



INTERNATIONAL COURT OF JUSTICE

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Summary

Unofficial

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Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem

Summary of the Advisory Opinion of 19 July 2024

Chronology of the procedure (paras 1-21)

The Court first recalls that on 19 January 2023, the Secretary-General of the United Nations officially communicated to the Court the decision taken by the General Assembly to submit the questions set forth in resolution 77/247 adopted by the United Nations General Assembly (hereinafter the “General Assembly”) on 30 December 2022.

Paragraph 18 of the resolution reads as follows:

“The General Assembly,

.....

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

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

I. JURISDICTION AND DISCRETION (PARAS. 22-50)

At the outset the Court observes that, when seised of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request.

A. Jurisdiction (paras. 23-29)

The Court first addresses the question whether it possesses jurisdiction to give the advisory opinion. It notes that, in accordance with the requirement in Article 96 of the Charter and Article 65 of its Statute, the Court must satisfy itself that the question on which it is requested to give its opinion is a “legal question”.

The Court recalls that, in the present proceedings, the General Assembly put two questions to the Court. These questions relate first to the legal consequences arising from certain policies and practices of Israel as an occupying Power in a situation of belligerent occupation since 1967. Secondly, they relate to how such policies and practices affect the legal status of the occupation in light of certain rules and principles of international law and to the legal consequences which arise from this status. The Court considers that these questions are legal questions. In light of the above, the Court concludes that the request has been made in accordance with the provisions of the Charter and of the Statute of the Court and therefore that it has jurisdiction to render the requested opinion.

B. Discretion (paras. 30-49)

The fact that the Court has jurisdiction to give an advisory opinion does not mean that it is obliged to exercise it. Article 65, paragraph 1, of the Statute provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”. As the Court has repeatedly emphasized, this “should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met”. However, given its functions as the principal judicial organ of the United Nations, the Court considers that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization, and, in principle, should not be refused”. However, only compelling reasons may lead the Court to refuse to give its opinion in response to a request falling within its jurisdiction. In view of the fact that some participants in the present proceedings have argued that there are compelling reasons for the Court to decline to give its opinion, the Court examines each of these in turn.

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

First, the Court examines the argument according to which the Court should decline to render an advisory opinion because the request concerns a bilateral dispute between Palestine and Israel, and the latter has not consented to the jurisdiction of the Court to resolve that dispute. The Court does not regard the subject-matter of the General Assembly’s request as being only a bilateral matter between Israel and Palestine. The involvement of the United Nations organs, and before that the League of Nations, in questions relating to Palestine dates back to the Mandate System. Since resolution 181 (II) concerning the partition of Palestine was adopted by the General Assembly in 1947, the Palestinian question has been before the General Assembly, which has considered, debated and adopted resolutions on it almost annually. Thus, this issue is a matter of particular interest and concern to the United Nations. The Court therefore considers that the issues raised by the request are part of the Palestinian question, including the General Assembly’s role relating thereto.

Consequently, the Court cannot, in the exercise of its discretion, decline to give the opinion requested on the ground of circumventing the principle of consent to judicial settlement.

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

The Court then examines the argument according to which the Court should decline to reply to the questions put to it because the General Assembly is not seeking the Court's opinion on a matter with which it requires assistance, but rather seeks the Court's confirmation of particular legal conclusions relevant to the resolution of a bilateral dispute between Palestine and Israel. In the present instance, the request is put forward by the General Assembly with reference to its own responsibilities and functions regarding the issue of the Occupied Palestinian Territory (see A/RES/77/247). The Court does not therefore consider that there is a compelling reason that should lead it to decline to give its opinion on the ground that such an opinion would not assist the General Assembly in the performance of its functions.

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

Turning to the question whether, the Court should decline to reply to the questions put to it because an advisory opinion from the Court would interfere with the Israeli-Palestinian negotiation process laid out by the framework established in the 1993 Declaration of Principles on Interim Self-Government Arrangements (hereinafter the "Oslo I Accord") and the 1995 Interim Agreement on the West Bank and the Gaza Strip (hereinafter the "Oslo II Accord"), and may exacerbate the Israeli-Palestinian disagreement, thereby compromising the outcome of negotiations, the Court considers that, in the present circumstances, this question is a matter of conjecture and the Court cannot speculate about the effects of its opinion. Therefore, the Court cannot regard this factor as a compelling reason to decline to respond to the General Assembly's request.

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

The Court then examines the argument according to which the Court should exercise its discretion to decline to answer the questions before it, or, even if the Court were to reply to these questions, it should take care that its reply does not interfere with the established framework for negotiations, since it is the Security Council, and not the General Assembly, which has primary responsibility for issues relating to the Israeli-Palestinian conflict. The Court notes that whether the opinion of the Court would have an adverse effect on the negotiation framework is a matter of conjecture on which the Court should not speculate. Moreover, in view of the fact that the General Assembly has the competence to address matters concerning international peace and security, such as those raised in the questions it has posed, there is no compelling reason for the Court to decline to give the requested opinion.

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

The Court notes that some participants have raised the argument that the Court should decline to give an opinion because it lacks sufficient information and would have to embark on a fact-finding mission covering a period of decades in order to answer the questions put to it by the General Assembly. The Court notes in this respect that in the present case, over 50 States and international organizations have submitted information relevant to a response to the questions put by the General

Assembly to the Court. It further notes that it has also reviewed a voluminous dossier submitted by the Secretary-General of the United Nations, which contains extensive information on the situation in the Occupied Palestinian Territory. The Court considers that, in the present case, it has before it sufficient information to decide legal questions in a manner consistent with its judicial function. Consequently, there is no compelling reason for it to decline to give the requested opinion on this ground.

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

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

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

II. GENERAL CONTEXT (PARAS. 51-71)

Before turning to the scope and meaning of the questions put to it by the General Assembly, the Court recalls the general context.

Having been part of the Ottoman Empire, at the end of the First World War, Palestine was placed under a Mandate that was entrusted to Great Britain by the League of Nations. In 1947, the United Kingdom announced its intention to complete its evacuation of the mandated territory by 1 August 1948, subsequently advancing that date to 15 May 1948. In the meantime, on 29 November 1947, the General Assembly had adopted resolution 181 (II) on the future government of Palestine, which “[r]ecommend[ed] to the United Kingdom . . . and to all other Members of the United Nations the adoption and implementation . . . of the Plan of Partition” of the territory, as set forth in the resolution, between two independent States, one Arab, the other Jewish, as well as the creation of a special international régime for the City of Jerusalem. While the Jewish population accepted the Plan of Partition, the Arab population of Palestine and the Arab States rejected this plan, contending, *inter alia*, that it was unbalanced.

On 14 May 1948, Israel proclaimed its independence with reference to the General Assembly resolution 181 (II); an armed conflict then broke out between Israel and a number of Arab States, and the Plan of Partition was not implemented. By resolution 62 (1948) of 16 November 1948, the Security Council decided that “an armistice shall be established in all sectors of Palestine”. In conformity with this decision, general armistice agreements were concluded in 1949 in Rhodes between Israel and its neighbouring States through mediation by the United Nations, fixing the armistice demarcation lines between Israeli and Arab forces (often later collectively called the “Green Line” owing to the colour used for it on maps).

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

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

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

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

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

In October 1973, another armed conflict broke out between Egypt, Syria and Israel. By resolution 338 of 22 October 1973, the Security Council called upon the parties to the conflict to terminate all military activity and to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts.

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

On 17 September 1978, Israel and Egypt signed the "Camp David Accords", which led in the following year to a Peace Treaty between the two countries. Later, a peace treaty was signed on 26 October 1994 between Israel and Jordan. That treaty fixed the boundary between the two States according to the lines set under the Mandate for Palestine.

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

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

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

Following an increase in acts of violence from the West Bank, in the early 2000s Israel began building a “continuous fence” (hereinafter the “wall”) largely in the West Bank and East Jerusalem. A plan of this type was approved for the first time by the Israeli Government in July 2001 and the first part of the relevant works was declared completed on 31 July 2003. Notwithstanding the Court’s opinion in 2004, finding “[t]he construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime [to be] contrary to international law”, the construction of the wall continued, as well as the expansion of settlements in the Occupied Palestinian Territory.

Reports indicate that, by 2005, settlers who had been residing in 21 settlements in the Gaza Strip and in four settlements in the northern West Bank, were evacuated pursuant to an Israeli “Disengagement Plan”. By 2023, approximately 465,000 settlers resided in the West Bank, spread across around 300 settlements and outposts, while some 230,000 settlers resided in East Jerusalem. The residents of settlements and “outposts” in the Occupied Palestinian Territory (“settlers”) are predominantly Israelis, as well as non-Israeli Jews who qualify for Israeli nationality under Israeli legislation.

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

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

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

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

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

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

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

The Court then turns to the scope and meaning of the two questions posed by the General Assembly, and recalls their formulation. The Court notes that the questions define the material, territorial and temporal scope of the Court’s enquiry. With regard to the material scope, question (a) identifies three types of conduct which question (b) describes as “policies and practices of Israel”: first, “the ongoing violation by Israel of the right of the Palestinian people to self-determination”; second, Israel’s “prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem”; third, Israel’s “adoption of related discriminatory legislation and measures”. In this regard, the Court limits itself to observing a feature common to all of them, namely that the terms of question (a) assume that these policies and practices are contrary

to international law. By virtue of its judicial function, however, the Court must itself determine the lawfulness of the policies and practices identified by the General Assembly. The Court considers that question (a) requires an assessment of the conformity with international law of those policies and practices of Israel identified in the request.

The Court considers that, in its request, the General Assembly has not sought from the Court a detailed factual determination of Israel's policies and practices. Therefore, in order to give an advisory opinion in this case, it is not necessary for the Court to make findings of fact with regard to specific incidents allegedly in violation of international law. The Court need only establish the main features of Israel's policies and practices and, on that basis, assess the conformity of these policies and practices with international law.

In terms of its territorial scope, question (a) refers to "the Palestinian territory occupied since 1967", which encompasses the West Bank, East Jerusalem and the Gaza Strip. The Court notes that the various United Nations organs and bodies frequently make specific reference to the different parts of the Occupied Palestinian Territory. The Court also does so in the present Advisory Opinion, as appropriate. However, the Court recalls that, from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, contiguity and integrity of which is to be preserved and respected. Thus, all references in this Opinion to the Occupied Palestinian Territory are references to this single territorial unit.

The Court further observes that the question mentions measures pertaining to "the Holy City of Jerusalem". The ordinary meaning of this term is ambiguous and may be subject to multiple interpretations, but the context provides useful clarification in the present case. In light of this context, the Court is of the view that the question posed by the General Assembly relating to the "Holy City of Jerusalem" is confined to measures taken by Israel in East Jerusalem.

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

The Court notes that the request for an advisory opinion was adopted by the General Assembly on 30 December 2022 and asked the Court to address Israel's "ongoing" or "continuing" policies and practices. Thus, the Court is of the view that the policies and practices contemplated by the request of the General Assembly do not include conduct by Israel in the Gaza Strip in response to the attack carried out against it by Hamas and other armed groups on 7 October 2023.

Question (b) has two parts. The first part requests the Court to assess how the policies and practices of Israel identified by the General Assembly "affect the legal status of the occupation". The Court observes that the use of the verb "affect" points to the possibility that such policies and practices may bring about changes to the "legal status". However, the scope of the first part of the question depends upon the meaning of the expression "legal status of the occupation" in the overall context of question (b). In the present context, the Court is of the view that the first part of question (b) calls on the Court to ascertain the manner in which Israel's policies and practices affect the legal status of the occupation, and thereby the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory.

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

IV. APPLICABLE LAW (PARAS. 84-102)

The Court notes at the outset that the applicability of certain rules of international law in the territory concerned depends on the status of that territory under international law. The Court first seeks to ascertain the status of the Occupied Palestinian Territory under international law, and then determines which rules of international law are relevant for answering the questions posed to it by the General Assembly.

The questions posed by the General Assembly are premised on the assumption that the Occupied Palestinian Territory is occupied by Israel. In its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court set out the circumstances under which a state of occupation is established. The Court observed that, in the 1967 armed conflict, Israel occupied the territories situated between the Green Line and the former eastern boundary of Palestine under the British Mandate, namely the West Bank and East Jerusalem. The Court affirmed that subsequent events had not altered the status of the territories in question as occupied territories, nor Israel's status as occupying Power.

In its *Wall* Advisory Opinion, the Court did not express a view as to the legal status of the Gaza Strip, as the construction of the wall did not affect the Gaza Strip. The Gaza Strip is an integral part of the territory that was occupied by Israel in 1967. Following the 1967 armed conflict, Israel, as the occupying Power, placed the Gaza Strip under its effective control. However, in 2004, Israel announced a "Disengagement Plan". According to that plan, Israel was to withdraw its military presence from the Gaza Strip and from several areas in the northern part of the West Bank. By 2005, Israel had completed the withdrawal of its army and the removal of the settlements in the Gaza Strip.

The Court notes that, for the purpose of determining whether a territory remains occupied under international law, the decisive criterion is not whether the occupying Power retains its physical military presence in the territory at all times but rather whether its authority has been established and can be exercised.

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

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

The Court then turns to the rules and principles that are relevant for answering the questions put to it. These include the prohibition of the acquisition of territory by threat or use of force and the right of peoples to self-determination, which are enshrined in the Charter of the United Nations and also form part of customary international law.

Further, international humanitarian law is of particular relevance. Israel's powers and duties in the Occupied Palestinian Territory are governed by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (the "Fourth Geneva Convention"), which is applicable in the Occupied Palestinian Territory, and by customary international law. Pursuant to Article 154 of the Fourth Geneva Convention, that Convention is supplementary to the rules contained in Sections II and III of the Hague Regulations Respecting the Laws and Customs of War on Land annexed to that Convention. As the Court has observed in its jurisprudence, the Hague Regulations have become part of customary international law, and they are thus binding on Israel.

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

The Court recalls that “international human rights instruments are applicable ‘in respect of acts done by a State in the exercise of its jurisdiction outside its own territory’, particularly in occupied territories”. The Court further recalls that the protection offered by human rights conventions does not cease in case of armed conflict or of occupation. Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may concern both these branches of international law.

Referring to its *Wall* Advisory Opinion, the Court observes that Israel remains bound by the ICCPR and the ICESCR in respect of its conduct with regard to the Occupied Palestinian Territory.

In relation to CERD, the Court notes that that Convention contains no provision expressly restricting its territorial application. On the contrary, several of its provisions impose obligations on States parties that are applicable in territories under their jurisdiction or in relation to individuals within their jurisdiction. This indicates that CERD is also applicable to conduct of a State party which has effects beyond its territory. In the Court’s view, Israel must comply with its obligations under CERD in circumstances in which it exercises its jurisdiction outside its territory.

Several participants in the present proceedings expressed diverging views regarding the relevance of the Oslo accords signed in 1993 and 1995 by Israel and the PLO. On the basis of the interpretation of these Accords, the Court considers that they cannot be understood to detract from Israel’s obligations under the pertinent rules of international law applicable in the Occupied Palestinian Territory.

V. ISRAEL’S POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY (PARAS. 103-243)

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

A. The question of the prolonged occupation (paras. 104-110)

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

By virtue of its status as an occupying Power, a State assumes a set of powers and duties with respect to the territory over which it exercises effective control. In this context, the occupying Power bears a duty to administer the territory for the benefit of the local population. The nature and scope

of these powers and duties are always premised on the same assumption: that occupation is a temporary situation to respond to military necessity, and it cannot transfer title of sovereignty to the occupying Power.

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

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

B. Settlement policy (paras. 111-156)

1. Overview (paras. 111-114)

Question (a) posed by the General Assembly enquires in part about the legal consequences arising from Israel's settlement policy. The Court considers, in this regard, that the distinction that is sometimes made between "settlements" and "outposts" is immaterial for the purpose of ascertaining whether the communities in question form part of Israel's settlement policy. What matters is whether they are established or maintained with Israel's support.

The Court further notes that, between 1967 and 2005, Israel's settlement policy was carried out in the West Bank, East Jerusalem and the Gaza Strip. Since the removal of Israel's settlements from the Gaza Strip in 2005, Israel's settlement policy has continued in the West Bank and East Jerusalem; the Court therefore limits its analysis to Israel's ongoing settlement policy in the West Bank and East Jerusalem. At the same time, the Court observes that Israel's settlement policy carried out in the Gaza Strip until 2005 was not substantially different from the policy that continues in the West Bank and East Jerusalem, today.

2. Transfer of civilian population (paras. 115-119)

In its *Wall* Advisory Opinion, the Court found that Israel's settlement policy was in breach of the sixth paragraph of Article 49 of the Fourth Geneva Convention, which provides that "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies".

In the Court's view, there is nothing in the terms or the context of the provision, or in the object and purpose or the drafting history of the Fourth Geneva Convention, to suggest that that provision prohibits only the forcible transfer of parts of the occupying Power's civilian population into the occupied territory. In the present case, there is extensive evidence of Israel's policy of providing incentives for the relocation of Israeli individuals and businesses into the West Bank, as well as for its industrial and agricultural development by settlers. There is also evidence that Israel regularly legalizes outposts that have been established in contravention of domestic Israeli legislation and that

Israel's construction of settlements is accompanied by specially designed civilian infrastructure in the West Bank and East Jerusalem, which integrates the settlements into the territory of Israel.

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

3. Confiscation or requisitioning of land (paras. 120-123)

The Court further notes that the expansion of Israel's settlements in the West Bank and East Jerusalem is based on the confiscation or requisitioning of large areas of land.

Observing that, in the present case, the public property confiscated or requisitioned for the development of Israeli settlements benefits the civilian population of settlers, to the detriment of the local Palestinian population, the Court concludes that Israel's land policies are not in conformity with Articles 46, 52 and 55 of the Hague Regulations.

4. Exploitation of natural resources (paras. 124-133)

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

On the basis of the evidence before it, the Court considers that Israel's use of the natural resources in the Occupied Palestinian Territory is inconsistent with its obligations under international law. By diverting a large share of the natural resources to its own population, including settlers, Israel is in breach of its obligation to act as administrator and usufructuary. The Court further considers that, by severely restricting the access of the Palestinian population to water that is available in the Occupied Palestinian Territory, Israel acts inconsistently with its obligation to ensure the availability of water in sufficient quantity and quality. In light of its analysis, the Court also concludes that Israel's policy of exploitation of natural resources in the Occupied Palestinian Territory is inconsistent with its obligation to respect the Palestinian people's right to permanent sovereignty over natural resources.

5. Extension of Israeli law (paras. 134-141)

Turning next to the question of the extension of Israeli law to the Occupied Palestinian Territory, the Court recalls that, under Article 43 of the Hague Regulations, the occupying Power must in principle respect the law in force in the occupied territory unless absolutely prevented from doing so. In principle, then, the law of occupation does not deprive the local population's civilian institutions in the occupied territory of the regulatory authority that they may have. Rather, it invests in the occupying Power a set of regulatory powers on an exceptional basis and on specific enumerated grounds.

Based on the evidence before it, the Court observes that Israel has expanded its sphere of legal regulation in the West Bank. It notes, in particular, that Israel has to a large degree substituted its military law for the local law in force in the Occupied Palestinian Territory at the beginning of the

occupation in 1967. Moreover, regional and local councils of settlers have assumed *de facto* jurisdiction over the settlements in the West Bank. In East Jerusalem, domestic Israeli law has been applied since the beginning of the occupation in 1967 and Israel treats East Jerusalem as its own national territory, where Israeli law is applied in full and to the exclusion of any other domestic legal system.

In the present case, the Court is not convinced that the extension of Israel's law to the West Bank and East Jerusalem is justified under any of the grounds laid down in the second paragraph of Article 64 of the Fourth Geneva Convention. Furthermore, the comprehensive application of Israeli law in East Jerusalem, as well as its application in relation to settlers throughout the West Bank, cannot be deemed "essential" for any of the purposes enumerated in the second paragraph of Article 64 of the Fourth Geneva Convention.

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

6. Forced displacement of the Palestinian population (paras. 142-147)

The Court then turns to the effects of Israel's settlement policy on the departure of the Palestinian population.

The Court observes that the large-scale confiscation of land and the deprivation of access to natural resources divest the local population of their basic means of subsistence, thus inducing their departure. Furthermore, a series of measures taken by Israeli military forces has exacerbated the pressure on the Palestinian population to leave parts of the Occupied Palestinian Territory against their will.

The Court recalls that, under the first paragraph of Article 49 of the Fourth Geneva Convention, "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive".

In this regard, the Court considers that transfer may be "forcible" — and thus prohibited under the first paragraph of Article 49 — not only when it is achieved through the use of physical force, but also when the people concerned have no choice but to leave. Further, the Court notes that, to be permissible, evacuations are conceived as a temporary measure, to be reversed as soon as the imperative military reasons subside. By contrast, evacuations of a permanent or indefinite character breach the prohibition of forcible transfer.

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

7. Violence against Palestinians (paras. 148-154)

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

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

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

In light of the above, the Court reaffirms (see *Wall Advisory Opinion*) that the Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law. The Court notes with grave concern reports that Israel's settlement policy has been expanding since the Court's *Wall Advisory Opinion*.

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

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

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

The Court recalls, in this regard, that, under the law of occupation, the control of the occupied territory by the occupying Power must be temporary in character. Consequently, conduct by the occupying Power that displays an intent to exercise permanent control over the occupied territory may indicate an act of annexation.

The assertion by the occupying Power of permanent control of the occupied territory may manifest itself in a variety of ways. In this connection, the Court notes that a distinction between "*de jure*" and "*de facto*" annexation is occasionally made. Although differing in terms of the means through which the annexation is carried out, both types of annexation share the same objective — the assertion of permanent control over the occupied territory.

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

Having examined Israel's policies and practices, both in relation to East Jerusalem and to the West Bank, with a view to determining whether they amount to annexation, the Court comes to the conclusion that Israel's policies and practices, including the maintenance and expansion of

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

It is the view of the Court that to seek to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force. The manner in which the annexation affects the legal status of the occupation, and thereby the legality of the continued presence of Israel, is discussed later in the advisory opinion.

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

The Court then examines the question of the legal consequences arising from Israel's adoption of related discriminatory legislation and measures". Recalling the wording of question (a) and the conclusion it reached with regard to the interpretation of the questions, it notes that it must itself determine whether the legislation and measures identified by the request of the General Assembly are discriminatory. In this regard, the Court first considers that it has to limit its analysis to legislation and measures that are closely linked to the policies and practices discussed previously. Second, the question covers Israel's legislation and measures only to the extent that they apply in the Occupied Palestinian Territory. Third, the question is confined to the potentially discriminatory character of Israel's legislation and measures.

Having thus defined the scope of question (a), the Court turns to the concept of discrimination. It considers that, common to all of the relevant provisions of international law is the concept of differential treatment between persons belonging to different groups. It observes, in this connection, that the existence of the Palestinian people is not at issue. Therefore, in the Court's view, differential treatment of Palestinians can give rise to discrimination.

In order to answer question (a), the Court first examines the effects that Israel's residence permit policy in East Jerusalem has on Palestinians in the Occupied Palestinian Territory. The Court then turns to the restrictions imposed by Israel on the movement of Palestinians in the Occupied Palestinian Territory. Finally, it examines Israel's practice of demolition of Palestinian properties in the West Bank and in East Jerusalem, both with regard to the practice of punitive demolition and demolitions for lack of a building permit. The Court notes in that connection that it is reported that almost 11,000 Palestinian structures have been demolished since 2009.

The Court concludes from the evidence presented to it and on the basis of its analysis that a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds specified by international law. The Court notes that this differentiation of treatment cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim. Accordingly, the Court is of the view that the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on, *inter alia*, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

The Court further observes that Israel's legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian

communities. For this reason, the Court considers that Israel's legislation and measures constitute a breach of Article 3 of CERD.

E. The question of self-determination (paras. 230-243)

Having found that Israel's settlement policy, its acts of annexation, and its related discriminatory legislation and measures are in breach of international law, the Court turns to the aspect of question (a) that enquires as to the effects of Israel's policies and practices on the exercise of the Palestinian people's right to self-determination. The Court has already affirmed, in its *Wall* opinion the existence of the right of the Palestinian people to self-determination. In the present proceedings, the Court first determines the scope of this right and then examines the effects, if any, that Israel's policies and practices have on its exercise.

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

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

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

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

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

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

The Court has determined that Israeli policies and practices and the manner in which they are implemented and applied on the ground have significant effects on the legal status of the occupation through the extension of Israeli sovereignty to certain parts of the occupied territory, their gradual annexation to Israeli territory, the exercise of Israeli governmental functions and the application of its domestic laws therein, as well as through the transfer of a growing number of its own nationals to

those parts of the territory and impeding the exercise of the right to self-determination of the Palestinian people.

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

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

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

In light of the foregoing, the Court turns to the examination of the legality of the continued presence of Israel in the Occupied Palestinian Territory.

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

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

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

Responding to an argument made by three participants, the Court observes that the Oslo Accords do not permit Israel to annex parts of the Occupied Palestinian Territory in order to meet its

security needs. Nor do they authorize Israel to maintain a permanent presence in the Occupied Palestinian Territory for such security needs.

The Court emphasizes that the conclusion that Israel's continued presence in the Occupied Palestinian Territory is illegal does not release it from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States in respect of the exercise of its powers in relation to the territory until such time as its presence is brought to an end. It is the effective control of a territory, regardless of its legal status under international law, which determines the basis of the responsibility of a State for its acts affecting the population of the territory or other States.

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

The Court has found that Israel's policies and practices referred to in question (a) are in breach of international law. The maintenance of these policies and practices is an unlawful act of a continuing character entailing Israel's international responsibility.

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

A. Legal consequences for Israel (paras. 267-272)

With regard to the Court's finding that Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character which has been brought about by Israel's violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible.

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

Israel is also under an obligation to provide full reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned. Reparation includes restitution, compensation and/or satisfaction.

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

Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence.

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

The Court emphasizes that the obligations flowing from Israel's internationally wrongful acts do not release it from its continuing duty to perform the international obligations which its conduct is in breach of. Specifically, Israel remains bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law.

B. Legal consequences for other States (paras. 273-279)

The Court then turns to the legal consequences of Israel's internationally wrongful acts in the Occupied Palestinian Territory as regards other States.

The Court observes that the obligations violated by Israel include certain obligations *erga omnes*, among which are the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law.

With regard to the right to self-determination, the Court considers that, while it is for the General Assembly and the Security Council to pronounce on the modalities required to ensure an end to Israel's illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination, all States must co-operate with the United Nations to put those modalities into effect.

As regards the prohibition of the acquisition of territory by force, taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties to the conflict through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967.

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

C. Legal consequences for the United Nations (paras. 280-283)

The duty of non-recognition specified earlier also applies to international organizations, including the United Nations, in view of the serious breaches of obligations *erga omnes* under international law. The obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory and the obligation to distinguish in dealings with Israel between the territory of Israel and the Occupied Palestinian Territory apply also to the United Nations.

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

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

“the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region”.

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

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

*

The full text of the final paragraph (para. 285) reads as follows:

For these reasons,

THE COURT,

(1) Unanimously,

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

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

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

AGAINST: *Vice-President* Sebutinde;

(3) By eleven votes to four,

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

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

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

(4) By eleven votes to four,

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

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

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

(5) By fourteen votes to one,

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

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

AGAINST: *Vice-President* Sebutinde;

(6) By fourteen votes to one,

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

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

AGAINST: *Vice-President* Sebutinde;

(7) By twelve votes to three,

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

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

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

(8) By twelve votes to three,

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

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

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

(9) By twelve votes to three,

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

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

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

*

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

Declaration of President Salam

In his declaration, President Salam states that he shares both the conclusions reached by the Court in this Advisory Opinion and the underlying reasoning. The purpose of his declaration is to set out additional reasons which, in his view, help to justify the Court's conclusions, in particular the unlawfulness of Israel's continued presence in the Occupied Palestinian Territory, and the subsequent obligation to put an end to it as rapidly as possible.

President Salam first discusses two of Israel's illegal policies and practices in the Occupied Palestinian Territory. With regard to settlement, he highlights the elements proving that Israel was in full knowledge of the illegality of this policy and the measures that accompanied it. Thus, as early as September 1967, the legal adviser to the Israeli Ministry of Foreign Affairs, and later various United Nations bodies and institutions warned Israel of the unlawful nature of settlement and other related practices. The declaration also examines Israel's discriminatory laws and measures in the Occupied Palestinian Territory, demonstrating that they are tantamount to the crime of apartheid. Israel has committed numerous inhumane acts in the Occupied Palestinian Territory, which the Opinion unambiguously identifies, as part of an institutionalized régime of systematic oppression and domination of one racial group over another.

In his declaration, President Salam regrets that the Court did not draw all the legal conclusions from General Assembly resolution 181 (II) of 29 November 1947. Indeed, he writes, by its commitment to implementing the said resolution, on which it based both its declaration of independence and its application for admission to the United Nations, Israel remains bound not to impede the exercise by the Palestinian people of its right to self-determination and to co-operate with the United Nations so that the State of Palestine, proclaimed in 1988 and subsequently admitted to the United Nations as an observer State based on the same resolution, can exercise full sovereignty over its territory and achieve full independence. This requires the complete withdrawal of Israel from the Occupied Palestinian Territory.

Addressing the question of the obligations arising for all States and the United Nations from Israel's violation of peremptory norms (*jus cogens*) and obligations *erga omnes* in the Occupied Palestinian Territory, the declaration stresses that they should take concrete and effective measures. For States, this implies not only mere diplomatic protests, but also refraining from any unconditional financial, economic, military or technological aid to the State of Israel, and punishing such violations where appropriate and in accordance with the relevant treaties to which they are parties. Concerning the United Nations, its bodies and institutions, President Salam — recalling all the Security Council resolutions that have so far remained without effect — invites them to take new concrete and appropriate measures to put an end, without delay and according to a well-defined timetable, to the violations of international law arising from the policies and practices of Israel in the Occupied Palestinian Territory. With regard to the ending of the illegal occupation, he also stresses that this should not be made conditional on the success of negotiations with Israel, as this would be tantamount to giving the occupying Power a right of veto and the power to continue the violations for as long as it wishes.

President Salam concluded his statement by recalling that, by stating the law, the Court is laying the foundations for a process based on justice, which alone can lead to a just and lasting peace.

Dissenting opinion of Vice-President Sebutinde

In her dissenting opinion, Vice-President Sebutinde argues against the Advisory Opinion for several reasons, including the lack of accurate, balanced and reliable information to judiciously arrive at a fair conclusion upon disputed questions of fact. She also criticizes the prejudicial formulation of the General Assembly's questions and the one-sided narrative in the statements of many participants

in the proceedings. In her view, the Advisory Opinion not only circumvents Israel's consent to the Court's resolution of the issues involved, but also circumvents and potentially jeopardizes the existing internationally sanctioned and legally binding negotiation framework for the resolution of the Israeli-Palestinian conflict. In rendering its Advisory Opinion, the Court should have been careful to guard its judicial character and integrity by ensuring that the nuanced and more complex issues that require resolution through negotiation — such as the competing territorial claims of the parties in former British Mandatory Palestine, and unresolved permanent-status issues such as a possible two-State solution, security, borders, refugees and the status of Jerusalem — are left to the negotiation framework already agreed upon by the parties to the Israeli-Palestinian conflict.

Vice-President Sebutinde considers that the Advisory Opinion omits the historical backdrop crucial to understanding the multi-faceted Israeli-Palestinian dispute and is tantamount to a one-sided “forensic audit” of Israel's compliance with international law that does not reflect a balanced and impartial examination of the pertinent legal and factual questions. She also emphasizes the need to grasp the historical nuances of the Israeli-Palestinian conflict, including the competing territorial claims of the parties in former British Mandatory Palestine, as well as the previous and ongoing efforts to resolve the conflict through the negotiation framework identified by the Security Council. In the view of the Vice-President, the Court lacks adequate, accurate, balanced and reliable information before it to enable it to judiciously arrive at a fair assessment and conclusions on the disputed questions of fact. She is further of the view that the Advisory Opinion circumvents the existing negotiation framework, as well as Israel's consent to the Court's resolution of the issues involved.

Furthermore, the Advisory Opinion also contains several shortcomings, particularly regarding the Court's answer to question 2. In her view, the timeline proposed by the Court for Israel's withdrawal from the occupied territories is impracticable and disregards the matters agreed upon in the existing negotiating framework, the security threats posed to Israel and the need to balance competing sovereignty claims. Vice-President Sebutinde also notes that the Court's application of the principle of full reparation is not appropriate in the circumstances of the Israeli-Palestinian conflict. Finally, Vice-President Sebutinde explains that the Court has misapplied the law of belligerent occupation and has adopted presumptions implicit in the question of the General Assembly without a prior critical analysis of relevant issues. These issues include the application of the principle of *uti possidetis juris* to the territory of the former British Mandate, the question of Israel's borders and its competing sovereignty claims, and the nature of the Palestinian right of self-determination and its relationship to Israel's own rights and security concerns. The Vice-President, while underscoring the importance of the negotiated agreements for a lasting resolution and the role of the United Nations in supporting peace efforts, emphasizes that the only avenue for a permanent solution to the Israeli-Palestinian conflict remains the negotiation framework set out in the United Nations and bilateral agreements.

Declaration of Judge Tomka

Having co-signed with Judges Abraham and Aurescu a joint opinion in the present case, Judge Tomka wishes to add a few additional observations to explain his vote.

He begins by recalling that the request of the General Assembly of the United Nations for an advisory opinion concerns issues which have been on its agenda from the very beginning of its activities, following the notification by the United Kingdom of its intention to transfer the mandate of Palestine to the Organization. Based on the recommendation of the Special Committee on Palestine, established in May 1947, the General Assembly adopted resolution 181 (II), known as the Plan of Partition, envisaging the creation of two independent States, one Arab, the other Jewish, and calling upon the inhabitants of Palestine to take the steps as may be necessary on their part to put this plan into effect. Unfortunately, the resolution was soon followed by violence, and the plan was not implemented. Had the Arab population of Palestine and the Arab States accepted the Partition Plan,

the tragedy afflicting the region since could have been averted, as the Arab population of Palestine would have been able to exercise its right to self-determination and establish a State of its own.

Today, the State of Israel, or at least the important political circles within that State, would like to claim, if not the whole territory of Palestine, at least its major part, as Israel's own territory. Judge Tomka notes that, over the years, Israel has pursued a policy of settlement in the West Bank, including East Jerusalem, despite knowing full well from the start that this policy ran contrary to its obligations under international law.

On the question of the legality of the occupation, Judge Tomka believes, as was emphasized in his joint opinion with two other Members of the Court, that the legally correct conclusion is that Israel's occupation of the Occupied Palestinian Territory is not unlawful as such; rather, it is Israel's effort at annexing the Occupied Palestinian Territory which is at issue.

Although he does not share the Court's view that Israel's continued presence in the Occupied Palestinian Territory is unlawful, Judge Tomka firmly believes that all States are under an obligation not to recognize the situation arising from the presence of Israel in the Occupied Palestinian Territory and to refrain from rendering aid or assistance to Israel in maintaining its presence therein. The main reason for his position lies in his belief that States should not assist Israel in its aim to annex a major part of the Occupied Palestinian Territory and to treat it as its own territory. On the contrary, for Judge Tomka, States should, within their power, lend their assistance to reach the overall goal of achieving peace in the Middle East, that is to say, the goal of achieving a situation in which the State of Israel and the State of Palestine live side by side, in peace and security within their internationally recognized boundaries.

Judge Tomka also considers that the United Nations, and especially the Security Council and General Assembly, should consider the modalities for bringing to an end as rapidly as possible the presence of the State of Israel in the Occupied Palestinian Territory. In his view, this can be done only when security is guaranteed for both States. He believes that achieving peace is long overdue and that all relevant actors should redouble their efforts to that effect. This remains the unfulfilled historical responsibility of the United Nations.

Joint opinion of Judges Tomka, Abraham and Aurescu

1. Judges Tomka, Abraham and Aurescu voted against certain points in the final conclusions of the Advisory Opinion (hereinafter the "Opinion").

2. The Judges opine that it is legally incorrect to assert, as the Opinion does based on the erroneous reasoning developed therein, that Israel's presence in the Occupied Palestinian Territory (hereinafter the "OPT") is unlawful and that it must therefore withdraw without any guarantees regarding its right to its security, which is one of the crucial elements necessary to achieve a lasting peace based on a permanent status settlement.

3. First, the Judges believe that the Gaza Strip should have been excluded from the scope of the Opinion. In their view, the Court was correct in excluding the situation in Gaza after 7 October 2023. However, they also believe that the Court should have concluded that it was unable to properly pronounce on the situation in Gaza prior to 7 October 2023 due to the lack of information preventing it from determining whether and to which extent the control Israel continued exercising over Gaza after the 2005 withdrawal was justified by security reasons, and also because nearly all of Israel's "policies and practices" mentioned in the Opinion refer to the situation in the West Bank.

4. Second, the Judges agree that Israel committed violations of the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination, in addition to violations of international humanitarian law and international human rights law. However, they do not adhere to the reasoning of the Opinion following which the presence of Israel, as an occupying Power, in the OPT is unlawful, merely based on the finding of these violations. The rules governing the conduct of an occupation and the obligations of the occupying Power, on the one hand, and those concerning the use of force and its consequences, on the other, constitute two distinct sets of rules. The question of whether and to what extent the occupying Power's conduct complies with its obligations in the occupied territory, irrespective of the legality of the occupation itself, must be examined under the first set of rules. The question of the legality of the occupation itself must be examined under the second one. The Judges are, therefore, of the view that "Israel's policies and practices" in the Occupied Palestinian Territory do not affect the "legal status of the occupation", which refers to the legality of Israel's presence in this territory as an occupying Power.

5. Moreover, the Judges stress that it is not the occupation itself but the annexation of Area C of the West Bank which constitutes the internationally wrongful act.

6. In addition, while recalling that an occupying Power is under an obligation to end an occupation as soon as it is no longer necessary to ensure its security, they consider that it is difficult to assert that Israel could today completely withdraw from the OPT "as rapidly as possible", in the absence of any guarantee, without exposing its security to substantial threats.

7. Third, the Judges believe that the legal impact of the Oslo Accords and of the relevant Security Council resolutions has been largely ignored in the Opinion. A correct combined interpretation of the Oslo Accords and of the relevant Security Council resolutions clearly underscores their legal effects, which continue to be valid at present, upon the close relationship between, on one hand, the package "right to self-determination — right to security" (these two rights being, in the context of the present case, intrinsically interconnected) and, on the other hand, the issue of the legality of the occupation, as well as the way this package needs to be implemented within the negotiation framework agreed between Israel and Palestine and supported by the resolutions of the Security Council. Moreover, the Judges hold the view that the permanent status settlement leading to the "two-State solution" is directly linked to the right to security: the boundaries, which define the territory of both States, including the Palestinian State, are closely connected with ensuring the security of the two States, Israel and Palestine.

8. They recall that, as explained in the *Namibia* Opinion, the resolutions adopted under Chapter VII of the Charter of the United Nations are not the only ones which are binding. Regarding the Middle East peace process, the Security Council, in exercising its primary responsibility for the maintenance of international peace and security under Article 24 of the Charter, adopted numerous relevant resolutions. The analysis of these resolutions shows that many of them are not merely declaratory, but legally binding as far as the principles, which they constantly reaffirmed regarding the Middle East peace process, are concerned. The Judges thus regret that the Opinion chose to ignore the relevance and value of these resolutions.

9. Regarding the issue of the settlements, the three Judges are of the view that the obligation of Israel not to alter the status of the West Bank under the Oslo II Accords implies that any new settlements created in Area C and beyond it (if any) after 1995, when the said Accord was concluded, are also in breach of it.

10. The Judges are convinced that the post-1995 settlements, combined with other measures, such as the illegal expulsion of the local Palestinian population or the application of Israel's domestic legislation to the occupied territory, indicate the intent to annex the territory encompassing the settlements in Area C, but not the West Bank as a whole.

11. Finally, the Judges express regret that that the Opinion did not state that both Israel and Palestine are under the obligation to resume without delay the direct permanent status negotiations for the "two-State solution", based on the negotiation framework defined by the Oslo Accords and the relevant Security Council resolutions. They also regret that the Opinion did not draw the attention of the Security Council and the General Assembly to the need to reinforce the efforts for achieving as soon as possible, on the basis of international law, a negotiated solution for the establishment of a Palestinian State, with the aim of reaching the objective of the two democratic States, Israel and Palestine, living side by side in peace and security, with secure and recognized borders. They also express regret that the Opinion did not encourage all States to support Israel, Palestine and the United Nations to achieve these essential objectives. They express concern that the Opinion will hardly serve the objective of achieving the "two-State solution", thus allowing for the peaceful coexistence of the Israeli and Palestinian peoples.

Separate opinion of Judge Yusuf

1. In the view of Judge Yusuf, Israel's continued presence in the Occupied Palestinian Territory is not only unlawful on account of its violation of both the prohibition on the acquisition of territory by force and the right of the Palestinian people to self-determination. Judge Yusuf posits that Israel's presence is also illegal because the excessively prolonged character of its occupation is contrary to the law of occupation (*jus in bello*) and the law on the use of force (*jus ad bellum*).

2. With respect to the law of occupation (*jus in bello*), Judge Yusuf notes that, although the rules of that body of law do not set a precise time-limit on occupation, they are nevertheless premised on the assumption that belligerent occupation must be temporary. Israel's 57-year occupation, which the Security Council had already characterized as prolonged in 1980, has become excessively prolonged. This excessively prolonged occupation has indefinitely subjected the Palestinian people to alien subjugation and domination, in defiance of and contrary to the rules and tenets of the law of occupation. Israel's prolonged occupation has changed the characteristics of the occupation, decoupling it from its normative framework and bringing it to a situation closer to colonial occupation or conquest than to belligerent occupation under the contemporary law of occupation. It is therefore to be considered unlawful under the law of occupation (*jus in bello*).

3. As for the law on the use of force (*jus ad bellum*), Judge Yusuf notes that occupation constitutes a continued use of force in foreign territory and is therefore subject to the law on the use of force. In order to be lawful, therefore, the occupying Power must be able to show that its occupation meets the conditions of necessity and proportionality as an exercise of the right to self-defence. According to Judge Yusuf, Israel's excessively prolonged occupation does not satisfy either of these conditions and its maintenance is a violation of the law on the use of force (*jus ad bellum*).

Declaration of Judge Xue

While voting in favour of the operative part of the Opinion, Judge Xue wishes to clarify a few points concerning the application of the principle of self-determination in the present proceedings. First, she opines that the peremptory character of the right to self-determination of the Palestinian

people rests on a solid legal basis of international law as reflected in the General Assembly resolutions 1514 (XV) and 2625 (XXV). Second, she considers that General Assembly and Security Council resolutions provide strong support for the Court's conclusion concerning the unlawfulness of Israel's continued presence in the Occupied Palestinian Territory, although such resolutions do not directly address this matter. Finally, she underscores that Israel's policies and practices in the Occupied Palestinian Territory cannot be justified by its security concerns. In conclusion, she states that Israel must immediately cease its internationally wrongful acts, while the ultimate realization of the right of the Palestinian people to self-determination lies in the final settlement of the conflict between the State of Palestine and the State of Israel.

Separate opinion of Judge Iwasawa

In the view of Judge Iwasawa, the Advisory Opinion has an important temporal limitation in that it does not address Israel's conduct in the Gaza Strip after 7 October 2023.

Judge Iwasawa points out that while "the Occupied Palestinian Territory" includes the West Bank, East Jerusalem, and Gaza, the situation of Gaza is distinct. He explains that the Court adopts the "functional approach" regarding the application of the law of occupation to Gaza, by stating that Israel is bound by certain obligations under the law of occupation that are commensurate with the degree of its effective control over Gaza. In doing so, the Court does not take a position as to whether Gaza remained "occupied" within the meaning of the law of occupation after 2005.

Judge Iwasawa agrees with the Court's analysis on Israel's adoption of "discriminatory legislation and measures" for the most part, but, in his view, the discriminatory aspect of the dual legal system introduced by Israel in the West Bank deserved more attention.

The Court concludes that the "separation" implemented by Israel in the West Bank between the Palestinian population and settlers constitutes a breach of Article 3 of CERD, without qualifying it as apartheid.

According to Judge Iwasawa, the Court concludes that Israel's continued presence in the Occupied Palestinian Territory is illegal because its policies and practices violate the prohibition of the acquisition of territory by force and impede the right to self-determination. This conclusion is not predicated on a finding that Israel violated its obligations under the law of occupation.

Judge Iwasawa agrees with the Court that the illegality of Israel's continued presence relates to the entirety of the Occupied Palestinian Territory, including Gaza.

The Court concludes that Israel has an obligation to bring to an end its continued presence in the Occupied Palestinian Territory "as rapidly as possible". Judge Iwasawa points out that Israel is not under an obligation to withdraw all its armed forces from the Occupied Palestinian Territory immediately and unconditionally.

Separate opinion of Judge Nolte

Judge Nolte writes separately to elaborate on the scope of the analysis of the Court and to express his disagreement with the additional observation of the Court that Israel's policies and practices violate Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Regarding the first point, Judge Nolte explains that the way in which the Court defines the factual and legal scope of its analysis is rooted in the differences between advisory proceedings and contentious proceedings. He points out that these differences inform the standards by which the Court arrives at its factual and legal conclusions. Since the Court has not made a fuller determination of

Israel's responsibility for its conduct in the Occupied Palestinian Territory, Judge Nolte is of the view that Israel's responsibility for specific conduct or situations would need to be established in other proceedings. He points out that Israel's security concerns would need to be considered carefully when assessing its responsibility with respect to any specific situation. Judge Nolte submits that the Advisory Opinion would have benefited considerably from a visible engagement by the Court with information from official Israeli sources.

With respect to the second point, Judge Nolte points out that the Advisory Opinion cannot be understood as finding that the prohibition of apartheid has been violated by Israel, given the absence of any discussion of the subjective element of apartheid, the specific intent, which is a core element of the prohibition. He is also not convinced that the Court had sufficient information before it to conclude that Israel's policies and practices amount either to apartheid or to racial segregation. In his view, the Court should therefore have refrained from observing that Article 3 of CERD has been breached. Judge Nolte notes that this would not have prevented the Court from observing that Israel's practices and policies have segregative effects which constitute violations of other provisions of CERD.

Joint declaration of Judges Nolte and Cleveland

Judges Nolte and Cleveland agree that Israel's continued presence in the Occupied Palestinian Territory is unlawful and that Israel must withdraw "as rapidly as possible". However, they are of the view that a fuller explanation is necessary.

They point out that the Court's Opinion excludes consideration of conduct by Israel in the Gaza Strip in response to the attack carried out against it by Hamas and other armed groups on 7 October 2023.

They agree with the Court that the legality of the presence of occupying forces in an occupied territory is determined by the international rules regarding the use of force in foreign territory (*jus ad bellum*), which absolutely prohibit the acquisition of territory by force. They note that the Court has not addressed the question whether the presence of Israel in the Occupied Palestinian Territory since 1967 resulted from an initial lawful or unlawful use of force, but that the relevant question today is whether Israel's continuing presence can still be justified under the *jus ad bellum*. Judges Nolte and Cleveland recognize that Israel has legitimate security concerns, given that the legitimacy of Israel's existence as a State is called into question by a number of States and non-State actors and that Israel has suffered numerous attacks coming from the Occupied Palestinian Territory. However, they submit that the right of self-defence can never justify the acquisition of territory by force. Any such justification is lost once the presence of the occupying Power becomes a vehicle for achieving annexation.

Judges Nolte and Cleveland are of the view that Israel's expansion of settlements and related policies, together with governmental expressions of intent to extend permanent sovereignty, express a clear intention to permanently appropriate East Jerusalem and the West Bank in its entirety, contrary to the prohibition on the acquisition of territory by force.

According to Judges Nolte and Cleveland, Israel's violations of the prohibition of the acquisition of territory by force and the accompanying frustration of the right of the Palestinian people to self-determination renders Israel's presence in the Occupied Palestinian Territory unlawful. Israel therefore is required to withdraw from the Occupied Palestinian Territory "as rapidly as possible". However, they emphasize that this assessment is without prejudice to the exclusion from the Court's analysis of conduct by Israel in the Gaza Strip in response to the attack carried out against it by Hamas and other armed groups on 7 October 2023. Judges Nolte and Cleveland further highlight that the duty to withdraw as rapidly as possible does not necessarily need to be fulfilled in the same way, or at the same time, with respect to every part of the Occupied Palestinian Territory.

Declaration of Judge Charlesworth

While agreeing with the Court's replies to the questions posed by the General Assembly, Judge Charlesworth addresses two issues where she thinks that more detailed reasoning is desirable.

Judge Charlesworth argues that the Court's recognition of discrimination on multiple grounds could have been explained more fully in the context of Palestinians in the Occupied Palestinian Territory. In her view, material before the Court indicates the existence of discrimination on multiple and potentially intersecting grounds, including gender and age.

Judge Charlesworth further explains the reason why Israel's effective control of the Occupied Palestinian Territory lacks a valid legal basis. She considers that Israel's occupation is lawful only if it is justified under the rules concerning the use of force. With respect to the right to self-defence in particular, Judge Charlesworth points out that this right must be exercised in compliance with the requirements of necessity and proportionality. She is of the view that the intensity, the territorial scope and the temporal scope of Israel's policies and practices undermine the proposition that Israel's occupation qualifies as an act of self-defence.

Separate opinion of Judge Cleveland

1. Judge Cleveland joins Judge Nolte in a joint declaration concerning the question of the legality of Israel's continuing presence in the Occupied Palestinian Territory. She also writes separately to elaborate on the Court's approach to the question of Gaza, the concept of annexation, and the preemptory status of the right to self-determination under international law.

2. Judge Cleveland notes that the advisory request, and the Court's Opinion, focus on the enduring denial of the right to self-determination of the Palestinian people, a conclusion she shares. She observes, however, that both the people of Palestine and Israel have a right to self-determination, including the right to live in peace within secure and recognized borders. She believes that the Court had a responsibility to take into greater account the ongoing threats to Israel and its people. She also expresses regret that Israel did not meaningfully participate in the advisory proceedings, and that the General Assembly request asked the Court to address only the policies and practices of Israel, rather than the legal consequences arising from the conduct of all relevant actors. She notes that resolution of the Israel-Palestine situation will not be achieved until the harms committed by all relevant actors are acknowledged and addressed.

3. Judge Cleveland observes that the situation in the Gaza Strip is catastrophic. She notes, however, that it is unclear what legal and practical conclusions can be drawn from the Court's Opinion regarding Israel's long-standing conduct toward Gaza. The Court imposes a temporal limitation that excludes from the Opinion's scope conduct by Israel in the Gaza Strip in response to the attack by Hamas and other armed groups on 7 October 2023. As a result, the Court does not address how the current conflict may affect the legality of Israel's pre-existing and continuing military engagement with Gaza.

4. She notes that the Opinion otherwise says very little about the situation in the Gaza Strip. The Court's conclusion that aspects of the law of occupation continued to apply with respect to Gaza between 2005 and 2023 does not identify what those obligations were or find any violations of them. The Court's discussion of Israel's settlement policies, annexation and related discriminatory practices focuses on the situation in East Jerusalem and the West Bank, not Gaza.

5. Most notably, Judge Cleveland observes that the key findings that underlie the Court's conclusion that Israel's presence in the Occupied Palestinian Territory is unlawful do not relate to Gaza. As the Court makes clear, the legality of an occupation is determined by the *jus ad bellum*, which prohibits the acquisition of territory by force. The Court finds that Israel's practices of settlement and annexation have violated this principle. The Court, however, makes no finding that Israel has expanded settlements or sought to annex Gaza, or that Israel's presence in relation to the Gaza Strip otherwise is unlawful under the *jus ad bellum*. She agrees that the right to self-determination of the Palestinian people includes the right to territorial integrity, but the Court does not explain how this principle renders Israel's presence unlawful under the *jus ad bellum* with respect to Gaza.

6. Judge Cleveland therefore agrees with the Court's reply that "the State of Israel's continued presence in the Occupied Palestinian Territory is unlawful" with respect to East Jerusalem and the West Bank. However, in her view the Court's temporal limitation on the scope of the Opinion, together with the Court's failure to substantiate a *jus ad bellum* analysis with respect to Gaza, render its determination that Israel's presence is unlawful inapplicable to the current situation in the Gaza Strip. Nevertheless, she regrets that the Court did not make clearer certain ongoing responsibilities of Israel under the law of occupation, human rights law and other principles of international law with respect to the long-standing tragic situation in Gaza.

7. Regarding the concept of annexation, Judge Cleveland observes that, although the General Assembly chose to frame its request in terms of "annexation", the relevant question under international law is whether a State has sought to "acquire" foreign territory by force. This prohibition is not limited to situations involving the assertion of formal sovereignty over a territory but includes circumstances in which a State establishes control over a territory through forcible measures with the intent to appropriate that territory permanently. In her view, the Court's conclusion that Israel has violated the *jus ad bellum* prohibition on the acquisition of territory by force with respect to East Jerusalem and the West Bank is consistent with this reasoning.

8. Finally, Judge Cleveland notes the Court's recognition, for the first time, that the right to self-determination is a peremptory norm of international law. She believes that the Court's identification of the right to self-determination as a peremptory norm in "foreign occupations such as the present case" analogizes the situation before the Court to the right of peoples to be free from alien subjugation and foreign domination, which the Court has long recognized as a fundamental norm. The Court is therefore invoking the particular features of Israel's occupation — notably annexation and the accompanying suppression of self-determination over a period of decades. She observes, however, consistent with the Court's case law, that it is the character and importance of self-determination as an obligation *erga omnes*, not its status as a peremptory norm, that gives rise to the Court's conclusions regarding the responsibility of States and the United Nations.

Declaration of Judge Tladi

1. Judge Tladi concurs fully with the Court's finding that Israel's continued presence in the Occupied Palestinian Territory (OPT) is unlawful and that, consequently, Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible. In his declaration, he addresses certain salient points in the Advisory Opinion that merit further comment and analysis. These are: the description by some participants that Israel's occupation of the OPT is a bilateral dispute; the Court's overindulgence of arguments concerning its discretion to decide to not respond to a request for an advisory opinion; the right of self-determination and its status as a *jus cogens* norm; the significance of the Court's finding that the policies and practices of

Israel in the OPT amount to apartheid; the issue of Israel's security concerns; and the consequences flowing from Israel's breaches for the United Nations.

2. While agreeing with the reasons (based on the United Nations' special institutional responsibility towards Palestine) adopted by the Court to reject arguments by some participants that the Israeli occupation of the OPT is a bilateral dispute, Judge Tladi expresses his regret that the Court did not go further to ground its reasoning in the responsibility of the international community. According to Judge Tladi, the Court's reasoning does not account for the moral and social imperative why international law *must* concern itself with the situation in the OPT and, more to the point, why international law must dictate the "international community's" centrality in resolving that situation. On discretion, Judge Tladi explains his view that the Court's discretion to decline to give an advisory opinion "is extremely narrow". He believes that this is particularly the case where the request emanates from the other organs of the United Nations, i.e. the General Assembly or the Security Council. In Judge Tladi's view, what the Court has available to it is not discretion in the traditional sense, but rather it has recourse to an overriding consideration of judicial propriety that can provide a legitimate excuse for refusing to reply to a request for an advisory opinion.

3. Judge Tladi commends the Court's explicit recognition of the right of self-determination as a peremptory norm of international law in this Advisory Opinion. However, he points out that the Opinion is ambivalent about the consequences arising from the peremptory status of the right to self-determination. Further, Judge Tladi explains his disagreement with the Court's language in paragraph 274 because it might be misunderstood to mean that the identified consequences for third States flow not from the peremptory status of the right of self-determination but rather from the *erga omnes* character of the obligations breached. He criticizes the Court's approach since there is virtually no support for the view that the *erga omnes* character of the obligation also gives rise to the consequences identified in Article 41 of the ILC's Articles on State Responsibility.

4. In his declaration, Judge Tladi explains that, in his view, Israel's policies and practices in the OPT are in breach of the prohibition of racial segregation and apartheid. He also highlights the severity and systematic nature of these practices.

5. In respect of arguments by some participants concerning Israel's security concerns, Judge Tladi explains that while he understands the Court's decision not to delve deeply into the issue, he finds it important to address the issue more explicitly. Judge Tladi's declaration opines that international law is not agnostic to security concerns, and that security interests are protected through rules of international law such as the duty to co-operate, and the law of the Charter on the prohibition on the use of force (including self-defence and the rules on the collective security framework). After reviewing the applicable legal framework concerning the Israeli occupation of the OPT, he concludes that security interests cannot override legal rules, and certainly not the most fundamental rules having the character of *jus cogens*.

6. Judge Tladi's declaration also delves into the obligations of the United Nations arising from the Opinion. He explores some practical and concrete actions by which the political organs of the United Nations can implement their obligations, such as acting positively on Palestine's request for membership in the United Nations and considering mechanisms to ensure Israel's compliance with its reparation obligation identified in the Opinion.

7. Judge Tladi concludes by urging the United Nations to act upon the advice provided by the Court to promote the resolution of this conflict.
