19 JULY 2024

ADVISORY OPINION

LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM

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CONSÉQUENCES JURIDIQUES DÉCOULANT DES POLITIQUES ET PRATIQUES D'ISRAËL DANS LE TERRITOIRE PALESTINIEN OCCUPÉ, Y COMPRIS JÉRUSALEM-EST

19 JUILLET 2024

AVIS CONSULTATIF

TABLE OF CONTENTS

Paragraphs

CHRONOLOGY OF THE PROCEDURE 1-21

I. JURISDICTION AND DISCRETION 22-50

A. Jurisdiction 23-29

B. Discretion 30-49

1. Whether the request relates to a dispute between two parties, one of which has not consented to the jurisdiction of the Court 33-35

2. Whether the Court's opinion would assist the General Assembly in the performance of its functions 36-37

3. Whether the Court's opinion may undermine the negotiation process between Israel and Palestine 38-40

4. Whether an advisory opinion would be detrimental to the work of the Security Council 41-43

5. Whether the Court has sufficient information to enable it to give an advisory opinion 44-47

6. Whether the questions are formulated in a biased manner 48-49

II. GENERAL CONTEXT 51-71

III. SCOPE AND MEANING OF THE QUESTIONS POSED BY THE GENERAL ASSEMBLY 72-83

IV. APPLICABLE LAW 84-102

V. ISRAEL'S POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY 103-243

A. The question of the prolonged occupation 104-110

B. Settlement policy 111-156

1. Overview 111-114

2. Transfer of civilian population 115-119

3. Confiscation or requisitioning of land 120-123

4. Exploitation of natural resources 124-133

5. Extension of Israeli law 134-141

6. Forced displacement of the Palestinian population 142-147

7. Violence against Palestinians 148-154

8. Conclusion on Israel's settlement policy 155-156

C. The question of the annexation of the Occupied Palestinian Territory 157-179

1. The concept of annexation 158-161

2. Acts by Israel amounting to annexation 162-173

3. The prohibition of the acquisition of territory by force 174-179

D. The question of discriminatory legislation and measures 180-229

1. The scope of question *(a)* 180-184

2. The concept of discrimination 185-191

3. Residence permit policy 192-197

4. Restrictions on movement 198-206

5. Demolition of property 207-222

(a) *Punitive demolitions* 208-213

(b) *Demolitions for lack of building permit* 214-222

6. Conclusion on Israel's discriminatory legislation and measures 223-229

E. The question of self-determination 230-243

VI. EFFECTS OF ISRAEL'S POLICIES AND PRACTICES ON THE LEGAL STATUS OF THE OCCUPATION 244-264

A. The scope of the first part of question *(b)* and applicable law 244-251

B. The manner in which Israeli policies and practices affect the legal status of the occupation 252-258

C. The legality of the continued presence of Israel in the Occupied Palestinian Territory 259-264

VII. LEGAL CONSEQUENCES ARISING FROM ISRAEL'S POLICIES AND PRACTICES AND FROM THE ILLEGALITY OF ISRAEL'S CONTINUED PRESENCE IN THE OCCUPIED PALESTINIAN TERRITORY 265-283

A. Legal consequences for Israel 267-272

B. Legal consequences for other States 273-279

C. Legal consequences for the United Nations 280-283

OPERATIVE CLAUSE 285

INTERNATIONAL COURT OF JUSTICE

YEAR 2024

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LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM

Jurisdiction of the Court to give the advisory opinion requested.

Article 65, paragraph 1, of the Statute — Article 96, paragraph 1, of the Charter — Competence of the General Assembly to seek advisory opinions — Request made in accordance with the Charter — Questions submitted to the Court are legal in character.

The Court has jurisdiction to give the advisory opinion requested.

* *

Discretion of the Court to decide whether it should give an opinion.

Article 65, paragraph 1, of the Statute — Only "compelling reasons" may lead the Court to refuse to exercise its judicial function.

Argument that request relates to a dispute between two parties, one of which has not consented to jurisdiction of the Court — Subject-matter of the General Assembly's request is not only a bilateral matter between Israel and Palestine — Issue is a matter of particular interest and concern to the United Nations — Giving the opinion requested does not have effect of circumventing principle of consent to judicial settlement.

Argument that the Court's response would not assist the General Assembly in performance of its functions — Determination of usefulness of the opinion left to requesting organ.

Argument that the Court's opinion may undermine negotiation process between Israel and Palestine — Question of possible adverse effect is a matter of conjecture — The Court cannot speculate about the effects of its opinion.

Argument that an advisory opinion would be detrimental to work of the Security Council — Primary responsibility of the Security Council for maintenance of international peace and security is not necessarily exclusive — The General Assembly has competence to address matters concerning international peace and security, such as those raised in questions.

Argument that the Court lacks sufficient information to enable it to give an advisory opinion — The Court considers it has sufficient information on the facts at its disposal.

Argument that questions are formulated in biased manner — It is for the Court to appreciate and assess appropriateness of formulation of questions — The Court also has power to determine for itself scope and meaning of questions.

No compelling reasons for the Court to decline to give the opinion requested by the General Assembly.

* *

Scope and meaning of the questions posed by the General Assembly.

Material scope — Question (a) *identifies three types of conduct which question* (b) *describes as policies and practices of Israel — Assumption under terms of question* (a) *that these policies and practices are contrary to international law — It is, however, for the Court to determine lawfulness of policies and practices identified by the General Assembly — Methods of proof applied by the Court — No need for the Court to make findings of fact with regard to specific incidents.*

Territorial scope — Palestinian territory occupied since 1967 encompassing the West Bank, East Jerusalem and the Gaza Strip — The "Occupied Palestinian Territory" constituting, from legal standpoint, a single territorial unit.

Temporal scope — The Court is not precluded from having regard to facts predating the occupation — Policies and practices contemplated by request do not include conduct by Israel in the Gaza Strip in response to attack carried out on 7 October 2023.

First part of question (b) *calls on the Court to ascertain manner in which Israel's policies and practices affect legal status of occupation, and thereby legality of continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory.*

* *

Applicable law.

Status of the Occupied Palestinian Territory — The West Bank and East Jerusalem are occupied territories in which Israel has status of occupying Power — Examination of status of the Gaza Strip — Israel's obligations in the Gaza Strip are commensurate with degree of its effective control.

Relevance of prohibition of acquisition of territory by threat or use of force and of right of peoples to self-determination — Particular relevance of international humanitarian law — Fourth Geneva Convention is applicable in the Occupied Palestinian Territory — Hague Regulations are binding on Israel — International human rights law — Israel is bound by the ICCPR and the ICESCR — Israel is bound to comply with CERD — Question of Oslo Accords — Oslo Accords cannot be understood to detract from Israel's obligations under pertinent rules of international law applicable in the Occupied Palestinian Territory.

* *

Israel's policies and practices in the Occupied Palestinian Territory.

Question (a) *concerns in part the legal consequences arising from Israel's "prolonged occupation" of the Occupied Palestinian Territory — Duty of occupying Power to administer the territory for benefit of local population — Nature and scope of powers and duties of occupying Power always premised on assumption that occupation is a temporary situation to respond to military necessity — Occupation cannot transfer title of sovereignty to occupying Power — Fact that an occupation is prolonged may have a bearing on justification under international law of occupying Power's continued presence in the occupied territory — The Court to examine Israel's policies and practices, as well as its continued presence in the Occupied Palestinian Territory, against this background.*

Settlement policy.

Since removal of Israel's settlements from the Gaza Strip in 2005, Israel's settlement policy has continued in the West Bank and East Jerusalem — The Court to limit its analysis to Israel's ongoing settlement policy in the West Bank and East Jerusalem.

Transfer by Israel of settlers to the West Bank and East Jerusalem, as well as maintenance of their presence, contrary to sixth paragraph of Article 49 of Fourth Geneva Convention —Expansion of Israel's settlements in the West Bank and East Jerusalem based on confiscation or requisitioning of large areas of land — Land policies of Israel not in conformity with Articles 46, 52 and 55 of Hague Regulations.

Exploitation of natural resources —Occupying Power is only administrator and usufructuary of natural resources in the occupied territory and must safeguard the capital of these resources — Use by occupying Power of natural resources must not exceed what is necessary for purposes of the occupation —Continuing duty of occupying Power to ensure adequate supply of foodstuffs for local population, including water — Use of natural resources in the occupied territory must be sustainable — Evidence that Israel exploits natural resources in Area C for benefit of its own population, to disadvantage of local Palestinian population — Israel's use of natural resources in the Occupied Palestinian Territory inconsistent with its obligations under international law.

Extension of Israeli law in the West Bank and East Jerusalem — Under Article 43 of Hague Regulations, occupying Power must in principle respect law in force in the occupied territory unless absolutely prevented from doing so — Exceptions set out in second paragraph of Article 64 of Fourth Geneva Convention — Extension of Israel's law to the West Bank and East Jerusalem not justified under relevant provision of Fourth Geneva Convention — Regulatory authority exercised by Israel in manner that is inconsistent with rule reflected in Article 43 of Hague Regulations and Article 64 of Fourth Geneva Convention.

Forced displacement of Palestinian population — Large-scale confiscation of land and deprivation of access to natural resources, as well as measures taken by Israeli military forces inducing departure of Palestinian population in Area C — Israel's policies and practices contrary to prohibition of forcible transfer of protected population under first paragraph of Article 49 of Fourth Geneva Convention.

Violence against Palestinians — Israel's systematic failure to prevent or punish attacks by settlers against the life or bodily integrity of Palestinians, as well as Israel's excessive use of force against Palestinians, is inconsistent with its obligations under Article 46 of Hague Regulations, first paragraph of Article 27 of Fourth Geneva Convention, Article 6, paragraph 1, and Article 7 of the ICCPR.

Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law.

Question of annexation of the Occupied Palestinian Territory.

Conduct by occupying Power displaying intent to exercise permanent control over occupied territory may indicate an act of annexation — Israel's policies and practices, notably in East Jerusalem and Area C of the West Bank, designed to remain in place indefinitely and to create irreversible effects on the ground — Israel's policies and practices amount to annexation of large parts of the Occupied Palestinian Territory — Prohibition of the use of force and corollary principle of non-acquisition of territory by force.

Question of discriminatory legislation and measures.

Concept of discrimination — The Court to determine whether legislation adopted and measures taken by Israel differentiate on, inter alia*, grounds of race, religion or ethnicity between Palestinians and members of other groups in relation to their enjoyment of human rights — Whether differentiation of treatment is nevertheless justified, in that it is reasonable and objective and serves a legitimate public aim.*

Israel's residence permit policy amounts to prohibited discrimination under Articles 2, paragraph 2, 23 and 26 ICCPR, and Articles 2, paragraph 2, and 10, paragraph 1, of the ICESCR — Restrictions imposed by Israel on movement of Palestinians in the Occupied Palestinian Territory amount to prohibited discrimination — Israel's practice of demolition of Palestinian properties in the West Bank and in East Jerusalem, including punitive demolitions and demolitions for lack of building permit, amounts to prohibited discrimination — Israel's legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between settler and Palestinian communities — Israel's legislation and measures constitute breach of Article 3 of CERD.

Question of self-determination.

Effects of Israel's policies and practices on exercise of the Palestinian people's right to self-determination — In cases of foreign occupation, right to self-determination constitutes a peremptory norm of international law — Obligation of Israel, as occupying Power, not to impede the Palestinian people from exercising its right to self-determination — Israel's settlement policy and its annexation of large parts of the Occupied Palestinian Territory violates integrity thereof — Israel's policies and practices obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development — Prolonged character of Israel's unlawful policies and practices aggravates violation of right of the Palestinian people to self-determination.

* *

Effects of Israel's policies and practices on legal status of occupation.

Scope of first part of question (b) *and applicable law.*

Scope of first part of question (b) *concerns manner in which Israel's policies and practices affect the legal status of the occupation, and thereby the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory — Relevance of* jus ad bellum *and right of peoples to self-determination.*

Manner in which Israel's policies and practices affect the legal status of the occupation.

Israel's assertion of sovereignty over and annexation of certain parts of the Occupied Palestinian Territory constitute violation of prohibition of acquisition of territory by force — Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory — Israel's security concerns cannot override principle of prohibition of acquisition of territory by force — Israel's obstruction to the exercise by the Palestinian people of its right to self-determination — Violation of fundamental principles of international law — Direct impact on legality of Israel's continued presence, as an occupying Power — Israel's presence in the Occupied Palestinian Territory is unlawful — Illegality relates to entirety of the Palestinian territory occupied by Israel in 1967 — No exception because of Oslo Accords — Unlawfulness of presence does not release Israel from its obligations and responsibilities under international law.

* *

Legal consequences arising from Israel's policies and practices and from the illegality of Israel's continued presence in the Occupied Palestinian Territory.

Legal consequences for Israel.

Israel obliged to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible — Obligation to immediately cease all new settlement activity — Obligation to repeal

all legislation and measures creating or maintaining the unlawful situation, including those which discriminate against the Palestinian people in the Occupied Palestinian Territory, as well as all measures aimed at modifying the demographic composition of any parts of the territory — Obligation to provide full reparation for the damage caused by Israel's internationally wrongful acts to all natural or legal persons concerned — Israel remains bound to comply with its obligation to respect the right of the Palestinian people to self-determination and with its obligations under international humanitarian law and international human rights law.

Legal consequences for other States.

All States must co-operate with the United Nations to put into effect modalities required to ensure an end to Israel's illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination — All States under obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory — Obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory — Obligation to distinguish in dealings with Israel between the territory of Israel and the Occupied Palestinian Territory.

Legal consequences for the United Nations.

Obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory — Obligation to distinguish in dealings with Israel between the territory of Israel and the Occupied Palestinian Territory — Precise modalities to bring to an end Israel's unlawful presence in the Occupied Palestinian Territory to be dealt with by the General Assembly and the Security Council.

ADVISORY OPINION

Present: *President* SALAM; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, YUSUF, XUE, BHANDARI, IWASAWA, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDO, CLEVELAND, AURESCU, TLADI; *Registrar* GAUTIER.

On the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The questions on which the advisory opinion of the Court has been requested are set forth in resolution 77/247 adopted by the United Nations General Assembly (hereinafter the "General Assembly") on 30 December 2022. By a letter dated 17 January 2023 and received in the Registry on 19 January 2023, the Secretary-General of the United Nations officially communicated to the Court the decision taken by the General Assembly to submit these questions for an advisory opinion. Certified true copies of the English and French texts of the resolution were enclosed with the letter. Paragraph 18 of the resolution reads as follows:

"*The General Assembly,*

. . . . . .

18. *Decides*, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 *(a)* above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

2. By letters dated 19 January 2023, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of its Statute.

3. By an Order dated 3 February 2023, the Court decided, in accordance with Article 66, paragraph 2, of its Statute, that the United Nations and its Member States, as well as the observer State of Palestine, were considered likely to be able to furnish information on the questions submitted to it for an advisory opinion, and fixed 25 July 2023 as the time-limit within which written statements on the questions might be presented to it, and 25 October 2023 as the time-limit within which States and organizations having presented written statements might submit written comments on the other written statements.

4. By letters dated 6 February 2023, the Registrar informed the United Nations and its Member States, as well as the observer State of Palestine, of the Court's decisions and transmitted a copy of the Order to them.

5. Ruling on requests presented subsequently by the League of Arab States, the Organisation of Islamic Cooperation and the African Union, the Court decided, in accordance with Article 66 of its Statute, that those three international organizations were likely to be able to furnish information on the questions submitted to it, and that they therefore might do so within the time-limits fixed by the Court.

6. Pursuant to Article 65, paragraph 2, of the Statute, the Secretary-General of the United Nations, under cover of a letter from the United Nations Legal Counsel dated 31 May 2023 and received in the Registry on 1 June 2023, communicated to the Court the first part of a dossier of documents likely to throw light upon the questions formulated by the General Assembly. The second part of that dossier was received in the Registry on 23 June 2023, under cover of a letter from the United Nations Legal Counsel dated 22 June 2023. Member States of the United Nations, the observer State of Palestine, the League of Arab States, the Organisation of Islamic Cooperation and the African Union were notified of these two communications on 2 and 26 June 2023, respectively.

7. Within the time-limit fixed by the Court in its Order of 3 February 2023, written statements were filed in the Registry, in order of receipt, by Türkiye, Namibia, Luxembourg, Canada, Bangladesh, Jordan, Chile, Liechtenstein, Lebanon, Norway, Israel, Algeria, the League of Arab States, the Syrian Arab Republic, Palestine, the Organisation of Islamic Cooperation, Egypt, Guyana, Japan, Saudi Arabia, Qatar, Switzerland, Spain, the Russian Federation, Italy, Yemen, Maldives, the United Arab Emirates, Oman, the African Union, Pakistan, South Africa, the United Kingdom of Great Britain and Northern Ireland, Hungary, Brazil, France, Kuwait, the United States of America, China, The Gambia, Ireland, Belize, Bolivia, Cuba, Mauritius, Morocco, Czechia, Malaysia, Colombia, Indonesia, Guatemala, Nauru, Djibouti, Togo and Fiji.

8. By a communication dated 28 July 2023, the Registry informed Member States of the United Nations having presented written statements, the observer State of Palestine, as well as the League of Arab States, the Organisation of Islamic Cooperation and the African Union, of the list of participants having filed written statements in the proceedings and explained that those statements could be downloaded from a dedicated web portal managed by the Registry.

9. The President of the Court authorized, on an exceptional basis, the filing of the written statement of Senegal on 1 August 2023 and of the written statement of Zambia on 4 August 2023, after the expiration of the relevant time-limit.

10. By a letter dated 7 August 2023, the Registrar informed the United Nations, and those of its Member States which had not presented written statements, that written statements had been filed in the Registry.

11. By letters dated 18 October 2023, the Registrar informed the United Nations, its Member States and the observer State of Palestine, as well as the League of Arab States, the Organisation of Islamic Cooperation and the African Union, that the Court had decided to hold oral proceedings on the request for an advisory opinion, which would open on 19 February 2024. It was specified that, during the oral proceedings, oral statements and comments could be presented by the United Nations and its Member States (regardless of whether they had submitted written statements and, as the case may be, written comments), the observer State of Palestine, as well as the League of Arab States, the Organisation of Islamic Cooperation and the African Union. The Registrar also invited them to inform the Registry, by 15 December 2023 at the latest, if they intended to take part in the oral proceedings.

12. By letters dated 31 October 2023, the Registrar informed Member States of the United Nations, the observer State of Palestine, the League of Arab States, the Organisation of Islamic Cooperation and the African Union that the United Nations Secretariat had communicated to

the Court new documents and certain translations of documents already submitted, as a supplement to the dossier presented in accordance with Article 65, paragraph 2, of the Statute.

13. Within the time-limit fixed by the Court in its Order of 3 February 2023, written comments were filed in the Registry, in order of receipt, by Jordan, the Organisation of Islamic Cooperation, Qatar, Belize, Bangladesh, Palestine, the United States of America, Indonesia, Chile, the League of Arab States, Egypt, Algeria, Guatemala and Namibia.

14. Upon receipt of those written comments, the Registrar, by communications dated 30 October 2023, informed Member States of the United Nations, the observer State of Palestine and international organizations having presented written statements that written comments had been submitted and that those comments could be downloaded from a dedicated web portal managed by the Registry.

15. On 2 November 2023, the President of the Court authorized, on an exceptional basis, the filing of the written comments of Pakistan, after the expiration of the relevant time-limit. Member States of the United Nations and international organizations having submitted written statements, and the observer State of Palestine, were informed thereof by a communication of the same date.

16. By communications dated 2 November 2023, the Registrar informed the United Nations and those of its Member States not having taken part in the written proceedings that the written statements and written comments submitted in the present proceedings could be downloaded from a dedicated web portal managed by the Registry.

17. By communications dated 20 November 2023, the Registrar informed the United Nations, its Member States and the observer State of Palestine, as well as the League of Arab States, the Organisation of Islamic Cooperation and the African Union, that non-governmental organizations had submitted written statements in the present advisory proceedings on their own initiative, pursuant to Practice Direction XII, and that these statements had been made available to them on a web portal managed by the Registry.

18. By letters dated 9 January 2024, the Registrar communicated the list of participants in the oral proceedings to those Member States of the United Nations which were taking part in them, and the observer State of Palestine, as well as the League of Arab States, the Organisation of Islamic Cooperation and the African Union, and enclosed a detailed schedule of the oral proceedings. By the same letters, he also informed them of certain practical arrangements regarding the organization of the oral proceedings.

19. By letters dated 15 January 2024, the Registrar communicated the list of participants in the oral proceedings to the United Nations and those of its Member States which were not taking part in them, and enclosed a detailed schedule of those proceedings.

20. Pursuant to Article 106 of its Rules, the Court decided to make the written statements and written comments submitted to it accessible to the public after the opening of the oral proceedings.

The written statements and written comments of States not taking part in the oral proceedings would be made accessible to the public on the first day of the oral proceedings. The written statements and written comments of States and organizations taking part in the oral proceedings would be made accessible at the end of the day on which they presented their oral statements.

21. In the course of the oral proceedings held on 19, 20, 21, 22, 23 and 26 February 2024, the Court heard oral statements, in the following order, by:

for the State of Palestine:	HE Mr Riad Malki, Minister for Foreign Affairs and Expatriates of the State of Palestine,
	Mr Andreas Zimmermann, LLM (Harvard), Professor, University of Potsdam, member of the Permanent Court of Arbitration,
	Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk, member of the Bar of the Supreme Court of the United States,
	HE Ms Namira Negm, PhD, Ambassador,
	Mr Philippe Sands, KC, Professor of Law, University College London, Barrister, 11 King's Bench Walk,
	Mr Alain Pellet, Emeritus Professor, University Paris Nanterre, former Chairperson of the International Law Commission, member and former President of the Institut de droit international,
	HE Mr Riyad Mansour, Minister, Permanent Representative of the State of Palestine to the United Nations, New York;
for the Republic of South Africa:	HE Mr Vusimuzi Madonsela, Ambassador of the Republic of South Africa to the Kingdom of the Netherlands,
	Mr Pieter Andreas Stemmet, Acting Chief State Law Adviser (International Law), Department of International Relations and Cooperation;
for the People's Democratic Republic of Algeria:	Mr Ahmed Laraba, jurist, member of the International Law Commission;
for the Kingdom of Saudi Arabia:	HE Mr Ziad Al Atiyah, Ambassador of the Kingdom of Saudi Arabia to the Kingdom of the Netherlands;
for the Kingdom of the Netherlands:	Mr René Lefeber, Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands, Representative of the Government of the Kingdom of the Netherlands;
for the People's Republic of Bangladesh:	HE Mr Riaz Hamidullah, Ambassador of the People's Republic of Bangladesh to the Kingdom of the Netherlands;

for the Kingdom of Belgium:	Mr Piet Heirbaut, Jurisconsult, Director-General of Legal Affairs, Federal Public Service for Foreign Affairs, Foreign Trade and Development Co-operation of the Kingdom of Belgium,
	Mr Vaios Koutroulis, Professor of International Law, Université Libre de Bruxelles;
for Belize:	HE Mr Assad Shoman, Ambassador, Special Envoy of the Prime Minister of Belize responsible for sovereignty matters,
	Ms Philippa Webb, Professor of Public International Law, King's College London, member of the Bars of Belize, England and Wales, and the State of New York, Twenty Essex,
	Mr Ben Juratowitch, KC, member of the Bars of Belize, Paris, and England and Wales, Essex Court Chambers;
for the Plurinational State of Bolivia:	HE Mr Roberto Calzadilla Sarmiento, Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands;
for the Federative Republic of Brazil:	Ms Maria Clara de Paula Tusco, Counsellor;
for the Republic of Chile:	Ms Ximena Fuentes Torrijo, Special Representative of the Republic of Chile;
for the Republic of Colombia:	Ms Andrea Jiménez Herrera, Minister Counsellor, Head of the Group of Affairs before the International Court of Justice at the Ministry of Foreign Affairs of the Republic of Colombia;
for the Republic of Cuba:	HE Ms Anayansi Rodríguez Camejo, Deputy Minister for Foreign Affairs;
for the Arab Republic of Egypt:	Ms Jasmine Moussa, Legal Counsellor, Cabinet of the Minister for Foreign Affairs, Ministry of Foreign Affairs of the Arab Republic of Egypt;
for the United Arab Emirates:	HE Ms Lana Nusseibeh, Assistant Minister for Political Affairs, Permanent Representative of the United Arab Emirates to the United Nations;
for the United States of America:	Mr Richard C. Visek, Acting Legal Adviser, United States Department of State;
for the Russian Federation:	HE Mr Vladimir Tarabrin, Ambassador of the Russian Federation to the Kingdom of the Netherlands;
for the French Republic:	Mr Diégo Colas, Legal Adviser, Director of Legal Affairs at the Ministry for Europe and Foreign Affairs;
for the Republic of The Gambia:	Hon. Dawda A. Jallow, Attorney General and Minister of Justice;

for the Co-operative Republic of Guyana:	Mr Edward Craven, Barrister, Matrix Chambers, London;
for Hungary:	Mr Attila Hidegh, Deputy State Secretary for International Cooperation, Ministry of Foreign Affairs and Trade of Hungary,
	Mr Gergő Kocsis, Head of the United Nations Department;
for the People's Republic of China:	HE Mr Ma Xinmin, Legal Adviser of the Ministry of Foreign Affairs, Director General, Department of Treaty and Law, Ministry of Foreign Affairs;
for the Islamic Republic of Iran:	HE Mr Reza Najafi, Deputy Foreign Minister for Legal and International Affairs, Ministry of Foreign Affairs;
for the Republic of Iraq:	HE Mr Hayder Albarrak, Head of the Legal Department of the Ministry of Foreign Affairs;
for Ireland:	Mr Rossa Fanning, SC, Attorney General;
for Japan:	Mr Tomohiro Mikanagi, Legal Adviser, Director General, International Legal Affairs Bureau, Ministry of Foreign Affairs, Japan,
	Mr Dapo Akande, Chichele Professor of Public International Law, University of Oxford, member of the Bar of England and Wales, Essex Court Chambers;
for the Hashemite Kingdom of Jordan:	HE Mr Ayman Safadi, Deputy Prime Minister and Minister for Foreign Affairs and Expatriates of the Hashemite Kingdom of Jordan,
	HE Mr Ahmad Ziadat, Minister of Justice of the Hashemite Kingdom of Jordan,
	Sir Michael Wood, KCMG, KC, member of the Bar of England and Wales, Twenty Essex, London;
for the State of Kuwait:	HE Mr Ali Ahmad Ebraheem S. Al-Dafiri, Ambassador of the State of Kuwait to the Kingdom of the Netherlands, Agent of the State of Kuwait,
	HE Mr Tareq M. A. M. Al-Banai, Permanent Representative of the State of Kuwait to the United Nations,
	HE Ms Tahani R. F. Al-Nasser, Assistant Foreign Minister of Legal Affairs, State of Kuwait;
for the Lebanese Republic:	HE Mr Abdel Sattar Issa, Ambassador of the Lebanese Republic to the Kingdom of the Netherlands;

for the State of Libya:	Mr Ahmed El Gehani, Libyan Representative to the International Criminal Court,
	Mr Nasser F. O. Algheitta, Legal Counsellor at the Permanent Mission of the State of Libya to the United Nations Office at Geneva;
for the Grand Duchy of Luxembourg:	Mr Alain Germeaux, Director of Legal Affairs, Ministry for Foreign and European Affairs of the Grand Duchy of Luxembourg;
for Malaysia:	HE Dato' Seri Utama Haji Mohamad Haji Hasan, Minister for Foreign Affairs of Malaysia;
for the Republic of Mauritius:	HE Mr Jagdish D. Koonjul, Permanent Representative of the Republic of Mauritius to the United Nations, New York,
	Mr Pierre Klein, Professor of International Law at the Université Libre de Bruxelles;
for the Republic of Namibia:	Hon. Yvonne Dausab, Minister of Justice,
	Ms Phoebe Okowa, Professor of Public International Law, University of London, Legal Counsel of Namibia;
for the Kingdom of Norway:	Mr Kristian Jervell, Director General, Legal Department, Ministry of Foreign Affairs,
	HE Mr Rolf Einar Fife, *ambassadeur en mission spéciale*, Ministry of Foreign Affairs;
for the Sultanate of Oman:	HE Sheikh Abdullah bin Salim bin Hamed Al Harthi, Ambassador of the Sultanate of Oman to the Kingdom of the Netherlands;
for the Islamic Republic of Pakistan:	HE Mr Ahmed Irfan Aslam, Federal Minister for Law and Justice of the Islamic Republic of Pakistan;
for the Republic of Indonesia:	HE Ms Retno L. P. Marsudi, Minister for Foreign Affairs of the Republic of Indonesia;
for the State of Qatar:	HE Mr Mutlaq Bin Majed Al-Qahtani, Ambassador of the State of Qatar to the Kingdom of the Netherlands;
for the United Kingdom of Great Britain and Northern Ireland:	Ms Sally Langrish, Representative of the United Kingdom of Great Britain and Northern Ireland before the International Court of Justice, Legal Adviser and Director General, Legal, Foreign, Commonwealth & Development Office,
	Mr Dan Sarooshi, KC, Professor of Public International Law, University of Oxford, member of the Bar of England and Wales, Essex Court Chambers;
for the Republic of Slovenia:	Mr Helmut Hartman, Legal Adviser, Embassy of the Republic of Slovenia in the Kingdom of the Netherlands,
	Mr Daniel Müller, Founding Partner of FAR Avocats, member of the Paris Bar;

for the Republic of the Sudan:	Mr Marwan A. M. Khier, Chargé d'affaires, Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,
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I. JURISDICTION AND DISCRETION

22. When seised of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* (hereinafter the "*Wall* Advisory Opinion"), *I.C.J. Reports 2004 (I)*, p. 144, para. 13; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 111, para. 54).

A. Jurisdiction

23. The Court's jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute, which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request".

24. The Court notes that pursuant to Article 96, paragraph 1, of the Charter, the General Assembly "may request the International Court of Justice to give an advisory opinion on any legal question".

25. The Court must satisfy itself, in accordance with the requirement in Article 96 of the Charter and Article 65 of its Statute, that the question on which it is requested to give its opinion is a "legal question".

26. All the participants who addressed this issue have expressed the view that the Court has jurisdiction to give the advisory opinion and that the questions contained in paragraph 18 of resolution 77/247 are legal questions.

27. In the present proceedings, the General Assembly put two questions to the Court (see paragraph 1 above). These questions relate first to the legal consequences arising from certain policies and practices of Israel as an occupying Power in a situation of belligerent occupation since 1967. Secondly, they relate to how such policies and practices affect the legal status of the occupation in light of certain rules and principles of international law and to the legal consequences which arise from this status. The Court considers that these questions are legal questions.

28. In light of the above, the Court concludes that the request has been made in accordance with the provisions of the Charter and of the Statute of the Court and therefore that it has jurisdiction to render the requested opinion.

29. However, in the course of these proceedings, diverging views have been expressed as to whether the questions asked are clearly and precisely formulated. While some participants consider that the questions are clear and precise, others are of the view that not all aspects of the questions are presented in a clear way. The Court notes that "lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court." (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 153-154, para. 38.) In the present case, the Court sees no reason to reformulate the questions. However, the Court will interpret the questions put to it wherever clarification may be necessary.

B. Discretion

30. The fact that the Court has jurisdiction to give an advisory opinion does not mean that it is obliged to exercise it. Article 65, paragraph 1, of the Statute provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request". As the Court has repeatedly emphasized, this "should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met" (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 415-416, para. 29). However, given its functions as the principal judicial organ of the United Nations, the Court considers that its answer to a request for an advisory opinion "represents its participation in the activities of the Organization, and, in principle, should not be refused" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 113, para. 65).

31. In accordance with its jurisprudence, only compelling reasons may lead the Court to refuse to give its opinion in response to a request falling within its jurisdiction (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 113, para. 65). In view of the fact that some participants in the present proceedings have argued that there are compelling reasons for the Court to decline to give its opinion, the Court will address these arguments below.

32. The arguments raised by these participants may be categorized as follows: (1) the request for an advisory opinion relates to a dispute between two parties, one of which has not consented to the jurisdiction of the Court; (2) the opinion would not assist the General Assembly; (3) the opinion may undermine the Israeli-Palestinian negotiation process; (4) an advisory opinion would be detrimental to the work of the Security Council; (5) the Court does not have sufficient information to enable it to give an advisory opinion; and (6) the questions are formulated in a biased manner. The Court will examine each of these arguments in turn.

1. Whether the request relates to a dispute between two parties, one of which has not consented to the jurisdiction of the Court

33. It has been argued by some participants that the Court should decline to render an advisory opinion because the request concerns a bilateral dispute between Palestine and Israel, and the latter has not consented to the jurisdiction of the Court to resolve that dispute, as evidenced by Israel's vote against resolution 77/247 and its written statement in the present proceedings. The majority of participants have, however, submitted that rendering an advisory opinion would not circumvent the principle of consent, as the questions put to the Court do not primarily concern a bilateral dispute. In the view of most of these participants, the subject-matter of the General Assembly's request, although it involves Israel and Palestine, concerns the responsibilities of the United Nations and wider questions of international peace and security, as well as certain obligations *erga omnes* of States.

34. The Court recalls that there would be a compelling reason for it to decline to give an advisory opinion when such an opinion "would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33; see also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 117, para. 85). However, the fact that, in the course of its reasoning, and in order to answer the questions submitted to it, the Court may have to pronounce on legal issues upon which divergent views have been expressed by Palestine and Israel does not convert the present case into a bilateral dispute (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 24, para. 34).

35. The Court does not regard the subject-matter of the General Assembly's request in the present case as being only a bilateral matter between Israel and Palestine. The involvement of the United Nations organs, and before that the League of Nations, in questions relating to Palestine dates back to the Mandate System (see paragraphs 51-52 below). Since resolution 181 (II) concerning the partition of Palestine was adopted by the General Assembly in 1947, the Palestinian question has been before the General Assembly, which has considered, debated and adopted resolutions on it almost annually. Thus, this issue is a matter of particular interest and concern to the United Nations. It has been described by the General Assembly as "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy" (General Assembly resolution 57/107 of 3 December 2002). The Court therefore considers that the issues raised by the request are part of the Palestinian question, including the General Assembly's role relating thereto (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 159, para. 50; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 118, para. 88). Consequently, the Court cannot, in the exercise of its discretion, decline to give the opinion requested on the ground of circumventing the principle of consent to judicial settlement.

2. Whether the Court's opinion would assist the General Assembly in the performance of its functions

36. It has been argued by one of the participants that the Court should decline to reply to the questions put to it because the General Assembly is not seeking the Court's opinion on a matter with which it requires assistance, but rather seeks the Court's confirmation of particular legal conclusions

relevant to the resolution of a bilateral dispute between Palestine and Israel. Other participants who have addressed the question have maintained that the Court should not decline to give its opinion on this ground because the purpose of the present request is to obtain an advisory opinion which will be of assistance to the General Assembly in the exercise of its functions. These participants have argued that the matters under consideration are of long-standing importance to the work of the General Assembly, which will therefore find value in the Court's opinion on certain legal questions.

37. As the Court has observed in the past,

> "it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs." (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 16.)

The Court cannot substitute its own assessment of the need for such an opinion with that of the organ requesting it (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 163, para. 62). The Court has consistently held in its jurisprudence that "advisory opinions have the purpose of furnishing to the requesting organs the elements of law necessary for them in their action" (*ibid.*, p. 162, para. 60). In the present instance, the request is put forward by the General Assembly with reference to its own responsibilities and functions regarding the issue of the Occupied Palestinian Territory (see A/RES/77/247). The Court does not therefore consider that there is a compelling reason that should lead it to decline to give its opinion on the ground that such an opinion would not assist the General Assembly in the performance of its functions.

3. Whether the Court's opinion may undermine the negotiation process between Israel and Palestine

38. Some participants have contended that the Court should decline to reply to the questions put to it because an advisory opinion from the Court would interfere with the Israeli-Palestinian negotiation process laid out by the framework established in the 1993 Declaration of Principles on Interim Self-Government Arrangements (hereinafter the "Oslo I Accord") and the 1995 Interim Agreement on the West Bank and the Gaza Strip (hereinafter the "Oslo II Accord"), and may exacerbate the Israeli-Palestinian disagreement, thereby compromising the outcome of negotiations.

39. In the view of other participants, an advisory opinion from the Court would not interfere with the negotiation process and the Court should not decline to give one on this basis. They have suggested that, on the contrary, an opinion from the Court is all the more necessary in light of the fact that Israeli-Palestinian negotiations have been stalled for many years.

40. In the present circumstances, the question of whether the Court's opinion would have an adverse effect on a negotiation process is a matter of conjecture. The Court cannot speculate about the effects of its opinion. In response to a similar argument in another case, the Court stated:

> "It has . . . been submitted that a reply from the Court in this case might adversely affect disarmament negotiations and would, therefore, be contrary to the interest of the United Nations. The Court is aware that, no matter what might be its conclusions in any

> opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter. Beyond that, the effect of the opinion is a matter of appreciation. The Court has heard contrary positions advanced and there are no evident criteria by which it can prefer one assessment to another." (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 237, para. 17.)

In light of the foregoing, the Court cannot regard this factor as a compelling reason to decline to respond to the General Assembly's request.

4. Whether an advisory opinion would be detrimental to the work of the Security Council

41. It has been contended by some participants that the Court should exercise its discretion to decline to answer the questions before it, while others have argued that, even if the Court were to reply to these questions, it should take care that its reply does not interfere with the established framework for negotiations, since it is the Security Council, and not the General Assembly, which has primary responsibility for issues relating to the Israeli-Palestinian conflict. According to these participants, an advisory opinion from the Court could negatively affect or interfere with the negotiation framework that the Security Council has established for resolution of the dispute. Other participants who have addressed the question have argued that the Court's opinion would not be detrimental to the work of the Security Council. In their view, the Security Council does not have exclusive responsibility under the Charter with respect to the maintenance of international peace and security, since the General Assembly may also address, alongside the Security Council, issues of such concern.

42. This argument is similar to the one examined in section 3 above, in so far as the negotiating framework is concerned, but also concerns the respective competences of the Security Council and the General Assembly in the maintenance of international peace and security. The Court addressed the latter issue in its *Wall* Advisory Opinion as follows: "Under Article 24 of the Charter the Security Council has 'primary responsibility for the maintenance of international peace and security'" (*I.C.J. Reports 2004 (I)*, p. 148, para. 26). However, the Court emphasized that "Article 24 refers to a primary, but not necessarily exclusive, competence" (*ibid.*). The General Assembly has the power, *inter alia*, under Article 14 of the Charter to "recommend measures for the peaceful adjustment of any situation". The Court further stated that "there has been an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security" and that this "accepted practice of the General Assembly, as it has evolved, is consistent with Article 12, paragraph 1, of the Charter" (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 149-150, paras. 27-28). This is indeed the case with respect to certain aspects of the Palestinian question.

43. The Court also recalls that Article 10 of the Charter confers on the General Assembly a competence relating to "any questions or any matters" within the scope of the Charter and that Article 11, paragraph 2, specifically provides it with competence to "discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations". This is the case with respect to the questions posed by the General Assembly in the present proceedings. As the Court has stated previously,

> "[w]here, as here, the General Assembly has a legitimate interest in the answer to a question, the fact that that answer may turn, in part, on a decision of the Security Council is not sufficient to justify the Court in declining to give its opinion to the General Assembly" (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 423, para. 47).

As pointed out in paragraph 40 above, whether the opinion of the Court would have an adverse effect on the negotiation framework is a matter of conjecture on which the Court should not speculate. Moreover, in view of the fact that the General Assembly has the competence to address matters concerning international peace and security, such as those raised in the questions it has posed, there is no compelling reason for the Court to decline to give the requested opinion.

5. Whether the Court has sufficient information to enable it to give an advisory opinion

44. Some participants have raised the argument that the Court should decline to give an opinion because it lacks sufficient information and would have to embark on a fact-finding mission covering a period of decades in order to answer the questions put to it by the General Assembly.

45. It has, however, been contended by other participants that the Court has sufficient information and evidence in the record before it and in publicly available documentation to properly assess the questions of fact that are relevant and necessary for answering the legal questions put to it. In this respect, they have referred to the dossier submitted to the Court by the Secretary-General of the United Nations and to the written and oral statements of participants in the present proceedings.

46. In its Opinion concerning the *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 72), and in its Opinion on *Western Sahara*, the Court made it clear that what is decisive in these circumstances is whether the Court has before it sufficient information "to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 28-29, para. 46). The discretion of the Court is exercised in order to protect the integrity of its judicial function and it is for the Court to assess, in each case, the nature and extent of the information required for it to perform its judicial function.

47. In the present case, over 50 States and international organizations have submitted information relevant to a response to the questions put by the General Assembly to the Court. The Court notes in particular that Israel's written statement, although mainly related to issues of jurisdiction and judicial propriety, contained information on other matters, including Israel's security concerns. The Court has also reviewed a voluminous dossier submitted by the Secretary-General of the United Nations, which contains extensive information on the situation in the Occupied Palestinian Territory. It is for the Court to assess the sufficiency of the information available to it. In the present case, the Court considers that it has before it sufficient information to decide legal questions in a manner consistent with its judicial function. Consequently, there is no compelling reason for it to decline to give the requested opinion on this ground.

6. Whether the questions are formulated in a biased manner

48. It has been argued by some participants that the questions put to the Court have been presented in a biased manner in that they assume the existence of violations of international law by Israel. These participants therefore contend that the Court should decline to answer them. Other participants have contested the characterization of the questions as biased or imbalanced.

49. The Court recalls, in the first instance, that it has the power to interpret and, where necessary, reformulate the questions put to it (see paragraph 29 above). It is therefore for the Court to appreciate and assess the appropriateness of the formulation of the questions. The Court may also, where necessary, determine for itself the scope and the meaning of the questions put to it. In the present case, the Court does not consider that the General Assembly intended to restrict the Court's freedom to determine these issues. The Court will ascertain for itself whether Israel's policies and practices are in violation of the applicable rules and principles of international law, before determining the legal consequences of any such violations. Consequently, the Court cannot, in the exercise of its discretion, decline to give its opinion on the ground that the questions put to it are biased or imbalanced.

*

50. In light of the foregoing, the Court concludes that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly.

II. GENERAL CONTEXT

51. Having been part of the Ottoman Empire, at the end of the First World War, Palestine was placed under a class "A" Mandate that was entrusted to Great Britain by the League of Nations, pursuant to Article 22, paragraph 4, of the League Covenant. According to this provision,

> "[c]ertain communities, formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone".

The territorial boundaries of Mandatory Palestine were laid down by various instruments, in particular on the eastern border, by a British memorandum of 16 September 1922 and the Anglo-Transjordanian Treaty of 20 February 1928.

52. In 1947, the United Kingdom announced its intention to complete its evacuation of the mandated territory by 1 August 1948, subsequently advancing that date to 15 May 1948. In the meantime, on 29 November 1947, the General Assembly had adopted resolution 181 (II) on the future government of Palestine, which "*[r]ecommend[ed]* to the United Kingdom . . . and to all other Members of the United Nations the adoption and implementation . . . of the Plan of Partition" of the territory, as set forth in the resolution, between two independent States, one Arab, the other Jewish, as well as the creation of a special international régime for the City of Jerusalem. The resolution provided that "[i]ndependent Arab and Jewish States . . . shall come into existence in Palestine two

months after the evacuation of the . . . mandatory Power". While the Jewish population accepted the Plan of Partition, the Arab population of Palestine and the Arab States rejected this plan, contending, *inter alia*, that it was unbalanced.

53. On 14 May 1948, Israel proclaimed its independence with reference to the General Assembly resolution 181 (II); an armed conflict then broke out between Israel and a number of Arab States, and the Plan of Partition was not implemented.

54. By resolution 62 (1948) of 16 November 1948, the Security Council decided that "an armistice shall be established in all sectors of Palestine" and called upon the parties directly involved in the conflict to seek agreement to this end. In conformity with this decision, general armistice agreements were concluded in 1949 in Rhodes between Israel and its neighbouring States through mediation by the United Nations, fixing the armistice demarcation lines between Israeli and Arab forces (often later collectively called the "Green Line" owing to the colour used for it on maps, and referred to hereinafter as such). The Demarcation Lines were subject to such rectification as might be agreed upon by the parties.

55. On 29 November 1948, referring to resolution 181 (II), Israel applied for admission to membership of the United Nations. On 11 May 1949, when it admitted Israel as a Member State of the United Nations, the General Assembly recalled resolution 181 (II) and took note of Israel's declarations "in respect of the implementation of the said resolution[]" (General Assembly resolution 273 (III)).

56. In 1964, the Palestine Liberation Organization (PLO) was created to represent the Palestinian people.

57. In 1967, an armed conflict (also known as the "Six-Day War") broke out between Israel and neighbouring countries Egypt, Syria and Jordan. By the time hostilities had ceased, Israeli forces occupied all the territories of Palestine under British Mandate beyond the Green Line (see paragraph 54 above).

58. On 22 November 1967, the Security Council unanimously adopted resolution 242 (1967), which "*emphasiz[ed]* the inadmissibility of acquisition of territory by war" and called for the "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict" and the

> "[t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force".

It further affirmed "the necessity . . . [f]or achieving a just settlement of the refugee problem" and "[f]or guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones".

59. From 1967 onwards, Israel started to establish or support settlements in the territories it occupied and took a number of measures aimed at changing the status of the City of Jerusalem. The Security Council, after recalling on a number of occasions "the principle that acquisition of territory by military conquest is inadmissible", condemned those measures and, by resolution 298 (1971) of 25 September 1971, confirmed that

> "all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status".

60. In October 1973, another armed conflict broke out between Egypt, Syria and Israel.

61. By resolution 338 of 22 October 1973, the Security Council called upon the parties to the conflict to terminate all military activity and to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts; it also decided that, "immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned".

62. On 14 October 1974, the General Assembly recognized, by resolution 3210 (XXIX), the PLO as the representative of the Palestinian people. By resolution 3236 (XXIX) of 22 November 1974, it recognized "that the Palestinian people is entitled to self-determination in accordance with the Charter of the United Nations".

63. On 17 September 1978, Israel and Egypt signed the "Camp David Accords", which led in the following year to a Peace Treaty between the two countries. Later, a peace treaty was signed on 26 October 1994 between Israel and Jordan. That treaty fixed the boundary between the two States according to the lines set under the Mandate for Palestine (see paragraph 51 above) but provided that, with regard to the "territory that came under Israeli Military government control in 1967", the boundary with Jordan would be considered "administrative".

64. On 15 November 1988, referring to resolution 181 (II) "which partitioned Palestine into an Arab and a Jewish State", the PLO "proclaim[ed] the establishment of the State of Palestine".

65. In 1993 and 1995, Israel and the PLO signed the Oslo I and Oslo II Accords. In an exchange of letters on 9 September 1993, the PLO recognized Israel's right to exist in peace and security, and Israel recognized the PLO as the legitimate representative of the Palestinian people. The Oslo I Accord established general guidelines for the negotiations to be conducted between Israel and Palestine. The Oslo II Accord, *inter alia*, divided the Israeli-occupied West Bank into three administrative areas (A, B and C) with Area C, which covers more than 60 per cent of the West Bank, being exclusively administered by Israel.

66. The Oslo Accords required Israel to, *inter alia*, transfer to Palestinian authorities certain powers and responsibilities exercised in Areas A and B of the West Bank by its military authorities and civil administration. Where such transfers, which have remained limited and partial, have taken place, Israel has retained significant control in relation to security matters.

67. Following an increase in acts of violence from the West Bank, in the early 2000s Israel began building a "continuous fence" (hereinafter the "wall") largely in the West Bank and East

Jerusalem. A report of the Secretary-General states that "[t]he Government of Israel has since 1996 considered plans to halt infiltration into Israel from the central and northern West Bank" (Report of the Secretary-General of 24 November 2003, UN doc. A/ES-10/248). A plan of this type was approved for the first time by the Israeli Government in July 2001. The Government subsequently took several decisions relating to the construction of the wall, and the first part of the relevant works was declared completed on 31 July 2003. Notwithstanding the Court's opinion in 2004, finding "[t]he construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime [to be] contrary to international law" (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 201, para. 163), the construction of the wall continued, as well as the expansion of settlements in the Occupied Palestinian Territory.

68. Reports indicate that, by 2005, settlers who had been residing in 21 settlements in the Gaza Strip and in four settlements in the northern West Bank, were evacuated pursuant to an Israeli "Disengagement Plan" (see "Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2023) and paragraph 88 below). By 2023, approximately 465,000 settlers resided in the West Bank, spread across around 300 settlements and outposts, while some 230,000 settlers resided in East Jerusalem (see "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", Report of the United Nations High Commissioner for Human Rights, UN doc. A/HRC/55/72 (1 February 2024), para. 9). The residents of settlements and "outposts" in the Occupied Palestinian Territory ("settlers") are predominantly Israelis, as well as non-Israeli Jews who qualify for Israeli nationality under Israeli legislation.

69. On 19 November 2003, the Security Council adopted resolution 1515 (2003), by which it "*[e]ndorse[d]* the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict". The Quartet consists of representatives of the United States of America, the European Union, the Russian Federation and the United Nations. That resolution "*[c]all[ed]* on the parties to fulfil their obligations under the Roadmap in cooperation with the Quartet and to achieve the vision of two States living side by side in peace and security".

70. On 29 November 2012, the General Assembly, recalling, *inter alia*, resolution 181 (II), accorded to Palestine non-member observer State status in the United Nations (resolution 67/19).

71. In 2016, the Security Council adopted resolution 2334 (2016) in which it urged

> "the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967".

On 10 May 2024, the General Assembly adopted resolution ES-10/23 in which it "*[d]etermines* that the State of Palestine is qualified for membership in the United Nations in accordance with Article 4 of the Charter of the United Nations and should therefore be admitted to membership in the United Nations".

On 10 June 2024, the Security Council adopted resolution 2735 (2024), whereby it reiterated

> "its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with international law and relevant UN resolutions, and in this regard stresse[d] the importance of unifying the Gaza Strip with the West Bank under the Palestinian Authority".

III. Scope and meaning of the questions posed by the General Assembly

72. The Court now turns to the scope and meaning of the two questions posed by the General Assembly, and recalls that they are formulated as follows:

> "*(a)* What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
>
> *(b)* How do the policies and practices of Israel referred to in paragraph 18 *(a)* above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

73. The Court notes that the questions define the material, territorial and temporal scope of the Court's enquiry.

74. With regard to the material scope, question *(a)* identifies three types of conduct which question *(b)* describes as "policies and practices of Israel": first, "the ongoing violation by Israel of the right of the Palestinian people to self-determination"; second, Israel's "prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem"; third, Israel's "adoption of related discriminatory legislation and measures". The specific scope of each of these policies and practices will be determined below, as the Court examines them in turn. At present, the Court limits itself to observing a feature common to all of them, namely that the terms of question *(a)* assume that these policies and practices are contrary to international law. For example, Israel's conduct is characterized as constituting a violation, and the legislation and measures adopted by it are characterized as discriminatory. By virtue of its judicial function, however, the Court must itself determine the lawfulness of the policies and practices identified by the General Assembly (see *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 424, paras. 52-53). In its *Wall* Advisory Opinion, the Court considered that determining the legal consequences of an action involved

an assessment of whether that action "is or is not in breach of certain rules and principles of international law" (*I.C.J. Reports 2004 (I)*, p. 154, para. 39). In the present case, too, as mentioned above, the Court considers that question *(a)* requires an assessment of the conformity with international law of those policies and practices of Israel identified in the request (see paragraph 49).

75. To fulfil this task, the Court must consider the main features of Israel's policies and practices, as identified in the request. In doing so, the Court has taken account of the information contained in the dossier communicated by the Secretary-General of the United Nations (see paragraph 6 above). The Court has further had regard to other information provided to it by the participants in the case.

76. As far as the methods of proof are concerned, the Court recalls that, in its contentious jurisdiction, it has taken evidence contained in United Nations documents into account "to the extent that they are of probative value and are corroborated, if necessary, by other credible sources" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 239, para. 205). The Court assesses the probative value of reports from official or independent bodies according to criteria that include

> "(1) the source of the item of evidence (for instance partisan, or neutral), (2) the process by which it has been generated (for instance an anonymous press report or the product of a careful court or court-like process), and (3) the quality or character of the item (such as statements against interest, and agreed or uncontested facts)" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 135, para. 227; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment of 31 January 2024*, para. 175).

When considering the evidentiary value of such reports, the Court has given weight to the care taken in preparing a report, the comprehensiveness of its sources and the independence of those responsible for preparing it (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 137, para. 230). The Court will apply these criteria in its assessment of the probative value of the reports proffered in this case.

77. In these advisory proceedings, the Court considers that, in its request, the General Assembly has not sought from the Court a detailed factual determination of Israel's policies and practices. The object of the questions posed by the General Assembly to the Court is the legal characterization by the Court of Israel's policies and practices. Therefore, in order to give an advisory opinion in this case, it is not necessary for the Court to make findings of fact with regard to specific incidents allegedly in violation of international law. The Court need only establish the main features of Israel's policies and practices and, on that basis, assess the conformity of these policies and practices with international law. The Court has already concluded that it has before it the necessary information to perform this task (see paragraph 47 above).

78. In terms of its territorial scope, question *(a)* refers to "the Palestinian territory occupied since 1967", which encompasses the West Bank, East Jerusalem and the Gaza Strip. The Court notes that the various United Nations organs and bodies frequently make specific reference to the different parts of the Occupied Palestinian Territory. The Court will also do so in the present Advisory Opinion, as appropriate. However, the Court recalls that, from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected (General Assembly resolution 77/247, para. 12; Article XI of the Oslo II Accord; General Assembly resolution ES-10/20 (2018), sixteenth preambular paragraph; Security Council resolution 1860 (2009), second preambular paragraph; Security Council resolution 2720 (2023), fourth preambular paragraph). Thus, all references in this Opinion to the Occupied Palestinian Territory are references to this single territorial unit.

79. The Court further observes that the question mentions measures pertaining to "the Holy City of Jerusalem". The ordinary meaning of this term is ambiguous: it may refer to the entire city of Jerusalem, with the boundaries laid down in General Assembly resolution 181 (II) of 29 November 1947; it may refer to either of the two parts of the city following the 1949 General Armistice Agreement between Israel and Jordan (see paragraph 54 above); or it may refer to a larger geographical area. Although the ordinary meaning of the term may be subject to multiple interpretations, the context provides useful clarification in the present case. As the Court mentioned above, the scope of the question is already confined in geographical terms to the Occupied Palestinian Territory. Moreover, the title and text of the resolution make specific reference to East Jerusalem several times. In light of this context, the Court is of the view that the question posed by the General Assembly relating to the "Holy City of Jerusalem" is confined to measures taken by Israel in East Jerusalem.

80. In terms of its temporal scope, question *(a)* requests the Court to take account of measures adopted by Israel in the Occupied Palestinian Territory since 1967. However, the Court is not precluded from having regard to facts predating the occupation, to the extent that this is necessary for the proper discharge of its judicial function.

81. The Court notes that the request for an advisory opinion was adopted by the General Assembly on 30 December 2022 and asked the Court to address Israel's "ongoing" or "continuing" policies and practices (see resolution 77/247, twenty-eighth and twenty-ninth preambular paragraphs, and paragraph 18 *(a)*). Thus, the Court is of the view that the policies and practices contemplated by the request of the General Assembly do not include conduct by Israel in the Gaza Strip in response to the attack carried out against it by Hamas and other armed groups on 7 October 2023.

82. Question *(b)* has two parts. The first part requests the Court to assess how the policies and practices of Israel identified by the General Assembly "affect the legal status of the occupation". The Court observes that the use of the verb "affect" points to the possibility that such policies and practices may bring about changes to the "legal status". However, the scope of the first part of the question depends upon the meaning of the expression "legal status of the occupation" in the overall context of question *(b)*. In its ordinary meaning, "legal status" means the character assigned by law to an entity, a person or a phenomenon. In the present context, the Court is of the view that the first part of question *(b)* calls on the Court to ascertain the manner in which Israel's policies and practices affect the legal status of the occupation, and thereby the legality of the continued presence of Israel,

as an occupying Power, in the Occupied Palestinian Territory. The issue of whether such policies and practices actually have an effect on the legal status of the occupation will be addressed by the Court in the introductory section of its reply to question *(b)* below, where the scope of the question will be further elaborated in light of the reply to question *(a)* of the General Assembly (see paragraphs 244-250 below).

83. The Court observes that both question *(a)* and the second part of question *(b)* call upon it to determine the legal consequences arising, respectively, from Israel's policies and practices and from its continued presence as an occupying Power in the Occupied Palestinian Territory. If and to the extent that the Court finds that any of Israel's policies and practices, or its continued presence, in the Occupied Palestinian Territory are contrary to international law, the Court will examine the legal consequences flowing from such findings for Israel, for other States and for the United Nations.

IV. APPLICABLE LAW

84. Having defined the scope and meaning of the questions posed by the General Assembly, the Court must determine the applicable law. In its request to the Court, the General Assembly refers to:

> "the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004."

85. The applicability of certain rules of international law in the territory concerned depends on the status of that territory under international law. The Court will first ascertain the status of the Occupied Palestinian Territory under international law. Then the Court will determine which rules of international law are relevant for answering the questions posed to it by the General Assembly.

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86. The questions posed by the General Assembly are premised on the assumption that the Occupied Palestinian Territory is occupied by Israel. In its *Wall* Advisory Opinion, the Court set out the circumstances under which a state of occupation is established:

> "[U]nder customary international law as reflected . . . in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 . . ., territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised." (*I.C.J. Reports 2004 (I)*, p. 167, para. 78; see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 229, para. 172.)

87. In the same Advisory Opinion, the Court observed that, in the 1967 armed conflict, Israel occupied the territories situated between the Green Line and the former eastern boundary of Palestine under the British Mandate, namely the West Bank and East Jerusalem (*I.C.J. Reports 2004 (I)*, p. 167, para. 78). The Court affirmed that subsequent events had not altered the status of the territories in question as occupied territories, nor Israel's status as occupying Power (*ibid.*).

88. In its *Wall* Advisory Opinion, the Court did not express a view as to the legal status of the Gaza Strip, as the construction of the wall did not affect the Gaza Strip. The Gaza Strip is an integral part of the territory that was occupied by Israel in 1967 (see paragraph 78 above). Following the 1967 armed conflict, Israel, as the occupying Power, placed the Gaza Strip under its effective control. However, in 2004, Israel announced a "Disengagement Plan". According to that plan, Israel was to withdraw its military presence from the Gaza Strip and from several areas in the northern part of the West Bank (Israeli Ministry of Foreign Affairs, "The Cabinet Resolution Regarding the Disengagement Plan" (6 June 2004); see also "Prime Minister Ariel Sharon's Address to the Knesset — The Vote on the Disengagement Plan" (25 October 2004)). By 2005, Israel had completed the withdrawal of its army and the removal of the settlements in the Gaza Strip.

89. However, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (hereinafter the "Independent International Commission of Inquiry") reports that Israel maintains control

> "over, inter alia, the airspace and territorial waters of Gaza, as well as its land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry" ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 19).

This is supported by the earlier findings of the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/1, which stated that

> "[t]he facts since the 2005 disengagement, among them the continuous patrolling of the territorial sea adjacent to Gaza by the Israeli Navy and constant surveillance flights of IDF [Israeli Defense Forces] aircraft, in particular remotely piloted aircraft, demonstrate the continued exclusive control by Israel of Gaza's airspace and maritime areas which — with the exception of limited fishing activities — Palestinians are not allowed to use. Since 2000, the IDF has also continuously enforced a no-go zone of varying width inside Gaza along the Green Line fence. Even in periods during which no active hostilities are occurring, the IDF regularly conducts operations in that zone, such as land levelling. Israel regulates the local monetary market, which is based on the Israeli currency and has controls on the custom duties. Under the Gaza Reconstruction Mechanism, Israel continues to exert a high degree of control over the construction industry in Gaza. Drawings of large scale public and private sector projects, as well as the planned quantities of construction material required, must be approved by the Government of Israel. Israel also controls the Palestinian population registry, which is common to both the West Bank and Gaza, and Palestinian ID-cards can only be issued or modified with Israeli approval. Israel also regulates all crossings allowing access to

> and from Gaza. While it is true that the Rafah crossing is governed by Egypt, Israel still exercises a large degree of control, as only Palestinians holding passports are allowed to cross, and passports can only be issued to people featuring on the Israeli generated population registry." ("Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1", UN doc. A/HRC/29/CRP.4 (24 June 2015), para. 29.)

90. In these circumstances, the Court must determine whether and how Israel's withdrawal of its physical military presence on the ground from the Gaza Strip in 2004-2005 affected its obligations under the law of occupation in that area. As the Court observed above (see paragraph 86), territory is occupied when it is actually placed under the authority of the hostile army. A State occupies territory that is not its own when, and to the extent that, it exercises effective control over it. A State therefore cannot be considered an occupying Power unless and until it has placed territory that is not its own under its effective control (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 230, para. 173).

91. Where a State has placed territory under its effective control, it might be in a position to maintain that control and to continue exercising its authority despite the absence of a physical military presence on the ground. Physical military presence in the occupied territory is not indispensable for the exercise by a State of effective control, as long as the State in question has the capacity to enforce its authority, including by making its physical presence felt within a reasonable time (for example, see United States Military Tribunal, *USA* v. *Wilhelm List and others (Hostage case)* (19 February 1948), *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, Vol. XI, p. 1243; International Criminal Tribunal for the former Yugoslavia, *Prosecutor* v. *Mladen Naletilić and Vinko Martinović*, IT-98-34-T, Trial Chamber, Judgement, 31 March 2003, para. 217).

92. The foregoing analysis indicates that, for the purpose of determining whether a territory remains occupied under international law, the decisive criterion is not whether the occupying Power retains its physical military presence in the territory at all times but rather whether its authority "has been established and can be exercised" (Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907; hereinafter the "Hague Regulations"). Where an occupying Power, having previously established its authority in the occupied territory, later withdraws its physical presence in part or in whole, it may still bear obligations under the law of occupation to the extent that it remains capable of exercising, and continues to exercise, elements of its authority in place of the local government.

93. Based on the information before it, the Court considers that Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005. This is even more so since 7 October 2023.

94. In light of the above, the Court is of the view that Israel's withdrawal from the Gaza Strip has not entirely released it of its obligations under the law of occupation. Israel's obligations have remained commensurate with the degree of its effective control over the Gaza Strip.

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95. The Court now turns to the rules and principles that are relevant for answering the questions put to it. These include the prohibition of the acquisition of territory by threat or use of force and the right of peoples to self-determination, which are enshrined in the Charter of the United Nations and also form part of customary international law. The Court will elaborate on these rules and principles below, in the context of its discussion of the various aspects of the questions put to it.

96. Further, international humanitarian law is of particular relevance. Israel's powers and duties in the Occupied Palestinian Territory are governed by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter the "Fourth Geneva Convention") and by customary international law. As the Court observed in its *Wall* Advisory Opinion, "the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties" (*I.C.J. Reports 2004 (I)*, p. 177, para. 101). Egypt, Israel and Jordan were all parties to that Convention when the 1967 armed conflict broke out. Therefore, the Fourth Geneva Convention is applicable in the Occupied Palestinian Territory. A great many of the rules of that Convention are so fundamental to the respect of the human person, and elementary considerations of humanity, that they are "to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law" (see *ibid.*, p. 199, para. 157; citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 257, para. 79). These rules incorporate obligations which are essentially of an *erga omnes* character (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 157). Pursuant to Article 154 of the Fourth Geneva Convention, that Convention is supplementary to the rules contained in Sections II and III of the Hague Regulations. As the Court has observed, the Hague Regulations have become part of customary international law (*ibid.*, p. 172, para. 89), and they are thus binding on Israel.

97. As regards international human rights law, the Court observes that Israel is party to several legal instruments containing human rights obligations, including the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (hereinafter "CERD"), the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (hereinafter the "ICESCR") and the International Covenant on Civil and Political Rights of 19 December 1966 (hereinafter the "ICCPR").

98. Many participants maintain that both international human rights law and international humanitarian law apply in a situation of armed conflict or occupation. They further argue that the scope of application of international human rights law does not depend on the territorial boundaries of a State alone and that international human rights law is applicable in respect of acts carried a State in the exercise of its jurisdiction outside its own territory. According to these participants, human rights obligations are complementary to those that derive from the law of occupation.

99. The Court recalls in this regard that "international human rights instruments are applicable 'in respect of acts done by a State in the exercise of its jurisdiction outside its own territory', particularly in occupied territories" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 243, para. 216, citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 178-181, paras. 107-113). The Court further recalls that the protection offered by human rights conventions does not cease in case of armed conflict or of occupation (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, *I.C.J. Reports 2004 (I)*, p. 178, para. 106). Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may concern both these branches of international law (*ibid.*).

100. The Court observes that Israel remains bound by the ICCPR and the ICESCR in respect of its conduct with regard to the Occupied Palestinian Territory (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 180-181, paras. 111-112).

101. In relation to CERD, the Court notes that that Convention contains no provision expressly restricting its territorial application. On the contrary, several of its provisions impose obligations on States parties that are applicable "in territories under their jurisdiction" (Article 3 of CERD) or in relation to individuals "within their jurisdiction" (Article 6 of CERD; see also Article 14, paragraphs 1 and 2, of CERD). This indicates that CERD is also applicable to conduct of a State party which has effects beyond its territory. With reference to the Occupied Palestinian Territory in particular, the Committee on the Elimination of Racial Discrimination (hereinafter the "CERD Committee") has taken the view that CERD is applicable to acts by Israel regarding persons in that territory (CERD Committee, "Concluding observations on the combined seventeenth to nineteenth reports of Israel", UN doc. CERD/C/ISR/CO/17-19 (27 January 2020), paras. 9-10; CERD Committee, "Consideration of reports submitted by States parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel", UN doc. CERD/C/304/Add.45 (30 March 1998), para. 12). In the Court's view, Israel must comply with its obligations under CERD in circumstances in which it exercises its jurisdiction outside its territory.

102. Several participants in the present proceedings expressed diverging views as to the relevance of the Oslo Accords in general (see paragraph 65 above). The parties to the Oslo Accords agreed to "exercise their powers and responsibilities pursuant to" the Accords "with due regard to internationally-accepted norms and principles of human rights and the rule of law" (Oslo II Accord, Art. XIX). The Court recalls that the "legitimate rights" of the Palestinian people recognized in the Oslo Accords includes the right to self-determination (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 183, para. 118). The Oslo Accords further precluded the parties from "initiat[ing] or tak[ing] any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations" (Oslo II Accord, Art. XXXI (7)). The Court observes that, in interpreting the Oslo Accords, it is necessary to take into account Article 47 of the Fourth Geneva Convention, which provides that the protected population "shall not be deprived" of the benefits of the Convention "by any agreement concluded between the authorities of the occupied territories and the Occupying Power". For all these reasons, the Court considers that the Oslo Accords cannot be understood to detract from Israel's obligations under the pertinent rules of international law applicable in the

Occupied Palestinian Territory. With these points in mind, the Court will take the Oslo Accords into account as appropriate.

V. ISRAEL'S POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY

103. The Court will now assess the conformity of Israel's policies and practices in the Occupied Palestinian Territory, as identified in question *(a)*, with its obligations under international law. In particular, the Court's analysis will examine, in turn, the questions of the prolonged occupation, Israel's policy of settlement, the annexation of the Palestinian territory occupied since 1967, and its adoption of related legislation and measures that are allegedly discriminatory. The Court will appraise whether and, if so, how Israel's policies and practices affect the right of the Palestinian people to self-determination after those other questions have been considered.

A. The question of the prolonged occupation

104. Question *(a)* concerns in part the legal consequences arising from Israel's "prolonged occupation" of the Occupied Palestinian Territory. In this regard, the Court notes that Israel's occupation has lasted for more than 57 years. In order to answer this aspect of the question, the Court must turn to the relationship between Israel, as the occupying Power, and the protected population of the occupied territory, which is governed by the law of occupation.

105. By virtue of its status as an occupying Power, a State assumes a set of powers and duties with respect to the territory over which it exercises effective control. In this context, the occupying Power bears a duty to administer the territory for the benefit of the local population. There is nothing in the Fourth Geneva Convention or in customary international law to suggest that the nature and the scope of the powers and duties of the occupying Power are contingent on the circumstances by which the occupation was brought about. Rather, the nature and scope of these powers and duties are always premised on the same assumption: that occupation is a temporary situation to respond to military necessity, and it cannot transfer title of sovereignty to the occupying Power.

106. This assumption underlies several of the rules of the law of occupation. Under Article 64 of the Fourth Geneva Convention and the rule enshrined in Article 43 of the Hague Regulations, for example, the occupying Power is obliged to respect, in principle, the laws of the occupied territory in force. Similarly, under the fifth paragraph of Article 50 of the Fourth Geneva Convention, the occupying Power may not hinder the application of a series of preferential measures adopted prior to the occupation; and, under the first paragraph of Article 54, it may not alter the status of public officials or judges in the occupied territory. Furthermore, the rule set out in Article 55 of the Hague Regulations confers on the occupying Power only the status of administrator and usufructuary of public buildings, real estate, forests and agricultural estates in the occupied territory. These provisions emphasize that occupation is conceived of as a temporary state of affairs, during which the exercise by the occupying Power of authority over foreign territory is tolerated for the benefit of the local population.

107. The same assumption also explains the temporal dimension of the powers and duties vested in the occupying Power under the law of occupation. The Court observes, in this connection,

that the third paragraph of Article 6 of the Fourth Geneva Convention sets a temporal limit to the obligations of a State in its capacity as an occupying Power. This limit to the application of some of the provisions of the Fourth Geneva Convention was not aimed at releasing States from their obligations under this Convention in situations of prolonged occupation. Instead, the preparatory work of the Fourth Geneva Convention indicates that this limit was based on the understanding that, within a year after the end of the military operations, the local authorities in the occupied territory largely would have resumed exercising governmental functions. On this basis, the continuing exercise of these functions by the occupying Power would not be necessary (*Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II, section A, Report of Committee III to the Plenary Assembly of the Diplomatic Conference of Geneva, pp. 815-816). If, however, local authorities have not resumed governmental functions, the occupying Power is not released from the obligations that arise out of its continued effective control over the occupied territory. Its basic duty to administer the territory for the benefit of the local population, and all the individual obligations arising thereunder, endures. To conclude otherwise would be contrary to the object and purpose of the Fourth Geneva Convention and would deprive the population subject to an ongoing occupation of the protection that it enjoys under international humanitarian law. Accordingly, the Court considers that, in circumstances in which the local authorities in the occupied territory have not resumed exercising governmental functions a year after the close of the military operations, the obligations of the occupying Power under the Fourth Geneva Convention remain in force, notwithstanding Article 6, paragraph 3. The Court also notes that there is no temporal limit on the application of the obligations of an occupying Power under the Hague Regulations.

108. Furthermore, it does not follow from Article 6 of the Fourth Geneva Convention that, in cases of prolonged occupation, the occupying Power acquires additional powers through the passage of time. The fact of the occupation cannot result in the transfer of title, regardless of the duration of the occupation. Therefore, the passage of time does not release the occupying Power from the obligations that it bears, including the obligation to refrain from exercising acts of sovereignty, nor does it expand the limited and enumerated powers that international humanitarian law vests in the occupying Power.

109. The fact that an occupation is prolonged does not in itself change its legal status under international humanitarian law. Although premised on the temporary character of the occupation, the law of occupation does not set temporal limits that would, as such, alter the legal status of the occupation. Instead, the legality of the occupying Power's presence in the occupied territory must be assessed in light of other rules. In particular, occupation consists of the exercise by a State of effective control in foreign territory (see paragraphs 91-92 above). In order to be permissible, therefore, such exercise of effective control must at all times be consistent with the rules concerning the prohibition of the threat or use of force, including the prohibition of territorial acquisition resulting from the threat or use of force, as well as with the right to self-determination. Therefore, the fact that an occupation is prolonged may have a bearing on the justification under international law of the occupying Power's continued presence in the occupied territory. The Court will examine these issues below (see paragraphs 157-179 and 230-243).

110. It is against this background that Israel's policies and practices, as well as its continuing presence in the Occupied Palestinian Territory, must be examined. The Court will now turn to these policies and practices, beginning with Israel's settlement policy.

B. Settlement policy

1. Overview

111. Question *(a)* posed by the General Assembly enquires in part about the legal consequences arising from Israel's settlement policy. The Court notes a certain degree of ambiguity in the English term "settlement", as used in the resolution of the General Assembly and in other texts. This term may be understood as referring to the Israeli residential communities established or supported by Israel in the Occupied Palestinian Territory; it may also be understood as encompassing all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of these communities. In French, the two concepts are distinguished through the use of the terms "colonie" and "colonisation", respectively. The French version of the resolution uses the term "colonisation", thus indicating that the Court is called upon to examine Israel's policy in relation to settlements comprehensively. The fact that question *(b)*, which forms the context for the interpretation of question *(a)*, describes settlement as a policy or practice confirms this interpretation.

112. The Court is aware that a distinction is sometimes made between "settlements" and "outposts", the latter having been established in contravention of domestic Israeli law. In the Court's view, this distinction is immaterial for the purpose of ascertaining whether the communities in question form part of Israel's settlement policy. What matters is whether they are established or maintained with Israel's support. In this regard, the Court notes that Israel regularly takes steps retroactively to legalize outposts and that it provides them with the infrastructure necessary for their maintenance (see "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), paras. 15-20; "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/76 (15 March 2023), paras. 14-15).

113. The Court recalls that Israel has been carrying out a settlement policy throughout its occupation of the Occupied Palestinian Territory (see paragraphs 59 and 68 above). It further observes that the question of Israeli settlements has been examined extensively by various United Nations organs and bodies. For example, by its resolution 19/17, the Human Rights Council established an independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (hereinafter the "Independent International Fact-Finding Mission"). The Secretary-General of the United Nations, as well as the United Nations High Commissioner for Human Rights, regularly publish reports documenting the facts surrounding the establishment and expansion of Israel's settlements. The question of Israeli settlement activities and their implications is also discussed in the reports of the Independent International Commission of Inquiry, as well as in the reports of Special Rapporteurs, including the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. These reports rely on a variety of sources, including first-hand accounts, to set out a detailed factual analysis of Israel's settlement policy.

114. The Court further notes that, between 1967 and 2005, Israel's settlement policy was carried out in the West Bank, East Jerusalem and the Gaza Strip. Since the removal of Israel's settlements from the Gaza Strip in 2005 (see paragraph 88 above), Israel's settlement policy has

continued in the West Bank and East Jerusalem; the Court will therefore limit its analysis to Israel's ongoing settlement policy in the West Bank and East Jerusalem. At the same time, the Court observes that Israel's settlement policy carried out in the Gaza Strip until 2005 was not substantially different from the policy that continues in the West Bank and East Jerusalem today.

2. Transfer of civilian population

115. In its *Wall* Advisory Opinion, the Court found that Israel's settlement policy was in breach of the sixth paragraph of Article 49 of the Fourth Geneva Convention, which provides that "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies" (*I.C.J. Reports 2004 (I)*, p. 183, para. 120). As the Court observed in that Advisory Opinion, this provision

> "prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory" (*ibid.*).

Indeed, there is nothing in the terms or the context of the provision, or in the object and purpose or the drafting history of the Fourth Geneva Convention, to suggest that that provision prohibits only the forcible transfer of parts of the occupying Power's civilian population into the occupied territory. In the present case, there is extensive evidence of Israel's policy of providing incentives for the relocation of Israeli individuals and businesses into the West Bank, as well as for its industrial and agricultural development by settlers (see, for example, "Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/53/163-E/1998/79 (14 July 1998), para. 21; "Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/37/39 (1 February 2018), paras. 43-45; "Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory", UN doc. TD/B/EX(71)/2 (20 September 2021), paras. 40-41).

116. As noted above, Israel regularly legalizes outposts that have been established in contravention of domestic Israeli legislation (see paragraph 112). For example, in February 2023, Israel announced its decision to legalize ten outposts in Area C of the West Bank ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), para. 17). The Court considers that, in pursuing these practices, Israel encourages the transfer of parts of its civilian population to outposts in the West Bank, in breach of the sixth paragraph of Article 49 of the Fourth Geneva Convention.

117. Furthermore, Israel's construction of settlements is accompanied by specially designed civilian infrastructure in the West Bank and East Jerusalem, which integrates the settlements into the territory of Israel. The Secretariat of the United Nations Conference on Trade and Development (UNCTAD) reports that Israel

> "has spent billions of dollars in building modern infrastructure to encourage the expansion of settlements, including road, water and sewerage systems, communications and power systems, security systems and educational and health-care facilities" ("Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory", UN doc. TD/B/EX(71)/2 (20 September 2021), para. 40).

The Independent International Commission of Inquiry adds that the continuous expansion by Israel of settlements and related infrastructure actively contributes to the entrenchment of the occupation ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 51). As the United Nations High Commissioner for Human Rights has noted, the population of the Israeli settlements has grown rapidly as a result of the establishment of Israeli infrastructure ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/76 (15 March 2023), para. 10). Moreover, Israel imposes specific conditions on the use of the infrastructure and transport network in the West Bank (see paragraphs 198-206 below).

118. The Court also notes that the prohibition of the transfer of the occupying Power's civilian population, as contained in the sixth paragraph of Article 49, is not contingent on the ensuing forcible displacement of the local population. The transfer of members of the civilian population of the occupying Power into the occupied territory is prohibited regardless of whether it results in the displacement of the local population. In any event, as the Court will examine below, the transfer of Israel's civilian population into the West Bank and East Jerusalem has resulted in the displacement of Palestinians residing there (see paragraphs 142-147).

119. In light of the above, the Court considers that the transfer by Israel of settlers to the West Bank and East Jerusalem, as well as Israel's maintenance of their presence, is contrary to the sixth paragraph of Article 49 of the Fourth Geneva Convention.

3. Confiscation or requisitioning of land

120. The expansion of Israel's settlements in the West Bank and East Jerusalem is based on the confiscation or requisitioning of large areas of land. According to the Independent International Commission of Inquiry, over 2 million dunams (approximately 2,000 sq km) have been expropriated in Area C alone since 1967, amounting to more than a third of the West Bank ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 39). This includes considerable areas of land that would be characterized as private property but have been declared by Israel as State land — and thus intended for public use — in reliance on a selective interpretation of the law in force at the time of Israel's occupation (*ibid.*, para. 33; "Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), para. 63). The United Nations High Commissioner for Human Rights reports that almost all of this State land has been allocated for the benefit of Israeli settlements ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/76 (15 March 2023), para. 8).

121. In East Jerusalem, where, as the Court will explain below (see paragraph 138), Israel comprehensively applies its domestic law, the confiscation of Palestinian land is made possible through the application of the Absentee Property Law of 1950. This law allows the confiscation of property where the owner was outside the area after 27 November 1947.

122. According to Article 46 of the Hague Regulations, private property must be respected and cannot be confiscated. The Court observes that this prohibition of confiscation of private property is unqualified: it does not allow for exceptions, whether for military exigencies or on any other ground (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 192, para. 135). In addition, Article 52 of the Hague Regulations stipulates that requisitions in kind shall not be demanded from inhabitants except for the needs of the army of occupation. Public real property, in turn, is to be administered by the occupying Power in accordance with the rules of usufruct under Article 55 of the Hague Regulations. In the Court's view, this entails that the occupying Power bears the duty to administer public property for the benefit of the local population or, exceptionally, to meet the needs of the army of occupation. In the present case, however, the public property confiscated or requisitioned for the development of Israeli settlements benefits the civilian population of settlers, to the detriment of the local Palestinian population. The Court, therefore, concludes that these land policies are not in conformity with Articles 46, 52 and 55 of the Hague Regulations.

123. The Court notes that this conclusion is consistent with that reached in its *Wall* Advisory Opinion. In that case, the Court considered the legal consequences of Israel's practice of confiscating and requisitioning Palestinian land, in so far as it was associated with the construction by Israel of the wall in the Occupied Palestinian Territory. Based on the information before it, the Court concluded that the construction of the wall had led to the destruction or requisition of property under conditions contravening the requirements of Articles 46 and 52 of the Hague Regulations (*I.C.J. Reports 2004 (I)*, p. 189, para. 132). As the Court observed in that Opinion, the wall's sinuous route had been traced in such a way as to include within its bounds the great majority of the Israeli settlements in the Occupied Palestinian Territory (*ibid.*, p. 183, para. 119). As the construction of the wall is integral to Israel's settlement policy, the Court considers that the conclusion that it reached in its *Wall* Advisory Opinion in relation to the confiscation or requisition of land for the purposes of the construction of the wall is also applicable to the taking of land for all purposes that support the further pursuit of Israel's settlement policy. This includes land used for the establishment of Israeli settlements, as well as "seam zone" areas (areas that fall between the wall and the 1949 Green Line), special security areas near settlements and closed military firing zones.

4. Exploitation of natural resources

124. The Court recalls that, under the principle of customary international law contained in Article 55 of the Hague Regulations, the occupying Power shall be regarded only as administrator and usufructuary of natural resources in the occupied territory, including but not limited to forests and agricultural estates, and it shall "safeguard the capital" of these resources. Therefore, the use by the occupying Power of natural resources must not exceed what is necessary for the purposes of the occupation. In this connection, the Court observes that the occupying Power has the continuing duty to ensure that the local population has an adequate supply of foodstuffs, including water (Article 55 of the Fourth Geneva Convention). Moreover, the use of natural resources in the occupied territory must be sustainable, and it must avoid environmental harm. This is reflected in principle 23 of the

Rio Declaration on Environment and Development of 1992, which provides that "[t]he environment and natural resources of people under . . . occupation shall be protected" (see also International Law Commission, "Draft principles on protection of the environment in relation to armed conflicts, with commentaries", 2022, UN doc. A/77/10, principle 20).

125. In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Court noted the importance of the principle of permanent sovereignty over natural resources under customary international law *(Judgment, I.C.J. Reports 2005*, p. 251, para. 244). The Court in that case found that, although several officers and soldiers of the Uganda Peoples' Defence Forces were involved in the looting, plundering and exploitation of the natural resources of the Democratic Republic of the Congo, there was no credible evidence to prove that Uganda, as the occupying Power, pursued a governmental policy directed at the exploitation of the natural resources of the Democratic Republic of the Congo (*ibid.*, para. 242). The Court considered that, under these circumstances, the principle of permanent sovereignty over natural resources was not applicable (*ibid.*, para. 244). Where, however, an occupying Power pursues a policy of exploitation of natural resources in the occupied territory contrary to the law of occupation, this policy could be contrary to the principle of permanent sovereignty over natural resources.

126. The Court notes that Area C is rich in natural resources ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/78/127-E/2023/95 (30 June 2023), para. 61; World Bank, *Area C and the Future of the Palestinian Economy* (2013), pp. 21-25). There is evidence to the effect that Israel exploits these natural resources, including water, minerals and other natural resources, for the benefit of its own population, to the disadvantage or even exclusion of the local Palestinian population.

127. According to information available to the Court, Israel placed water resources in the Occupied Palestinian Territory under its military control following the beginning of the occupation in 1967; subsequently, in 1982, Israel transferred authority over the water resources in the West Bank and East Jerusalem to Mekorot, the Israeli national water company ("Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/48/43 (15 October 2021), para. 18).

128. United Nations Reports confirm that Israel prioritizes the water supply of settlements, to the detriment of Palestinian communities, which suffer from lengthy and frequent water outages ("Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), paras. 83-85). Israel has imposed restrictions on the construction and maintenance by Palestinians of water installations without a military permit, and it prevents Palestinians from accessing and extracting water from the Jordan River ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/78/127-E/2023/95 (30 June 2023), paras. 62-63). Thus, in practice, Palestinians have little ability to ensure access to water in large parts of the West Bank; instead they must purchase

significant quantities of water from Israel at a high price ("Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/48/43 (15 October 2021), paras. 30 and 43).

129. As a result of Israel's control and management of the water resources in the West Bank, both the quantity and the quality of water to which Palestinians have access is well below the levels recommended by the World Health Organization ("Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/48/43 (15 October 2021), para. 26). The Committee on Economic, Social and Cultural Rights has noted with concern the impact of Israel's settlement policy on the access by Palestinians to water ("Concluding observations on the fourth periodic report of Israel", UN doc. E/C.12/ISR/CO/4 (12 November 2019), para. 46).

130. According to the Independent International Commission of Inquiry and UNCTAD, Israel's water and land policies have resulted in the reduction of agricultural land from 2.4 million dunams (approximately 2,400 sq km) in 1980 to around 1 million dunams (approximately 1,000 sq km) in 2010, while the share of agriculture in the gross domestic product of the Occupied Palestinian Territory declined from 35 per cent in 1972 to 12 per cent in 1995, to less than 4 per cent by 2020. Moreover, the expansion of settlements and of industrial zones has contributed to the pollution of freshwater and groundwater. Dwindling supplies of water and associated environmental degradation have severely undermined the Palestinian agricultural sector, reducing employment possibilities ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 72; "Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory", UN doc. TD/B/67/5 (5 August 2020), para. 31).

131. The Independent International Fact-Finding Mission stated that 86 per cent of the mineral-rich Jordan Valley and the Dead Sea was in practice under the jurisdiction of the regional councils of Israeli settlements and that settlements extract minerals and cultivate fertile agricultural lands at the expense of Palestinians ("Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), para. 36). According to the Independent International Commission of Inquiry, Israel has granted mining concessions to Israeli-operated quarries in Area C; the largest share of the raw materials extracted is transferred to Israel ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 37). By contrast, it has been reported that Israel has not issued quarrying permits for Palestinian companies in Area C since 1994 ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/74/88-E/2019/72 (13 May 2019), para. 86).

132. The Court notes that the Security Council has emphasized the importance of ensuring the protection of water resources in the occupied territories (Security Council resolution 465 (1980)

of 1 March 1980, para. 8). The General Assembly has repeatedly demanded that Israel "cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources in the Occupied Palestinian Territory, including East Jerusalem" (see, for example, General Assembly resolution 78/170 of 19 December 2023, para. 2).

133. On the basis of the evidence before it, the Court considers that Israel's use of the natural resources in the Occupied Palestinian Territory is inconsistent with its obligations under international law. By diverting a large share of the natural resources to its own population, including settlers, Israel is in breach of its obligation to act as administrator and usufructuary. In this connection, the Court recalls that the transfer by Israel of its own population to the Occupied Palestinian Territory is contrary to international law (see paragraph 119 above). Therefore, in the Court's view, the use of natural resources in the occupied territory cannot be justified with reference to the needs of that population. The Court further considers that, by severely restricting the access of the Palestinian population to water that is available in the Occupied Palestinian Territory, Israel acts inconsistently with its obligation to ensure the availability of water in sufficient quantity and quality (Article 55 of the Fourth Geneva Convention). The Court notes that, while the Oslo II Accord regulates water and sewage in the Occupied Palestinian Territory (Article 40 of Appendix I of Annex III of the Oslo II Accord), that agreement cannot be understood to detract from Israel's obligation under international humanitarian law to provide water in sufficient quantity and quality (see paragraph 102 above). In light of the above, the Court also concludes that Israel's policy of exploitation of natural resources in the Occupied Palestinian Territory is inconsistent with its obligation to respect the Palestinian people's right to permanent sovereignty over natural resources.

5. Extension of Israeli law

134. Under Article 43 of the Hague Regulations, the occupying Power must in principle respect the law in force in the occupied territory unless absolutely prevented from doing so. This rule is complemented by the second paragraph of Article 64 of the Fourth Geneva Convention, which exceptionally allows the occupying Power to

> "subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the [Fourth Geneva] Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them".

In principle, then, the law of occupation does not deprive the local population's civilian institutions in the occupied territory of the regulatory authority that they may have. Rather, it invests in the occupying Power a set of regulatory powers on an exceptional basis and on specific enumerated grounds.

135. In the present case, Israel has expanded its sphere of legal regulation in the West Bank. As the Independent International Commission of Inquiry explains:

> "Since the start of the occupation, Israel has extended its legal domain in the West Bank, which has resulted in far-reaching changes to the applicable law and, in practice, two sets of applicable law: military law and Israeli domestic law, which has been

> extended extra-territorially to apply only to Israeli settlers. This has been done through military orders, legislation and Supreme Court decisions and includes criminal law, national health insurance law, taxation laws and laws pertaining to elections. There are also separate legal systems for enforcing traffic laws and an institutional and legislative separation in the planning and building regime." ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 46.)

136. Israel has to a large degree substituted its military law for the local law in force in the Occupied Palestinian Territory at the beginning of the occupation in 1967. Offences under Israel's military law are tried by Israeli military courts rather than by local civil or criminal courts. Moreover, as a matter of practice, the competent Israeli military authorities apply to settlers the law applicable to civilians in Israel, as well as to non-Israeli Jews present in the West Bank. As a result, settlers in the West Bank enjoy the rights and privileges of Israeli citizenship, as well as the protections of Israeli domestic laws and social benefits. In addition, settlers are not subjected to Israeli military courts and are instead tried before Israeli civilian courts. Palestinians in the West Bank are thus subject to military law and military courts, whereas settlers benefit from the criminal law and criminal justice system applicable to civilians in Israel.

137. Moreover, regional and local councils of settlers have assumed *de facto* jurisdiction over the settlements in the West Bank ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report by the Secretary-General", UN doc. A/67/375 (18 September 2012), paras. 11-13). Since late 2022, Israel has transferred decision-making power over civil affairs in Area C from the military to a civilian minister in the Ministry of Defence (see paragraph 156 below).

138. In East Jerusalem, domestic Israeli law has been applied since the beginning of the occupation in 1967. By its Government and Law Procedures Ordinance (No. 11), 5727-1967, of 28 June 1967, Israel declared that its domestic law, jurisdiction and administration were applicable to East Jerusalem, the geographical boundaries of which were expanded. In 1980, Israel adopted a Basic Law that proclaimed the "complete and united Jerusalem" as the capital of Israel and the seat of its Government ("Basic-Law: Jerusalem the capital of Israel", 5740-1980). The same law prohibited the delegation of any powers concerning Jerusalem to "a foreign political or governing power, or to another similar foreign authority, whether permanently or for a given period". The Court will discuss Israel's policies in East Jerusalem, as well as their conformity with international law, below (see paragraphs 163-165). Here, it is enough to note that, from the perspective of domestic law, Israel treats East Jerusalem as its own national territory, where Israeli law is applied in full and to the exclusion of any other domestic legal system.

139. In the present case, the Court is not convinced that the extension of Israel's law to the West Bank and East Jerusalem is justified under any of the grounds laid down in the second paragraph of Article 64 of the Fourth Geneva Convention. In this connection, the Court recalls that the transfer by Israel of its civilian population to the West Bank and East Jerusalem is contrary to the Fourth Geneva Convention (see paragraph 119 above); therefore, it cannot be invoked as a ground for regulation in these territories. Furthermore, the comprehensive application of Israeli law in East

Jerusalem, as well as its application in relation to settlers throughout the West Bank, cannot be deemed "essential" for any of the purposes enumerated in the second paragraph of Article 64 of the Fourth Geneva Convention.

140. The arrangements agreed upon between Israel and the PLO in the Oslo Accords point in the same direction. In particular, the Court notes that, pursuant to Article X, paragraph 4, of the Oslo II Accord, "Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order". Moreover, under Article XIII, paragraph 2 *(a)*, of that Accord, "Israel shall have the overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism". Article XVII, paragraph 4 *(b)*, of the same Accord stipulates that, in relation to areas not under the territorial jurisdiction of the Palestinian Council established by that Accord, "the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law". There is nothing in these provisions to suggest that they add to the enumerated powers invested in Israel under the law of occupation. On the contrary, by stipulating that Israel shall "continue" to carry duties and shall "retain" some powers, these provisions are clearly intended to preserve some of the powers conferred on Israel under the law of occupation, rather than to increase them. This is confirmed by the fact that these provisions recognize Israel's powers on grounds of security and public order, namely on grounds that are already recognized under the law of occupation as a permissible basis for regulation by the occupying Power. Finally, the terms of Article XVII, paragraph 4 *(b)*, of the Oslo II Accord expressly state that Israel only retains the powers "necessary", and at any rate "in accordance with international law", including the law of occupation. It follows that Israel may not rely on the Oslo Accords to exercise its jurisdiction in the Occupied Palestinian Territory in a manner that is at variance with its obligations under the law of occupation (see also paragraph 102).

141. For these reasons, the Court considers that Israel has exercised its regulatory authority as an occupying Power in a manner that is inconsistent with the rule reflected in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention.

6. Forced displacement of the Palestinian population

142. The Court now turns to the effects of Israel's settlement policy on the departure of the Palestinian population. In this regard, the Court recalls its observation in the *Wall* Advisory Opinion that Israel's settlement policy contributed to the departure of Palestinian populations from areas of the West Bank and East Jerusalem (*I.C.J. Reports 2004 (I)*, p. 184, para. 122).

143. The Court observes that the large-scale confiscation of land and the deprivation of access to natural resources divest the local population of their basic means of subsistence, thus inducing their departure. Furthermore, a series of measures taken by Israeli military forces has exacerbated the pressure on the Palestinian population to leave parts of the Occupied Palestinian Territory against their will (see paragraphs 180-229 below). Reports by the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights and other United Nations bodies document that Israel evicts or displaces hundreds of Palestinians from the Occupied Palestinian Territory every year, commonly as a result of the demolition of their property or as a result of zoning and planning policies and the relocation plans associated with them. For example, the

Secretary-General of the United Nations reported that more than a thousand Palestinians were displaced between June 2022 and May 2023 after Israeli authorities demolished, confiscated or sealed their properties ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), para. 31). Also, demolitions caused the displacement of over 700 Palestinians between April 2021 and March 2022 ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/77/90-E/2022/66 (8 June 2022), para. 43). In addition, in May 2022 the High Court of Justice of Israel rejected petitions against eviction orders issued to approximately 1,150 Palestinian residents of an area designated by Israel as a firing zone (HCJ 413/13 *Abu 'Aram* v. *Minister for Defence*, 2022; see also "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/76 (15 March 2023), paras. 52-53). Such practices place more Palestinians at risk of forced eviction in the future.

144. The Court recalls that, under the first paragraph of Article 49 of the Fourth Geneva Convention, "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive". The terms of this provision distinguish between "transfers" on the one hand and, on the other, "deportations . . . from occupied territory to the territory of the Occupying Power or to that of any other country". Under the ordinary meaning of these terms, all forcible transfers of protected persons are prohibited, including transfers within the occupied territory. This interpretation is confirmed, first, by the context of the provision, notably the second paragraph of Article 49. That paragraph provides a limited exception to the rule laid down in the first paragraph. According to that exception, to which the Court will return below (see paragraph 146), evacuation of a given area may be permitted, but it "may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement". Moreover, evacuation may only be ordered in two exceptional cases — when the safety of the population or imperative military reasons require it. The presence of the second paragraph, which sets out the conditions exceptionally permitting the internal displacement of the local population, indicates that, as a rule, such internal displacement is covered by the prohibition. If it were otherwise, and internal displacement were in all circumstances permissible, the exception enshrined in the second paragraph of Article 49 would be rendered redundant. This reading is confirmed by the purpose of the prohibition — to preserve the familial and societal bonds of protected persons. Such bonds are at risk regardless of the destination of the transfer.

145. The purpose of the prohibition also indicates, in the Court's view, that the provision protects an occupied population against any transfer that is involuntary in character. The preparatory work of the Fourth Geneva Convention confirms that the term "forcible" was intended to exclude from the scope of the prohibition transfers that might be effected with the consent of the protected persons (see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II, section A, Report of Committee III to the Plenary Assembly of the Diplomatic Conference of Geneva, p. 827). Consequently, transfer may be "forcible" — and thus prohibited under the first paragraph of Article 49 — not only when it is achieved through the use of physical force, but also when the people concerned have no choice but to leave (see International Criminal Tribunal for the former Yugoslavia, *Prosecutor* v. *Milomir Stakić*, Case No. IT-97-24-A, Appeals Chamber, Judgment of 22 March 2006, para. 279). Therefore, the absence of physical force does not exclude the possibility that the transfer in question is forcible.

146. Further, as the Court observed above, evacuation of an area is permissible exceptionally if, pursuant to the second paragraph of Article 49, "the security of the population or imperative military reasons so demand". Even in such cases, however, this paragraph provides that the evacuated persons "shall be transferred back to their homes as soon as hostilities in the area in question have ceased". This indicates that evacuations are conceived as a temporary measure, to be reversed as soon as the imperative military reasons subside. By contrast, evacuations of a permanent or indefinite character breach the prohibition of forcible transfer. Therefore, they are not covered by the exception set out in the second paragraph of Article 49.

147. The Court considers that Israel's policies and practices, which it discusses in greater detail below (see paragraphs 180-229), including its forcible evictions, extensive house demolitions and restrictions on residence and movement, often leave little choice to members of the Palestinian population living in Area C but to leave their area of residence. The nature of Israel's acts, including the fact that Israel frequently confiscates land following the demolition of Palestinian property for reallocation to Israeli settlements, indicates that its measures are not temporary in character and therefore cannot be considered as permissible evacuations. In the Court's view, Israel's policies and practices are contrary to the prohibition of forcible transfer of the protected population under the first paragraph of Article 49 of the Fourth Geneva Convention.

7. Violence against Palestinians

148. The Court notes that Israel's settlement policy has given rise to violence by settlers and security forces against Palestinians.

149. In this regard, the Court recalls that the right to life of protected persons in the occupied territory is guaranteed under the rule reflected in Article 46 of the Hague Regulations. This rule is complemented by the first paragraph of Article 27 of the Fourth Geneva Convention, which provides that protected persons shall be humanely treated and protected against all threats or acts of violence. Furthermore, the rights to life and to protection against violence are guaranteed by Article 6, paragraph 1, and Article 7 of the ICCPR.

150. According to various United Nations reports, settlers often subject Palestinians in the Occupied Palestinian Territory to extensive violence, which Israeli authorities fail to prevent or to punish (see, for example, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), paras. 45-74; "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/55/72 (1 February 2024), paras. 16-33).

151. The Secretary-General of the United Nations has regularly documented an increase in the frequency and severity of attacks by settlers against Palestinians (for example, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/76/336 (23 September 2021), para. 17). Israel's failure to

respond to such violence has also been reported. The Independent International Commission of Inquiry states that, although Israel appears to affirm its duty to prevent and punish such attacks, it often fails to intervene in settler violence against Palestinians ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 64). Other United Nations reports document incidents of armed settlers carrying out attacks inside Palestinian communities, sometimes in the proximity of the Israeli security forces who fail to intervene or, indeed, even support settlers in their attacks (for example, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/49/85 (28 April 2022), para. 13). Moreover, it is reported that Israelis who harm Palestinians in the West Bank are significantly less likely to be indicted than if their victim is non-Palestinian ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan: Report of the Secretary-General", UN doc. A/77/493 (3 October 2022), para. 41). According to the Human Rights Committee, the lack of access for victims to justice and effective remedies fosters a "general climate of impunity" in the case of settler violence against Palestinians (see Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 24).

152. Evidence before the Court indicates that Israeli security forces intervene with unnecessary or disproportionate force against Palestinians in the aftermath of settler attacks or in the context of Palestinian demonstrations against settlement expansion. The Independent International Commission of Inquiry has reported several incidents in which Israeli security forces have used live ammunition to suppress demonstrations by Palestinians resulting in hundreds of fatalities and injuries ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/78/198 (5 September 2023), paras. 12-21; "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 68). According to a 2023 report by the Secretary-General of the United Nations, patterns have been identified

> "of Israeli security forces applying military tactics to law enforcement operations in the West Bank . . . Israel Security Forces appear to have failed to take steps to de-escalate situations of confrontation or to ensure potentially lethal force is employed only as a last resort when strictly necessary to protect life or prevent serious injury from an imminent threat." ("Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General", UN doc. A/78/502 (2 October 2023), para. 14.)

According to the same report, more Palestinians were killed in the West Bank and East Jerusalem in 2022 than in any other year since 2005 (*ibid.*, para. 13).

153. Further, it is reported that Palestinian women and girls are subjected to gender-based violence in the form of excessive use of force and abuse, including physical, psychological and verbal abuse and sexual harassment, by Israeli security forces and settlers ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 59).

154. The Court considers that the violence by settlers against Palestinians, Israel's failure to prevent or to punish it effectively and its excessive use of force against Palestinians contribute to the creation and maintenance of a coercive environment against Palestinians. In the present case, on the basis of the evidence before it, the Court is of the view that Israel's systematic failure to prevent or to punish attacks by settlers against the life or bodily integrity of Palestinians, as well as Israel's excessive use of force against Palestinians, is inconsistent with the obligations identified in paragraph 149 above.

8. Conclusion on Israel's settlement policy

155. In light of the above, the Court reaffirms that the Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 120).

156. The Court notes with grave concern reports that Israel's settlement policy has been expanding since the Court's *Wall* Advisory Opinion. In particular, in December 2022 Israel's parliament approved the establishment of an additional minister within the Ministry of Defence vested with governing powers in the West Bank, including land designations, planning and co-ordination of demolitions, which would expedite the approval process for new settlements. Also, the size of existing Israeli settlements expanded from 1 November 2022 to 31 October 2023 at a significant rate, with approximately 24,300 housing units within existing Israeli settlements in the West Bank being advanced or approved, including approximately 9,670 in East Jerusalem ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/55/72 (1 February 2024), paras. 7 and 10).

C. The question of the annexation of the Occupied Palestinian Territory

157. The Court observes that the question posed by the General Assembly refers in part to the legal consequences arising out of Israel's alleged annexation of the Occupied Palestinian Territory. In order to respond to this aspect of the question, the Court must first analyse the concept of "annexation". Second, the Court will examine Israel's policies and practices with a view to determining whether they amount to annexation. Finally, the Court will discuss the lawfulness of Israel's policies and practices (see paragraph 74 above).

1. The concept of annexation

158. By the term "annexation", in the present context, the Court understands the forcible acquisition by the occupying Power of the territory that it occupies, namely its integration into the territory of the occupying Power. Annexation, then, presupposes the intent of the occupying Power to exercise permanent control over the occupied territory.

159. The Court recalls, in this regard, that, under the law of occupation, the control of the occupied territory by the occupying Power must be temporary in character. Thus, the law is based on the principle that the occupying Power shall preserve the *status quo ante* in the occupied territory. This is evidenced, *inter alia*, by the limited range of powers vested in the occupying Power under

the law of occupation, some of which have been discussed above (see paragraphs 104-110 and 134). Regardless of the circumstances in which the occupation was brought about, the fact of the occupation alone cannot confer sovereign title to the occupying Power. Consequently, conduct by the occupying Power that displays an intent to exercise permanent control over the occupied territory may indicate an act of annexation.

160. The assertion by the occupying Power of permanent control of the occupied territory may manifest itself in a variety of ways. In this connection, the Court notes that a distinction between "*de jure*" and "*de facto*" annexation is occasionally made, including by some of the participants in these proceedings. According to this distinction, *de jure* annexation consists in the formal declaration by the occupying Power of sovereignty over the occupied territory, whereas *de facto* annexation comprises acts short of a formal declaration that create a "fait accompli" on the ground and that consolidate the occupying Power's permanent control over the occupied territory. Although differing in terms of the means through which the annexation is carried out, both types of annexation share the same objective — the assertion of permanent control over the occupied territory.

161. Against this background, the Court must examine whether, through its conduct, Israel establishes its permanent control over the Occupied Palestinian Territory, in a manner that would amount to annexation.

2. Acts by Israel amounting to annexation

162. The great majority of participants have argued that the policies and practices of Israel amount to annexation of at least part of the Occupied Palestinian Territory. In this regard, most participants pointed to the continued construction of the wall in the West Bank, the establishment of settlements and outposts, as well as the construction of related infrastructure. Some participants have also argued that statements made by Israeli officials over several decades reveal that Israel intends to permanently exercise sovereignty over large parts of the Occupied Palestinian Territory and that it does not regard its occupation as temporary.

163. The Court first examines Israel's policies and practices in relation to East Jerusalem. As the Court noted above, Israel has applied its domestic law in East Jerusalem since its occupation in 1967. In 1980, Israel enacted domestic legislation, in the form of a Basic Law, proclaiming East Jerusalem as part of its capital (see paragraph 138). Another Basic Law, entitled "Israel — The Nation State of the Jewish People" and enacted in 2018, affirms that "[t]he complete and united Jerusalem is the capital of Israel". Israel has asserted that East Jerusalem is part of its territory, as evidenced by the notification of the Israeli Government to the Secretary-General of the United Nations, according to which "Jerusalem is not, in any part, 'occupied territory'; it is the sovereign capital of the State of Israel" ("Report submitted to the Security Council by the Secretary-General in accordance with resolution 672 (1990)", UN doc. S/21919 (31 October 1990), para. 3). The Absentee Property Law of 1950 (see paragraph 121 above) has facilitated the confiscation of "absentee property" and its use for the expansion of Israeli settlements in and around the historical borders of the city. The Independent International Commission of Inquiry reports that "[o]ver one third of East Jerusalem has been expropriated for the construction of Israeli settlements, and only 13 per cent of the annexed area is currently zoned for Palestinian construction" ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 14). It adds that approximately 230,000 persons live in 14 settlements established in East Jerusalem (*ibid.*, para. 15).

164. Israel has taken measures to integrate the infrastructure of East Jerusalem with that of West Jerusalem, notably through the construction of a single public transportation network. At the same time, other measures serve to separate East Jerusalem from the West Bank. Prominent among them is the construction of the wall, the legal consequences of which the Court has already considered (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 122). The Secretary-General of the United Nations, the Independent International Fact-Finding Mission and the United Nations High Commissioner for Human Rights concur that the wall and its associated settlement régime, as implemented in East Jerusalem, entail the detachment of East Jerusalem from the West Bank (see "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), para. 11; "Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), para. 34; "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/76 (15 March 2023), para. 6).

165. The Court considers that Israel's measures in East Jerusalem create an inhospitable environment for the Palestinian population. Because Israel treats East Jerusalem as its own territory, it regards Palestinians residing there as foreigners, and it requires that they hold a valid residence permit (see paragraphs 192-197). Israeli law has also put in place a building permit scheme, the violation of which results in demolition through an expedited procedure, as well as steep fines (see paragraphs 214-217 below). In 2019, the Secretary-General of the United Nations stated that at least one third of all Palestinian homes in East Jerusalem lacked an Israeli-issued building permit; as a result, over 100,000 residents were at risk of having their homes demolished and of being forcibly transferred ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/74/357 (20 September 2019), para. 31). Moreover, in 2018, Israel began a process of settlement of land title in East Jerusalem, whereby land ownership claims are examined and conclusively registered in Israel's land registry. According to the Secretary-General of the United Nations, Israel's process of land ownership registration is pursued in areas of Israeli settlement expansion, which would increase Israeli control over additional territory in East Jerusalem ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), para. 22). All of these measures exert pressure on Palestinians in East Jerusalem to leave the city.

166. Turning to Israel's settlement policy in the West Bank, the Court observes that, pursuant to the Basic Law of 2018 (see paragraph 163 above), the State of Israel "views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation". As noted above, considerable areas of land have already been declared as State land and allocated for the benefit of Israeli settlements (see paragraph 120). Palestinian construction is entirely prohibited in 70 per cent of Area C and severely restricted in the remaining 30 per cent of the area; less than 1 per cent of Area C is available to Palestinians for building housing and infrastructure ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), paras. 39 and 42). The rate of expansion of Israeli settlements has been consistently increasing (see paragraph 156 above). The growth rate of the settler population in the West Bank appears to be

significantly higher than that of the population in Israel and of the Palestinian population in the West Bank ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/HRC/50/21 (9 May 2022), para. 34).

167. The Court observes that the continued expansion of settlements in Area C increases Israel's civilian and military presence in the territory and pushes the Palestinian population to other areas of the West Bank. This, together with the infrastructure régime associated with the settlements, advances the integration of large areas of the West Bank into the territory of Israel. In its *Wall* Advisory Opinion, the Court took note of the risk that the wall, which was being constructed at the time and which has further expanded since then, could prejudge the future frontier between Israel and Palestine, and that it could assist Israel in the integration of settlements into its own territory (*I.C.J. Reports 2004 (I)*, p. 184, para. 121). In the Court's view, the same is true for Israel's policy of integrating the infrastructure in the West Bank, including the road network, with that of Israel, which results in the interlacement of the settlements in the West Bank with Israel in a contiguous area, fragmenting the remaining areas in the West Bank (see paragraph 200). These measures are designed to be of indefinite duration, as evidenced by the fact that they are not easily reversible.

168. In this connection, the Court takes note of the report by the Independent International Commission of Inquiry, which observed in 2022 that

> "Israel treats the occupation as a permanent fixture and has — for all intents and purposes — annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. Actions by Israel constituting de facto annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank." ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 76.)

169. The displacement of the local population from the occupied territory, which sustains Israel's settlement policy, also advances the integration of the territory. As the Court discussed above (see paragraphs 142-147), Israel's policies and practices induce the departure of the Palestinian population from parts of the Occupied Palestinian Territory, notably from East Jerusalem and Area C in the West Bank. This, in turn, enables the further expansion of Israel's settlement policy and the ready integration of Palestinian territory into Israel. The Court also recalls that Israel's practice of exploitation of the natural resources in the West Bank is inconsistent with the right of the Palestinian people to permanent sovereignty over natural resources (see paragraph 133 above).

170. Israel's extension of its domestic law to the West Bank, notably to the settlements and over the settlers (see paragraphs 134-141 above), as well as its assumption of broader regulatory powers by virtue of the prolonged character of the occupation, entrenches its control over the occupied territory. Israel has also taken steps to incorporate the West Bank into its own territory. In this regard, the Court takes note of Israel's transfer of powers, including land designations, planning and co-ordination of demolitions, to a civilian administration within the Ministry of Defence in 2023 (see also paragraph 156 above). This is in line with the Israeli Government's guiding principles

of 2022, which announced the formulation and promotion of a policy for the "application of sovereignty" over the West Bank ("A coalition agreement to establish a national government" (28 December 2022), para. 118).

171. The Secretary-General of the United Nations, in his 2023 Report to the General Assembly on Israeli settlements, stated that

> "successive Israeli Governments have consistently advanced and implemented policies of settlement expansion and takeover of Palestinian land.
>
> The policies of the current Government in this regard are aligned, to an unprecedented extent, with the goals of the Israeli settler movement to expand long-term control over the occupied West Bank, including East Jerusalem, and, in practice, to further integrate those areas into the territory of the State of Israel." ("Israeli settlements in the Occupied Palestinian Territory including East Jerusalem, and the occupied Syrian Golan: Report by the Secretary-General", UN doc. A/78/554 (25 October 2023), paras. 4-5.)

172. In its *Wall* Advisory Opinion, the Court addressed the question of whether the construction of the wall in the Occupied Palestinian Territory amounted to an act of annexation in the following terms:

> "Whilst the Court notes the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is of a temporary nature . . ., it nevertheless cannot remain indifferent to certain fears expressed to it that the route of the wall will prejudge the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access. The Court considers that the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation." (*I.C.J. Reports 2004 (I)*, p. 184, para. 121.)

Indeed, policies, practices or other measures that are such as to bring the occupied territory under the occupying Power's permanent control constitute acts of annexation.

173. In light of the above, the Court is of the view that Israel's policies and practices, including the maintenance and expansion of settlements, the construction of associated infrastructure, including the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel's capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel's control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank. These policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground. Consequently, the Court considers that these policies and practices amount to annexation of large parts of the Occupied Palestinian Territory.

3. The prohibition of the acquisition of territory by force

174. Many participants have argued that belligerent occupation can in no way serve as a basis for the acquisition of territory; it does not confer on the occupying Power title to the occupied territory; nor does it erase the rightful title.

175. The annexation of occupied territory by an occupying Power is unlawful. Under the principle enshrined in Article 2, paragraph 4, of the Charter of the United Nations,

> "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

Resolution 2625 (XXV) of 24 October 1970, entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", emphasized with reference to this principle that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal" (General Assembly resolution 2625 (XXV), Annex, first principle). As the Court has affirmed, the prohibition of territorial acquisition resulting from the threat or use of force, as a corollary of the prohibition of the threat or use of force, is a principle of customary international law (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 171, para. 87).

176. In this regard, the Court observes that the prohibition of acquisition of territory by force was emphasized by the Security Council in its resolution 242 (1967) of 22 November 1967 (see paragraph 58 above). The Security Council affirmed this principle by resolution 252 (1968) of 21 May 1968, where it also declared that "all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status". The Security Council has since reiterated this principle in several resolutions dealing with Israel's purported annexation of Arab and Palestinian territory (for example, Security Council resolutions 267 (1969) of 1 April 1969, 298 (1971) of 25 September 1971 and 478 (1980) of 20 August 1980). More recently, the Security Council, in its resolution 2334 (2016) of 23 December 2016, stated that

> "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace" (para. 1).

In the same resolution, the Security Council underlined that "it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations".

177. The principle of the prohibition of the acquisition of territory by force was equally reaffirmed by the General Assembly in several resolutions adopted with regard to the situation in the Occupied Palestinian Territory. Thus, by its resolution 77/126 of 12 December 2022, it emphasizes

that "the occupation of a territory is to be a temporary, de facto situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies". It also recalls in this regard

> "the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for a just, lasting and comprehensive peace settlement" (para. 7).

178. The Court notes the argument made by two participants in the present proceedings according to which Israel's "deep historical ties and own valid claims to" the territory it now occupies have been disregarded by the very formulation of the question. The Court observes, first, that it is not called upon to pronounce on historical claims concerning the Occupied Palestinian Territory; and, secondly, that no information has been provided to the Court to substantiate such claims. In any event, the prohibition of the acquisition of territory by force entails that the use of force is not a means for resolving claims of sovereignty.

179. The Court has found that Israel's policies and practices amount to annexation of large parts of the Occupied Palestinian Territory. It is the view of the Court that to seek to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force. The manner in which the annexation affects the legal status of the occupation, and thereby the legality of the continued presence of Israel, is discussed below (see paragraphs 252-254).

D. The question of discriminatory legislation and measures

1. The scope of question *(a)*

180. A further aspect of question *(a)* posed by the General Assembly enquires about the legal consequences arising from Israel's "adoption of related discriminatory legislation and measures". As noted above (see paragraph 74), the Court must itself determine whether the legislation and measures identified by the request of the General Assembly are discriminatory. The terms in which this aspect of the question has been posed, read in their context, do not suggest that the General Assembly seeks the Court's views on all human rights violations allegedly taking place in the Occupied Palestinian Territory. Rather, the scope of the General Assembly's enquiry is limited in four ways.

181. First, the question concerns Israel's legislation and measures only to the extent that they are related to the policies and practices discussed above. Under the terms of question *(a)*, therefore, the Court will limit its analysis to legislation and measures that are closely linked to the policies and practices discussed above.

182. Second, the question covers Israel's legislation and measures only to the extent that they apply in the Occupied Palestinian Territory. The Court is therefore not called upon to pronounce on whether Israel's legislation or measures outside the Occupied Palestinian Territory, including in Israel's own territory, are discriminatory.

183. Third, the question is confined to the potentially discriminatory character of Israel's legislation and measures. Thus, the Court's task is to examine whether legislation adopted or measures taken by Israel in relation to the policies and practices identified above give rise to discrimination. The Court will discuss below its understanding of the concept of discrimination for the purposes of the present Advisory Opinion (see paragraphs 185-191).

184. Fourth, as noted above, the question does not call upon the Court to examine all specific pieces of legislation and measures taken by Israel, or to determine whether their application in individual cases since the beginning of the occupation in 1967 has been discriminatory in character (see paragraph 77). The Court considers that its task, according to the question posed to it, is to examine whether Israel has adopted discriminatory legislation or taken discriminatory measures of a systemic character.

2. The concept of discrimination

185. The Court observes that the prohibition of discrimination in the enjoyment of human rights and fundamental freedoms forms part of the purposes of the United Nations. Under Article 1, paragraph 3, of the United Nations Charter, one of the purposes of the United Nations is "[t]o achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". The Universal Declaration of Human Rights also provides that

> "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty." (Article 2.)

186. Certain forms of discrimination are prohibited under international humanitarian law. For example, the third paragraph of Article 27 of the Fourth Geneva Convention provides:

> "Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion."

187. Several human rights instruments which are applicable in the present case prohibit discrimination.

Article 2, paragraph 1, of the ICCPR provides:

> "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 26 of the same Covenant stipulates that

> "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 4 of the ICCPR allows States parties to take measures in derogation from some of their obligations under that instrument subject to various conditions. Nonetheless, under the terms of Article 4, the measures in question must not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin.

For its part, Article 2, paragraph 2, of the ICESCR provides:

> "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

188. Article 1, paragraph 1, of CERD provides a definition of discrimination based on specific grounds:

> "In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

189. The provisions above give effect to the principle of the prohibition of discrimination, which is now part of customary international law.

190. Common to all of these provisions is the concept of differential treatment between persons belonging to different groups. The Court observes, in this connection, that the existence of the Palestinian people is not at issue. Thus, in the Court's view, differential treatment of Palestinians can give rise to discrimination. The Court is mindful that differential treatment might not be experienced by all members of the Palestinian group in the same way, and that some members of the group might be subjected to differential treatment on multiple grounds.

191. The Court will first determine whether the legislation adopted and measures taken by Israel differentiate on, *inter alia*, the grounds of race, religion or ethnicity between Palestinians and members of other groups in relation to their enjoyment of human rights within the meaning of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 1

of CERD. However, not all differentiation of treatment constitutes discrimination. Accordingly, if the Court affirms the existence of differential treatment, it must, at a second stage, determine whether this differentiation of treatment is nevertheless justified, in that it is reasonable and objective and serves a legitimate public aim.

3. Residence permit policy

192. The Court will first examine the effects that Israel's residence permit policy in East Jerusalem has on Palestinians in the Occupied Palestinian Territory.

193. The Court recalls that Israel treats East Jerusalem as the territory of Israel and applies its domestic law to it (see paragraph 138 above). Under Israel's domestic law, residence in East Jerusalem is unrestricted for Israeli citizens and for non-Israeli Jews (Law of Return, 5710-1950, Arts. 1-3; Entry Into Israel Law, 5712-1952, Art. 1). By contrast, under Israel's domestic law, all other residents of East Jerusalem, including Palestinians that are not Israeli citizens, are regarded as foreign nationals residing in the territory of Israel, and their right to reside in East Jerusalem is subject to holding a valid residence permit. Since 1995, Palestinians have been required to prove that their "centre of life" has remained in East Jerusalem for the past seven years in order to retain their residence permit. Following legislative amendments since 2008, the Minister for the Interior has been granted broad discretion to revoke residence permits, and Palestinian residence permits have been revoked on a series of grounds, including "breach of loyalty" to Israel ("Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General", UN doc. A/78/502 (2 October 2023), para. 59). According to the United Nations High Commissioner for Human Rights, more than 14,500 Palestinians have had their East Jerusalem residence permit revoked by the Israeli authorities since 1967 ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/37/43 (6 March 2018), para. 55; also "Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/77/90-E/2022/66 (8 June 2022), para. 44).

194. The Court considers that, at least in so far as it is applied in East Jerusalem, Israel's residence permit policy results in the differential treatment of Palestinians in relation to their right to reside in East Jerusalem, as guaranteed under Article 5 *(d)* (i) of CERD and Article 12 of the ICCPR. The Court observes that the CERD Committee and the Human Rights Committee have expressed the view that Israel's residence permit policy is inconsistent with its obligations under CERD and the ICCPR, respectively (CERD Committee, "Concluding observations on the combined seventeenth to nineteenth reports of Israel", UN doc. CERD/C/ISR/CO/17-19 (27 January 2020), para. 15; Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 18).

195. The Court notes that, under the applicable Citizenship and Entry into Israel Law, non-settler inhabitants of the West Bank are in principle prohibited from obtaining a permit to reside

in East Jerusalem, except on very limited grounds, and always at the discretion of the Minister for the Interior. This policy has an adverse effect on the reunification of families in which one member is a permanent resident of East Jerusalem and another is a non-settler resident of the West Bank. Such families have to choose among living separately; living together outside East Jerusalem, in which case one spouse risks losing Israeli citizenship or permanent residence status; or living together in East Jerusalem, in which case the other spouse must apply for an annual permit (see Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 44; Committee on the Elimination of Discrimination against Women, "Concluding observations on the sixth periodic report of Israel", UN doc. CEDAW/C/ISR/CO/6 (17 November 2017), para. 40 *(b)*). The restrictions imposed by the choice between these options do not apply to settlers. The Court further observes that an adverse effect of Israel's policy is experienced particularly by Palestinian women, who commonly depend on male spouses for their residence status (Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 44; "Implementation of Human Rights Council resolutions S-9/1 and S-12/1: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/46/63 (11 February 2021), para. 45). Therefore, in the Court's view, Israel's residence permit policy results in the differential treatment of Palestinians in relation to their right to family life, as guaranteed under Article 10 of the ICESCR and Article 17 of the ICCPR.

196. In the Court's view, the differential treatment imposed by Israel's residence permit policy in East Jerusalem is not justified, because it does not serve a legitimate public aim. In particular, the permit system is implemented as a result and in furtherance of Israel's annexation of East Jerusalem, which the Court has already considered to be unlawful (see paragraph 179 above). The Court thus considers that no differential treatment can be justified with reference to the advancement of Israel's settlement policy or its policy of annexation.

197. In light of the above, the Court is of the view that Israel's residence permit policy amounts to prohibited discrimination under Articles 2, paragraph 2, 23 and 26 of the ICCPR, and Articles 2, paragraph 2, and 10, paragraph 1, of the ICESCR.

4. Restrictions on movement

198. The Court now turns to the restrictions imposed by Israel on the movement of Palestinians in the Occupied Palestinian Territory.

199. As the Court has noted above, almost the entire Area C has been allocated to settlements, or it has been designated as closed military zones and nature reserves (see paragraph 120). While these areas are accessible to all settlers and holders of an entry permit to Israel, including non-Israeli Jews, Palestinians in the Occupied Palestinian Territory require a special permit to access them.

200. Israel has also established infrastructure in Area C, including an extensive road network that connects the Israeli settlements with one another and with the territory of Israel (see

paragraph 117). Although this road network stretches across Area C and often passes near Palestinian villages, access by Palestinians to much of it is impeded, restricted or entirely prohibited. According to UNCTAD, Palestinian travel is restricted on 29 roads and sections of roads totalling approximately 58 km throughout the West Bank, including many of the main traffic arteries ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/78/127-E/2023/95 (30 June 2023), para. 58). The Independent International Fact-Finding Mission noted that

> "[t]he restrictions themselves come in many forms, including settler-only roads, a regime of checkpoints and crossings (closure obstacles), impediments created by the wall and its gate and permit regime, as well as administrative restrictions" ("Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), para. 72).

As reported by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), there were 565 movement obstacles in the West Bank in early 2023, including 49 constantly staffed checkpoints and more than 300 roadblocks (OCHA, "Fact sheet: Movement and access in the West Bank" (August 2023)). Where Palestinians are allowed access to the restricted road network, this access is dependent on obtaining an individual travel permit, which is not required for settlers. According to the evidence before the Court, not all publicly available procedures for obtaining a permit have been translated into Arabic, the language of most applicants ("Human rights situation in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General", UN doc. A/HRC/31/44 (20 January 2016), para. 15).

201. A significant restriction of movement for Palestinians is the wall that has been under construction in the West Bank since 2002 (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 168, para. 80). The movement of Palestinians in areas located between completed parts of the wall and the Green Line depends on permits or special arrangements granted by Israel ("Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General", UN doc. A/68/502 (4 October 2013), paras. 22-23).

202. Mindful of the scope of its enquiry (see paragraph 81 above), the Court notes that stringent restrictions have applied to movement between the Gaza Strip (see paragraph 87 above), the West Bank and East Jerusalem ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/78/127-E/2023/95 (30 June 2023), para. 55).

203. Moreover, Israel's restrictions on movement impede access of Palestinians in the West Bank and in the Gaza Strip to places of worship in East Jerusalem. Evidence before the Court

indicates that restrictions such as checkpoints and area closures during holy days have prevented Palestinians from attending religious rituals ("Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), para. 60). Further, the Committee on Economic, Social and Cultural Rights has emphasized that the impediments to access to religious sites, especially in East Jerusalem, impair the enjoyment of the freedom of religion on an equal footing ("Concluding observations on the fourth periodic report of Israel", UN doc. E/C.12/ISR/CO/4 (12 November 2019), para. 70).

204. United Nations reports indicate that Israel's security forces engage in the destruction of the roads and other infrastructure used by Palestinians in the West Bank (for example, "Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/55/28 (4 March 2024), para. 55). Such activities further exacerbate the differentiation in the treatment of Palestinians with reference to their freedom of movement. The Human Rights Committee has also expressed its concern about the differential treatment of Palestinians in relation to their freedom of movement as a result of Israel's restrictions (Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 36).

205. On the basis of the evidence before it, the Court considers that, through its practice of restricting movement, Israel differentiates in its treatment of Palestinians with reference to their freedom of movement. With respect to the question of the potential justification of Israel's differentiation in treatment, the Court has taken note of Israel's security concerns, as identified by some participants in the proceedings, that might justify restrictions on movement. To the extent that such concerns pertain to the security of the settlers and the settlements, it is the Court's view that the protection of the settlers and settlements, the presence of which in the Occupied Palestinian Territory is contrary to international law, cannot be invoked as a ground to justify measures that treat Palestinians differently. Moreover, the Court considers that Israel's measures imposing restrictions on all Palestinians solely on account of their Palestinian identity are disproportionate to any legitimate public aim and cannot be justified with reference to security.

206. In its *Wall* Advisory Opinion, the Court was of the opinion

> "that the construction of the wall and its associated régime impede the liberty of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto) as guaranteed under Article 12, paragraph 1, of the International Covenant on Civil and Political Rights. They also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child." (*I.C.J. Reports 2004 (I)*, pp. 191-192, para. 134.)

In the Court's view, the entire régime of restrictions on the movement of Palestinians throughout the Occupied Palestinian Territory has a discriminatory effect on their enjoyment of these rights, as well

as to the right to be protected from arbitrary or unlawful interference with family life, as guaranteed under Article 17 of the ICCPR. In light of the above, the Court is of the view that Israel's policies restricting freedom of movement amount to prohibited discrimination under Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

5. Demolition of property

207. The Court now turns to Israel's practice of demolition of Palestinian properties in the West Bank and in East Jerusalem. According to the United Nations Office for the Coordination of Humanitarian Affairs, which has been compiling data on the practice of property demolition in the West Bank and East Jerusalem since 2009, almost 11,000 Palestinian structures have been demolished since then. Properties demolished included more than 4,500 residential and livelihood structures, over 3,000 agricultural structures and almost 1,000 water, sanitation and hygiene structures (OCHA, "Data on demolition and displacement in the West Bank"). Israel's practice of house demolitions takes two main forms: demolition of property as a punitive sanction for a criminal offence; and demolition of property for lack of a building permit. The Court will examine each in turn.

(a) *Punitive demolitions*

208. Under applicable law, the military commander of the Israeli Defense Forces has the power to order the demolition of properties that are linked with individuals having committed any of a cluster of offences deemed to be terrorist in nature: these properties are primarily homes in which the individuals in question live, or have lived, or where their families live. Israel is reported to have demolished more than 2,000 Palestinian properties since the beginning of the occupation as punishment for criminal offences (UN doc. A/HRC/44/60 (22 December 2020), para. 38).

209. The Court notes that Israeli courts have considered that the legal authority for punitive demolition is found in paragraph 1 of Palestine Defence (Emergency) Regulation 119, which was issued under the British Mandate (The Defence (Emergency) Regulations, 1945, *The Palestine Gazette, No. 1442 — Supplement No. 2*, p. 1089 (27 September 1945); see also Supreme Court of Israel (sitting as the High Court of Justice), *Sakhwil et al.* v. *Commander of the Judea and Samaria region*, HCJ 434/79, *Israel Yearbook on Human Rights*, Vol. 10, 1980, p. 346). Although the continuing validity of Palestine Defence (Emergency) Regulation 119 since 1948 may be disputed, the Court is not called upon to determine this question. The Court need only examine whether its application by Israel, as the occupying Power, gives rise to discrimination against Palestinians.

210. In this regard, the Court observes that, although several thousand Palestinian homes have been demolished (see paragraph 208 above), the measure of punitive demolition appears never to have been used against properties connected to Israeli civilians having committed similar offences ("Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General", UN doc. A/78/502 (2 October 2023), para. 27). In this respect, the application of Israel's measure of punitive demolition amounts to differential treatment of Palestinians in the Occupied Palestinian Territory in the enjoyment of

their right to be protected from arbitrary or unlawful interference with privacy, family and home, as guaranteed under Article 17, paragraph 1, of the ICCPR.

211. The Court must determine whether such differential treatment is, however, justified. In this connection, the Court recalls that, under Article 53 of the Fourth Geneva Convention, the destruction of real or personal property is "prohibited, except where such destruction is rendered absolutely necessary by military operations". The same principle is expressed in Article 23 *(g)* of the Hague Regulations, which prohibits the destruction of property unless it is "imperatively demanded by the necessities of war". The military operations envisaged in these provisions will likely occur in the context of active hostilities. In the present case, however, the Court is not convinced that the punitive demolition of property is rendered absolutely necessary by military operations, or is otherwise justified.

212. Moreover, while linked in some way to the individual having committed specific offences, the properties under demolition are commonly used or owned by a wide circle of people, including the individual's family or relatives. In this regard, the Court observes that the first paragraph of Article 33 of the Fourth Geneva Convention provides: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." This provision follows from the general principle of individual criminal responsibility, which prohibits attributing responsibility to an individual for acts of another. In the Court's view, punitive demolition of property amounts to punishment of other persons living in or using this property for acts that they have not committed, and it is therefore contrary to Article 33 of the Fourth Geneva Convention. The Court also recalls that the occupying Power is authorized to repeal or suspend penal laws in force in the occupied territory in so far as they constitute, *inter alia*, "an obstacle to the application of [that] Convention" (second paragraph of Article 64 of the Fourth Geneva Convention). This provision implies that, even if Palestine Defence (Emergency) Regulation 119 remains in force as a matter of domestic law, it may not be relied on by Israel to act in a manner that is inconsistent with its international obligations under the Fourth Geneva Convention, and in particular its obligation to refrain from imposing collective punishment.

213. Israel's practice of punitive demolitions of Palestinian property, being contrary to its obligations under international humanitarian law, does not serve a legitimate public aim. The Court considers that, because this practice treats Palestinians differently without justification, it amounts to prohibited discrimination under Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

(b) ***Demolitions for lack of building permit***

214. A separate form of property demolition is carried out in the implementation of Israel's land planning system in the West Bank and East Jerusalem. As the Court stated above, Israel has allocated almost all of the land in Area C (which accounts for more than 60 per cent of the West Bank area) for Israeli settlements, closed military zones and nature reserves (see paragraph 120). Less than 1 per cent of the land in Area C and 13 per cent of the land in East Jerusalem is allocated for the construction of infrastructure for Palestinians ("Report on UNCTAD assistance to the

Palestinian people: Developments in the economy of the Occupied Palestinian Territory", UN doc. TD/B/EX(71)/2 (20 September 2021), para. 33; see also paragraph 163 above).

215. Moreover, according to the 2013 report of the Independent International Fact-Finding Mission, Palestinians have been excluded from the planning committees entrusted with issuing and enforcing building permits; in the 20 years prior to the report, 94 per cent of Palestinian permit applications had been denied ("Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem", UN doc. A/HRC/22/63 (7 February 2013), para. 70). It is reported that the approval rate of Palestinian permit applications has further declined since then ("Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel", UN doc. A/77/328 (14 September 2022), para. 42; see also "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan: Report of the Secretary-General", UN doc. A/77/493 (3 October 2022), para. 18). In July 2023, the head of infrastructure at the Israeli Civil Administration confirmed that more than 90 per cent of Palestinian requests for permits were rejected, while approximately 60-70 per cent of Israeli requests were discussed and approved ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/55/72 (1 February 2024), para. 35).

216. In light of the long, complicated and expensive process for obtaining a building permit and its low approval rate, many Palestinians build structures without a permit. Buildings lacking permits are subject to demolition, exposing their residents to the risk of eviction and displacement; as the Court noted above, more than a third of Palestinian homes, housing approximately 100,000 residents, lacked building permits in 2019 (see paragraph 165). The heavy penalties that are incurred for lack of building permits have led many Palestinians to demolish their own properties ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/75/376 (1 October 2020), para. 48).

217. A series of amendments to the applicable zoning and planning legal framework, including the enactment of Military Order No. 1797 in 2019 and the amendment of Military Order No. 1252 in 2020, have enabled Israeli authorities to demolish structures within 96 hours of the issuance of a removal order; the means of redress against demolition have also been restricted ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/46/65 (15 February 2021), para. 32). As a result, the rate of demolitions has steadily increased. The United Nations High Commissioner for Human Rights has reported the demolition of more than 7,000 Palestinian-owned structures between 2012 and 2022, mostly in Area C and East Jerusalem. Among these structures, more than 1,600 were structures providing humanitarian aid, more than 600 were water, sanitation and hygiene buildings, and more than 20 were schools educating approximately 1,300 children ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/76 (15 March 2023), paras. 25-26).

218. By contrast, settler constructions lacking building permits in the West Bank are affected far less by the practice of demolitions. According to the Secretary-General of the United Nations, five times more demolition orders were issued for Palestinian structures than Israeli ones in the period 2019-2020. In light of the extensive unlicensed construction in settlements and outposts, the Secretary-General considered this to indicate discrimination against Palestinians ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), para. 33). In this connection, the Court recalls the extensive practice of retroactive regularization, rather than demolition, of settler constructions lacking building permits in the Occupied Palestinian Territory (see paragraph 112 above).

219. The Court notes that the differential treatment of Palestinians arising out of Israel's planning policies and practices has been emphasized by the Secretary-General of the United Nations and several treaty monitoring bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the CERD Committee ("Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General", UN doc. A/78/554 (25 October 2023), para. 19; Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 42; Committee on Economic, Social and Cultural Rights, "Concluding observations on the fourth periodic report of Israel", UN doc. E/C.12/ISR/CO/4 (12 November 2019), para. 50; CERD Committee, "Concluding observations on the combined seventeenth to nineteenth reports of Israel", UN doc. CERD/C/ISR/CO/17-19 (27 January 2020), para. 42). The Human Rights Committee, for example, has expressed

> "its deep concern that the systematic practice of demolitions and forced evictions based on discriminatory policies have led to the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which amounts to racial segregation" (Human Rights Committee, "Concluding observations on the fifth periodic report of Israel", UN doc. CCPR/C/ISR/CO/5 (5 May 2022), para. 42).

220. On the basis of the evidence before it, the Court considers that Israel's planning policy in relation to the issuance of building permits, and its practice of property demolition for lack of a building permit, constitutes differential treatment of Palestinians in the enjoyment of their right to be protected from arbitrary or unlawful interference with privacy, family and home, as guaranteed under Article 17, paragraph 1, of the ICCPR.

221. In the Court's view, this practice cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim. In particular, there is nothing in the material before the Court to indicate that the refusal of building permits to Palestinians, or the demolition of structures for lack of such permits, at such a sweeping scale, serves a legitimate aim. This conclusion is further supported by the fact that, in so far as Israel grants building permits for settlers and settlements, it acts in breach of international law (see paragraphs 119 and 155 above).

222. In light of the above, the Court considers that Israel's planning policy in relation to the issuance of building permits, and in particular its practice of property demolition for lack of a building permit, which treats Palestinians differently from settlers without justification, amounts to prohibited discrimination, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

6. Conclusion on Israel's discriminatory legislation and measures

223. For the reasons above, the Court concludes that a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds specified by international law. As the Court has noted, this differentiation of treatment cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim (see paragraphs 196, 205, 213 and 222). Accordingly, the Court is of the view that the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on, *inter alia*, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

224. A number of participants have argued that Israel's policies and practices in the Occupied Palestinian Territory amount to segregation or apartheid, in breach of Article 3 of CERD.

225. Article 3 of CERD provides as follows: "States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." This provision refers to two particularly severe forms of racial discrimination: racial segregation and apartheid.

226. The Court observes that Israel's policies and practices in the West Bank and East Jerusalem implement a separation between the Palestinian population and the settlers transferred by Israel to the territory.

227. This separation is first and foremost physical: Israel's settlement policy furthers the fragmentation of the West Bank and East Jerusalem, and the encirclement of Palestinian communities into enclaves. As a result of discriminatory policies and practices such as the imposition of a residence permit system and the use of distinct road networks, which the Court has discussed above, Palestinian communities remain physically isolated from each other and separated from the communities of settlers (see, for example, paragraphs 200 and 219).

228. The separation between the settler and Palestinian communities is also juridical. As a result of the partial extension of Israeli law to the West Bank and East Jerusalem, settlers and Palestinians are subject to distinct legal systems in the Occupied Palestinian Territory (see paragraphs 135-137 above). To the extent that Israeli law applies to Palestinians, it imposes on them restrictions, such as the requirement for a permit to reside in East Jerusalem, from which settlers are exempt. In addition, Israel's legislation and measures that have been applicable for decades treat Palestinians differently from settlers in a wide range of fields of individual and social activity in the West Bank and East Jerusalem (see paragraphs 192-222 above).

229. The Court observes that Israel's legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities. For this reason, the Court considers that Israel's legislation and measures constitute a breach of Article 3 of CERD.

E. The question of self-determination

230. The Court has found that Israel's settlement policy, its acts of annexation, and its related discriminatory legislation and measures are in breach of international law. The Court now turns to the aspect of question *(a)* that enquires as to the effects of Israel's policies and practices on the exercise of the Palestinian people's right to self-determination. The Court has already affirmed the existence of the right of the Palestinian people to self-determination (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 183, para. 118). The Court will first determine the scope of this right and then examine the effects, if any, that Israel's policies and practices have on its exercise.

231. The Charter of the United Nations identifies the development of friendly relations "based on respect for the principle of equal rights and self-determination of peoples" as one of the Organization's purposes (Article 1, paragraph 2, of the Charter). The right of all peoples to self-determination has been recognized by the General Assembly as one of the "basic principles of international law" (Annex to resolution 2625 (XXV) of 24 October 1970). Its importance has been emphasized in numerous resolutions, in particular in the Declaration on the granting of independence to colonial countries and peoples, which confirms the application of the right to all peoples and territories that have not yet attained independence (resolution 1514 (XV) of 14 December 1960, para. 2).

232. The Court has affirmed that the right of all peoples to self-determination is "one of the essential principles of contemporary international law" (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29). Indeed, it has recognized that the obligation to respect the right to self-determination is owed *erga omnes* and that all States have a legal interest in protecting that right (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 139, para. 180).

233. The centrality of the right to self-determination in international law is also reflected in its inclusion as common Article 1 of the ICESCR and the ICCPR, the first paragraph of which provides: "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development." The Human Rights Committee has explained that the importance of the right to self-determination stems from the fact that "its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights" (General Comment No. 12 (13 March 1984), *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40* (UN doc. A/39/40 (SUPP)), Annex VI, para. 1). Indeed, as the Court has affirmed, the right to self-determination is a fundamental human right (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 131, para. 144). In the context of decolonization, the General Assembly has repeatedly emphasized the significance of the right to self-determination as an "inalienable right" (for example, resolution 40/25 of 29 November 1985, para. 3; resolution 42/14 of 6 November 1987, para. 4; resolution 49/40 of 9 December 1994, para. 1). The General Assembly has also underlined that "there is no alternative

to the principle of self-determination" in the process of decolonization (for example, resolution 57/138 (A) of 11 December 2002, para. 3; resolution 59/134 (A) of 10 December 2004, para. 2). The Court considers that, in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law.

234. The right of self-determination of peoples has a broad scope of application (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 131, para. 144). For the purpose of answering the question put to it, the Court must determine whether the policies and practices of Israel, as the occupying Power, in the Occupied Palestinian Territory impede the exercise of the right of the Palestinian people to self-determination.

235. Many participants have argued that Israel's occupation of the Occupied Palestinian Territory violates the right of the Palestinian people to self-determination. The policies and practices of Israel that are said to infringe this right include the expansion of settlements and the establishment of associated infrastructure in the Occupied Palestinian Territory; the confiscation of land and demolition of Palestinian structures; the changes to the demographic composition of certain parts of the Occupied Palestinian Territory; the fragmentation of the Occupied Palestinian Territory; and the appropriation of natural resources, including the exploitation of hydrocarbon, mineral and water resources in the Occupied Palestinian Territory. Other participants have expressed reservations. One participant, in particular, has argued that the right to self-determination is relative and should not involve changes to existing frontiers. In its view, the Court should ascertain whether the exercise of the right to self-determination by the Palestinian people has infringed the territorial integrity, political inviolability or legitimate security needs of the State of Israel.

236. In the Court's view, the following elements are of particular relevance in the present proceedings.

237. First, the Court recalls that the right to territorial integrity is recognized under customary international law as "a corollary of the right to self-determination" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 134, para. 160). In the context of Palestine, the General Assembly and the Human Rights Council have called for "the respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem" (for example, General Assembly resolution 77/208 of 15 December 2022, ninth preambular paragraph; Human Rights Council resolution 49/28 of 1 April 2022, para. 5). The Court considers that Israel, as the occupying Power, has the obligation not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory.

238. The Court has already found that Israel's settlement policy has fragmented the West Bank and severed East Jerusalem from it (see paragraph 164 above). The sprawl of settlements in the West Bank, coupled with the expansion of a road network to which Palestinians have limited or no access, has had the effect of encircling Palestinian communities in enclaves in the West Bank (see paragraphs 200 and 227 above). Moreover, Israel's annexation of large parts of the Occupied Palestinian Territory violates the integrity of the Occupied Palestinian Territory, as an essential element of the Palestinian people's right to self-determination.

239. Second, by virtue of the right to self-determination, a people is protected against acts aimed at dispersing the population and undermining its integrity as a people. In the past, the Court concluded that Israel's construction of the wall, along with other measures, contributed to the departure of Palestinian populations from certain areas, thus risking alterations to the demographic composition of the Occupied Palestinian Territory; for that reason, it severely impeded the exercise by the Palestinian people of its right to self-determination (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 184, para. 122). The Court has also found above that Israel's settlement policy as a whole, its annexation of territory and its related legislation and measures that discriminate against Palestinians in the Occupied Palestinian Territory contribute to the departure of Palestinians from certain areas of the Occupied Palestinian Territory, notably from Area C and East Jerusalem. Moreover, Israel's strict restrictions on movement between the Gaza Strip, the West Bank and East Jerusalem divide the Palestinian populations living in different parts of the Occupied Palestinian Territory (see paragraphs 202 and 206 above). In the Court's view, these policies and practices undermine the integrity of the Palestinian people in the Occupied Palestinian Territory, significantly impeding the exercise of its right to self-determination.

240. A third element of the right to self-determination is the right to exercise permanent sovereignty over natural resources, which is a principle of customary international law (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 251, para. 244). The Court has already found above that Israel has been exploiting the natural resources in the Occupied Palestinian Territory for its own benefit and for the benefit of settlements, in breach of its obligation to respect the Palestinian people's permanent sovereignty over natural resources (see paragraph 133). In depriving the Palestinian people of its enjoyment of the natural resources in the Occupied Palestinian Territory for decades, Israel has impeded the exercise of its right to self-determination.

241. Fourth, a key element of the right to self-determination is the right of a people freely to determine its political status and to pursue its economic, social and cultural development. This right is reflected in resolutions 1514 (XV) and 2625 (XXV), and it is enshrined in common Article 1 of the ICCPR and the ICESCR (see paragraph 233 above). The Court has already discussed the impact of Israel's policies and practices on some aspects of the economic, social and cultural life of Palestinians, in particular by virtue of the impairment of their human rights. The dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/78/127-E/2023/95 (30 June 2023)).

242. In addition to the injury inflicted on individual persons, the violation of Palestinians' rights — including the right to liberty and security of person, and the freedom of movement — has repercussions on the Palestinian people as a whole, frustrating its economic, social and cultural development. In this connection, the Economic and Social Commission for Western Asia observed in 2023 that

> "Israeli-imposed restrictions, expansion of the illegal settlements and other practices not only prevent development but have also exacerbated the fragmentation of the

> Palestinian territory. These policies and practices have had a severe humanitarian, economic, social and political impact on Palestinians and their ability to exercise their fundamental human rights. Their repercussions have had a cumulative, multilayered and intergenerational impact on the Palestinian society, economy and environment and have caused the deterioration of the living conditions of the Palestinians, their forced displacement, 'de-development' of the Occupied Palestinian Territory, entrenchment of the Palestinian economy's asymmetric dependence on Israel, and exacerbation of Palestinian institutional dependence on foreign aid." ("Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan", UN doc. A/78/127-E/2023/95 (30 June 2023), para. 130.)

The Court thus considers that Israel's policies and practices obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development.

243. The prolonged character of Israel's unlawful policies and practices aggravates their violation of the right of the Palestinian people to self-determination. As a consequence of Israel's policies and practices, which span decades, the Palestinian people has been deprived of its right to self-determination over a long period, and further prolongation of these policies and practices undermines the exercise of this right in the future. For these reasons, the Court is of the view that Israel's unlawful policies and practices are in breach of Israel's obligation to respect the right of the Palestinian people to self-determination. The manner in which these policies affect the legal status of the occupation, and thereby the legality of the continued presence of Israel in the Occupied Palestinian Territory, is discussed below (see paragraphs 255-257).

VI. EFFECTS OF ISRAEL'S POLICIES AND PRACTICES ON THE LEGAL STATUS OF THE OCCUPATION

A. The scope of the first part of question *(b)* and applicable law

244. The Court will now turn to the first part of question *(b)* on which the General Assembly requested its opinion and will examine whether and, if so, the manner in which the policies and practices of Israel have affected the legal status of the occupation in light of the relevant rules and principles of international law. It will begin by further determining the scope of the first part of question *(b)* posed by the General Assembly.

245. As shown in the Court's reply to question *(a)* above, Israel has adopted certain policies and practices which are not in conformity with the legal régime governing occupation. Moreover, the above reply to question *(a)* shows that Israel's policies and practices, including its continued expansion of settlements, are designed to establish facts on the ground that are irreversible, which entrench the annexation of large parts of the Occupied Palestinian Territory and impede the exercise of the right to self-determination by the Palestinian people (see paragraphs 162-173 and 230-243 above). The Court is of the view that these policies and practices, and the creation of facts on the ground have significant effects on the legal status of the occupation and thereby on the legality of the continued presence of Israel in the Occupied Palestinian Territory.

246. The Court notes that the Security Council and General Assembly both have expressed similar views with respect to Israel's policies and practices designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory.

247. For example, the Security Council, in its resolution 252 (1968), after reaffirming that acquisition of territory by military conquest is inadmissible, declared that it

> "*[c]onsiders* that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status".

The Council also, by its resolution 446 (1979), called upon Israel

> "to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories".

Moreover, by resolution 465 (1980), the Council determined that

> "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East".

248. Similarly, the General Assembly, by its resolution 32/5 (1977), referring to the serious situation in the occupied Arab territories, expressed its grave anxiety and concern over, *inter alia*, "the measures and actions taken by the Government of Israel, as the occupying Power, and designed to change the legal status, geographical nature and demographic composition of those territories"; and determined that "all such measures and actions taken by Israel in the Palestinian and other Arab territories occupied since 1967 have no legal validity". Subsequently, in 2015, it called upon

> "Israel, the occupying Power, to comply strictly with its obligations under international law, including international humanitarian law, and to cease all of its measures that are contrary to international law and all unilateral actions in the Occupied Palestinian Territory, including East Jerusalem, that are aimed at altering the character, status and demographic composition of the Territory, including the confiscation and de facto annexation of land, and thus at prejudging the final outcome of peace negotiations, with a view to achieving without delay an end to the Israeli occupation that began in 1967" (resolution 70/15 (2015)).

249. More recently, the General Assembly, in the same resolution in which it requested the present Advisory Opinion from the Court, demanded that

> "Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which, inter alia, gravely and detrimentally impact the human rights of the Palestinian people, including their right to self-determination, and the prospects for achieving without delay an end to the Israeli occupation that began in 1967 and a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides" (resolution 77/247 (2022)).

250. Thus, the Court considers that the first part of question *(b)* posed by the General Assembly is not whether the policies and practices of Israel affect the legal status of the occupation as such. Rather, the Court is of the view that the scope of the first part of the second question concerns the manner in which Israel's policies and practices affect the legal status of the occupation, and thereby the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. This legality is to be determined under the rules and principles of general international law, including those of the Charter of the United Nations.

251. The Court considers that the rules and principles of general international law and of the Charter of the United Nations on the use of force in foreign territory (*jus ad bellum*) have to be distinguished from the rules and principles that apply to the conduct of the occupying Power under international humanitarian law (*jus in bello*) and international human rights law. The former rules determine the legality of the continued presence of the occupying Power in the occupied territory; while the latter continue to apply to the occupying Power, regardless of the legality or illegality of its presence. It is the former category of rules and principles regarding the use of force, together with the right of peoples to self-determination, that the Court considers to be applicable to its reply to the first part of question *(b)* of the request for an advisory opinion by the General Assembly.

B. The manner in which Israeli policies and practices affect the legal status of the occupation

252. The Court has determined above that Israeli policies and practices and the manner in which they are implemented and applied on the ground have significant effects on the legal status of the occupation through the extension of Israeli sovereignty to certain parts of the occupied territory, their gradual annexation to Israeli territory, the exercise of Israeli governmental functions and the application of its domestic laws therein, as well as through the transfer of a growing number of its own nationals to those parts of the territory and impeding the exercise of the right to self-determination of the Palestinian people (see Part V.C. and Part V.E. above). As a result, these policies and practices have brought about changes in the physical character, legal status, demographic composition and territorial integrity of the Occupied Palestinian Territory, particularly the West Bank and East Jerusalem. These changes manifest an intention to create a permanent and irreversible Israeli presence in the Occupied Palestinian Territory.

253. The Court observes that an occupation involves, by its very nature, a continued use of force in foreign territory. Such use of force is, however, subject to the rules of international law governing the legality of the use of force or *jus ad bellum*. As indicated in Part V.C. above, these rules prohibit the use of force to acquire territory. Under contemporary international law as contained in the Charter of the United Nations and reflected in customary international law, occupation can under no circumstances serve as the source of title to territory or justify its acquisition by the occupying Power.

254. Israel's assertion of sovereignty over and its annexation of certain parts of the territory constitute, as shown above, a violation of the prohibition of the acquisition of territory by force. This violation has a direct impact on the legality of Israel's continued presence, as an occupying Power, in the Occupied Palestinian Territory. The Court considers that Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the Occupied Palestinian Territory on account of its occupation. Nor can Israel's security concerns override the principle of the prohibition of the acquisition of territory by force.

255. With regard to the right to self-determination, the Court recalls that "respect for the principle of equal rights and self-determination of peoples" is enshrined in the Charter of the United Nations (Article 1, paragraph 2), and reaffirmed in General Assembly resolution 2625 (XXV), in accordance with which "[e]very State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] of their right to self-determination".

256. The Court observes that the effects of Israel's policies and practices as discussed above, and its exercise of sovereignty over certain parts of the Occupied Palestinian Territory, particularly the West Bank and East Jerusalem, constitute an obstruction to the exercise by the Palestinian people of its right to self-determination (see paragraphs 234-243 above). The effects of these policies and practices include Israel's annexation of parts of the Occupied Palestinian Territory, the fragmentation of this territory, undermining its integrity, the deprivation of the Palestinian people of the enjoyment of the natural resources of the territory and its impairment of the Palestinian people's right to pursue its economic, social and cultural development (see paragraphs 230-243 above).

257. The above-described effects of Israel's policies and practices, resulting, *inter alia*, in the prolonged deprivation of the Palestinian people of its right to self-determination, constitute a breach of this fundamental right. This breach has a direct impact on the legality of Israel's presence, as an occupying Power, in the Occupied Palestinian Territory. The Court is of the view that occupation cannot be used in such a manner as to leave indefinitely the occupied population in a state of suspension and uncertainty, denying them their right to self-determination while integrating parts of their territory into the occupying Power's own territory. The Court considers that the existence of the Palestinian people's right to self-determination cannot be subject to conditions on the part of the occupying Power, in view of its character as an inalienable right.

258. In light of the above, the Court will now turn to the examination of the legality of the continued presence of Israel in the Occupied Palestinian Territory.

C. The legality of the continued presence of Israel in the Occupied Palestinian Territory

259. Many of the participants in the present proceedings have argued that Israel's occupation is illegal because its policies and practices have effected changes to the territory and its demographic composition which have a permanent character. In their view, the permanent character of Israel's violations of the prohibition of the acquisition of territory by force render Israel's continued presence in the Occupied Palestinian Territory unlawful.

260. Some participants have likened the present proceedings to *Legal Consequences for States of the Continued Presence of South Africa in Namibia*. These participants have argued that if South Africa's continued presence could be found to be illegal due to its violation of the applicable rules and principles of general international law and the Charter of the United Nations, so too may Israel's occupation, by reason of its violation of the same rules and principles.

261. The Court considers that the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful.

262. This illegality relates to the entirety of the Palestinian territory occupied by Israel in 1967. This is the territorial unit across which Israel has imposed policies and practices to fragment and frustrate the ability of the Palestinian people to exercise its right to self-determination, and over large swathes of which it has extended Israeli sovereignty in violation of international law. The entirety of the Occupied Palestinian Territory is also the territory in relation to which the Palestinian people should be able to exercise its right to self-determination, the integrity of which must be respected.

263. Three participants have contended that agreements between Israel and Palestine, including the Oslo Accords, recognize Israel's right to maintain its presence in the Occupied Palestinian Territory, *inter alia*, in order to meet its security needs and obligations. The Court observes that these Accords do not permit Israel to annex parts of the Occupied Palestinian Territory in order to meet its security needs. Nor do they authorize Israel to maintain a permanent presence in the Occupied Palestinian Territory for such security needs.

264. The Court emphasizes that the conclusion that Israel's continued presence in the Occupied Palestinian Territory is illegal does not release it from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States in respect of the exercise of its powers in relation to the territory until such time as its presence is brought to an end. It is the effective control of a territory, regardless of its legal status under international law, which determines the basis of the responsibility of a State for its acts affecting the population of the territory or other States (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 118).

VII. LEGAL CONSEQUENCES ARISING FROM ISRAEL'S POLICIES AND PRACTICES AND FROM THE ILLEGALITY OF ISRAEL'S CONTINUED PRESENCE IN THE OCCUPIED PALESTINIAN TERRITORY

265. The Court has found that Israel's policies and practices referred to in question *(a)* are in breach of international law. The maintenance of these policies and practices is an unlawful act of a continuing character entailing Israel's international responsibility (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, pp. 138-139, para. 177).

266. The Court has also found in reply to the first part of question *(b)* that the continued presence of Israel in the Occupied Palestinian Territory is illegal. The Court will therefore address the legal consequences arising from Israel's policies and practices referred to in question *(a)* for Israel, together with those arising from the illegality of Israel's continued presence in the Occupied Palestinian Territory under question *(b)*, for Israel, for other States and for the United Nations.

A. Legal consequences for Israel

267. With regard to the Court's finding that Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character which has been brought about by Israel's violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible. As the Court affirmed in its *Wall* Advisory Opinion, the obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 139, para. 178; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 197, para. 150).

268. The Court further observes that, with respect to the policies and practices of Israel referred to in question *(a)* which were found to be unlawful, Israel has an obligation to put an end to those unlawful acts. In this respect, Israel must immediately cease all new settlement activity. Israel also has an obligation to repeal all legislation and measures creating or maintaining the unlawful situation, including those which discriminate against the Palestinian people in the Occupied Palestinian Territory, as well as all measures aimed at modifying the demographic composition of any parts of the territory.

269. Israel is also under an obligation to provide full reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 152). The Court recalls that the essential principle is that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). Reparation includes restitution, compensation and/or satisfaction.

270. Restitution includes Israel's obligation to return the land and other immovable property, as well as all assets seized from any natural or legal person since its occupation started in 1967, and all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents. It also requires the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence.

271. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons, and populations, where that may be the case, having suffered any form of material damage as a result of Israel's wrongful acts under the occupation.

272. The Court emphasizes that the obligations flowing from Israel's internationally wrongful acts do not release it from its continuing duty to perform the international obligations which its conduct is in breach of. Specifically, Israel remains bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 197, para. 149).

B. Legal consequences for other States

273. The Court will now turn to the legal consequences of Israel's internationally wrongful acts in the Occupied Palestinian Territory as regards other States.

274. The Court observes that the obligations violated by Israel include certain obligations *erga omnes*. As the Court indicated in the *Barcelona Traction* case, such obligations are by their very nature "the concern of all States" and "[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection" (*Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). Among the obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law.

275. With regard to the right to self-determination, the Court considers that, while it is for the General Assembly and the Security Council to pronounce on the modalities required to ensure an end to Israel's illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination, all States must co-operate with the United Nations to put those modalities into effect. As recalled in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

> "[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out

> the responsibilities entrusted to it by the Charter regarding the implementation of the principle" (General Assembly resolution 2625 (XXV)).

276. As regards the prohibition of the acquisition of territory by force, the Court notes that the Security Council has declared on several occasions, in relation to the Occupied Palestinian Territory, the inadmissibility of the acquisition of territory by force and has determined that

> "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity" (Security Council resolution 465 (1980)).

Moreover, the Security Council in resolution 2334 (2016) reaffirmed that "it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations", and called upon "all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".

277. Similarly, the General Assembly has called upon all States

"*(a)* Not to recognize any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties through negotiations, including by ensuring that agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967;

(b) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967;

(c) Not to render aid or assistance to illegal settlement activities, including not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories, in line with Security Council resolution 465 (1980) of 1 March 1980;

(d) To respect and ensure respect for international law, in all circumstances, including through measures of accountability, consistent with international law" (resolution 74/11 (2019)).

In its resolution 77/126, the General Assembly also called upon

> "all States, consistent with their obligations under international law and the relevant resolutions, not to recognize, and not to render aid or assistance in maintaining, the situation created by measures that are illegal under international law, including those aimed at advancing annexation in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967";

while in resolution 32/161 (1977), the General Assembly called upon

> "all States, international organizations, specialized agencies, investment corporations and all other institutions not to recognize, or cooperate with or assist in any manner in,

any measures undertaken by Israel to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories".

278. Taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia*, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 55-56, paras. 122, 125-127).

279. Moreover, the Court considers that, in view of the character and importance of the rights and obligations involved, all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory. It is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

C. Legal consequences for the United Nations

280. The duty of non-recognition specified above also applies to international organizations, including the United Nations, in view of the serious breaches of obligations *erga omnes* under international law. As noted above, the General Assembly has already called, in some of its resolutions, on international organizations and specialized agencies not "to recognize, or co-operate with or assist in any manner in, any measures undertaken by Israel to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories" (resolution 32/161 (1977)). In view of the character and importance of the obligations *erga omnes* involved in the illegal presence of Israel in the Occupied Palestinian Territory, the obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory and the obligation to distinguish in their dealings with Israel between the territory of Israel and the Occupied Palestinian Territory apply also to the United Nations.

281. Finally, the Court is of the view that the precise modalities to bring to an end Israel's unlawful presence in the Occupied Palestinian Territory is a matter to be dealt with by the General Assembly, which requested this opinion, as well as the Security Council. Therefore, it is for the General Assembly and the Security Council to consider what further action is required to put an end to the illegal presence of Israel, taking into account the present Advisory Opinion.

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282. The Court considers it important to stress as it did in its *Wall* Advisory Opinion,

> "the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region" (*I.C.J. Reports 2004 (I)*, p. 200, para. 161).

283. The Court also considers that the realization of the right of the Palestinian people to self-determination, including its right to an independent and sovereign State, living side by side in peace with the State of Israel within secure and recognized borders for both States, as envisaged in resolutions of the Security Council and General Assembly, would contribute to regional stability and the security of all States in the Middle East.

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284. The Court emphasizes that its reply to the questions put to it by the General Assembly rests on the totality of the legal grounds set forth by the Court above, each of which is to be read in the light of the others, taking into account the framing by the Court of the material, territorial and temporal scope of the questions (paragraphs 72 to 83).

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285. For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: *President* Salam; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde;

(3) By eleven votes to four,

Is of the opinion that the State of Israel's continued presence in the Occupied Palestinian Territory is unlawful;

IN FAVOUR: *President* Salam; *Judges* Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Aurescu;

(4) By eleven votes to four,

Is of the opinion that the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible;

IN FAVOUR: *President* Salam; *Judges* Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Aurescu;

(5) By fourteen votes to one,

Is of the opinion that the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde;

(6) By fourteen votes to one,

Is of the opinion that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Abraham, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Vice-President* Sebutinde;

(7) By twelve votes to three,

Is of the opinion that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Aurescu;

(8) By twelve votes to three,

Is of the opinion that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory;

IN FAVOUR: *President* Salam; *Judges* Tomka, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Aurescu;

(9) By twelve votes to three,

Is of the opinion that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.

IN FAVOUR: *President* Salam; *Judges* Tomka, Yusuf, Xue, Bhandari, Iwasawa, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Aurescu.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of July, two thousand and twenty-four, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Nawaf SALAM,
President.

(Signed) Philippe GAUTIER,
Registrar.

President SALAM appends a declaration to the Advisory Opinion of the Court; Vice-President SEBUTINDE appends a dissenting opinion to the Advisory Opinion of the Court; Judge TOMKA appends a declaration to the Advisory Opinion of the Court; Judges TOMKA, ABRAHAM and AURESCU append a joint opinion to the Advisory Opinion of the Court; Judge YUSUF appends a separate opinion to the Advisory Opinion of the Court; Judge XUE appends a declaration to the Advisory Opinion of the Court; Judges IWASAWA and NOLTE append separate opinions to the Advisory Opinion of the Court; Judges NOLTE and CLEVELAND append a joint declaration to the Advisory Opinion of the Court; Judges CHARLESWORTH and BRANT append declarations to the Advisory Opinion of the Court; Judges GÓMEZ ROBLEDO and CLEVELAND append separate opinions to the Advisory Opinion of the Court; Judge TLADI appends a declaration to the Advisory Opinion of the Court.

(Initialled) N.S.

(Initialled) Ph.G.