ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE PALESTINIAN PEOPLE IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF

THE ARAB REPUBLIC OF EGYPT

25 July, 2023

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PART I

PRELIMINARY REMARKS

I. Introduction

1. The United Nations (hereinafter "**UN**") General Assembly, at its fifty-sixth plenary meeting held on 30 December 2022, under its agenda item 47, adopted resolution 77/247 entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem"[1]. In this resolution, the General Assembly decided, in accordance with Article 96 of the UN Charter, to request the International Court of Justice (hereinafter "**ICJ"** or the "**Court"**) to render an advisory opinion pursuant to Article 65 of the Statute of the Court, 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. The request for an advisory opinion was transmitted to the Court by the UN Secretary-General through a letter dated 17 January 2023, which was received in the Court's Registry on 19 January 2023.

3. By letters dated 19 January 2023, the Court's 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 the ICJ Statute.

4. On 3 February, the Court issued an order deciding that the UN and its Member States, as well as the Observer State of Palestine, are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. The Court's order also fixed the time limits (25 July 2023 as the time limit within which written

[1] UN. General Assembly Resolution 77/247, " *Israeli practices affecting human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*", A/RES/77/247, 9 January 2023, [hereinafter "*Resolution 77/247*"], can be accessed through: https://www.un.org/unispal/wp-content/uploads/2023/01/A.RES_.77.247_301222.pdf

statements may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute; and 25 October 2023 as the time limit within which States and organizations having presented written statements, may submit written comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute).

5. The Arab Republic of Egypt ("**Egypt**") attaches the highest importance to the international rule of law, based on the principles of justice and peace, and to the ICJ's role as the principal judicial organ of the United Nations. Based on this principled position, Egypt wishes to avail itself of this opportunity to submit a Written Statement providing information to the Court and expressing its views in respect of the pending request for an advisory opinion. Egypt believes that the Court's Advisory Opinion will strengthen efforts to consolidate peace and stability in the Middle East.

6. Egypt welcomed GA Resolution A/RES/77/247 and renews its call to the international community to intensify efforts to implement all relevant United Nations resolutions, leading to the end of the Israeli occupation, the realization of international justice, and the empowerment of the Palestinian people to exercise their inalienable legitimate rights. This must include the right to return, the right to self-determination and the right to establish their independent State on the borders of 4 June, 1967, with East Jerusalem as its capital.

7. In this Written Statement, the Egypt sets out its preliminary observations on, and initial submissions in respect of, the questions submitted to the Court *concerning* "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem", pursuant to Resolution A/RES/77/247 of the General Assembly of the United Nations (the "General Assembly").

8. Since 1947, the General Assembly has been seized of the Palestine question, and has adopted numerous resolutions calling on Israel to comply with international law and to put an end to the continued occupation of the Palestinian territories, and the flagrant violations of international law. In 2004, it requested an Advisory Opinion *on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* an opinion which, to date has not been implemented. It now returns to the Court with a new request.

9. The International Court of Justice must exercise its role in upholding the rule of law at the international level. It has an accumulated experience of over a century, which it must lean against and derive its resolve from. The Court is one of the six main organs of the United Nations and its principal judicial organ. It applies the sources of international law, enumerated in Article 38 of the Charter. However, the Charter itself stands at the centre of its functions.

10. The weight and purport of advisory opinions is beyond doubt, having considerable significance to the preservation and development of international law. The Court has asserted the authoritativeness of its advisory opinions. According to Article 38(1)(d) of the Court's Statute, its advisory opinions would constitute "subsidiary means for the determination of rules of law". Indeed, the Court has always relied on its earlier findings and jurisprudence. That is applicable to both contentious and advisory, in particular when

they have determined issues relating to the interpretation and application of international law.[2] Therefore, the Court should proceed with the present case without hesitation.

11. In submitting this Written Statement, Egypt hopes to assist the Court in answering the Questions put to it. In so doing, it intends to:

- establish that the Court has jurisdiction to issue the opinion requested by the General Assembly and lay out the scope of the request (PART II);
- outline the relevant historical background (PART III);
- address how 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, constitute a violation of international law (PART IV - V);
- the legal consequences arising from such an unlawful situation under general international law (PART VI).

12. Egypt wishes that the Palestinian Question be settled in all its aspects, through a just, lasting, and comprehensive settlement, in accordance with international law, including the UN Charter and UN Resolutions. As a neighbouring country to both Palestine and Israel, Egypt has historically engaged extensively and constructively as a regional sponsor to promote conditions conducive to viable and sustainable peace, based on justice and international law. The stalemate in the efforts during the past years requires the international community to work towards consolidating the parameters required to preserve the legitimate and inalienable rights of the Palestinian people, and establish an independent Palestinian State, based on the 4th June 1967 borders. Egypt, therefore, looks forward to the Court's Advisory Opinion on this matter.

[2] *Cf., Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, ICJ Reports, 2008*, p. 428, para. 53 [hereinafter "*Punishment of the Crime of Genocide*"], quoting *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, ICJ Reports, 1998*, p. 292, para. 28.

PART II
JURISDICTION

I. Introduction

13. When the Court is seized of a request for an advisory opinion, it 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.[3]

14. As will be shown, once the Court has established its jurisdiction, it will only exercise its discretion not to render an advisory opinion, where there are "compelling reasons" not to.[4] To date, the International Court of Justice has never exercised that discretion.[5]

15. Egypt submits that the same threshold should apply in the context of the present advisory proceedings.

16. Article 65, paragraph 1, of the ICJ's Statute provides that:

> "The 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."[6] (emphasis added)

17. The Court has indicated that:

> "It is … a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ."[7]

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[3] *Cf.*, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 232, para. 10 [hereinafter "*The Nuclear Weapons Advisory Opinion*"]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 144, para. 13 [hereinafter "*The Wall Advisory Opinion*"]; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 412, para. 17 [hereinafter "*The Independence of Kosovo Advisory Opinion*"]; and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 54 [hereinafter "*The Separation of the Chagos Archipelago Advisory Opinion*"].

[4] The *Wall Advisory Opinion*, *op. cit.*, p. 156, para. 44; *The Nuclear Weapons Advisory Opinion*, pp. 234-235, para. 14.

[5] The *Wall Advisory Opinion*, *loc. cit.*; The *Nuclear Weapons Advisory Opinion*, *loc. cit*. The one instance of the Court refusing to provide an Advisory Opinion was justified by the Court's lack of jurisdiction – see *loc. cit*.

[6] *Statute of the International Court of Justice*, adopted in the San Francico Conference on 26 June 1945, Article 65, [hereinafter "*The ICJ Statute*"], can be accessed through: https://www.icj-cij.org/statute

[7] *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, pp. 333-334, para. 21.

18. There is no doubt that the two relevant prerequisites for the giving of an advisory opinion, namely that the request be made by a duly authorised organ and that the question put to the Court be a legal one, are both fulfilled in the present request, as detailed below.

II. The General Assembly is Authorised to Request the Advisory Opinion

A. Resolution A/RES/77/247 is valid

19. The Court must satisfy itself that Resolution A/RES/77/247 was validly adopted from the procedural point of view. The Resolution was adopted by a recorded vote of 87 votes in favour, 26 votes against, and 53 abstentions, in accordance with Rule 86 of the Assembly's Rules of Procedures[8]. As such, it has been properly adopted, and is an effective expression of the legally valid will of the General Assembly.

20. It is now necessary to examine whether that Resolution was *intra vires*.

B. The General Assembly is competent to request an Advisory Opinion (ratione personae)

21. According to Article 96, paragraph 1, of the Charter, the General Assembly (like the Security Council), "may request the International Court of Justice to give an advisory opinion on any legal question".[9] Thus the GA is formally authorized by the Charter to make a request 'on any legal question'.

22. The broad scope of this Article reflects the very broad competence of the General Assembly, under Chapter IV of the UN Charter (in particular articles 10, 11, and 13) and hence, the almost complete liberty of the Assembly in requesting an opinion of the Court. This has been confirmed by the Court itself, in the oft quoted *Nuclear Weapons Advisory Opinion*.[10] The Court has also clearly reiterated its position in the *Wall Advisory Opinion*.[11]

23. The matters *in casu*, around which the Questions before the Court revolve, are human rights and fundamental freedoms, including the right to self-determination, and the adoption of discriminatory legislation and measures, the maintenance of international peace and security (*lato sensu*), and addressing situations resulting from a violation of the provisions of the Charter setting forth the Purposes and Principles of the United Nations, , all of which are covered by Chapter IV of the UN Charter.

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[8] *Rules of Procedure of the General Assembly*, document A/520/Rev.20, Rule 83, can be accessed through: https://www.un.org/en/ga/about/ropga/

[9] *Charter of the United Nations*, entered into force on 24 October 1944, Article 96(1) [hereinafter "*The UN Charter*"], can be accessed through: https://www.un.org/en/about-us/un-charter/full-text

[10] *The Nuclear Weapons Advisory Opinion*, *op. cit.*, p. 232, para. 11.

[11] *The Wall Advisory Opinion*, *op. cit*., p. 144, para. 14.

24. In the *Chagos Advisory Opinion*, the Court recalled what it had already said in the *Western Sahara Advisory Opinion,*[12] namely that:

> "The object of the request is … to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory."

25. The Palestinian case, in all its aspects, has been under active consideration by the General Assembly, both in ordinary, or special sessions, for several decades, prior to its decision to request this Opinion from the Court. Thus, there is no doubt that the General Assembly is authorised to request the present advisory opinion.

III. The request concerns a "Legal Question" (jurisdiction *ratione materiae*)

26. It has been noted that, according 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*"[13] (emphasis added).

27. The Court must, therefore, ascertain whether the requirement in Article 96 of the Charter (and Article 65 of its Statute) - that the advisory opinion must be on a "legal question" - is satisfied.

28. The General Assembly is, indeed, requesting an advisory opinion from the Court on *legal* questions. Questions (a) and (b) are framed in such a manner that expressly pronounces themselves on the *legal nature* of the Request. By asking "[w]hat are the legal consequences" arising from ongoing violations, since 1967, and "[h]ow do the policies and practices … affect the legal status of the occupation, and what are the legal consequences" that arise for States and the United Nations, they can only be qualified as "legal questions", the answers to which must have regard to international law.

29. These are, necessarily, and by definition, *legal questions* in the meaning of the Charter, the Statute and the Court's own jurisprudence.

30. These questions also involve the *interpretation* of international norms, which is essentially a judicial task. The questions submitted by the General Assembly have been, to use the very words of the Court "*framed in terms of law and raise problems of international law … [they are by their] very nature susceptible of a reply based on law*", hence they are squarely questions of a legal character.[14]

31. In the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the Court confirmed, in paragraph 13, that "The fact that this question also has political aspects,

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[12] *The Separation of the Chagos Archipelago Advisory Opinion, op. cit.*, p.118, para. 86; Western Sahara Advisory Opinion, *I.C.J Reports 1975*, pp. 26-27, para. 39 [hereinafter "*The Western Sahara Advisory Opinion*"].

[13] The UN Charter, *op. cit.*, Article 96(1).

[14] *Western Sahara, Advisory Opinion*, *op. cit*., p. 18, para. 15; *The Wall Advisory Opinion*, *op. cit*., p. 153, para. 37.

as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question' and to 'deprive the Court of a competence expressly conferred on it by its Statute[15].

32. Furthermore, as the Court stated in *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, "in situations where political considerations are prominent it may be particularly necessary for an international organisation to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate […]".[16]

33. The Court also previously affirmed in the Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, that:

> "in the view of the Court, the contingency that there may be factual issues underlying the question posed does not alter its character as a 'legal question' as envisaged in Article 96 of the Charter. The reference in this provision to legal questions cannot be interpreted as opposing legal to factual issues. Normally, to enable a court to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues."[17]

34. In sum, Egypt notes that the request presents two legal questions that are precisely formulated in clear legal terms and raise issues of international law. The General Assembly's request for the Advisory Opinion satisfies the conditions of Article 65 of the Statute of the Court and Article 96(1) of the UN Charter, both *ratione personae* (the General Assembly being a duly authorised organ) and *ratione materiae* (the Request being for a legal question).

35. Accordingly, the Court is invited to render the requested advisory opinion.

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[15] *The Nuclear Weapons Advisory Opinion, op. cit*., p. 233-234, para. 13; *The Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, *Advisory Opinion, I.C.J. Reports 1973*, p. 172, para. 14. This point was further reiterated by the Court when it stated: "Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law" (cf. Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948, pp. 61-62; Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, pp. 6-7; Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 155)."

[16] *Cf., Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, ICJ, Reports 1980*, p.87, para. 33.

[17] *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. 27, para. 40 [hereinafter "*Namibia Advisory Opinion*"]; *The Western Sahara Advisory Opinion*, *op. cit.*, p.19, paras. 16-17.

IV. The Duty of the Court to Give the Requested Opinion

36. The Court has stated that the "fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it".[18] It recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that "[t]he Court may give an advisory opinion…", 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".[19]

37. The discretion whether, or not, to respond to a request for an advisory opinion exists so as to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations.[20]

38. The Court, however, has been mindful of the fact 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".[21] Thus, the consistent jurisprudence of the Court is that only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction.[22]

39. In the Wall Advisory Opinion, the Court stated that:

> The present Court has never, in the exercise of its discretionary power, declined to respond to a request for an advisory opinion. Its decision not to give the advisory opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, requested by the World Health Organization, was based on the Court's lack of jurisdiction, and not on considerations of judicial propriety.[23] Only on one occasion did the Court's predecessor, the Permanent Court of International Justice, take the view that it should not reply to a question put to it,[24] but this was due to "the very particular circumstances, which were that the question directly concerned an already existing dispute, one of the States parties to which was neither a party to the Statute of the Permanent Court, nor a Member of the League of Nations, objected to the proceedings, and refused to take part in any way".[25]

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[18] *The Separation of the Chagos Archipelago Advisory Opinion, op. cit.*, p. 113, para. 63.
[19] *The Separation of the Chagos Archipelago Advisory Opinion*, *op. cit.*, p.113, para. 63; *The Wall Advisory Opinion, op. cit.*, p. 156, para. 44; *The Independence of Kosovo Advisory Opinion, op. cit.,* pp. 415-416, para. 29.
[20] *The Wall Advisory Opinion, op. cit.*, pp. 156-157, paras. 44-45; *The Independence of Kosovo Advisory Opinion, op. cit.*, pp. 415-416, para. 29.
[21] *Cf.*, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71 [hereinafter "*The Interpretation of Peace Treaties Advisory Opinion*"]; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, pp. 78-79, para. 29; *The Wall, Advisory Opinion, op. cit.,* p. 156, para. 44.
[22] *The Wall Advisory Opinion, op. cit*., p. 156, para. 44; *The Independence of Kosovo Advisory Opinion, op. cit.,* p. 416, para. 30.
[23] *Cf.*, I.C.J. Reports 1996(I), p. 235, para. 14; *The Wall Advisory Opinion, op. cit.*, p.156, para. 44.
[24] *Status of Eastern Carelia, Advisory Opinion*, 1923, P.C.I.J., Series B, No. 5.
[25] *The Wall Advisory Opinion, op. cit.*, p.157, para. 46; *The Nuclear Weapons Advisory Opinion*, *op. cit*., pp. 235-236, para. 14.

40. Furthermore, in determining whether such compelling reasons exist, the Court will not have regard to the background of the question. As the Court stated in its *Nuclear Weapons Advisory Opinion*:

> "once the Assembly has asked, by adopting a resolution, for an advisory opinion on a legal question, the Court, in determining whether there are any compelling reasons for it to refuse to give such an opinion, will not have regard to the origins or to the political history of the request, or to the distribution of votes in respect of the adopted resolution."[26]

41. The Court has further, unambiguously, affirmed that whatever its political aspects, it cannot refuse to respond to the legal elements of a question, which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law.[27]

42. The Court has also made clear that, in determining the jurisdictional issue of whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request, or the political implications which its opinion might have.[28]

43. In the past, the advisory jurisdiction of the Court has been challenged on the grounds of "lack of consent", or that the request concerns a contentious, bilateral matter. In *Interpretation of Peace Treaties,* the ICJ held that the consent requirement "is different in regard to advisory proceedings even where the request for an opinion relates to a legal question actually pending between States.… no State can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable"[29]. The Court affirmed this in its Wall Advisory Opinion*,* stating that "the lack of consent to the Court's contentious jurisdiction by interested States has no bearing on the Court's jurisdiction to give an advisory opinion".[30]

44. Additionally, in the Wall Advisory Opinion the Court "did not consider that the subject-matter…can be regarded as only a bilateral matter between Israel and Palestine" given the UN's "permanent responsibility towards the question of Palestine"[31]. The Court deemed that the question put to it was "located in a much broader frame of reference than a bilateral dispute"[32]. Likewise, in *Chagos*, the Court opined that the issues raised by the request were located in the broader frame of reference of decolonization.[33]

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[26] *The Nuclear Weapons Advisory Opinion, op. cit.*, p. 237, para. 16.
[27] *The Independence of Kosovo Advisory Opinion*, *op. cit.*, p. 415, para. 27.
[28] *Loc. cit*.
[29] *The Interpretation of Peace Treaties Advisory Opinion, op. cit.*, p.71.
[30] *The Wall Advisory Opinion, op. cit.*, p.157, para 47.
[31] *Idem*., para 49.
[32] *Idem.*, pp. 157-9, paras. 47-50.
[33] *The Separation of the Chagos Archipelago Advisory Opinion, op. cit.*, p. 118, para 88.

45. Additionally, arguments that the Advisory Opinion could impede a political solution to the conflict can also be dismissed. When the Court was confronted with similar arguments during the proceedings in the *Wall* Advisory Opinion, the Court stated:

> "The Court now turns to another argument raised in the present proceedings in support of the view that it should decline to exercise its jurisdiction. Some participants have argued that an advisory opinion from the Court on the legality of the wall and the legal consequences of its construction could impede a political, negotiated solution to the Israeli-Palestinian conflict […] This is a submission of a kind which the Court has already had to consider several times in the past. For instance, in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons"[34].

46. The Court stated further in the same context that:

> "The Court is conscious that the "Roadmap", which was endorsed by the Security Council in resolution 1515 (2003), constitutes a negotiating framework for the resolution of the Israeli-Palestinian conflict. It is not clear, however, what influence the Court's opinion might have on those negotiations. Participants in the present proceedings have expressed differing views in this regard. The Court cannot regard this factor as a compelling reason to decline to exercise its jurisdiction."[35]

47. The purpose of the Court's advisory jurisdiction is to enable organs of the United Nations and other authorized bodies to obtain opinions from the Court, which will assist them in the future exercise of their functions.

48. Finally, the Court cannot determine, or even concern itself with, what steps the General Assembly may wish to take after receiving the Court's opinion, or what effect that opinion may have in relation to those steps.[36]

49. In earlier advisory opinions, the Court said it "will simply address the issues arising in all their aspects by applying the legal rules relevant to the situation."[37] This is what the Court is asked to do in the present case, as there are no compelling circumstances for the Court to decline giving its opinion to the Assembly.

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

V. The Scope of the Request

51. The terms of a request for an advisory opinion establish its scope.

A. Subject matter

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[34] *The Wall Advisory Opinion, op. cit.,* p. 159, para 51
[35] *Idem*., p. 160, para 53
[36] *The Independence of Kosovo Advisory Opinion*, *op. cit.*, p. 421, para. 44.
[37] *The Nuclear Weapons Advisory Opinion*, *op. cit.*, p. 237, para. 15.

52. The subject of the General Assembly's Request, set out in Resolution A/RES/77/247, concern two questions by virtue of which the Court is expected to clearly state how and why Israeli practices are unlawful under international law and to state the legal consequences flowing from that illegality. The General Assembly has already determined, in numerous resolutions, that Israel's practices constitute breaches of international law.

53. The ambit of the term "legal consequences" is not limited to a general declaration on international responsibility. The judicial function of the Court requires that the Court reaffirm the existing legal situation, which encompasses the breach of a wide range of specific and detailed rules of general and conventional international law, the Charter and relevant resolutions of the Security Council and General Assembly, including the right to self-determination, international humanitarian law, and international human rights law.

54. In the *Wall* advisory opinion, whilst it responded to a single question, it made clear that it had to assess *first* whether the construction of the wall was a breach of international law, *before* it could determine the legal consequences arising from the construction of the wall. It said:

> "In the present instance, if the General Assembly requests the Court to state the 'legal consequences' arising from the construction of the wall, the use of these terms necessarily encompasses an assessment of whether that construction is or is not in breach of certain rules and principles of international law. Thus, the Court is first called upon to determine whether such rules and principles have been and are still being breached by the construction of the wall along the planned route."[38]

B. Temporal scope of the request

55. Under Question (a), the Court is asked to advise the General Assembly on 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*, and from its adoption of related discriminatory legislation and measures.

56. The Court is thus required to identify and determine what is the "Occupied Palestinian Territory" as of the year 1967, as it constitutes a *temporal* aspect of the request. This date also determines the relevant geographical boundaries of the request. It, factually and legally, delimits the search into the ongoing violation by Israel of the right of the Palestinian people to self-determination, and its policies and practices including prolonged occupation, annexation and settlements, as well as its adoption of related discriminatory legislation and measures, (the consequences of which it shall have to determine), *between 1967 up to the present*.

[38] The *Wall Advisory Opinion*, *op. cit.*, p. 154, para. 39.

57. The General Assembly has thus identified for it the *period of the historical context*, in which the Request places the Questions referred to the Court and the answers to be given to them, as the Court has observed in earlier advisory activities.[39]

C. Geographical scope of the request: The "Occupied Palestinian Territory"

58. The Court is asked to advise the General Assembly on 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 "occupied Palestinian territory", and its discriminatory legislation. It is *not necessary* for the Court to enter into a geographical exercise to determine the precise boundaries of the occupied Palestinian Territory, including East Jerusalem, in order to answer the Questions put to it, as long as it understands that the territories lie beyond the Green Line, separating Israel from the Occupied Palestinian Territory. It suffices that it addresses the issues of "occupied" Palestinian Territory, and the "Palestinian people" entitled to self-determination under international law.

[39] The *Western Sahara, Advisory Opinion, op. cit.*, p. 38, para. 76.

PART III
HISTORICAL BACKGROUND: THE DEVELOPMENT OF THE PALESTINIAN QUESTION

59. A brief history is necessary, for the Court to establish factual circumstances surrounding issues raised in the Questions put forward in the GA's Request.[40] This factual background will be presented briefly here without any discussion of any legal aspects, that are not directly relevant to the Request before the Court, while reserving Egypt's legal position in this regard.

60. The Palestinian Question finds its roots in the unilateral statement issued by the British Foreign Secretary on 2 November 1917, during the First World War, announcing Britain's support for "the establishment in Palestine of a national home for the Jewish people" (known as the 'Balfour Declaration').

61. On June 28, 1919, Palestine was placed under British Mandate, according to the Covenant of the League of Nations signed as a part of the Treaty of Versailles.

62. Article 2 of the Mandate document provided that "the Mandatory shall be responsible for placing the Country under such political, administrative and economic conditions […] and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion." It also provided for the creation of "a Jewish national home" in Palestine, in line with the "Balfour Declaration".

63. Throughout the Mandate period, Britain relaxed immigration procedures, removed restrictions on the sale and, or acquisition of land to Jewish immigrants and took additional measures to effect large-scale Jewish immigration from abroad. This was faced with Palestinian resistance.

64. In 1947, the United Kingdom turned the problem over to the United Nations. At the First Special Session of the General Assembly a Special Committee on Palestine was established. At the Second regular Session, after an intense two-month-long debate, the General Assembly, on 29 November, 1947, adopted resolution 181 (II), approving, with minor changes, the Plan of Partition with Economic Union (the "Partition Plan"), as proposed by the majority in the Special Committee on Palestine. The Partition Plan, a detailed four-part document attached to the Resolution, provided for the termination of the Mandate, the progressive withdrawal of British armed forces and the delineation of boundaries between the two States and Jerusalem.

65. The Partition Plan provided for:

1. The creation of the Arab and Jewish States no later than 1 October, 1948;

[40] *The Wall Advisory Opinion, op. cit.,* pp. 165-167, paras. 69-77.

2. The division of Palestine into eight parts: three allotted to the Arab State and three to the Jewish State; while the seventh, the town of Jaffa, was to form an Arab enclave within Jewish territory; and
3. The international regime for Jerusalem, the eighth division, to be administered by the United Nations Trusteeship Council.

66. On 14 May, 1948, the United Kingdom unilaterally renounced its Mandate over Palestine. The following day, the "Jewish Agency" proclaimed the establishment of the State of Israel on the territory allotted to it by the Partition Plan. In the ensuing conflict, the Israeli army occupied about one-half of the land that was allotted to the Arab State in Resolution 181 (II).

The Security Council called for a four-week truce on 29 May, 1948 and the fighting was halted.

67. The truce went into effect on 11 June and was supervised by the United Nations Mediator, with the assistance of the United Nations Truce Supervision Organisation ("UNTSO"). However, no agreement could be reached on an extension of the truce, and fighting broke out again on 8 July.

68. On 15 July, 1948, the Security Council decided that the situation in Palestine constituted a threat to international peace and security. It ordered a ceasefire and the second truce came into force. By that time, Israel controlled much of the territory allotted to the Arab State by the partition resolution, including the western part of Jerusalem. Almost 750,000 Palestinians had been uprooted from their homes and became refugees.

69. Armistice Agreements were concluded between Israel and Egypt in February, 1949 and with Jordan in April 1949. The West Bank, including East Jerusalem, was demarcated in the Jordanian-Israeli Armistice Agreement. The Armistice Line came to be known as the "Green Line." The Gaza Strip was demarcated in the Egyptian-Israeli Armistice Agreement. It was placed under the administration of the Egyptian Government with the approval of the League of Arab States on 13 April, 1950.

70. On 11 December, 1948, the General Assembly adopted Resolution 194 (III), which provided that refugees wishing to return and live at peace with their neighbours should be permitted to do so at the earliest practicable date; and compensation should be provided for the loss of property of those choosing not to return. It also provided for the demilitarization and internationalization of Jerusalem and the protection of, and free access to, the holy places in Palestine.

71. The provisions of that Resolution have been repeatedly reasserted by the Assembly.

72. Under Resolution 181 (II), Jerusalem was designated *corpus separatum* under an international regime to be administrated by the United Nations. However, when the 1948 war broke out, the Israeli forces occupied West Jerusalem and the Jordanian army remained in East Jerusalem. The *de facto* division of the City of Jerusalem was formalized in the Jordan-Israel Armistice Agreement of 1949.

73. On 11 May, 1949, Israel became a member of the United Nations. The General Assembly took note of Israel's declarations made earlier to the Assembly's Ad Hoc Political Committee regarding the implementation of Resolutions 181 (II) and 194 (III).[41]

74. Shortly thereafter, on 23 January, 1950, Israel declared Jerusalem as its capital, which was not recognized at the time by any other State.

75. In the 5 June, 1967, war Israel occupied the whole of the Gaza Strip and the West Bank, including East Jerusalem. Since the question put forward to the Court does not address the legality of the use of force in the 1967 war, this Written Statement will not discuss this issue, while reserving Egypt's position on the matter.

76. On 22 November, 1967, the UN Security Council unanimously adopted Resolution 242 (1967), according to which, Israel was demanded to withdraw from territories "occupied in the recent conflict". Since 1967, Israel has been governing the Occupied Palestinian Territory (namely, the West Bank, including East Jerusalem, and the Gaza Strip) as the Occupying Power. The War brought about a second exodus of Palestinians, estimated at half a million.

77. As a result of this, Israel now controlled the whole of Jerusalem. On 27 June, 1967, the Israeli Knesset incorporated the whole of the Jerusalem area into the municipal and administrative ambit of its government.

78. On November 22, 1967, the Security Council unanimously adopted Resolution 242 (1967), which states:

> "The Security Council,
>
> Expressing its continuing concern with the grave situation in the Middle East,
> Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,
>
> Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter.
>
> 1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace which should include the application of both the following principles:
>
> (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;

[41] UN. General Assembly Resolution (273), "*Admission of Israel to membership in the United Nations*", A/RES/273 (III) of 11 May 1949, can be accessed through: https://digitallibrary.un.org/record/210373?ln=en

(ii) Termination 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;

79. Resolution 242 thus emphasized the principle of the inadmissibility of the acquisition of territory by force and emphasized the duty of all States to act according to Article 2(4) of the UN Charter. It demanded the withdrawal of Israel armed forces from territories occupied in the recent conflict.

80. The General Assembly also convened its Fifth Emergency Session from 19 June to 3 July, 1967.

81. In its Resolution 338, the Security Council, reaffirmed Resolution 242 by stating that:

> "The Security Council,
>
> 1. Calls upon all parties to the present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the positions they now occupy;
>
> 2. Calls upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts;
>
> 2. Decides that, immediately and concurrently with the cease-fire, negotiations start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East."

82. On 30 July, 1980, the Knesset adopted the Basic Law stipulating "Jerusalem, complete and united, is the capital of Israel".

83. In response, the UN General Assembly adopted Resolution 35/169E on 15 December, 1980, affirming in operative paragraph (2) that:

> "the enactment of the 'Basic Law' by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem".

84. This position has been consistently maintained in subsequent resolutions.[42]

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[42] For example, UN. General Assembly Resolution 42/209 B A/RES/42/209 [B] A/RES/42/209 [C], and A/RES/42/209 [D] of 11 December 1987 can be accessed through: https://research.un.org/en/docs/ga/quick/regular/42; and UN. General Assembly Resolution 44/42, "*Question of Palestine*", 76th plenary meeting, 6 December, 1989, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/548/01/IMG/NR054801.pdf?OpenElement

85. Likewise, the Security Council has consistently rejected any attempt by Israel to change the legal status of Jerusalem. In Resolution 252 (1968) of 21 May, 1968, it:

> "Consider[ed] that al1 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;"

86. This position has been consistently maintained in subsequent resolutions.[43]

87. Since 1991, a series of negotiations took place to achieve a final settlement of the Palestinian issue, including the Oslo Peace Process culminating in the 1993 Oslo Accords, followed by the Wye River Conference of 1998, Camp David II, and the Roadmap to a Permanent Two-State Solution to the Israeli- Palestinian Conflict. To achieve a true and lasting peace between the Israeli and Palestinian peoples, there must be two viable and independent States living as neighbours, while ending the military occupation.

88. In March 2002, the Beirut Summit of the League of Arab States adopted an Arab Peace Initiative calling for full Israeli withdrawal from all the territories occupied in June 1967, in implementation of Security Council Resolutions 242 and 338, reaffirmed by the Madrid conference of 1991 and the land for peace principle, and Israel's acceptance of an independent Palestinian State, with East Jerusalem as its capital, in return for the establishment of normal relations in the context of a comprehensive settlement with Israel. This initiative was welcomed by the Security Council, through Resolutions 1397 (2002) and 1435 (2002).

89. On 23 December 2018, the UN Security Council adopted Resolution 2234, which stated the following:

> "The Security Council,
>
> 1. Reaffirms 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;
> 2. Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard;
>
> […]

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[43] For example: UN. Security Council Resolutions 267 (1969) of 3 July 1969, can be accessed through; https://digitallibrary.un.org/record/90766?ln=en; 271 of 15 September 1969, can be accessed through: https://digitallibrary.un.org/record/90768?ln=en; 298 (1971) of 25 September 1971; and 478 (1980) of 20 August 1980, can be accessed through: https://digitallibrary.un.org/record/25618?ln=en

5. Calls 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;

PART IV
THE LEGAL CONSEQUENCES OF THE ONGOING VIOLATION BY ISRAEL OF THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

I. Introduction

173. The first Question, on which the General Assembly has requested an advisory opinion of the Court, reads 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*?" (emphasis added)

174. The Question indicates the Assembly's conviction that there exists already an "ongoing violation by Israel of the right of the Palestinian people to self-determination", arising "from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967". It has, also, by way of *example*, stated that such violations "include[ed] measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem. In addition, it refers to Israel's "adoption of related discriminatory legislation and measures"[44].

175. As a general statement, it should be noted that the Court has already addressed the principle of self-determination in a number of seminal cases, most recently in the Chagos Advisory Opinion.[45] Nonetheless, Egypt finds it useful for the purposes of the present Advisory Opinion to re-examine this principle and its development, in order to reaffirm its status as a principle of customary international law, including since the Israeli occupation of Palestinian territories in 1967, its applicability to the Palestinian people, and its character as an obligation *erga omnes*.

176. The endeavour of the Court to establish violations and breaches is a fact-sensitive exercise. There is an abundant body of evidence that will confirm the violations the Court is minded to ascertain at first. The true nature and the impact of the Israeli practices on the life of the Palestinian population, are documented in numerous documents within the framework of the United Nations, by Specialised Agencies of the United Nations system, by other intergovernmental organisations, by human rights bodies, etc. The documents written under the auspices of the United Nations include the Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13 [46] and reports submitted by Special Rapporteurs of the Commission on

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[44] Resolution 77/247, *op. cit.*

[45] *The Separation of the Chagos Archipelago Advisory Opinion, op. cit.*

[46] "*Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13*", Doc. A/ES-10/248 of 24 November 2003, can be accessed through: https://digitallibrary.un.org/record/507053

Human Rights, the Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967[47] and that of the Special Rapporteur on the Right to food.[48] Specialised Agencies (the World Bank and the IMF) have joined forces with the European Union and the Governments of the United States and of Norway in forming a Local Aid Coordinating Committee which has submitted a report with regular updates.[49] As to human rights treaty bodies, various conclusions, observations and general comments of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have to be mentioned.

177. In the present proceedings, the Court will undoubtedly revisit its earlier opinion, regarding Palestine; the *Wall Advisory Opinion*.[50] Still, it may be useful to highlight the principal findings in that case:

- The territories occupied by Israel in 1967, situated east of the green line, including East Jerusalem, are considered occupied territories, in which Israel has the status of occupying power under international humanitarian law.[51]

- The Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 1907 (the Hague Regulations) are considered customary law, and thus applicable in the occupied territories.[52] The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) in the occupied territories also applied to the territories.[53]

- Israel is bound to apply the international human rights conventions that it had ratified.[54]

- The establishment of Israeli settlements in the occupied territories, including East Jerusalem, constitutes a breach of its obligations under international law.[55]

- The construction of the separation barrier and its associated regime, by affecting the demographic composition of the Occupied Territories, constitute in and of

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[47] "*Report of the Special Rapporteur on the Commission on Human Rights, John Dugard, on the situation on human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A*", Doc. E/CN4/2004/6 of 8 September 2003, can be accessed through: https://digitallibrary.un.org/record/504468?ln=en

[48] "*The Right to food: report: addendum / by the Special Rapporteur, Jeabn Ziegler*", Doc. E/CN.4/2004/10/Add.2 of 31 October 2003, can be accessed through: https://digitallibrary.un.org/record/506617?ln=en

[49] The Impact of Israel's Separation Barrier on Affected West Bank Communities, Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), May, 2003, updates July and September, 2003.

[50] *The Wall Advisory Opinion, op. cit.*

[51] *Idem*., pp. 166-167, paras. 75 and 78.

[52] *Idem*., p.172, para. 89.

[53] *Idem*., p.177, para. 101.

[54] *Idem*., p.178, para. 107.

[55] *Idem*., p. 183, para. 120.

themselves contravention of Article 49(6) of the Fourth Geneva Convention and of the abovementioned Security Council resolutions.[56]

- The construction of the Wall "severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right."[57]

- The construction of the Wall and its associated regime impede the exercise by the local population of the right to work, health, education and adequate standard of living, as proclaimed in the ICESCR and in the CRC, and that human rights infringements could not be justified by the requirements of national security, or public order.[58]

- Israel is bound to ensure access to the holy places that came under its control during the 1967 war. [59]

- Israel could not invoke certain Security Council resolutions (SC Res. 1368 (12 September 2001) and SC Res. 1373 (28 September 2001)) that recognize States' right to employ self-defence measures against terrorist attacks, as Israel exercises control over the occupied territories and this "situation is thus different from that contemplated by Security Council resolutions."[60]

- The invocation of a state of "necessity" is recognized under customary international law only on an exceptional basis, and it is "not convinced that the construction of the wall along the route chosen was the only means to safeguard the interests of Israel against the peril which it has invoked as justification for that construction."[61]

- Israel's responsibility is engaged under international law, it is bound to comply with its international obligations, and it must "cease forthwith the works of construction of the wall being built by it in the Occupied Palestinian Territory, including in and around East Jerusalem." Israel is bound to dismantle "those parts of that structure situated within the Occupied Palestinian Territory", repeal or render ineffective all legislative and regulatory acts adopted with a view to construction of the wall and establishment of its associated regime, and to make reparation for the damage caused to all the natural or legal persons concerned.[62]

- Violation of the Palestinians' right to self-determination, as well as breaches of international humanitarian law, concern obligations *erga omnes*, and that all States

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[56] *Idem*., pp.184 and 189, paras. 122 and 132.
[57] *Idem*., p.184, para. 122.
[58] *Idem*., pp. 191, 192 and 193, paras. 134, 136 and 137.
[59] *Idem*., p. 197, para. 149.
[60] *Idem*., p. 194, para. 139.
[61] *Idem*., p. 194, para. 140.
[62] *Idem*., p. 197 and 198, paras. 147, 149, 151, and 152.

can be held to have a legal interest in their protection[63]. All states are under an obligation "not to recognize the illegal situation resulting from the construction of the wall" in the territories, "not to render aid or assistance in maintaining the situation created by such construction," and "to see to it that any impediment, resulting from the construction of the Wall, to the exercise by the Palestinian people of its right to self-determination, is brought to an end." All States Parties to the Fourth Geneva Convention are bound "to ensure compliance by Israel with international humanitarian law as embodied in that Convention."[64]

178. In reaching its findings, the Court reviewed the legality of Israel's actions in light of the applicable 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. In the present Advisory Opinion, the Court is requested to go beyond these findings, in addressing the issue of the legality of Israel's policies and practices in the Palestinian territory occupied in 1967, and indeed the legality of the occupation itself.

II. The Right to Self-Determination is Part of International Law

179. The principle of self-determination of peoples is enshrined in Articles 1(2), 55 and 56 of the UN Charter. It is also enshrined in common Article 1 of the two International Covenants of 1966.

180. In the *Chagos Advisory Opinion*, the Court analysed the evolution of the principle of self-determination of colonial peoples and territories from 1945, until the adoption of Resolution 1514 (XV) in 1960 ("Resolution 1514 (XV)", or "Resolution 1514"). The Court found that "the adoption of resolution 1514 (XV) represents a defining moment in the consolidation of State practice on decolonization".[65] It is now recognised that this right applies to all people under foreign subjugation, occupation and alien rule, including the Palestinian people.

181. It is no longer a matter of dispute in international law, that the right of peoples to self-determination – first expressed in the nineteenth century – is a cardinal principle in modern international law. The ILC Commentaries to the Articles on State Responsibility for Internationally Wrongful Acts consider the principle non-derogable.[66] Its *erga omnes* character, confirmed by this Court in the East Timor case,

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[63] *Idem*, p. 199, para. 155.
[64] *Idem*., p. 200, para. 159.
[65] *The Separation of the Chagos Archipelago Advisory Opinion*, *op. cit.*, p.132, para. 150,152.
[66] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, "*Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected"*, commentary to article 26, p. 85, para 5; commentary to article 40, p. 113, para 5, [hereinafter "*Draft Articles on States Responsibility*"]

entails that all States and international organisations have a legal interest and duty in respecting and protecting this right.[67]

182. Another issue that may arise in this case, is whether the right to self-determination was applicable to Palestine in 1967. In other words, was the right to self-determination *part of* customary international law *at that time*? And was it applicable to the Palestinian people?

A. Self-determination under customary international law

183. Article 1(2) of the United Nations Charter provides that one of the purposes of the Organisation is the development of friendly relations amongst nations "based on respect for the principle of equal rights and self-determination of peoples".[68]

184. This was echoed in Article 55 of the Charter, which referred to the promotion of certain objectives in the field of international economic and social cooperation "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,".[69]

185. It is noteworthy that Article 1(2) of the French version of the Charter, even referred to a *right* to self-determination of peoples, "le *droit* des peuples à disposer d'eux-mêmes" (emphasis added). It read as follows:

> "Développer entre les nations des relations amicales fondées sur le respect du principe de l'égalité de droits des peuples et de leur *droit* à disposer d'eux-mêmes, et prendre toutes autres mesures propres à consolider la paix du monde;" (emphasis added)

186. Thus, while self-determination was articulated as a legal right by the General Assembly during the 1950s, it was already referred to in the Charter of the United Nations in 1945.

187. Regional human rights instruments such as Part VIII of the Helsinki Final Act of 1975, Article 20 of the 1981 African Charter of Human and Peoples' Rights and the 1990 Charter of Paris for a New Europe have also recognised the right to self-determination[70].

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[67] *East Timor (Portugal v. Australia), Judgement*, *I.C.J. Reports 1995*, p. 90, p. 102, para. 29. [hereinafter "*East Timor Judgement*"].
[68] UN Charter, *op. cit.*, Article 1(2).
[69] UN Charter, *op. cit.*, Article 55.
[70] Helsinki Final Act, 1975, adopted at the Conference on Security and Co-operation in Europe, 1 August 1975, can be accessed through: https://www.osce.org/files/f/documents/5/c/39501.pdf; The African Charter on Human and Peoples' Rights, entered into force on October 21, 1989, can be accessed through: https://au.int/en/treaties/african-charter-human-and-peoples-rights; Charter of Paris for A New Europe (1990), Adopted by the Heads of State or Government of the States participating in the Conference on Security and Co-operation, 21 November 1990, can be accessed through: https://www.osce.org/files/f/documents/0/6/39516.pdf

188. Before discussing the content of the relevant General Assembly resolutions, it is important to highlight the relationship between such resolutions and the development of customary international law. Customary international law arises from a general and consistent practice of States, accepted as law, as provided for by Article 38(1)(b) of the Statute of the Court.

189. A series of resolutions may show the evolution of *opinio juris* towards the creation of a rule of customary international law. This was confirmed by this Court in the *Nuclear Weapons Advisory Opinion*, where it noted that:

> "… General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule."[71] (emphasis original)

190. The analysis of the relevant General Assembly resolutions demonstrates that an enforceable right to self-determination *existed in customary international law* at least as far back as the time when Resolution 1514 was adopted, in 1960. This Resolution reflected the state of international law at the time of its adoption. This was confirmed by the Court in the Chagos Advisory Opinion.[72]

B. General Assembly resolutions on the right to self-determination of all peoples

191. In the *Chagos Advisory Opinion*, the Court confined itself to examining the right to self-determination in the colonial context.[73] In 1950, General Assembly Resolution 421(V), referred to the *right* of peoples and nations to self-determination.[74] In February 1952, it adopted Resolution 545(VI), which noted that the right of peoples and nations to self-determination *had already been recognised* as a fundamental right.[75]

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[71] The *Nuclear Weapons Advisory Opinion*, *op. cit.*, pp. 254-255, para. 70.
[72] *The Separation of the Chagos Archipelago Advisory Opinion*, *op. cit.*, p.132, para. 150,152.
[73] *Idem.,* para 144.
[74] UN. General Assembly Resolution 421 (V), "*Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights*", A/RES/421 (V) of 4 December 1950, can be accessed through: https://research.un.org/en/docs/ga/quick/regular/5.
[75] UN. General Assembly Resolution 545 (VI), "*Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination"*, A/RES/545 (VI) of 5 February 1952, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/068/00/PDF/NR006800.pdf?OpenElement.

192. Later that year, the General Assembly adopted Resolution 637(VII), which called upon the Member States of the United Nations to recognise and promote the realisation of the right to self-determination of colonial peoples and territories, in mandatory terms:

> "the States Members of the United Nations *shall* recognize and promote the realization of *the right of self-determination of peoples of Non-Self-Governing* and Trust Territories who are under their administration."[76] (emphasis added)

193. Similar resolutions were adopted in 1953 (Resolution 738 (VIII)) [77] and 1954 (Resolution 833 (IX)). In the context of Resolution 833 (IX), the General Assembly considered the draft International Covenants on Human Rights.[78] Both draft Covenants had an identical first article[79] explicitly referring to the right *of all peoples* to self-determination and to the obligation of States parties to the Covenants to promote the right to self-determination in Non-Self-Governing and Trust territories.[80]

194. In 1955, the United Nations Secretariat, in a working paper relating to the negotiations of the Covenants, made it clear that the General Assembly had already recognised the right to self-determination of peoples and nations and was now to formulate an obligation for States to promote and respect this right.[81]

195. Resolution 1188 (XII) adopted in 1957, made it clear, using mandatory language, that colonial powers had an obligation to promote and facilitate the exercise of the right to self-determination by colonial peoples. Its first operative paragraph read:

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[76] UN. General Assembly Resolution 637 (VII), "*The right of people and nations to self-determination*", A/RES/637 (VII) of 16 December 1952, para. 2, can be accessed through: https://digitallibrary.un.org/record/666117?ln=en.

[77] UN. General Assembly Resolution 738 (VIII), "*The right of peoples and nations to self-determination*" (A/RES/738 (VIII) of 28 November 1953), para. 4, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/086/03/PDF/NR008603.pdf?OpenElement.

[78] UN. General Assembly Resolution 833 (IX), "*Draft International Covenants on Human Rights*", A/RES/833 (IX) of 4 December 1954, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/095/68/PDF/NR009568.pdf?OpenElement; Commission on Human Rights, Report of 10th Session, ECOSOC OR 18th Session, suppl. 7 (E/2573; E/CN.4/705 of April 1954), annexes I, II, III; Economic and Social Council Official Records: Eighteenth Session, Resolutions, Supplement No. 1 (E/2654 of 15 August 1954), p. 8, The Economic and Social Council Resolution 545 (XVIII (B)), "*Draft International Covenant on Human Rights*", of 29 July 1954, [hereinafter "*The Commission on Human Rights' 10th Session Report*"], can be accessed through: file:///C:/Users/taher/Downloads/E_2573_E_CN.4_705-EN%20(1).pdf.

[79] The Commission on Human Rights' 10th Session Report, *op. cit*., pp. 62, 65 and 66.

[80] UN. General Assembly 3rd Committee, "*Draft International Covenants on Human Rights: report of the 3rd Committee / Rapporteur: Hermod Lannung (Denmark)",* A/3077 of 8 December 1955, [hereinafter "*Report of the Third Committee*"], can be accessed through: https://digitallibrary.un.org/record/732492?ln=en. *Report of the Third Committee*, *op. cit*., p. 20, can be accessed through: file:///C:/Users/taher/Downloads/A_3077-EN.pdf.

[81] U.N Secretary-General, Annotation on the Text of the Draft International Covenants on Human Rights, 55, U.N. Doc. A/2929 (July 1,1955), Annex 15, can be accessed through: https://digitallibrary.un.org/record/748971?ln=en.

> "[Those Member States bearing responsibility] for the administration of Non-Self-Governing Territories *shall* promote the realization and facilitate the exercise of [the] right [to self-determination] by the people of such Territories."[82] (emphasis added)

196. This paved the way for Resolution 1514 (XV), where the General Assembly adopted - with 89 votes in favour, none against and 9 abstentions - the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Resolution proclaimed the right to self-determination of colonial peoples in unequivocal terms, declaring that:

> "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[83]

197. The Resolution also denounced colonisation as a breach of the fundamental rights of *peoples subject to alien subjugation, domination and exploitation* and contrary to the UN Charter (emphasis added).[84] It required immediate steps to be taken in Trust and Non-Self-Governing Territories "or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire […]"[85]

198. Since then the General Assembly has repeatedly referred to Resolution 1514.[86]

199. The actions taken by administering powers, in respect of Non-Self-Governing and Trust territories during the 1950s and shortly after the adoption of Resolution 1514, show that they considered the right to self-determination to be an enforceable right under customary international.

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[82] UN. General Assembly Resolution 1188 (XII), "*Recommendations concerning international respect for the right of peoples and nations to self-determination*", A/RES/1188 (XII) of 11 December 1957, para. 1(b), can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/119/71/PDF/NR011971.pdf?OpenElement.

[83] UN. General Assembly Resolution 1514 (XV), "*Declaration on the granting of independence to colonial countries and peoples*", A/RES/1514 (XV) of 14 December 1960, [hereinafter "*Resolution 1514 (XV)*"], para. 2, can be accessed through: https://digitallibrary.un.org/record/206145?ln=en.

[84] *Idem*., para. 1.

[85] *Idem.*, para. 5.

[86] For example, Resolutions 1650 (XVI), 1724 (XVI), 1742 (XVI), 1746 (XVI), 1747 (XVI), 1807 (XVII), 1819 (XVII), 1897 (XVIII), 1913 (XVIII), 1949 (XVIII), 1954 (XVIII), 2063 (XX), 2107 (XX), 2184 (XX), 2183 (XXI), 2185 (XXI), 2226 (XXI), 2354 (XXII), 2379 (XXIII), 2383 (XXIII), 2428 (XXIII), 2983 (XXVII), 3162 (XXVIII), and 3292 (XXIX).

200. Between 1950 and 1960, prior to the adoption of Resolution 1514 on 14 December 1960, thirty Non-Self-governing and Trust territories achieved independence.[87] Nineteen countries followed suit between 1960 and 1965.[88]

201. United Nations Member States have also agreed to put in place an enforcement mechanism to give effect to Resolution 1514. They thus considered the right to self-determination to be an enforceable right under international law.

202. Less than a year after the adoption of Resolution 1514, Resolution 1654 (XVI), which was unanimously adopted, creating the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.[89] This Committee was given significant powers to oversee the implementation of Resolution 1514. It was further given the ability to adopt resolutions for consideration by the General Assembly's Fourth Committee, and ultimately the General Assembly itself.[90]

203. Similarly, a number of Resolutions were adopted by the General Assembly[91] and the Security Council,[92] in the years following the adoption of Resolution 1514, calling for compliance with its terms and condemning failures of administering powers to comply.

204. Of particular note, is the adoption by the General Assembly of Resolution 1803 (XVII) of 14 December 1962 on "Permanent sovereignty over natural resources". The Preamble of this Resolution refers explicitly to permanent sovereignty over natural wealth and resources as "a basic constituent of the right to self-determination".[93] The fact that this Resolution used this language is further evidence of that there existed

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[87] *See* The United Nations and Decolonisation, *"List of former Trust and Non-Self Governing Territories",* can be accessed through: https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts.

[88] *Loc. cit*.

[89] UN. General Assembly Resolution 1654 (XVI), "*The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*", A/RES/1654 (XVI) of 27 November 1961), [hereinafter "*Resolution 1654 (XVI)*"], can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/167/07/PDF/NR016707.pdf?OpenElement

[90] *Idem*., paras. 4-6.

[91] *See*, for example, UN. General Assembly Resolution 1810 (XVII), "*The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*", A/RES/1810 (XVII) of 17 December 1962, para. 4; UN. General Assembly Resolution 1956 (XVIII), "*The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*", A/RES/1956 (XVIII) of 11 December 1963, preamble para. 5 and para. 7; UN. General Assembly Resolution 1979 (XVIII), "*Question of South West Africa*", A/RES/1979 (XVIII) of 17 December 1963, para. 1.

[92] UN. Security Council Resolution 163, "*Question Relating to Angola*" (UN Doc S/4835, 9 June 1961); United Nations Security Council Resolution 180, "*Question Relating to Territories Under Portuguese Administration*" (UN Doc S/5380, 31 July 1963); UN. Security Council Resolution 183, "*Question relating to territories under Portuguese Administration*" (UN Doc S/5380, 31 July 1963), para. 3.

[93] UN. General Assembly Resolution 1803 (XVII), "*Permanent sovereignty over natural resources*" (A/RES/1803 (XVII) of 14 December 1962), preamble para. 2.

already at the time of adoption of Resolution 1514 a consolidated *opinio juris* that the right to self-determination formed part of customary international law.

205. In this context, Resolution 2625 (XXV) adopted in 1970 and entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations", codified long-standing and long-existing customary international law. It referred to the principle of equal rights and self-determination of *all peoples*, in the following terms:

> "By virtue of the principle of equal rights and self-determination of peoples enshrined in the *Charter of the United Nations*, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."[94] (emphasis original)

206. It further declared:

> "The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."[95]

207. The final part of Resolution 2625 (XXV) confirms the fundamental nature of the right to self-determination. Indeed, in its relevant part, Resolution 2625 stated:

> "The principles of the Charter which are embodied in this Declaration constitute *basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles*."[96] (emphasis added)

208. The majority of scholars, including those writing in the early 1960s, consider that an enforceable right to self-determination formed part of general international law, including when Resolution 1514 was adopted.[97] This view was also taken by scholars

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[94] UN. General Assembly Resolution 2625 (XXV), "*Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*", A/RES/2625 (XXV) of 24 October 1970 [hereinafter "*Resolution 2625 (XXV)*"], Annex, para. 1, principle 5, para. 1.

[95] *Idem*., Annex, para. 1, principle 5, para. 6.

[96] *Idem*., Annex, para. 3.

[97] See for example, Higgins R, *The Development of International Law Through the Political Organs of the UN* (Oxford University Press (1963)), p. 100-101; Abi-Saab G, *The Newly Independent States and the Rules of International Law: An Outline*, (1962) 8 Howard L.J. (2) 95, p. 112; Castañeda J, *Legal Effects of United Nations Resolutions* (New York, Columbia University Press, (1969)), p. 105; Lachs M, "*The right of self-determination (169)*", in: Collected Courses of the Hague Academy of International Law, The Hague Academy of International Law (Brill, Boston (1980), First published online 1980).

many years after the adoption of Resolution 1514.[98] Furthermore, as early as 1963, certain members of the International Law Commission referred to the right to self-determination as a rule of *jus cogens*.[99]

C. The scope of the right to self-determination

209. The essential feature of the right to self-determination is the principle that its application requires free and genuine expression of the peoples concerned.[100] As mentioned earlier, Resolution 1514 referred to the right of all people to self-determination and paragraph 5 in *all territories which have not yet attained independence*[101] (emphasis added).

210. Furthermore, General Assembly resolution 1514 (XV) states that: "the subjection of people to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations.[102] General Assembly Resolution 2625 (XX5) further clarified that "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle of equal rights and self-determination of peoples […]".[103] Specific Resolutions confirming the applicability of the right to self-determination of the Palestinian people are discussed in paras 211 – 214.

D. The Right to self-determination of the Palestinian People

211. With regard to the existence of a "Palestinian people" and its right to self-determination, this Court stated the following in the *Wall* Advisory Opinion:

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[98] Abi-Saab G., *Wars of National Liberation and the Development of Humanitarian Law*, in Akkerman, Van Krieken and Pannenborg (eds), Declarations on principles, A Quest for Universal Peace (Liber Röling) (Sijthoff, Leyden, (1977)), p. 372; Crawford J, *The Creation of States in International law* (2nd ed. Clarendon Press (2006)), p. 604 (referring to Resolution 1514 (XV) as having achieved a quasi-constitutional status); Shaw M, *Title to territory in Africa: international legal issues* (Clarendon Press (1986)), pp. 88-89. *See also* Cassese A, *Self-Determination of Peoples* (Cambridge University Press (1995)), p. 70; Crawford J, *Brownlie's Principles of Public International Law* (8th ed., Oxford University Press (2012)), p. 646; Daillier P and Pellet A, *Droit international public* (7th ed., LGDJ (2002)), pp. 519-520.

[99] *Yearbook of the International Law Commission (1963), Volume I, Summary records of the fifteenth session (6 May-12 July 1963)*, UN Doc A/CN.4/SER.A/1963, p 155, can be accessed through: https://legal.un.org/ilc/publications/yearbooks/english/ilc_1963_v1.pdf.

[100] General Assembly Resolution 1541 (XV) "*Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter*", A/RES/1541 (XV) of 15 December 1960, [hereinafter "Resolution 1541 (XV)"], Annex, Principle VI, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/153/15/PDF/NR015315.pdf?OpenElement; UN. General Assembly Resolution 742 (VIII) "*Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government*", A/RES/742 (VIII) of 27 November 1953, para 6, can be accessed through: https://digitallibrary.un.org/record/211635?ln=en

[101] Resolution 1514 (XV), *op. cit*., para. 2.

[102] *Idem*., para 1.

[103] Resolution 2625 (XXV), *op. cit*., Annex, para. 1, principle 5.

> As regards the principle of the right of peoples to self-determination, the Court observes that the existence of a "Palestinian people" is no longer in issue. Such existence has moreover been recognized by Israel in the exchange of letters of 9 September 1993 between Mr. Yasser Arafat, President of the Palestine Liberation Organization (PLO) and Mr. Yitzhak Rabin, Israeli Prime Minister. In that correspondence, the President of the PLO recognized "the right of the State of Israel to exist in peace and security" and made various other commitments. In reply, the Israeli Prime Minister informed him that, in the light of those commitments, "the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people". The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 also refers a number of times to the Palestinian people and its "legitimate rights". The Court considers that those rights include the right to self-determination, as the General Assembly has moreover recognized on a number of occasions.[104]

212. This has been confirmed on numerous occasions by the General Assembly, including resolution 2649 (XXV), which condemned "those governments that deny the right to self-determination of peoples recognised as being entitled to it, especially of the peoples of Southern Africa and Palestine".[105]

213. In its Resolution 67/19, the General Assembly recognised Palestine's status as a non-Member observer State under occupation.

214. The UN Security Council has called for an end to the Israeli occupation and the realisation of the two-State solution with Palestine and Israel living side by side in peace and security within recognised borders based on the 1967 lines.[106] The Human Rights Council has also recognised "the inalienable, permanent and unqualified right to self-determination of the Palestinian people, including the right to live in freedom,
215. justice and dignity and their right to their independent State of Palestine."[107]

E. Integrity of the self-determination unit

216. The right to self-determination is a right vested in peoples. It entails the right of peoples to determine their internal political status and their external status. It is intrinsically linked to the notion of territorial integrity, in that it can only be exercised by peoples within specific territorial units.

217. This, in turn, means that the territorial unit cannot be dismembered prior to the exercise of the right to self-determination by the people of that territory.

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[104] *The Wall Advisory Opinion, op.cit*., pp. 182-183, para. 118

[105] UN. General Assembly Resolution 2649 (XXV), 30 November 1970, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/349/14/PDF/NR034914.pdf?OpenElement

[106] UN. Security Council Resolution, S/RES/2334,

[107] See. For example the following resolutions of the Human Rights Council: A/HRC/RES/34/29, A/HRC/RES/37/34; A/HRC/RES/40/22; A/HRC/RES/49/28.

218. The right to self-determination is applicable to all inhabitants of a the self-determination territorial unit. This was based on the principle of territorial integrity affirmed in the Preamble of Resolution 1514 in the following terms:

> "*Convinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory …"[108] (emphasis added)

219. The Special Rapporteur of the Human Rights Commission on the situation of human rights in the Palestinian territories occupied by Israel, more recently clarified the principle as follows:

> "The right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self- determination within a territory."[109]

220. Finally, the fact the right to self-determination was exercised by peoples within a self-determination unit meant that the relevant unit could not be dismembered prior to independence.[110]

221. This prohibition to dismember colonial units prior to their independence was endorsed repeatedly by a series of UN Resolutions, adopted by a large majority, after the adoption of Resolution 1514.

222. In 1961, the General Assembly expressed its deep concern in Resolution 1654 (XVI) that, contrary to paragraph 6 of the Resolution 1514, acts aimed at the partial or total disruption of national unity and territorial integrity were being carried out in the process of decolonisation.[111] General Assembly Resolutions 2232 (XXI) and 2357 (XXII) further reiterated that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories … is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly Resolution 1514 (XV)".[112]

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[108] Resolution 1514 (XV), *op. cit.*, para. 11.

[109] Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2A, 8 September 2003, E/CN.4/2004/6, para. 15. This was reiterated by a number of public international law scholars, including Crawford who explained that the principle of self-determination "is not a right applicable just to any group of people desiring political independence or self-government. ... It applies as a matter of right only after the unit of self-determination has been determined". Crawford J, *The Creation of States*, *op. cit*., p. 127.

[110] Raic D, *Statehood and the law of self-determination* (Kluwer Law International Law (2002)), p. 304.

[111] Resolution 1654 (XVI), *op. cit*., preamble para. 6.

[112] General Assembly Resolution 2232 (XXI) "*Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*" (A/RES/2232 (XXI 20 December 1966) (hereinafter

223. For example, shortly after the adoption of Resolution 1514, the General Assembly recognised the imperative "need for adequate and effective guarantees to ensure the successful and just implementation of the right of self-determination on the basis of respect for the unity and territorial integrity of Algeria."[113]

224. General Assembly Resolution 2066 noted with deep concern "that any step taken by the administering power to detach certain islands from the territory of Mauritius … would be in contravention of the Declaration, and in particular paragraph 6 thereof" and invited the "Administering Power to take no action which would dismember the territory of Mauritius and violate its territorial integrity".[114]

225. In light of the above, the fragmentation and dismemberment of the Occupied Palestinian territories, through the Israeli settlements policy and the *de facto* and *de jure* annexation, is a violation of the fundamental principle of self-determination.

F. Decisions of the ICJ confirming the right to self-determination

226. The Court has endorsed the principle and right of self-determination, as formulated in Resolution 1514 on numerous occasions, for both colonial peoples as well as other peoples and territories subject to alien subjugation, domination and exploitation, or those who have not fully attained independence or self-government.

227. The recent *Chagos Advisory Opinion* confirmed that "[t]he adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization."[115] It considered that:

> "although resolution 1514 (XV) is formally a recommendation, *it has a declaratory character with regard to the right to self-determination as a customary norm*, in view of its content and the conditions of its adoption"[116] (emphasis added).

"Resolution 2232 (XXI)"), para. 4; UN. General Assembly Resolution 2357 (XXII), "*Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*", A/RES/2357 (XXII of 19 December 1967), preamble para.6, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/236/92/PDF/NR023692.pdf?OpenElement

[113] UN. General Assembly Resolution 1573 (XV), "*Question of Algeria*", A/RES/1573 (XV) of 19 December 1960), para 2, can be accessed through: https://digitallibrary.un.org/record/205864?ln=en; *See also* UN. General Assembly Resolution 1724 (XVI), "*Question of Algeria*", A/RES/ 1724 (XVI) of 20 December 1961, can be accessed through: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/167/77/PDF/NR016777.pdf?OpenElement.

[114] UN. General Assembly Resolution 2066 (XX), "*Question of Mauritius"* (A/RES/2066 (XX) of 16 December 1965), (hereinafter "Resolution 2066 (XX)"), preamble para 5, operative para 4.

[115] *The Separation of the Chagos Archipelago Advisory Opinion*, *op. cit.*, p.132, para. 150.

[116] *Idem.*, para. 152.

228. In the 1971 *Namibia Advisory Opinion*, the Court specifically referred to the Resolution as "an important stage" in the development of international law regarding Non-Self-Governing territories.[117] It further stated that:

> "… the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed and expanded to all "territories whose peoples have not yet attained a full measure of self-government" (Art. 73). Thus, it clearly embraced territories under a colonial régime. Obviously the sacred trust continued to apply to League of Nations mandated territories on which an international status had been conferred earlier. A further important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces al1 peoples and territories which "have not yet attained independence"."[118]

229. In the 1975 *Western Sahara Advisory Opinion*, the Court[119] observed that:

> "The principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end, were enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV)."[120]

230. The Court also alluded to the obligation of administering powers to give effect to the right of self-determination. It stated that "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned" and that the "validity of the principle of self-determination" could be "defined as the need to pay regard to the freely expressed will of peoples".[121]

231. In its Judgment of 30 June, 1995, in the *East Timor* case, the Court stated that:

> "The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court …; *it is one of the essential principles of contemporary international law*."[122] (emphasis added)

> "… Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable."[123] (emphasis original)

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[117] *Namibia Advisory Opinion*, *op. cit.*, p. 31, para. 52.
[118] *Namibia Advisory Opinion*, *op. cit.*, p. 31, para. 52.
[119] *Western Sahara Advisory Opinion*, *op. cit.*, p. 32, para. 57.
[120] *Idem.,* p. 31, para. 55.
[121] *Idem.*, pp. 31 and 33, paras 55 and 59.
[122] *East Timor Judgement, op. cit.*, p. 102, para. 29
[123] *Loc. cit*.

232. Further, in the *Wall Advisory Opinion*, the Court noted that the principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly in resolution 2625 (XXV), pursuant to 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."[124]

233. In its Advisory Opinion on *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo,* this Court stated that "[d]uring the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of Non-Self-Governing territories and peoples subject to alien subjugation, domination and exploitation'.[125] This means that the right to self-determination applied to all such peoples, without distinction.

III. The Right to Self-Determination was and continues to be breached by Israel

234. In its first Question to this Court, the General Assembly specifically refers to "ongoing violation by Israel of the right of the Palestinian people to self-determination". It is, thus, implicit from that Question that the General Assembly considers Israel to be already in breach of the right to self-determination of the people of Palestine.

235. As already mentioned, this principle was reiterated in multiple resolutions and decisions of the General Assembly of the United Nations, including resolutions and decisions specifically addressing the situation in the Palestinian territory occupied in 1967.

236. Israel continues to obstruct the realisation of the Palestinian people's inalienable rights, including their right to self-determination and their right of return. Part V will outline how the prolonged occupation, settlements policy and *de jure* and *de facto* annexation of territory in the Palestinian territories occupied since 1967 constitute a violation of the principle of self-determination, as well as other relevant principles of international law.

237. Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination, and to put an immediate end to the violation of this obligation, including through bringing an immediate end to the occupation.

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[124] *Wall Advisory Opinion*, *op. cit.*, pp. 171-172, para. 88.

[125] *The Independence of Kosovo Advisory Opinion, op. cit.*, p. 436 and 438, para 79, and 82

PART V
The Legal Consequences Arising from the Prolonged occupation, settlement and annexation of the Palestinian Territory Occupied in 1967

A. Prolonged Occupation

238. Israel's occupation of Palestinian territories has lasted for 56 years. The UN Security Council and General Assembly have both repeatedly demanded an end to the prolonged occupation of the Palestinian territories, including in Security Council resolution 471 which reaffirmed "the overriding necessity to end the prolonged occupation of the Arab territories occupied by Israel since 1967, including Jerusalem."[126]

239. As already highlighted, this Court found in the *Wall* Advisory Opinion that the territories situated east of the Green Line occupied by Israel in 1967, including East Jerusalem, are considered occupied territories, in which Israel has the status of occupying Power under customary international law.[127] The Court also found that the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 1907 (the Hague Regulations) reflect customary law, and are thus applicable in the occupied territories.[128] Moreover, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) was found by the Court to apply to the occupied Palestinian territories without a need to enquire into the prior status of these territories.[129]

240. These rules governing occupation also apply to the Gaza Strip. Although Israel withdrew its ground forces from Gaza in 2005, Israel still retains effective control over the territory by *inter alia*: exercising complete control of Gaza's airspace and territorial waters; supervising the flow of people and goods into and out of Gaza; controlling the Palestinian population registry (including who is a "resident" of Gaza); controlling the tax policy and transfer of tax revenues; and controlling the West Bank, which, together with Gaza, constitute a single territorial unit.

241. Israel's continuing military incursions and control of Gaza's borders indicate that Israel is still exerting authority over the territory. Israel's continued control over the Gaza Strip is considered by the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 to be a form of collective punishment.[130] In the same vein, the General Assembly in its resolution 77/247 adopted

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[126] UN. Security Council Resolution 471, S/RES/471(1980), adopted by the Security Council at its 2226th meeting, on 5 June 1980, preamble, can be accessed through: https://digitallibrary.un.org/record/13947?ln=en.

[127] *Wall Advisory Opinion*., *op cit,* p. 167, para. 78.

[128] *Idem*., p.172, para. 89.

[129] *Idem*., p. 177, para. 101.

[130] *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, A/HRC/44/60, 15 July 2020, can be accessed through: https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-44-60-advance-unedited-version/

on 30 December 2022 called "upon Israel, the occupying Power, to cease its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip".

242. While ground forces are often a reasonable proxy for authority over a territory, nothing in the Hague Convention makes them *per se* a prerequisite for the applicability of the occupation rules. This was confirmed by the International Military Tribunal (IMT) in Nuremberg which held that Greece and Yugoslavia were occupied even though "the partisans were able to control sections of these countries at various times" because "it is established that the Germans could at any time they desired assume physical control of any part of the country".[131] Applicability of the rules of occupation to the Gaza Strip is confirmed by the United Nations which continues to regard the Gaza Strip as part of the occupied Palestinian Territory.[132]

243. International humanitarian law is premised on the temporary nature of occupation. Article 42 of the Hague Regulations defines occupied territory in the following terms "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".[133]

244. The commentary to article IV of the Geneva Conventions stipulates that "the occupation of territory in wartime is essentially a temporary, *de facto* situation, which deprives the Occupied Power neither of its statehood nor its sovereignty; it merely interferes with its power to exercise its rights".[134] According to the International Criminal Tribunal for the Former Yugoslavia, "occupation is defined as a transitional period following invasion and preceding the agreement on the cessation of hostilities".[135]

245. As a corollary, an occupying power must "freez[e] the *status juris* of the occupied territory for as long and as far as occupation remains effective; so that it cannot be changed by any unilateral act or action on the part of the Occupying Power".[136] This is

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[131] *Hostage Case, United States v List (Wilhelm) and ors*, Trial Judgment, Case No 7, (1948) 11 TWC 757, (1950) 11 TWC 1230, (1948) 8 LRTWC 34, ICL 491 (US 1948), (1948) 15 ILR 632, 19th February 1948, International Military Tribunal [IMT]; Nuremberg Military Tribunal [NMT].

[132] United Nations, *Spokesperson's Daily Highlights*, 19 January 2012 (here).

[133] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, entered into force 26 January 1910, Regulations, art 42, [hereinafter the "*Hague Regulations*"] can be accessed through: https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907?activeTab=undefined

[134] International Committee of the Red Cross, Commentary on the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Jean S. Pictet ed.), (1958), [hereinafter "Pictet, *Commentary"]*, p. 275.

[135] International Criminal Tribunal for the former Yugoslavia [hereinafter "*ICTY*"], The Prosecutor v. Mladen Naletilic and Vinko Martinovic, Case No. IT-98-34-T, Judgment (Trial Chamber) 31 March 2003, para 214.

[136] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Verbatim Record, 23 February (Request for advisory opinion submitted by the General Assembly of the United Nations), Advisory Proceedings [hereinafter "*Wall Advisory Proceedings*"], Oral Statement by counsel Georges Abi Saab, 23 February 2004, CR 2004/1, p. 43.

reflected in Article 43 of the Hague Regulations, which directs the Occupying Power to take all measures to ensure "public order and safety, while respecting *unless absolutely prevented*, the laws in force in the country".[137]

246. It follows from this that any measures that result in permanent changes to the occupied territory are illegal.[138] This prohibition extends to both the formal legal status of the occupied territory as well as any changes in its demographic and material components, which is reflected in Article 49 of Geneva Convention IV. Occupying powers may not acquire sovereignty over the occupied territory through annexation. Their authority is limited to *de facto* authority rather than *de jure* authority.

247. According to article 47 of Geneva Convention IV:

> protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention, by any change introduced, as a result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.[139]

248. According to the Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel,[140] Palestinians have been subjected to a prolonged military rule, as well as *de jure* and *de facto* annexation.

249. For these reasons, a protracted occupation that is coupled with measures to permanently change the demographic characteristics of the occupied territory, and acquire territory in violation of the cardinal principle of the prohibition of the acquisition of territory by force, is illegal *per se* and amounts to *de facto* annexation.[141] It follows that the Israeli occupation of Palestinian territory is unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land *de facto* and *de jure*.[142]

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[137] The Hague Regulations, *op. cit.*, art. 43.

[138] See Koutroulis, V. "The Application of International Humanitarian Law and International Human Rights Lawin Situations of Prolonged Occupation: Only a Matter of Time?" 94 (885) International Review of the Red Cross (Spring 2012).

[139] Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, article 47, can be accessed through: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-47?activeTab=undefined.

[140] UN. General Assembly Resolution, "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jeruslaem, and Israel, A/77/328, 14 September, 2022, can be accessed through: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/591/34/PDF/N2259134.pdf?OpenElement

[141] The *Wall Advisory Proceedings*, *op. cit.*, p. 46; *The Wall Advisory Opinion, op. cit.*, p. 181, para. 115.

[142] *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, 14 September 2022 (Issued on 20 October 2022), paras. 75–76, can be accessed through: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/591/34/PDF/N2259134.pdf?OpenElement.

B. Settlement

250. Article 49(6) of the Fourth Geneva Convention stipulates that: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." This Article was intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories.[143] The prohibition of population transfer, including the implantation of settlers into occupied territory, is absolute.

251. It is also indisputable that the occupying power may not seize private properties in the occupied territory since such private properties are not deemed by any means as war gains. The occupying power may not seize such properties, as it should respect and protect them, whether they are moveable assets or real estates.

252. Article 55 of The Hague Regulations on War on Land states that: "[t]he occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."[144] Article 46 of the Regulations stress the necessity of respecting private properties in an occupied territory and the forbiddance of confiscating them, as it states: "[f]amily honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated"[145].

253. Despite the previous prohibitions, extensive settlement developments mark the West Bank and continue to expand. Ever since the 1967 War, Israel has been pursuing a policy of implanting settlements in the West Bank and occupied Jerusalem, for the purpose of creating facts on the grounds and breaking up the territorial contiguity of the occupied territories.

254. Israeli settlements alter the demographic composition of the occupied Palestinian territory. They necessarily entail the departure of Palestinians from their homes and lands, amounting to a *de facto* expulsion, in violation of Article 49(1) of the Fourth Geneva Convention. They result in permanent changes to the status of the territory. Coupled with the encouragement of an influx into the settlement areas, of its own population, there occurs a significant change in the demographic structure of the Palestinian territory, contrary to international humanitarian law.

255. Any movement of population, whether in or out of the occupied territory, which affects the population in such a way as to dramatically alter the demographic composition of this territory, is a permanent change contrary to the fundamental principles of the law of belligerent occupation. The forcible displacement of the occupied people and the

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[143] Pictet, *Commentary*, *op. cit.*, p. 282.
[144] The Hague Regulations, *op. cit*., article 55.
[145] *Idem.*, art. 46.

transfer of the citizens of the occupying Power to the occupied territory are both prohibited under Article 49 of the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War and constitute grave breaches under Article 147 of the Convention.

256. The UN Security Council and General Assembly have repeatedly condemned Israeli procedures and measures carried out on the occupied Palestinian territories in relation to the confiscation of lands, the construction of settlements and the transfer of Jewish immigrants to Palestinian territories. Security Council resolution 465 (1980) 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 just, comprehensive and lasting peace in the Middle East.[146]

257. The Council strongly deplored the "continuation and persistence of Israel in pursuing those policies and practices," and further called upon "the Government and people of Israel" to:

> "rescind those measures, to dismantle the existing settlements, and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem."[147]

258. In the *Wall Advisory Opinion* the Court addressed the question of the legality of the Israeli settlements. It stated:

> "As regards these settlements, the Court notes that Article 49, paragraph 6, of the Fourth Geneva Convention provides: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." That 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.[148]

259. Specifying its findings to the Israeli policies on settlements, the Court said:

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[146] UN. Security Council Resolution 465 (1980), S/RES/465 (1980) of 1 March 1980, para 5, can be accessed through: https://digitallibrary.un.org/record/11767/?ln=en
[147] *Idem*, para. 6.
[148] *The Wall Advisory Opinion, op.cit.*, p. 183, para. 120.

"… Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6 [of the Fourth Geneva Convention]".[149]

260. The Security Council reiterated its position on this issue in 2016, when it stated in resolution 2334 the following:

"*Condemning* all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions, [...]

1. *Reaffirms* 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; [...]"[150]

2. *Reiterates* its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard"[151]

261. Since settlements constitute an unlawful transfer of Israeli citizens to the occupied territory with the objective of permanent presence, its unlawfulness extends to the totality of its associated regime, encompassing, by such, all policies, practices, and infrastructure, including the Wall, designed to enable such illegal presence and displace Palestinians from their land. General Assembly resolution 77/126 deplored the continued illegal construction of the wall, expressing concern that the route is departing from the 1949 Armistice Line to include the great majority of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. It added that this is fragmenting the territorial contiguity of the Territory and undermining its viability.[152] This constitutes a violation of the fundamental principle of the inadmissibility of the acquisition of territory through the use of force.

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[149] *Loc. cit*.
[150] UN Security Council Resolution, S/RES/2334, adopted by the Security Council at its 7853rd meeting, on 23 December 2016, can be accessed through: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/463/89/PDF/N1646389.pdf?OpenElement
[151] *Loc. cit.*
[152] UN. General Assembly Resolution, "*Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*", A/RES/77/126, adopted during the 52nd plenary meeting on 12 December 2022, [hereinafter "*Resolution 77/126*"] can be accessed through: https://www.un.org/unispal/wp-content/uploads/2023/01/A.RES_.77.126_121222.pdf.

262. Israel's strategic settlement policy, which is a "national value" under Israeli laws, is essentially a systemic "de-Palestinianization" of the occupied territory, and consequently prevents the realization of the Palestinians' right to self-determination.[153]

263. Because the settlement policy has been established in breach of international humanitarian law, Israel had and continues to have an obligation to put an end to it. Population transfers also clearly constitute breaches of international human rights law, including the right to freedom of movement, the principle of non-discrimination and the right to self-determination. The ICJ and various UN human rights bodies have acknowledged that the full range of Israel's obligations under human rights treaties continue to apply to its conduct in the West Bank.[154] That position is upheld by the UN Committee against Torture, UN Committee on the Elimination of Discrimination against Women, UN Committee on Economic, Social and Cultural Rights, and UN Human Rights Committee.[155]

C. Annexation

264. The UNGA's *Declaration on Friendly Relations* provides that 'the territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it".[156] It follows from this that an Administering Power cannot annex the territory of a colony or dependent territory.

265. Similarly, an Occupying Power cannot annex any of the Occupied Territory.

266. The Charter of the United Nations prescribes a general and absolute prohibition on the acquisition of a territory by force. Properly applied, Article 2(4) of the Charter prohibits the annexation of an occupied territory. The occupying power only exercises temporary *de facto* authority, meaning that it must administer the territory, not only for his own military purposes, but also, for the public benefit of the inhabitants under its control. This inevitably means that it is under a duty to preserve a *status quo* in the territory it occupies. Annexation, *per contra*, results in altering the legal status in the occupied territory; that is against simple administration.

267. In the *Wall* Advisory Opinion, the Court considered that "the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become

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[153] *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/77/356, 21 September 2022, p. 20. para 67, can be accessed through: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/598/03/PDF/N2259803.pdf?OpenElement

[154] *The Wall Advisory Opinion, op.cit,* p.178-181, paras. 106–113.

[155] UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of Israel CAT/C/ISR/5, 16 February 2015, paras 8–9; UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the Sixth Periodic Report of Israel, CEDAW/C/ISR/6, 14 July 2017, paras 14–15; UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Israel, E/C.12/ISR/4, 14 January 2019, paras 9–10; UN Human Rights Committee, Concluding Observations on the Fifth Periodic Report of Israel, CCPR/C/ISR/CO/5, 30 March 2022, para 7(b).

[156] Resolution 2625 ((XXV), *op. cit.*

permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation."[157] Also, the UN General Assembly in its resolution 77/126 adopted on 12 December 2022 condemned the annexation by Israel of areas in the Occupied Palestinian Territory:

> "[T]he 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, 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, and expresses its grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory."[158]

268. Based on the following, considering that (i) belligerent occupation does not allow the Occupying Power to annex the occupied territory; (ii) the Occupying Power's prerogatives are limited to the management of public order and civil life in the occupied territory; and (iii) occupation must be temporary, violation of any one of these principles, in addition to the violation of the specific norm that reflects them, renders occupation *per se* illegal. Belligerent occupation becomes illegal whenever the Occupying Power takes measures aimed to appropriate the occupied territory or portions thereof, or that are otherwise incompatible with the duty to return such territory as soon as feasible.

269. Israel's de jure annexation of Jerusalem, formalized in 1980, is clearly contrary to international law. Israel's intention to make its occupation permanent is evidenced by its residential, industrial, and agricultural settlements, and related infrastructures such as roads and water systems, which have been established and developed in the West Bank, including East Jerusalem, since 1967. The Wall and its associated regime have further pursued the incorporation of major settlements, especially those located around East Jerusalem, into Israel's territory, giving rise to a *de facto* annexation, which further violates the Palestinians' rights to self-determination and permanent sovereignty over their natural resources.[159] Israel has also seized and confiscated the private property of Palestinian citizens, as well as their land, contrary to the principles of IHL.[160] Besides their unlawfulness, these measures contradict the principle of temporariness.

270. Consequently, Egypt submits that Israel's occupation is illegal under international humanitarian law. Otherwise, Israel's indefinite occupation would be tantamount to a nullification of the right of the Palestinian people to self-determination.

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[157] *The Wall Advisory Opinion, op.cit.*, p. 184, para. 121.
[158] Resolution 77/126, *op. cit.*
[159] *The Wall Advisory Opinion, op.cit.,* p.184*,* para 121; Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Michael Lynk, A/73/447, 22 October 2018, para 25, can be accessed through: https://digitallibrary.un.org/record/1652052?ln=en
[160] The *Wall Advisory Opinion, op. cit*., p. 185, para. 124 and p. 189, para. 133.

D. Measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem

271. The Court has already acknowledged that:

> "From 1967 onwards, Israel took a number of measures in … [the occupied] territories 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 in the clearest possible terms 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".[161]

272. It went on to explain that:

> "The territories situated between the Green Line … and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories … have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power."[162]

273. The adverse and illegal effect of settlements on the demography of Palestine has been authoritatively acknowledged by the Security Council. In Resolution 465 (1980), the Council declared that "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian or other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity."

274. Further, the Wall constructed by Israel in the occupied territory, continues to unlawfully alter the demographic composition of the occupied Territory, as "a significant number of Palestinians have already been compelled by the construction of the wall and its associated regime to depart from certain areas, a process that will continue as more of the wall is built, that construction, coupled with the establishment of the Israeli settlements … is tending to alter the demographic composition of the Occupied Territories."[163]

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[161] *Idem.,* p. 166, para. 75.
[162] *Idem.*, p. 167, para. 78.
[163] *Idem.*, pp. 184 and 190, paras. 122 and 133.

275. On 28 September, 2000, a visit to Al-Aqsa Mosque by Israeli Prime Minister Ariel Sharon (then the Likud opposition leader) sparked the second *Intifada*. This led to confrontations between the Palestinians and the Israeli army, the latter backed by armed settlers. The ensuing Israeli military campaign led to the killing of civilians, demolition of homes, and destruction of Palestinian infrastructure.

276. The Security Council, in Resolution 1322 (2000,) deplored the provocation carried out at Al-Haram-Al-Sharif in Jerusalem on 28 September, 2000, and the subsequent violence there and in other holy places, as well as, in other areas throughout the territories occupied by Israel since 1967. It condemned the excessive use of force against Palestinians and called upon Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention, calling for an immediate cessation of violence.[164]

E. Adoption of related discriminatory legislation and measures

277. Israel has adopted discriminatory legislation and measures in the Palestinian Territories occupied in 1967. This includes numerous Military Orders that entrench racial discrimination between Palestinians, on the one hand, and Israeli settlers, on the other. Israel implements both *de facto* and *de jure* measures of racial discrimination, including in the areas of detention, criminal justice and procedure, housing, urban planning and zoning, land confiscations and house demolitions, in addition to the obstruction of freedom of movement. According to Human Rights Council Resolution 49/29, these measures include:

> "the combination of movement restrictions consisting of the wall, roadblocks, and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and other forms of institutionalised discrimination".[165]

278. The "Basic Law" of Israel promotes the right to self-determination only for the "Jewish people", while enshrining the illegal annexation of Jerusalem and the establishment of settlements. In addition, the restriction of the Palestinian people's access to "Area C" and the obstruction of access and movement of goods and people between the West Bank and Gaza prevent any growth of Palestine's economy and hampers the geographical unity of the State of Palestine and its territorial integrity. All these policies and measures are a constant cause of clashes and tension and a violation of human rights law, including the fundamental prohibition of racial discrimination.

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[164] Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, United Nations, Treaty Series, vol. 75, No. 973, can be accessed through: https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war

[165] Human Rights Council Resolution 49/29, " Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem", A/HRC/RES/49/29, 11 April 2022, para 7(c).

279. The Special Rapporteur on the Situation of human rights in the Palestinian territories occupied since 1967 stated:

> "Since 1967, the human rights situation in the occupied Palestinian territory has been steadily deteriorating, primarily as a result of gross violations of international law, including racial segregation and subjugation by the occupying Power, Israel."[166]

280. General Assembly Resolution 77/126 states that the demolition of Palestinian homes and the building of settlements imperil the viability of the two-State solution. The same resolution demanded that Israel, the Occupying Power:

> "cease all measures contrary to international law, as well as discriminatory legislation, policies and actions in the Occupied Palestinian Territory that violate the human rights of the Palestinian people, including the killing and injury of civilians, including attempts at forced transfers of Bedouin communities, the transfer of its own population into the Occupied Palestinian Territory, including East Jerusalem, the destruction and confiscation of civilian property, including home demolitions, including if carried out as collective punishment in violation of international humanitarian law, and any obstruction of humanitarian assistance, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

281. All these measures and practices constitute a violation of article 2 of the Convention on the Elimination on Racial Discrimination, which Israel ratified on 3 January 1979, and which stipulates that all States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination, including by refraining from any act or practice of racial discrimination, and from sponsoring, defending or supporting racial discrimination by any person or organization. Paragraph (c) provides that States Parties "shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

282. Accordingly, Israel is under an obligation to repeal all legislation that maintains racial discrimination against the Palestinian people, and to cease all discriminatory policies and practices.

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[166] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/77/356, 21 September 2022, para. 6.

PART VI
THE POLICIES AND PRACTICES OF ISRAEL AFFECTING THE LEGAL STATUS OF THE OCCUPATION AND THE LEGAL CONSEQUENCES THAT ARISE FOR ALL STATES AND THE UNITED NATIONS FROM THIS STATUS

283. The second Question, on which the General Assembly has requested an advisory opinion from the Court in Resolution A/RES/77/247, reads as follows:

> "(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?"

284. Before dealing with the legal consequences as such, Egypt would like to make general observations in relation to the second Question. Egypt will then stress the legal consequences arising for Israel, as well as the legal consequences for other States and international organisations.

I. General Observations

285. The Question contained in paragraph (b) of General Assembly Resolution A/77/247 calls for two general observations.

286. *First*, this Question should be understood by reference to the specific purpose of a request for an advisory opinion, which is to guide the United Nations organs in their action and providing them with the necessary elements of law.

287. The Court's opinion "is given not to the States, but to the organ which is entitled to request it."[167]

288. In answering the second Question, the Court is invited to focus on the general legal principles at stake.

289. Question (b) effectively calls upon the Court to undertake what would best be described as a *qualification juridique* of the situation that Israel has brought into effect, by in policies and practices, as to "the legal status of the occupation".

290. *Second*, the Court is invited to address the legal consequences of the violation of the right to self-determination, and the practices and policies of prolonged occupation, annexation, settlement and racial discrimination in terms of international responsibility, arising out of the wrongdoing State and that of other States and the United Nations.

291. In the *Wall Advisory Opinion*, the Court emphasised that:

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[167] *Interpretation of Peace Treaties Advisory Opinion*, *op. cit.*, p. 71.

> "In the present instance, if the General Assembly requests the Court to state the "legal consequences" arising from the construction of the wall, the use of these terms necessarily encompasses an assessment of whether that construction is or is not in breach of certain rules and principles of international law."[168]

292. Having concluded that "the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, [were] contrary to various of Israel's international obligations,"[169] the Court went on to address the legal consequences of that conduct in terms of international responsibility. The Court made a distinction between the consequences arising for the wrongdoing State and those arising for other States and the United Nations "[g]iven the character and the importance of the rights and obligations involved."[170]

293. The Court is now invited to assess the legal consequences arising out of the breaches addressed under the first question put forward to the Court. Given the importance and fundamental character of the obligations at stake, some legal consequences arise necessarily for Israel – as the wrongdoing State – and for the international community as a whole.

II. Legal Consequences

294. Israel, has violated, and continues to violate, a number of distinct international obligations of *erga omnes* character applicable to Israel, pertaining to international humanitarian law and international human rights law. These comprise, *inter alia*, of: (i) the respect for the right to self-determination of the Palestinian People; (ii) the prohibition of any attempt at dismembering the Palestinian Occupied Territory, including Jerusalem; (iii) the obligation to refrain from any act violating the territorial integrity, or the national unity of Palestinians; and (iv) the guarantee of fundamental human rights of the Palestinian People.

295. Hence, the international responsibility incurred by Israel for such acts involves a series of legal consequences.

A. The continued duty of Israel to perform the obligations that it breached

296. Israel is first and foremost obliged to comply with the *all* obligations it has breached. Article 29 of the ILC Articles on State Responsibility provides:

> "The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached."[171]

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[168] *Wall Advisory Opinion*, *op. cit.*, p. 154, para. 39; and p. 164, para. 68.
[169] *Idem.*, p. 197, para. 147.
[170] *Idem.,* p. 200, para. 159.
[171] Draft Articles on States Responsibility, *op. cit*., Article 29.

297. As such, even though Israel has committed breaches of international obligations in connection with its unlawful continued occupation, it remains bound by these obligations.

298. These obligations encompass Israel's obligation to give effect to the right to self-determination by ending the occupation.

299. The corresponding legal obligation on States to give effect to this right was also reasserted a number of times. For instance, the Human Rights Committee in its General Comment on Article 1 observed that:

> "Paragraph 3 … is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. … It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination."[172]

300. Israel is legally bound to make every effort, so as to enable the Palestinian people to realise fully their right to self-determination.

B. Cessation and non-repetition

301. In addition to the duty to comply with its obligations under the right to self-determination, Israel has the obligation to put an end to its wrongful conduct. As stated by the Court:

> "According to general international law on the responsibility of States for internationally wrongful acts, as expressed in this respect by Article 30 (a) of the International Law Commission's Articles on the subject, the State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing."[173]

302. Article 30, cited by the Court, provides that:

> "The State responsible for the internationally wrongful act is under an obligation:

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[172] *Human Rights Committee,* General Comment No. 12., para. 6, can be accessed through: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FGEC%2F6626&Lang=en

[173] *Jurisdictional Immunities of the State*, (*Germany v. Italy: Greece intervening), Judgement, ICJ Reports 2012*, p. 153, para. 137.

(a) To cease that act, if it is continuing;"[174]

303. On that specific obligation, the ILC explained that:

> "The function of cessation is to *put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule*. The responsible State's obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law".[175] (emphasis added)

304. This obligation extends to all acts, whether material or immaterial, committed by Israel, in pursuance of its continued occupation of Palestine. In the *Wall* Advisory Opinion, the Court indeed specified that:

> "All legislative and regulatory acts adopted with a view to [the] construction [of the wall], and to the establishment of its associated régime, must forthwith be repealed or rendered ineffective, except in so far as such acts, by providing for compensation or other forms of reparation for the Palestinian population, may continue to be relevant for compliance by Israel with [its] obligations."[176]

305. Therefore, there is no reason to depart from such a conclusion, as far as the obligation of Israel to cease the continued breach of its international obligations. This entails the dismantling of illegal structures, including settlements and the Wall, and their associated regime.

306. The responsible State also has the obligation "[t]o offer appropriate assurances and guarantees of non-repetition, if circumstances so require" [177].

C. Reparation and restitution

307. It is well established, as indicated by the Court in the *Wall Advisory Opinion*, that in international law the wrongdoing State "has the obligation to make reparation for the damage caused to al1 the natural or legal persons concerned."[178]

308. As stated in the well-known *dictum* of the Permanent Court of International Justice in the *Factory at Chorzów* case, "reparation must, so 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."[179]

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[174] Draft Articles on States Responsibility, *op. cit.*, Article 30.
[175] *Idem*., Article 30, Commentary, para. 5.
[176] *Wall Advisory Opinion*, *op. cit*., p. 198, para. 151.
[177] Draft Articles on States Responsibility, *op. cit.*, Article 30, Commentary, para. 9.
[178] *Wall Advisory Opinion*, *op. cit.*, p. 198, para. 152.
[179] *Factory at Chorzow* (Germany v. Poland), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13), p. 47.

309. In order to achieve that goal in the "concrete circumstances surrounding each case and [given] the precise nature and scope of the injury,"[180] the various forms of reparation may have to be combined. As explained by the ILC:

> "full reparation may only be achieved in particular cases by the combination of different forms of reparation. For example, re-establishment of the situation which existed before the breach may not be sufficient for full reparation because the wrongful act has caused additional material damage (e.g. injury flowing from the loss of the use of property wrongfully seized). Wiping out all the consequences of the wrongful act may thus require some or all forms of reparation to be provided, depending on the type and extent of the injury that has been caused."[181]

310. Article 31(1) of the International Law Commission's Articles specifically addresses this principle. It states:

> "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."[182]

311. And, in Article 34 it stated that:

> "Forms of reparation
> Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination …"[183]

312. Restitution may have to be accompanied by measures of compensation for the material and non-material damage caused. For instance, the Court stated, in the *Wall Advisory Opinion*, that Israel was

> "under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, *all natural or legal persons having suffered any form of material damage as a result of the wall's construction*."[184] (emphasis added)

313. In its judgment on the merits in the *Diallo* case, the Court stated the following:

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[180] *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment*, I.C.J. *Reports 2004 (I)*, p. 59, para. 119.
[181] Draft Articles on States Responsibility, *op. cit*., Article 34, Commentary, para. 2.
[182] *Idem*., Article 31(1).
[183] Draft Articles on States Responsibility, *op. cit.*, Article 34.
[184] *Wall Advisory Opinion*, *op. cit.*, p. 198, para. 153.

> "In the light of the circumstances of the case, in particular *the fundamental character of the human rights obligations breached* and Guinea's claim for reparation in the form of compensation, the Court is of the opinion that, in addition to a judicial finding of the violations, reparation due to Guinea for the injury suffered by Mr. Diallo *must take the form of compensation*."[185] (emphasis added)

314. There is no doubt that the fundamental character of the obligations breached by Israel calls for a measure of compensation. Thus, in view of the circumstances leading to the present request, Israel should provide adequate compensation, not only to Palestine, but also to all natural and legal persons having suffered from material and non-material damage, as a result of its wrongful conduct. Such an extension of compensation to natural or legal persons – and not only to the injured State, was clearly contemplated by the Court in the passage of the *Wall Advisory Opinion* quoted above.

315. Furthermore, the violation of the right of permanent sovereignty over natural resources, as a "principle of customary international law"[186] enshrined in General Assembly Resolution 1803 (XVII) of 14 December 1962, is likely to have caused reparable damage. In Resolution 3175 (XXVIII) of 17 December 1973, on the "Permanent Sovereignty over National Resources in the Occupied Arab Territories", the General Assembly affirmed

> "the right of the Arab States and peoples whose territories are under Israeli occupation to the *restitution of and full compensation* for the exploitation and looting of, and damages to, the natural resources, as well as the exploitation and manipulation of the human resources, of the occupied territories."[187] (emphasis added)

316. This is applicable to Palestine and its people.

D. Satisfaction

317. Finally, Egypt is of the view that the Court should consider whether the injury suffered by Palestinians, would be fully repaired *via* restitution and compensation. In the alternative, according to Article 37 of the ILC Articles on State Responsibility, it may prove necessary to provide for satisfaction, "consist[ing] in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality".[188] Given the character and importance of the rights at stake, such a possibility may indeed appear relevant. At the very least, it would appear that a declaration, included in the operative part of the advisory opinion, according to which Israel would be declared as

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[185] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits*, *Judgment*, *I.C.J. Reports 2010*, p. 691, para. 161.
[186] *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.
[187] UN. General Assembly Resolution 3175 (XXVIII), "*Permanent Sovereignty over National Resources in the Occupied Arab Territories*", A/RES/3175 (XXVIII) of 17 December 1973), para. 3.
[188] Draft Articles on States Responsibility, *op. cit.*, Article 37(2).

having failed to comply with its obligations towards Palestine and the Palestinians, its people and its nationals, would indeed provide an "appropriate form"[189] of satisfaction.

II. Legal Consequences for Other States and International Organisations

318. In the *Wall Advisory Opinion*, the Court considered those consequences "arising for other States and, where appropriate, for the United Nations".[190] In doing so, the Court observed 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, "in 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, Second Phase, Judgment*, I.C.J. Reports 1970, p. 32, para. 33)."[191] (emphasis original)

319. Among the obligations concerned, was the obligation to respect the right to self-determination, which constitutes "one of the essential principles of contemporary international law" and has "an *erga omnes* character".[192]

320. In the *Wall Advisory Opinion*, the Court stated:

> "Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."[193]

321. In the current proceedings, Egypt is of the view that the Court should follow its consistent practice, and, thus, indicate that all States have the obligation:

a. not to recognise the illegal situation created by the ongoing violation by Israel of the right to 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

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[189] *Punishment of the Crime of Genocide*, *op. cit.*, p. 234, para. 463; See also *Corfu Channel (United Kingdom v. Albania) case*, *Judgment of 9 April 1949*, *I.C.J. Reports 1949*, p. 4, pp. 35, 36.
[190] *Wall Advisory Opinion*, *op. cit.*, p. 197, para. 148.
[191] *Idem.*, p. 199, para. 155.
[192] *East Timor Judgement*, *op. cit*., p. 102, para. 29.
[193] *Wall Advisory Opinion*, *op. cit.*, p. 200, para. 159.

composition, character and status of the Holy City of Jerusalem, and its adoption of related discriminatory legislation and measures;

b. not to render aid or assistance in maintaining that situation; and

c. to cooperate through lawful means in order to bring that illegality to an end.

322. Such an approach would also be in conformity with general international law as reflected in Resolution 2625 (XXV) which stated in its relevant part:

> "*Every 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, in order:
>
> a. To promote friendly relations and co-operation among States; and
>
> b. To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned …"[194] (emphasis added)

323. The conclusion given by the Court in the operative part of the *Wall Advisory Opinion* was that:

> "[t]he United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion."[195]

[194] Resolution 2625 (XXV), *op. cit.*, Annex, para. 1, principle 5.

[195] *Wall Advisory Opinion*, *op. cit.*, p. 202, para. 163; *See also* UN. General Assembly Resolution 66/100, "*Responsibility of international organizations*", A/RES/66/100, 27 February 2012, can be accessed through:https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/464/82/PDF/N1146482.pdf?OpenElement.

PART VII
CONCLUSIONS AND SUBMISSIONS

324. Through its Written Statement, Egypt has demonstrated the extent to which it is concerned with the consequences of the unlawful Israeli practices affecting the inalienable rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem. By participating in the present proceedings, Egypt aspires towards attaining a just, peaceful and legal end to all the issues that prompted the Request of the General Assembly.

325. Guided by the Court's dictum in the Western Sahara Advisory Opinion, in which the Court emphasized that "[i]ts answer is requested in order to assist the General Assembly to determine its future decolonization policy", (emphasis added) Egypt is convinced that the Court will play a decisive role in clarifying and consolidating the applicable international law through its replies to the Questions put to it by the General Assembly.

326. Egypt, respectfully, submits that the Court should answer the questions put to it by the General Assembly as follows:

a- The Court is competent to give the advisory opinion requested by the General Assembly in its Resolution A/RES/77/247 of 30 December, 2022;

b- Israel has violated the right of the Palestinian people to self-determination reflected in General Assembly Resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967, among others, which constitutes a peremptory norm of international law;

c- The prolonged and continuing occupation of the territory of Palestine, and the practices and policies of annexation and settlements, constitute a breach of international obligations, including:

i- the relevant principles of international humanitarian law, including Geneva Convention IV and the Hague Regulations,
ii- the right of the people of Palestine to self-determination;
iii- the inviolability of the territorial integrity of States;
iv- the inadmissibility of the acquisition of territory through the use of force;
v- the relevant binding United Nations resolutions;
vi- the relevant provisions of the International Covenant on Civil and Political Rights;
vii- the relevant provisions of the International Covenant on Economic, Social and Cultural Rights; and
viii- the relevant provisions of the Convention on the Elimination of Racial Discrimination.

d- All legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem are null and void and must be rescinded, and constitute an internationally wrongful act;

e- All policies and practices implemented by Israel that discriminate between Palestinians, on the one hand, and Israeli settlers on the other, whether de facto or de jure, constitute a violation of international obligations, including the Convention on the Elimination of Racial Discrimination;

f- The policies and practices of Israel in the Occupied Palestinian Territories aim to ensure permanent presence and control over Palestinian lands and resources, which are contrary to international law and renders the occupation illegal;

g- Israel is obliged under general international law to:

i- to effect restitutio in integrum by:
1- ceasing immediately its unlawful occupation of the Palestinian territory occupied in 1967 by ending the occupation; and,

2- ceasing immediately its unlawful policies and practices, including annexation of Palestinian territories, settlements expansion, and racial discrimination, and dismantle existing settlements in the occupied Palestinian territories;

ii- provide compensation, covering both the material and moral damage suffered by the people of Palestine; and

iii- abide by its obligation to allow the return of the Palestinians to their homes, or compensate those who choose not to return.

h- All States and international organisations, and in particular the United Nations and all its organs, have a duty to cooperate and to take the appropriate measures, in order to induce Israel to comply with the obligations stated in paragraphs "d" and "g" above without delay, and refrain from any act or omission that contributes to maintaining the unlawful situation;

i- All States and international organisations, and in particular the United Nations and all its organs, have a duty to refrain from cooperating with Israel, in pursuance of its continued practices obstructing the right to self-determination of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, or the maintenance of the present illegal situation.

327. Finally, Egypt respectfully invites the Court to recommend to the General Assembly to take all necessary measures to ensure the compliance by Israel with its Advisory opinion, and take the necessary measures to ensure implementation of its relevant resolutions without further delay.

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Sameh Shoukry

Minister of Foreign Affairs
The Arab Republic of Egypt