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

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF
THE AFRICAN UNION

25 July 2023

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I – PRELIMINARY REMARKS

1. In light of the great importance of the questions now before the International Court of Justice (the "**Court**"), the African Union is honoured to intervene in these advisory proceedings. Advisory Opinions are a prime way for the Court to exercise its role as a principal organ of the United Nations ("**UN**"), and to further strengthen the function and place of international law in global affairs. Assisting the Court in its office is the paramount duty and pride of any international organisation.

2. In this Written Statement, the African Union will set out its preliminary observations and initial submissions with respect to the questions submitted to the Court concerning the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, pursuant to Resolution A/RES/77/247 ("**Resolution 77/247**") of the General Assembly of the UN (the "**General Assembly**").

A. INTRODUCTION

3. From the first resolutions of the UN[1] in this respect to the latest,[2] the situation of Palestine has given rise to hundreds of reports, submissions, resolutions, and comments, in a multilateral effort to, one day, hopefully, achieve a "a peaceful, just, lasting and comprehensive solution of" that question.[3] This very Court has had the opportunity, nearly twenty years ago, to bear on the matter – delivering an advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory (the "**Wall Advisory Opinion**").[4]

4. For its part, the African Union has, always and consistently, supported the multilateral efforts to deliver a just and lasting solution to the Palestinian situation,[5]

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1 General Assembly Resolution 181(II), 'Future Government of Palestine' (A/RES/181(II) of 29 November 1947), and Security Council Resolution 42 (S/RES/42 of 5 March 1948).

2 **Dossier No. 3**, General Assembly Resolution 77/247, 'Israeli Practices Affecting the Human rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem' (A/RES/77/247 of 30 December 2022); **Dossier No. 1372**, Security Council Resolution 2334 (S/RES/2334 of 23 December 2016).

3 **Dossier No. 834**, General Assembly Resolution 74/89, 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem' (A/RES/74/89 of 26 December 2019), p. 2.

4 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136.

5 See, e.g., Palestinian Rights Committee, *Marking Anniversary of Nakba, President Tells Palestinian Rights Committee "Tragedy Constitutes a Scar on Humanity"* (GA/PAL/1453 of 15 May 2023), remarks by Salem M. Matug, Representative of the Office of the Permanent Observer of the African Union.

including through its participation as observer to the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People ("**Palestinian Rights Committee**"). The African Union has also frequently expressed its support to the Palestinian people and deplored their mounting plight, taking a stand against all acts and conduct, from any party, including Israel, susceptible to worsen the situation,[6] or likely to divert the international community from a much-needed two-states solution.[7] In doing so, the African Union has persistently maintained that "[p]rogress cannot be made […] unless both parties agree on a way forward, together, based on relevant UN resolutions, international law and joint agreements."[8]

5. This remains the situation today, after decades of failed hopes, and while the situation on the ground keeps deteriorating.[9] In support of achieving progress, Resolution 77/247 has thus asked the Court to opine on two questions:

   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 [the first question] 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?"

6. These questions go to the heart of the Palestinian situation, and the African Union is confident that their resolution cannot but contribute substantially to any future progress in bringing about peace and justice in the region.

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6 **Exhibit AU-6**, Statement of the Chairperson of the African Union Commission on the Situation in Gaza, 7 August 2022; **Exhibit AU-7**, Statement of the Chairperson of African Union Commission on the American Decision to Recognize Jerusalem as the Capital of Israel, 6 December 2017.

7 Palestinian Rights Committee, *Amid Creeping Annexation, Shrinking Civil Society Space for Palestinians, Israel Must Be Held Accountable, Speakers Stress at Meeting Marking International Solidarity Day* (GA/PAL/1447 of 29 November 2022).

8 Palestinian Rights Committee, *Marking International Solidarity Day, Permanent Observer Tells Palestinian Rights Committee Israel's Illegal Settlements Signal Rejection of Two-State Solution* (GA/PAL/1442 of 29 November 2021).

9 Several documents and fact-finding missions from the UN refer to "negative trends" on the ground. See, e.g., **Dossier No. 1240**, 'Protection of the Palestinian civilian population' (A/ES-10/794 of 14 August 2018), para. 6; Resolution 77/247, *supra* note 2, para. 2: "Deeply regretting that 55 years have passed since the onset of the Israeli occupation, and stressing the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine".

7. This Written Statement thus represents the views of the African Union, whose membership considers that the resolution of the questions asked to the Court constitute a matter of systemic importance in international law. As the Court recognized, the African Union "is likely to be able to furnish information on the questions submitted to the Court by the General Assembly."[10]

B. THE INTEREST OF THE AFRICAN UNION IN THESE ADVISORY PROCEEDINGS

8. The African Union, established on 11 July 2000, is a regional agency within the meaning of Article 52 of Chapter VIII of the Charter of the United Nations (the "**Charter**"). The African Union has a membership of fifty-five African States. Pursuant to its Constitutive Act, the African Union is tasked with "promot[ing] and defend[ing] African common positions on issues of interest to the continent and its peoples".[11]

9. The African Union has a direct interest in these proceedings, for several, non-exhaustive and cumulative, reasons:

   a. Having themselves suffered through the evils of colonisation, African States have a keen interest in the occupation of the Palestinian territory. The complete decolonisation of the African Continent is one of the primary objectives of the African Union, in line with the goals of its predecessor, the Organization of African Unity (the "**OAU**"), whose Charter's Preamble had emphasized the need "to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neo-colonialism in all its forms".[12] In the same vein, the African Charter on Human and Peoples' Rights provides that "[a]ll peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural."[13] The African Union, at the celebration of the OAU's fiftieth anniversary, reiterated its continued commitment to the "completion of

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10 *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, The Court authorizes the African Union to participate in the proceedings (Press Release No. 2023/19 of 13 April 2023).

11 **Exhibit AU-1**, Constitutive Act of the African Union (11 July 2000), Article 3.

12 **Exhibit AU-2**, OAU Charter (25 May 1963), Preamble, para. 6.

13 African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 ("**ACHPR**"), Article 20(3).

the decolonization process in Africa; to protect the right to self-determination of African peoples still under colonial rule."[14]

This background provides the Union with particular knowledge, experience, and interest in modern situations that involve issues of occupation and self-determination.

b. Beyond the fight against colonisation, the African Union and the OAU have been at the forefront of multilateral efforts to end three international legal wrongs that find echoes in the current Palestinian situation:

i. *The liberation of Namibia*. The OAU played a key role in Namibia's fight for freedom and independence from apartheid South Africa.[15] The OAU, in particular, led the diplomatic and legal efforts that resulted in multiple decisions from the Court on this matter.[16] In that case, the Court's role in clarifying the law, and in particular in finding South Africa's conduct as unlawful and under an obligation to unconditionally withdraw from the occupied territory,[17] contributed to the eventual exercise by Namibia of its right of self-determination.

ii. *The situation of apartheid in South Africa*. From its very inception, the OAU has fought against the crime of apartheid committed by South Africa.[18] The African Union continues to condemn such systems of racial discrimination, and joins all efforts to prevent and eradicate apartheid anywhere in the world.[19]

iii. *The decolonisation of Chagos*. Africa was not only the continent most afflicted by colonisation: it has also been the stage for some of the most glaring failures to decolonise, with a prime example in the United Kingdom's longstanding refusal to return the Chagos Archipelago to

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14 **Exhibit AU-3**, Solemn Declaration on the 50th Anniversary of the OAU/AU, Assembly/AU/Decl.3(XXI), May 2013, para. B(i).

15 See, e.g., **Exhibit AU-4**, Council of Ministers of the Organization of African Unity, meeting in its Eleventh Ordinary Session in Algiers, Algeria, from 4 to 12 September 1968, Resolution on Namibia, CM/Res. 150 (XI).

16 In *South West Africa* (Liberia v. South Africa); *South West Africa* (Ethiopia v. South Africa); and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (1970).

17 *Idem*, Advisory Opinion, I.C.J. Reports 1971, p. 16 ("***Namibia Advisory Opinion***").

18 **Exhibit AU-5**, Resolutions Adopted by the first Conference of Independent African Heads of State and Government held in Addis Ababa, Ethiopia, from 22 to 25 May 1963, CIAS/PLEN.2/REV.2, Agenda Item II: Apartheid and Racial Discrimination.

19 See *ibid.*, at 4: "CONDEMNS racial discrimination in all its forms in Africa and all over the world".

Mauritius. As part of its decades-long endeavour to put an end to this injustice, the African Union was honoured to intervene in the proceedings leading to the *Chagos Advisory Opinion*,[20] making it a chief witness to the power and importance of the Court's advisory proceedings in bringing about the end of colonization and protecting the right of self-determination.[21]

The African Union's unique insight on these issues helps explain its interest and eagerness to assist the Court in these proceedings.

c. Palestine is a neighbouring territory to the African Union, abutting Egypt, which is not only a founding member of the OAU, but also a key protagonist in the evolving situation of Palestine. Ignoring the legal consequences of a long-standing and concerning situation of such magnitude at its doors would not only be a mistake for the African Union – it would be irresponsible. Accordingly, the African Union is duty bound to contribute to a solution to the Palestinian situation.

d. Finally, many Member States of the African Union are also, in parallel, members of the Arab League and the Organisation of Islamic Cooperation. While these intergovernmental organisations will also present observations of their own in these advisory proceedings,[22] the African Union includes States that are not members of these groupings, and can thus assist the Court with insights and experience arising from a continent-wide variety of States.

10. All these reasons explain the African Union's decision to request "the AU Commission, through the Office of the Legal Counsel, to exert all necessary efforts to make an AU written submission in accordance with Article 66 of the ICJ Statute".[23]

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[20] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the African Union (1 March 2018).

[21] *Idem*, Advisory Opinion, I.C.J. Reports 2019, p. 95 ("**Chagos Advisory Opinion**").

[22] See *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, 'The Court authorizes the League of Arab States to participate in the proceedings' (Press release 2023/12 of 10 March 2023), and *idem*, 'The Court authorizes the Organisation of Islamic Cooperation to participate in the proceedings' (Press release 2023/16 of 31 March 2023).

[23] **Exhibit AU-8**, African Union, Declaration on the Situation in Palestine and the Middle East, Assembly/AU/Decl.2(XXXVI), para. 7.

C. THE BACKGROUND TO THESE ADVISORY PROCEEDINGS

11. The historical background to the situation in Palestine has been aptly summarised by the Court in the *Wall Advisory Opinion*.[24] Accordingly, the sections below will offer a mere overview of that background, before focusing on the situation as it stands today, including in view of the most recent developments. Further historical background shall be provided when reviewing certain key issues, in the following Chapters.

1. The Palestinian Situation Qualifies as Occupation under International Law

12. Following the First World War, the Palestinian Territory was placed under the Mandate of the League of Nations, and put under British administration.[25] During this period, the former Ottoman province saw a surge of arrivals from Jewish populations,[26] in line with the Mandate's avowed goal of creating a "national home for the Jewish people".[27] As explained further below, however,[28] the Mandate did not contemplate the establishment of a Jewish State over the entirety of the Palestinian territory; indeed, the Council of the League of Nations had explicitly required the United Kingdom not to "prejudice the civil and religious rights of existing non-Jewish communities in Palestine," further entrusting it with "safeguarding the civil and religious rights of all inhabitants of Palestine, irrespective of race and religion."[29]

13. In 1947, the General Assembly passed a resolution ("**Resolution 181 (II)**") on the future government of Palestine,[30] which called upon the parties involved to agree to a partition of the territory, with a special status reserved for the Holy City of Jerusalem. This plan was never implemented, and, on the proclamation of the State of Israel in May 1948 and the subsequent relinquishment of the United Kingdom's mandate, war broke out.

14. The international armed conflict that flared up between Israel and its neighbouring States was fed by the embers of decade-long tensions between the Jewish and local

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[24] See *Wall Advisory Opinion*, paras. 70 to 77.

[25] See UN, 'Origins and Evolution of the Palestine Problem: 1917-1947 (Part I)', available at: https://www.un.org/unispal/history2/origins-and-evolution-of-the-palestine-problem/part-i-1917-1947/.

[26] *Ibid.*: "At the culmination of a quarter century of Mandatory rule, Palestine had been radically transformed in demographic terms."

[27] British Mandate for Palestine, Council of the League of Nations, (1922) 3 *League of Nations Official Journal* 1007 ("**Palestine Mandate**").

[28] *Infra*, paras. 68-76.

[29] Palestine Mandate, Article 2.

[30] Resolution 181 (II), *supra* note 1.

Arab populations. In this context, the military intervention by the neighbouring States failed to put an end to unilateral Israeli actions. As a result of attacks against Palestinian cities and villages, countless Palestinian individuals and families left; to this day, nearly 6 million Palestinians are registered as refugees, scattered throughout the Middle East.[31]

15. The following armistice saw Israel and Jordan agree on an armistice line that became known as the "Green Line".[32] However, the Palestinian territories East of that line, as well as the Gaza strip, eventually fell under Israel's occupation following the Six-Day War of 1967. This led to a unanimous Resolution from the Security Council, calling on Israel to secure the "[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict".[33] Further resolutions from the Security Council later condemned "in the clearest possible terms" the actions by Israel "aimed at the incorporation of the occupied section" of the West Bank.[34]

16. This included Jerusalem, a place of deep historical and religious importance. In line with Resolution 181 (II), Jerusalem was meant to be designated as a *corpus separatum* subject to an international regime.[35] As with the partition of Palestine, however, this did not happen: instead, following the Six-Day War, Israel came to exercise control over the entirety of the City, West as well as East – and to ignore the many international protests decrying this *fait accompli*.[36] In a language repeated several times hence (yet still unheeded), the Security Council has condemned any attempt at changing the status of Jerusalem:

> […] all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status.[37]

17. Notwithstanding, since the enactment of the Basic Law of 1980, Israel has purported to adopt Jerusalem as the "complete and united" capital of Israel,[38] *de jure* annexing

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31 See United Nations Relief and Works Agency for Palestine Refugees in the Near East, 'Who are Palestine Refugees', available at: https://www.unrwa.org/palestine-refugees.

32 Jordan-Israel General Armistice Agreement (3 April 1949), 42 UNTS 304 (1949), Articles V and VI.

33 **Dossier No. 1245**, Security Council, Resolution 242 (S/RES/242 of 22 November 1967, "**Resolution 242**").

34 *Wall Advisory Opinion*, para. 75, citing **Dossier No. 1257**, Security Council Resolution 298 (S/RES/298 of 25 September 1971).

35 Resolution 181 (II), *supra* note 1, Part III ('City of Jerusalem').

36 See, e.g., **Dossier No. 1257**, Security Council Resolution 298 (S/RES/298 of 25 September 1971), paras. 3 and 4.

37 **Dossier No. 1247**, Security Council Resolution 252 (S/RES/252 of 21 May 1968); see also **Dossier No. 1257**, Security Council Resolution 298 (S/RES/298 of 25 September 1971).

38 Israel: Basic Law of 1980, Jerusalem, Capital of Israel, 5 August 1980, available at: https://www.refworld.org/docid/3ae6b52f14.html.

this part of the Holy City. This move was condemned by the UN, with the General Assembly calling upon states not to recognize the Basic Law, and to withdraw any diplomatic missions from the City of Jerusalem.[39] And while, through the 1993 Oslo Accords, Israel and the Palestine Liberation Organization ("**PLO**") agreed to hold negotiations over the future of the City,[40] the matter remains unresolved.

18. It was in light of this history and subsequent developments that the Court confirmed, in the *Wall Advisory Opinion*, what the international community had been protesting for decades: that, under customary international law, "[a]ll these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power."[41]

19. The situation has, however, deteriorated since the Court rendered the *Wall Advisory Opinion*, with Israel laying down deep roots in the occupying territory, by (i) displacing Palestinian populations;[42] (ii) establishing ever more "settlements" in the Palestinian territory,[43] with knock-down effects in terms of violence in the area;[44] (iii) building infrastructures, such as bypass roads, designed to partition and morsel the territorial integrity of Palestinian lands;[45] and (iv) extending its control and its *de facto* annexation of East Jerusalem and changing its demographic character. To this should be added, of course, Israel's failure to stop building the very Wall (the "**Separation Wall**") found unlawful by the Court in 2004.[46] All these facts have been duly ascertained and described by countless, successive publications by fair and

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39 **Dossier No. 1273**, Security Council Resolution 476 (S/RES/476 of 30 June 1980), and **Dossier No. 1274**, Security Council Resolution 478 (S/RES/478 of 20 August 1980).

40 **Dossier No. 1302**, Letter addressed to the Secretary- General (A/48/486 - S/26560 of 8 October 1993), Annex, Declaration of Principles on Interim Self-Government Arrangements (13 September 1993) ("**Oslo I Accords**"), Article V.

41 *Wall Advisory Opinion*, para. 78.

42 **Dossier No. 758**, Note of the Secretary-General, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories' (A/77/501 of 3 October 2022), paras. 12-16, describing the "Annexation of Masafer Yatta", and describing it (at para. 8) as "the largest displacement of Palestinians since 1967[, which] may amount to forcible transfer, a grave breach of international humanitarian law.".

43 As acknowledged by the Court in *Wall Advisory Opinion*, para. 120, citing in particular **Dossier No. 1267**, Security Council Resolution 465 (S/RES/465 of 1 March 1980). For more recent developments, see Report of the Secretary-General, 'Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and the Occupied Syrian Golan' (A/77/493 of 3 October 2022), paras. 4-16; **Dossier No. 758**, Note of the Secretary-General, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories' (A/77/501 of 3 October 2022), paras. 17-29.

44 **Dossier No. 1267**, Security Council Resolution 465, *supra* note 43, paras. 28-42. See also **Dossier No. 1794**, Human Rights Committee ("**HRC**"), 'Concluding observations on the fifth periodic report of Israel' (CCPR/C/ISR/CO/5 of 5 May 2022), para. 24.

45 **Dossier No. 1267**, Security Council Resolution 465, *supra* note 43, in particular para. 28.

46 **Dossier No. 1794**, *supra* note 44, para. 14.

impartial sources; they are key to the questions posed to the Court by Resolution 77/247, as explained below, in Chapter III, section **B**.

2. The Palestinian People is Deprived of its Right to Self-Determination

20. The Mandate established over Palestine in 1922 was meant to be temporary.[47] Palestinians would, eventually, exercise their right of self-determination,[48] just like all other peoples that found themselves under the mandate and trusteeship framework.[49] The importance of this goal lies in the fact that self-determination, under international law and as confirmed many times by the Court,[50] is a "fundamental human right",[51] which all states have a duty to respect.[52] Accordingly, the Mandate had put on the United Kingdom the obligation to secure the "development of self-governing institutions […] safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."[53]

21. This was not to be. As further developed below in assessing the legal status of the occupation,[54] by the expiration of the Mandate, the creation of the State of Israel, and the subsequent wars and occupation has prevented any exercise by the Palestinian People of its right of self-determination. While this did not fully prevent steps by the Palestinian People to exercise that right – and the African Union, as discussed below,[55] considers that Palestine meets the criteria of statehood under international law – all steps taken in this respect remain short of a genuine exercise of the right to self-determination, which would require, as a "minimum requirement of justice", the creation of a "politically independent State in all of the occupied Palestinian territory".[56]

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47 Palestine Mandate, *supra* note 27.

48 As put in Article 22 of the Covenant of the League of Nations: "Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory *until such time as they are able to stand alone*." (emphasis added)

49 *Namibia Advisory Opinion*, paras. 46, 53: "the ultimate objective of the [mandate system] was the self-determination and independence of the peoples concerned."

50 *Wall Advisory Opinion*, para. 88.

51 *Chagos Advisory Opinion*, para. 144.

52 Article 1(2), of the UN Charter; General Assembly Resolution 2625 (XXV), 'Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations' (A/RES/2625 (XXV) of 24 October 1970).

53 Palestine Mandate, *supra* note 47, Article 2.

54 *Infra*, Chapter III, Section **A**.

55 *Infra*, para. 110.

56 **Dossier No. 1429**, Note by the Secretary-General, 'Situation of human rights in the Palestinian territories occupied since 1967' (A/77/356 of 21 September 2022), para. 12.

22. It bears stressing, in this context, that in the *Wall* case the Court had laid to rest any concern that the Palestinians did not qualify as a "people" deserving of self-determination: as the Court noted, even Israel recognised it.[57] Yet, that "inalienable right[]"[58] of the Palestinian people to this day remains frustrated.

23. Indeed, as will be elaborated below,[59] the ongoing occupation of the Palestinian territory by Israel prevents the State of Palestine from fully enjoying and exercising its statehood. The most recent report from the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 provides evidence that a set of Israeli policies, which includes the establishment of settlements on Palestinian lands, is contributing to a territorial fragmentation that denies full territorial sovereignty to the State of Palestine, and thus prevents the Palestinian People's exercise of its right to self-determination.

3. The Wall Advisory Opinion and its Legal Consequences

24. The Court in the Wall Advisory Opinion had thus made several key findings:

    a. Israel's control over the territory qualifies as occupation under international law;[60] and

    b. Israel's conduct, including the construction of the Wall, "severely impede[d] the exercise by the Palestinian people of its right to self-determination, and [wa]s therefore a breach of Israel's obligation to respect that right."[61]

    c. From these conclusions that engaged the international responsibility of Israel,[62] the Court further ruled that a number of obligations ensued:

        i. Israel should comply with the obligations it had breached, including respect for the Palestinian people's right of self-determination, and compliance with the rules and principles of humanitarian and human rights law;[63]

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57 *Wall Advisory Opinion*, para. 118. See also *ibid.*, para. 162, acknowledging that the Court hoped to see "a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours".

58 As put in **Dossier No. 382**, General Assembly Resolution 3236 (XXIX), 'Question of Palestine' (A/RES/3236 (XXIX) of 22 November 1974).

59 *Infra*, paras. 103-118.

60 *Wall Advisory Opinion*, para. 78.

61 *Ibid.*, para. 122.

62 *Ibid.*, para. 147.

63 *Ibid.*, para. 149.

ii. Israel should ensure freedom of access to the Holy Places under its control;[64]

iii. Israel should put an end to the violations found by the Court, notably by ceasing to build further stretches of the Separation Wall, and dismantling those erected within the Palestinian territory.[65] The Court made clear, however, that this obligation extended not only to the Wall, but also to "its associated régime", whose underlying legal acts should "forthwith be repealed or rendered ineffective";[66] and

iv. Israel should repair the damages resulting from its breaches of international law, either through restitution or compensation.[67]

25. The Advisory Opinion was not, as has been alleged, an attack against Israel. To wit, the Court acknowledged Israel's point of view in this matter:

> The fact remains that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population. It has the right, and indeed the duty, to respond in order to protect the life of its citizens. The measures taken are bound nonetheless to remain in conformity with applicable international law.[68]

In its closing remarks, the Court also stressed that it had performed its mandate of assisting the General Assembly with a view to the "maintenance of international peace and security and the peaceful settlement of disputes".[69]

26. A few weeks after the Court rendered its opinion, the General Assembly voted overwhelmingly on a Resolution calling upon Israel to abide by the terms of the Court's decision.[70]

27. Unfortunately, it has been the common opinion of the international community that Israel has, so far, failed to abide by the *Wall Advisory Opinion*.[71] The International

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64 *Ibid.*

65 *Ibid.*, para. 151.

66 *Ibid.*

67 *Ibid.*, paras. 152-153.

68 *Ibid.*, para. 141. See also *ibid.*, para. 162, where the Court acknowledged that "[i]llegal actions and unilateral decisions have been taken on all sides".

69 *Ibid.*, para. 161.

70 **Dossier No. 1227**, General Assembly Resolution ES-10/15, 'Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem*' (A/RES/ES-10/15 of 20 July 2004).

71 See, e.g., **Dossier No. 1566**, HRC, 'Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout

Commission of Jurists noted, citing the factual findings of the UN Human Rights Committee (which had called on Israel to comply with the Advisory Opinion), that "[n]ot only has Israel failed to implement the Human Rights Committee's recommendations, but it has continued to expand the settlements and to transfer its own population into the" occupied Palestinian territory.[72]

4. Recent Developments, and the Particular Situation of East Jerusalem

28. Nearly two decades have now elapsed since the Court described Israel's actions in Palestine as attempting to create a situation of "*fait accompli*" that would be "be tantamount to *de facto* annexation".[73] Nothing has changed, save for the worse:[74]

    a. Has Israel stopped and reversed its occupation ? On the contrary, settlements have continued to be built all across the West Bank, uprooting Palestinians, and creating ever more holes in the territory that remains formally under the control of the Palestinian authorities. The Separation Wall continues to be built, in open defiance of the Court's findings, while bypass roads are further fragmenting the Palestinian territory, to the detriment of its inhabitants. Millions of refugees remain scattered across the globe, and the General Assembly had to extend the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("**UNRWA**") – which has thus the dubious honour of being the longest standing refugee organisation in the world.

    b. Has Israel finally upheld the Palestinian People's right of self-determination ? On the contrary, that right remains frustrated, in light of Israel's numerous policies and practices, in breach of international law (by themselves or in aggregate) that deny both the Palestinian People the exercise of its right to self-determination, and the State of Palestine the exercise of its full

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the Occupied Palestinian Territory, including East Jerusalem' (A/HRC/31/42 of 8 January 2016), para. 15: "In the 10 years since the International Court of Justice, in its advisory opinion dated 9 July 2004 [...] concluded that the construction of the wall in occupied territory and the settlements were illegal, the settler population in the West Bank, including East Jerusalem, has increased substantially."

72 International Commission of Jurists, 'Israel: Ensure Full Compliance with the International Covenant on Civil and Political Rights' (June 2020), available at: https://www.icj.org/wp-content/uploads/2020/06/Israel-ICCPR-compliance-Advocacy-Analysis-Brief-2020-ENG.pdf, p. 6.

73 *Wall Advisory Opinion*, para. 121.

74 See **Dossier No. 1372**, Security Council Resolution 2334, *supra* note 2, p. 2, mentioning the "negative trends on the ground, which are steadily eroding the two-State solution and entrenching a one-State reality."

sovereignty. Adding insult to injury, Israel enacted a new Basic Law in 2018 that included the following principle:

> The realization of the right to national self-determination in the State of Israel is exclusive to the Jewish People.[75]

Further, and in retaliation for the General Assembly's decision to seek the Court's Advisory Opinion, Israel has sought to starve the Palestinian Authority of funds legitimately owed to it.[76]

29. As for Jerusalem, its *de facto* and *de jure* annexation has continued unabated. In particular, Israel has ramped up the evictions of Palestinian citizens, on the cover of a law that permits the transfer of formerly Jewish property to the heirs of their previous owners – a law that offers no comparable remedy to dispossessed Palestinians.[77]

30. In Resolution 2334 (2016), the Security Council reiterated the long-standing concern of the international community with the Palestinian situation, and reaffirmed that "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law".[78] The Security Council further called the parties to abide by their international obligations, observe restraints in their dealings, and collaborate to achieve a "comprehensive, just and lasting peace in the Middle East".[79] A succession of reports by the UN Secretary-General have since found that Israel has skirted these clear directions from the Security Council.[80]

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75 Basic Law adopted on 19 July 2018 (also known as the "Jewish Nation-State Law"), Basic Principle 1(C), unofficial translation available at: https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf.

76 See **Dossier No. 1401**, 'Security Council, verbatim record, 78th year, 9290th meeting, 22 March 2023, Oral report of the Secretary-General pursuant to Security Council resolution 2334 (2016) of 23 December 2016' (S/PV.9290 of 22 March 2023), p. 4: "On 6 January, the Israeli Government approved a series of measures against the Palestinian Authority, including the transfer of Palestinian Authority tax revenues withheld by Israel of some USD 39 million to families of Israelis killed in Palestinian attacks. This measure was in response to the 30 December adoption of a UN General Assembly resolution requesting an advisory opinion by the International Court of Justice (ICJ) relating to Israel's occupation of Palestinian territory. On 16 January, 39 Member States signed a joint statement, reconfirming support for the ICJ and noting deep concern regarding the Israeli Government's punitive measures."

77 See UN News, *UN independent experts spotlight 'prima facie war crime' in East Jerusalem*, UN NEWS, 13 April 2023, available at: https://news.un.org/en/story/2023/04/1135602.

78 **Dossier No. 1372**, Security Council Resolution 2334, *supra* note 2, para. 1.

79 *Ibid.*, at 9.

80 **Dossier No. 1391**, Report of the Secretary-General, 'Implementation of Security Council resolution 2334 (2016)' (S/2021/584 of 18 June 2021), para. 2.

31. This served as background to Resolution 77/247. The first draft of that Resolution was put together at the 77th session of the Fourth Committee, and was sponsored by 13 States, including 6 Members States of the African Union.[81] 18 more countries joined the proposal, including another 6 Members States of the African Union.[82] A large majority of the African Union's Member States then voted in favour of the resolution, with the rest mostly abstaining,[83] for a final voting record of 98 to 17, with 52 abstentions. This record highlights the importance of this issue for the African Union. Likewise, Resolution 77/247 was eventually adopted by the General Assembly with the votes of most Member States of the African Union either in favour or abstaining.[84]

32. Finally, in early 2023, the Security Council made its first statement on the matter in years, in reaction to yet another announcement by Israel that, far from complying with its international obligations, it would expand and legalise the settlements on the West Bank.[85] The Security Council:

> [S]trongly underscore[d] the need for all parties to meet their international obligations and commitments; strongly oppose[d] all unilateral measures that impede peace, including, inter alia, Israeli construction and expansion of settlements, confiscation of Palestinians' land, and the "legalization" of settlement outposts, demolition of Palestinians' homes and displacement of Palestinian civilians.[86]

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81 See General Assembly Fourth Committee, 'Agenda Item 47' (A/C.4/77/L.12/Rev.1 of 10 November 2022). The African sponsors included Algeria, Egypt, Mauritania, Namibia, Senegal and Tunisia.

82 **Dossier No. 2**, Report of the Special Political and Decolonization Committee (Fourth Committee) 'Israeli practices and settlement activities affecting the rights of the Palestinian people and other Arabs of the occupied territories' (A/77/400 of 14 November 2022), para. 8, referring to Djibouti, Morocco, Niger, Somalia, South Africa, and Sudan.

83 *Ibid.*, para. 9.

84 General Assembly, '56th Plenary Meeting Verbatim Record' (A/77/PV.56 (Resumption 1) of 30 December 2022), p. 4.

85 Isabel Debre, *Israeli Cabinet ministers reject US criticism on settlements*, ASSOCIATED PRESS, 14 February 2023.

86 **Dossier No. 1400**, Statement by the President of the Security Council (S/PRST/2023/1 of 20 February 2023).

II – THE COURT HAS JURISDICTION TO GIVE THE ADVISORY OPINION REQUESTED

33. Before delivering any advisory opinion, the Court has first to review whether it has the jurisdiction to answer the questions posed to it, and whether it should exercise its discretion not to.[87]

34. As explained in this section, there is no doubt that the Court has jurisdiction in these advisory proceedings. That jurisdiction is governed by Article 65 of its Statute, which reads:

> The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.[88]

35. This provision includes two prerequisites for the validity of a request for an advisory opinion: (**A**) the request must be made by a duly authorized organ; and (**B**) the question put to the Court must be a legal one. As detailed below, both requirements are fulfilled in the present request, giving rise to the Court's duty to give the requested opinion (**C**).

A. THE GENERAL ASSEMBLY IS AUTHORISED TO REQUEST THE ADVISORY OPINION

36. According to the Charter, the General Assembly (like the Security Council), "may request the International Court of Justice to give an advisory opinion on any legal question."[89] By contrast with other organs of the UN, this right is not bound by "the scope of […] activities" of the General Assembly.[90] The latter is, in any event, endowed with a very broad competence under UN Charter Articles 10, 11 and 13, including competence with respect to "questions relating to the maintenance of international peace and security brought before it by any Member of the UN".[91]

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87 See, e.g., *Chagos Advisory Opinion*, para. 54, and the jurisprudence cited.
88 *Statute of the International Court of Justice*, 18 April 1946, Article 65.
89 Charter, Article 96(1).
90 Charter, Article 96(2).
91 Charter, Article 11(2).

37. The Court has confirmed many times that this provision allows the General Assembly to request an advisory opinion under Article 65 of its Statute.[92] The Court has also affirmed that the situation in Palestine pertains to international peace and security.[93] There is no denying that the Palestine situation has been under active consideration by the General Assembly for several decades prior to its decision to request an opinion from the Court. Accordingly, the "object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions."[94]

38. The General Assembly's competence is solely limited by Article 12(1) of the Charter, which reads:

> While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.[95]

39. As stressed by the Court in its jurisprudence, however, the practice arising from this provision has substantially evolved since the Charter was adopted, and the recent decades have evidenced "an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security."[96] As put by the Court in the *Kosovo Advisory Opinion*:

> The limit which the Charter places upon the General Assembly to protect the role of the Security Council is contained in Article 12 and restricts the power of the General Assembly to make recommendations following a discussion, not its power to engage in such a discussion.[97]

Be that as it may, the Court has also considered that a request for an advisory opinion does not qualify as a "recommendation", and is thus not limited by Article 12(1) of the Charter.[98]

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92 Most recently in *Chagos Advisory Opinion*, para. 56.
93 *Wall Advisory Opinion*, para. 17.
94 *Ibid.*, para. 50.
95 Charter, Article 12(1).
96 *Wall Advisory Opinion*, para. 27.
97 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403 ("**Kosovo Advisory Opinion**"), para. 40.
98 *Wall Advisory Opinion*, para. 25.

40. It has been suggested, during the debates preceding the adoption of the draft resolution by the Fourth Committee, that the language seeking an Advisory Opinion from the Court had been "inserted late in negotiations [… which] did not allow for sufficient consultations and is not the appropriate process for this type of request."[99] In the same vein, some States have considered that the questions for the Court adopted in the context of Resolution 77/247 "would have benefited from further discussion and consultations with the wider United Nations membership".[100]

41. There is, however, no particular "process" for the General Assembly or its Committee to adopt a resolution seeking the view of the Court on appropriate questions of international law; in absence of specific rule being violated, there is therefore no ground to hold Resolution 77/247 invalid.[101] The complaints regarding lack of consultations, for their part, ring hollow in circumstances where the situation in Palestine has been under consideration of the UN organs for several decades,[102] and is the subject of continuous monitoring and debate.

42. Just as in the *Wall Advisory Opinion*,[103] the Court should therefore consider that the General Assembly validly exercised its powers under Article 96(1) of the UN Charter.

B. THE QUESTIONS HAVE A LEGAL CHARACTER

43. The Court may answer a request for an advisory opinion only if the questions presented to it have a legal character.[104]

44. That the two questions presented to the Court by the General Assembly are legal in character cannot be doubted. On their face, these questions have been deliberately framed by the General Assembly as pertaining to legal issues. In particular, the focus of both questions is on the "legal consequences" and/or the "legal status" of certain

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99 See General Assembly Fourth Committee, 'Summary Record of the 25th Meeting of the 77th session' (A/C.4/77/SR.25 of 10 November 2022), statement by the United States, available on video: https://media.un.org/en/asset/k1p/k1p3p1b46n, at 44". It has further been suggested that the resolution was biased against Israel: *ibid.*, at 47". While this contention was made without any evidence, it has no impact on the validity of the General Assembly's request for an Advisory Opinion.

100 General Assembly, '56th Plenary Meeting Verbatim Record', *supra* note 84, p. 5, statement by Malta (Malta nonetheless voted in favour of the Resolution). See also *ibid.*, p. 3, statement by Portugal: "we believe that there should have been more in-depth consultations"; *ibid.*, p. 4, statement by Romania.

101 *Namibia Advisory Opinion*, para. 20; see also *Wall Advisory Opinion*, para. 34.

102 See *Kosovo Advisory Opinion*, para. 43, discussing the *Wall Advisory Opinion*, and noting that "[t]he situation in the occupied Palestinian territory had been under active consideration by the General Assembly for several decades prior to its decision to request an opinion from the Court and the General Assembly had discussed the precise subject on which the Court's opinion was sought."

103 *Wall Advisory Opinion*, para. 15.

104 *Chagos Advisory Opinion*, para. 57.

underlying facts. To echo the Court in the *Wall* case (in which the underlying question also pertained to "legal consequences"), these terms "necessarily encompasses an assessment of whether [the underlying conduct] is or is not in breach of certain rules and principles of international law."[105]

45. In other words, these are questions "framed in terms of law and rais[ing] problems of international law", which "are by their very nature susceptible of a reply based on law".[106] The Court has therefore jurisdiction to answer them.

46. And while doubts have been raised, during the adoption of Resolution 77/247, regarding the "technical formulation of the request",[107] the Court remains free to interpret the questions in a way that would align them with the legal nature of the proceedings.[108] This interpretative power is further meant to be exercised where a question lacks clarity or its legal character is ambiguous.[109] While the African Union does not consider that the questions posed to the Court lack in clarity, it recognises that the Court will therefore be able to interpret them in the manner most apt to elicit legal answers to the General Assembly's queries.

47. Accordingly, the Court has jurisdiction to give the requested Advisory Opinion.

C. THE COURT'S DUTY TO GIVE THE REQUESTED OPINION

48. Once the Court has established its jurisdiction, it may exercise its discretion not to give the requested opinion, in order to "to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations".[110] This question lies within the full discretion of the Court, in line with the permissiveness of Article 65 of its Statute.[111] The Court has held, however, that it will only exercise its discretion not to render an advisory opinion where there are "compelling reasons" not to.[112] To date, the Court has never exercised that discretion.[113]

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105 *Wall Advisory Opinion*, para. 39.

106 *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12 ("**Western Sahara Advisory Opinion**"), para. 15.

107 General Assembly, '56th Plenary Meeting Verbatim Record', *supra* note 84, statement by Portugal.

108 *Wall Advisory Opinion*, para. 38.

109 *Ibid.*

110 *Chagos Advisory Opinion*, para. 64.

111 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* (First Phase), Advisory Opinion, I.C.J. Reports 1950, p. 65, p. 72.

112 *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010 (II), p. 403, para. 30.

113 *Wall Advisory Opinion*, para. 44. See also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226 ("***Nuclear Weapons Advisory Opinion***"), para. 14.

49. While the Court's predecessor, the Permanent Court of International Justice ("**PCIJ**"), declined to give an advisory opinion in the matter of the *Status of Eastern Carelia*,[114] this was on grounds – the impossibility of ascertaining some facts without hearing from some parties; the existence of a parallel dispute involving a state that was not a party to the Statute of the PCIJ – that find no parallel in the present case.

50. In the *Western Sahara* case, the Court noted that a key consideration in exercising that discretion is, indeed, whether:

> […] the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character.[115]

51. The Court is certainly in such a position in that case. Few international situations have been better documented, by credible and authoritative sources, than the long-standing occupation of Palestine. When deciding to put these questions to the Court, the General Assembly relied on multiple reports and factual investigations.[116] The humongous size of the Dossier introduced by the UN Secretariat in line with Article 65(2) of the Statute of the Court (the "**Dossier**"), comprising 29,159 pages spread over 3,206 documents, guarantees that the Court will be in possession of "all documents likely to throw light upon the question."[117] Finally, the Court remains free to request further information or exercise its general powers in evidentiary matters.

52. Besides, and by further contrast with the *Eastern Carelia* case, the Court has no need to hear specifically Israel or Palestine on an issue that concerns the UN. While some states, in voting against Resolution 77/247, have shared their concerns that "it is inappropriate without the consent of both parties to ask the Court to give an advisory opinion on what is essentially a bilateral dispute",[118] this runs contrary to the Court's *Wall Advisory Opinion*, in which "opinion [had been] requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute" between Israel and

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114 1923 P.C.I.J., Series B, No. 5.

115 *Western Sahara Advisory Opinion*, para. 46.

116 See, e.g., **Dossier No. 758**, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories', *supra* note 43; **Dossier No. 1539**, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk' (A/HRC/49/87 of 12 August 2022).

117 Statute of the Court, Article 65(2).

118 General Assembly, '56th Plenary Meeting Verbatim Record', *supra* note 84, p. 4, statement by the United Kingdom.

Palestine.[119] If the more-circumscribed situation regarding the Separation Wall did not qualify as a bilateral dispute in 2004, *a fortiori* the broader Palestinian situation does not either, twenty years hence.

53. It has further been suggested, in the debates preceding the adoption of the draft Resolution 77/247, that the opinion would serve no purpose,[120] or would actually be detrimental to the peace process in Palestine.[121] Yet, these concerns are irrelevant to the Court's use of its discretion to answer the legal questions asked by the General Assembly; as put by the Court in the *Nuclear Weapons Advisory Opinion*:

> […] it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs.[122]

54. It has also been suggested that this request for an Advisory Opinion was meant to "weaponize" the Court, so as to "impose the Palestinian twisted reality on Israel", and thereby "stab a knife in the heart of any hope for progress."[123] Delegates have also described the draft resolution as being based on "poisonous" and "libellous" information.[124] Other states have put it as a matter of "overjudicializing international relations".[125]

55. These criticisms are far from new: in challenging the jurisdiction or the discretion of the Court to render an Advisory Opinion that could be inconvenient for them, States have often asserted that the allegedly political nature of the questions should prevent the Court from exercising its duty. However, the Court has steadfastly refused to engage with this kind of argument, observing that most of the questions put to it "will

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119 *Wall Advisory Opinion*, para. 49.

120 General Assembly, '56th Plenary Meeting Verbatim Record', *supra* note 84, p. 3, statement by Portugal: "It is unclear how it can directly benefit the peace process." See also *ibid.*, p. 4, statement of the United Kingdom: "we do not feel that a referral to the International Court of Justice is helpful in bringing the parties back to dialogue"; p. 5, statement of Romania: "we are not convinced that the request for an advisory opinion from the International Court of Justice serves the overall aim of advancing a just, lasting and negotiated settlement of the conflict between the Israelis and Palestinians."

121 See General Assembly Fourth Committee, 'Summary Record of the 25th Meeting of the 77th session', *supra* note 99, statement by Israel, also available on video: https://media.un.org/en/asset/k1p/k1p3p1b46n, starting from 1'10", with Israel suggesting that "[b]y involving the ICJ, any hopes for reconciliation are being driven off a cliff".

122 *Nuclear Weapons*, para. 16. See also *Kosovo Advisory Opinion*, para. 34.

123 General Assembly Fourth Committee, 'Summary Record of the 25th Meeting of the 77th session', *supra* note 99, statement by Israel, also available on video: https://media.un.org/en/asset/k1p/k1p3p1b46n, starting from 1'10".

124 *Ibid.*

125 General Assembly, '56th Plenary Meeting Verbatim Record', *supra* note 84, p. 3, statement by Portugal, recognising nonetheless "the crucial role of the International Court of Justice as the principal judicial organ of the United Nations, which underpins the international rules-based order that we seek to preserve, and it is an organ that plays an integral role in the development of international law."

have political significance, great or small",[126] and that this should not be a bar to its judicial function.[127] The Court has further noted that the political motives behind a question are, indeed, irrelevant to the exercise of that judicial function,[128] while its judges are also not equipped to determine whether the Advisory Opinion will have detrimental consequences, in a context where the General Assembly – by posing the question – implicitly held otherwise.[129]

56. This stance is reflected in the Court's adjudicatory function, where the political ramifications of a dispute have not prevented the Court to officiate.[130] International jurisprudence supports the Court's position in this respect, as a blanket ban on the international resolution of allegedly political issues would bring international justice to a standstill.[131] Even more so, as held by the Court in the past:

> […] in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate […].[132]

57. This is also because not answering such questions would be a political stance in itself – yet one in which the Court would not have had the chance to express its legal function. As aptly put by Judge Kooijmans in the *Wall Advisory Opinion*:

> Once the decision to [ask for an Advisory Opinion] had been taken, the Court was made an actor on the political stage regardless of whether it would or would not give an opinion. A refusal would just as much have politicized the Court as the rendering of an opinion.[133]

58. In other words, "the circumstance that others may evaluate and interpret these facts in a subjective or political manner can be no argument for a court of law to abdicate

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126 *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 151, p. 155.

127 *Nuclear Weapons Advisory Opinion*, para. 13: "Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law."

128 *Kosovo Advisory Opinion*, paras. 27, 33. See also *Nuclear Weapons Advisory Opinion*, para. 16.

129 *Kosovo Advisory Opinion*, para. 35.

130 *Border and Transborder Armed Actions* (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 91, para. 52: "the Court's judgment is a legal pronouncement, and it cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement"

131 ECtHR, *Ukraine v. Russia (*re *Crimea)*, Judgment, 16 December 2020, Applications Nos. 20958/14 and 38334/18, paras. 273-274: "the political nature of any motives which might have inspired the applicant Government to submit the application and the political implications that the Court's ruling might have are of no relevance in the establishment of its jurisdiction to adjudicate the legal issues submitted before it."

132 *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 73, para. 33.

133 *Wall Advisory Opinion*, Separate Opinion of Judge Kooijmans, para. 21.

its judicial task."[134] Here as well, the near-unanimous precedent set in the *Wall Advisory Opinion* should control, and the Court should consider that there is no ground to exercise its discretion not to opine on the questions at hand.[135]

[134] *Wall Advisory Opinion*, para. 58.

[135] See also R. Falk, *Toward Authoritativeness: The ICJ Ruling on Israel's Security Wall*, 99 *AJIL* 1, 45-46 (2005), noting that the "virtual unanimity of the Court on this adumbration of judicial function gives great weight to the assertion that an advisory opinion on these matters deserves to be treated with the greatest possible respect. The high stature of the jurists on the Court at present, together with the quality of the reasoning in the opinion and its elaborations in the several separate opinions, further strengthens claims of authoritativeness."

III – THE LEGAL CONSEQUENCES ARISING FROM THE CURRENT SITUATION IN PALESTINE

A. THE LEGAL STATUS OF THE OCCUPATION

59. The first question put before the Court by Resolution 77/247 relates to the "legal consequences" of Israel's prolonged occupation, settlement, and annexation of the Palestinian territories. However, before discussing the legal consequences arising from the current situation in the Palestinian territories, it is necessary to first determine the legal status of the Israeli occupation. This is in line with the approach adopted by the Court in the *Wall Advisory Opinion*:

> [I]f the General Assembly requests the Court to state the "legal consequences" arising from the construction of the wall, the use of these terms necessarily encompasses an assessment of whether that construction is or is not in breach of certain rules and principles of international law.[136]

60. Accordingly, this part is divided into three sections: after providing a definition of the concept of a belligerent occupation (*1*), a second section applies that definition to the present case, and concludes that the Israeli occupation of the Palestinian territories (namely, East Jerusalem, the West Bank, and the Gaza Strip) constitutes a belligerent occupation (*2*). Lastly, a third section argues that the Israeli occupation of the Palestinian territories constitutes an internationally wrongful act (*3*).

1. The Definition of Belligerent Occupation

61. According to Article 42 of the Regulations concerning the Laws and Customs of War on Land, annexed to the Hague Convention IV respecting the Laws and Customs of War on Land (hereinafter: 1907 Hague Regulations), a "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."[137] In addition, common Article 2 of the 1949 Geneva

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136 *Wall Advisory Opinion*, para. 39.

137 Hague Regulations Respecting the Laws and Customs of War on Land, Annexed to Hague Convention (IV), 1907, THE HAGUE PEACE CONFERENCES AND OTHER INTERNATIONAL CONFERENCES CONCERNING THE LAWS AND USAGES OF WAR: TEXTS OF CONVENTIONS WITH COMMENTARIES (A.P. Higgins ed., 1909).

Conventions stipulates that the four Geneva conventions apply "to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them," and to all cases of "partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."[138] These provisions of the 1907 Hague Regulations and the 1949 Geneva Conventions are universally accepted as reflecting rules of customary international law.[139]

62. Therefore, according to the 1907 Hague Regulations and the 1949 Geneva Conventions, a belligerent occupation arises whenever a State establishes effective control over territories to which it does not have sovereign title during or as a result of an international armed conflict, regardless of whether a formal state of war exists between the belligerents or whether the control of such territory was resisted by armed force.[140]

63. Determining whether a situation amounts to a case of belligerent occupation is a question of fact. The principal factor in making such a determination is whether a hostile power has established effective control over the territory in question. As put by the US Military Tribunal in Nuremberg in the *Hostages Case*:

> Whether an invasion has developed into an occupation is a question of fact. The term invasion implies a military operation while an occupation indicates the exercise of governmental authority to the exclusion of the established government. This presupposes the destruction of organised resistance and the establishment of an administration to preserve law and order. To the extent that the occupant's control is maintained and that of the civil government eliminated, the area will be said to be occupied.[141]

64. The ICTY further observed that classifying a situation as a belligerent obligation is a determination that must be made on the basis of a case-by-case factual analysis that should be guided by the following factors:

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138 The Geneva Conventions of 12 August 1949, International Committee of the Red Cross.

139 *Wall Advisory Opinion*, para. 78; International Criminal Tribunal for the former Yugoslavia ("ICTY"), *Prosecutor v. M. Naletilic and V. Martinovic*, (Judgment), Trial Chamber, Case No. ICTY IT-98-34-T (March 31, 2003), para. 215.

140 This echoes Eyal Benvenisti's widely-cited understanding of a belligerent occupation, which is defined any "effective occupation of a power (be it one of more states or an international organization, such as the United Nations) over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory." EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 43 (2nd ed. 2012). Similarly, in a seminal article (*What is Military Occupation?* 55 BRIT. YRBK INT'L L. 249, 255 (1984)), Adam Roberts explained that "[a]t the heart of almost all treaty provisions and legal writings about occupation is the image of the armed forces of a State exercising some kind of coercive control or authority over inhabited territory outside the accepted international frontiers of their State."

141 United States Military Tribunal, Nuremberg, *Wilhelm List et. al. (The Hostages Trial)*, Case No. VII, 19 February 1948, p. 55-56.

- the occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly;
- the enemy's forces have surrendered, been defeated or withdraw. In this respect, battle areas may not be considered as occupied territory. However, sporadic local resistance, even successful, does not affect the reality of occupation;
- the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;
- a temporary administration has been established over the territory;
- the occupying power has issued and enforced directions to the civilian population;[142]

65. Spatially, a belligerent occupation extends to those areas under the effective control of a hostile power.[143] However, it is not required, in order to constitute a belligerent occupation, for the forces of the hostile power to be present everywhere throughout the occupied territory and at all times. Rather, it is sufficient that the hostile power retains forces in the area and that it is able to dispatch its forces to assert control over the territory in question. Furthermore, the persistence of acts of resistance against the occupying power, including by a national liberation movement, or the exercise of elements of governmental or administrative authority by representatives of the population residing in the occupied territory, does not necessarily affect the classification of a situation as a belligerent occupation. In other words, a situation will be deemed to constitute belligerent occupation whenever a hostile power maintains physical control over foreign territory or retains the ability to assert such control.[144]

66. Temporally, a belligerent occupation begins from the moment that a hostile power establishes effective control over the territory in question. As the Eritrea-Ethiopia Claims Commission explained:

> an area where combat is ongoing and the attacking forces have not yet established control cannot normally be considered occupied […] On the other

142 ICTY, *Prosecutor v. M. Naletilic and V. Martinovic*, *supra* note 139, para. 217.

143 As Yoram Dinstein argued (YORAM DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION, 43 (2nd ed. 2019)), "there are two cumulative conditions for belligerent occupation: (i) the authority by the Occupying Power must be established; and (ii) the Occupying Power must be able to ('can') exercise that authority. In other words, belligerent occupation pertains only to that area in which the Occupying Power is actually exercising authority and is capable of doing so."

144 See *Trial of Wilhelm List et. al. (The Hostages Trial)*, *supra* note 141, at p. 56.

> hand, where combat is not occurring in an area controlled even for just a few days by the armed forces of a hostile Power, the Commission believes that the legal rules applicable to occupied territory should apply.[145]

67. Determining whether a belligerent occupation has ended is also established on the basis of a case-by-case factual analysis. The declared positions of the occupying power are legally immaterial in this regard. Rather, the determining factors are whether the hostile power has fully and effectively withdrawn from the territory in question and is no longer in a position to reassert effective control or administrative authority over such territory.[146]

2. The Current Situation in the Palestinian Territories Constitutes a Belligerent Occupation by the State of Israel

68. In light of that definition, there is no doubt for the African Union that the State of Israel is occupying the Palestinian territories that it has controlled since the Six-Day War. An overview of the historical evolution of the legal status of the Palestine will, accordingly, demonstrate that the State of Israel does not hold a valid legal title to those territories.

69. The territories that now constitute the State of Israel and the State of Palestine were originally subject to the sovereignty of the Ottoman Empire. After the Empire's dissolution and Turkey's renouncement of sovereignty over areas formerly under its authority (including Palestine), pursuant to the 1923 Treaty of Lausanne,[147] the entirety of Palestine and the territories of what is now the Hashemite Kingdom of Jordan were brought under the mandate system of the League of Nations.

70. According to the Covenant of the League of Nations, the territories and peoples administered through the mandate system formed "a sacred trust of civilization."[148] Underlying this "sacred trust" were two interrelated principles. First, mandated territories were not open for annexation by mandatory powers,[149] and second, the peoples of the mandate territories were understood to possess "a potentiality for

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145 Eritrea-Ethiopia Claims Commission, *Partial Award: Central Front, Eritrea's Claims 2, 4, 6, 7, 8, & 22*, 28 April 2004, XXVI RIAA 115, para. 57.

146 International Committee of the Red Cross, Expert Meeting: *Occupation and Other Forms of Administration of Foreign Territory* (2012).

147 Treaty of Peace with Turkey, and Other Instruments (1923), LNTS Vol. XXVIII.

148 Covenant of the League of Nations, Article 22.

149 *International Status of South-West Africa*, Advisory Opinion, I.C.J. Reports 1950, p. 128, p. 131, noting that, under the mandate system, "two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of such peoples form 'a sacred trust of civilization'."

independent existence on the attainment of a certain stage of development."[150] Moreover, as international law further developed, the peoples of non-self-governing territories under the mandate system were recognized as being endowed with the right to self-determination.[151] Accordingly, administering powers never acquired title to these territories. Rather, the right to exercise full self-government over such territories remained vested in the peoples of these territories, and those peoples were entitled to attain independence once the mandate was extinguished.[152]

71. The mandate for Palestine was entrusted to the United Kingdom by the Council of the League of Nations on 24 July 1922.[153] Palestine was categorized as a 'A-Class' territory which, according to the Covenant of the League of Nations, was inhabited by communities that "have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone."[154]

72. In its Preamble, the mandate for Palestine instructed the United Kingdom, in its capacity as the mandatory power, to put into effect the so-called Balfour Declaration that was issued by the British Government on 2 November 1917, and which expressed support for "the establishment in Palestine of a national home for the Jewish people." The mandate for Palestine also expressed recognition of "the historical connection of the Jewish people with Palestine and to the grounds of reconstituting their national home in that country."[155] In pursuing this objective, however, the Council of the League of Nations required the United Kingdom not to "prejudice the civil and religious rights of existing non-Jewish communities in Palestine," and also entrusted it with "safeguarding the civil and religious rights of all inhabitants of Palestine, irrespective of race and religion."[156]

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150 *Namibia Advisory Opinion*, para. 46.

151 See Jan Klabbers, *The Right to be Taken Seriously: Self-Determination in International Law*, 28 HUMAN RIGHTS QUART. 186, 191 (2006), noting that "[t]he very function of the mandate system, moreover, was thought to reside in making the self-determination and independence of peoples possible".

152 See RAMENDRA NATH CHOWDHURI, INTERNATIONAL MANDATES AND TRUSTEESHIP SYSTEMS: A COMPARATIVE STUDY 235-236 (1955).

153 Palestine Mandate, *supra* note 27.

154 *Ibid.*

155 *Ibid.*

156 *Ibid.*, article 2.

73. In this context, Sir Winston Churchill, then British Secretary of State for the Colonies, published in June 1922, an official White Paper that explained the object and purpose of the mandate for Palestine and the Balfour Declaration, offering an authoritative aid in interpreting these documents. The White Paper affirmed that the mandate was not intended to bring about "the disappearance or the subordination of the Arabic population, language or culture in Palestine." Nor was the mandate designed so that "Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded *in Palestine*." Indeed, "the development of the Jewish National Home in Palestine" was not aimed at imposing:

> Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish community; with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride. But in order that this community should have the best prospect of free development and provide a full opportunity for the Jewish people to display its capacities, it is essential that it should know that it is in Palestine as of right and not on sufferance.[157]

74. The mandate did not, therefore, transfer sovereignty over Palestine to the United Kingdom; rather, Palestine was provisionally recognized as an independent nation that was placed under the administration of a mandatory power until such time when complete self-government was achievable. Furthermore, the mandate did not create an obligation on the mandatory power to establish a Jewish State in Palestine (indeed, the mandate did not specify what the final status of Palestine should be);[158] rather, the mandate obligated the United Kingdom to administer Palestine, as a single and undivided territory, on behalf of the League of Nations, as a trust, and in a manner that fostered the development and growth of the Jewish community within that territory, without subordinating the Arab population or prejudicing the civil and religious rights of non-Jewish communities.[159] This was the legal standing of the territory of Palestine until the British mandate ended, at midnight, on 15 May 1948.

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157 UK correspondence with Palestine Arab Delegation and Zionist Organization/British policy in Palestine, "Churchill White Paper" – UK documentation Cmd. 1700, available at: https://www.un.org/unispal/document/auto-insert-196917/ (emphasis in original)

158 Michael Akehurst, *The Arab-Israeli Conflict and International Law* 5 NEW ZEALAND UNIVERSITIES LAW REVIEW 231, 22-23 (1973). See also JOHN QUIGLEY, BRITAIN AND ITS MANDATE OVER PALESTINE: LEGAL CHICANERY ON A WORLD STAGE, 17-21 (2022).

159 VICTOR KATTAN, FROM COEXISTENCE TO CONQUEST: INTERNATIONAL LAW AND THE ORIGINS OF THE ARAB-ISRAELI CONFLICT 1891-1949, 56-63 (2009).

75. The mandate did not stipulate the territorial boundaries of Palestine, leaving them to be established through a series of prior and subsequent instruments. Of particular interest for the purposes of this Advisory Opinion are the southern and eastern boundaries of Palestine. The former were established pursuant to an agreement concluded between the Egyptian and Ottoman governments on 1 October 1906, that delimited the "administrative separating line" between Egypt, which was in a vassal status with regard to the Ottoman Empire, and the Ottoman provinces of Hejaz and Jerusalem.[160] This administrative boundary became the international frontier between Egypt and Israel, and between Egypt and the Gaza Strip.

76. The eastern boundaries of mandate Palestine were delimited in the process of the establishment of the Emirate of Transjordan, which later became the Hashemite Kingdom of Jordan.[161] With the consent of the League of Nations, the United Kingdom severed the territory of Transjordan from mandate Palestine in September,[162] which was followed by the conclusion of an agreement between Transjordan and the United Kingdom on 20 February 1928.[163] The boundary between Transjordan and mandate Palestine became the international frontier between Israel and Jordan.[164]

77. As a result of the escalating tensions and intercommunal strife between the Jewish and Arab communities in Palestine, and in view of the increasing incidents of violence against British authorities, the United Kingdom informed the UN in February 1947 of its decision to relinquish the mandate for Palestine.[165] The United Kingdom also requested, on 12 April 1947, the convening of a Special Session of the UN General Assembly to discuss the question of Palestine. This led to the establishment of the Special Committee on Palestine (UNSCOP), which, in September 1947, issued a report regarding the future of Palestine.

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160 Case Concerning the Location of Boundary Markers in Taba between Egypt and Israel, Decision, 29 September 1988, XX RIAA 1. See also Gabriel Warburg, *The Sinai Peninsula Borders, 1906-1947* 14 JOURNAL OF CONTEMPORARY HISTORY 677 (1979).

161 On the evolving status of Transjordan, see EUGENE ROGAN, FRONTIERS OF THE STATE IN THE LATE OTTOMAN EMPIRE: TRANSJORDAN, 1850–1921 (1999).

162 Malcolm Shaw, *The League of Nations Mandate System and the Palestine Mandate: What Did and Does It Say About International and What Did and Does It Say about Palestine?* 49 ISRAEL LAW REVIEW 287, 301 (2016). In this process, Transjordan was defined as "all territory lying to the east of a line drawn from a point two miles west of the town of Aqaba on the Gulf of that name up the centre of the Wadi Araba, Dead Sea and River Jordan to its junction with the Yarmuk: hence up the centre of that river to the Syrian frontier."

163 Yitzhak Gil-Har, *Boundaries Delimitation: Palestine and Trans-Jordan*, 36 MIDDLE EASTERN STUDIES 68, 70-71 (2000).

164 Israel–Jordan Treaty of Peace, Avaba/Araba Crossing Point, 26 October 1994, 34 ILM 43.

165 For a discussion of the considerations that led to Great Britain's abandonment of the mandate for Palestine, see Avi Shlaim, *Britain and the Arab-Israeli War of 1948* 16 JOURNAL OF PALESTINE STUDIES 50 (1987).

78. A majority of UNSCOP members proposed partitioning the territory of Palestine into three parts: (i) a Jewish State on 56% of mandate Palestine; (ii) an Arab State on 43% of mandate Palestine; and (iii) Jerusalem.[166] This proposal provided the blueprint for Resolution 181 (II), which recommended the termination of the British mandate and the partition of Palestine into two separate Jewish and Arab States, bound by an economic union, in addition to designating the entire City of Jerusalem as a "*corpus separatum*" to be administered by the UN.[167]

79. That partition plan, however, was never implemented. On 14 May 1948, the State of Israel declared independence, and the United Kingdom relinquished the mandate the following day. This led to the outbreak of an international armed conflict between Israel and its Arab neighbours that continued until the next year. After the cessation of hostilities, general armistice agreements were concluded between Egypt and Israel on 24 February 1949,[168] and between Israel and Jordan on 3 April 1949.[169] These agreements established armistice lines that delineated the territories under the control of each of the parties. The armistice line in the Israeli-Jordanian agreement is often referred to as the 'Green Line'. As a result of this armed conflict and the subsequent armistice agreements, Israel established control over more territories than had been allocated to it under the UN partition plan.[170]

80. Israel was admitted to the UN on 11 May 1949.[171] While Israel is now almost universally recognized as a sovereign State, including by a significant majority of the Member States of the African Union, at that time the legal foundation for Israel's claim to sovereignty over those territories which it controlled as the result of the armistice agreements was uncertain. As the late Judge James Crawford noted:

> Israel was not created pursuant either to an authoritative disposition of the territory, or to a valid and subsisting authorization […] At the time of the ceasefire, Israel extended over substantially greater territory than that accorded to it by the partition resolution […] Thus, Israel was created by the

166 UN Special Committee on Palestine (UNSCOP), 'Report to the General Assembly' (A/364 of 3 September 1947).
167 Resolution 181 (II), *supra* note 1.
168 Egypt-Israel General Armistice Agreement (24 February 1949), 42 UNTS 251 (1949).
169 Jordan-Israel General Armistice Agreement (3 April 1949), 42 UNTS 304 (1949).
170 BENNY MORRIS, 1948: A HISTORY OF THE FIRST ARAB-ISRAELI WAR 375-376 (2008).
171 General Assembly Resolution 273 (III), 'Admission of Israel to membership in the United Nations' (A/RES/273 (III) of 11 May 1949).

use of force, without the consent of any previous sovereign and without complying with any valid act of disposition.[172]

81. After the conclusion of the armistice agreements, Egypt retained control of the Gaza Strip, while Jordan controlled East Jerusalem and the territory known as the West Bank, which is the area between the eastern boundaries of mandate Palestine and the Green Line delineated in the Israeli-Jordanian armistice agreement. Egypt controlled and administered the Gaza Strip without annexing this territory or claiming that it was subject to Egyptian sovereignty. On the other hand, East Jerusalem and the West Bank were incorporated into the Hashemite Kingdom of Jordan pursuant to the 1950 Act of Union and, thus, became formally subject to Jordanian sovereignty.[173] In 1974, however, Jordan recognized the Palestinian Liberation Organization (PLO) as the sole legitimate representative of the Palestinian people, and in 1988, the union between Jordan and the West Bank was dissolved, after which Jordan recognized the State of Palestine, thereby renouncing any claim to sovereignty over East Jerusalem and the West Bank.[174]

82. In June 1967, an international armed conflict broke out that led to the establishment of Israeli control over the entire territory of mandate Palestine, including East Jerusalem, the West Bank, and the Gaza Strip. These areas are collectively referred to as the "Occupied Palestinian Territories".[175] It is established that, prior to the Six-Day War, the State of Israel was not in possession of East Jerusalem, the West Bank, or the Gaza Strip, nor did the State of Israel have a valid legal title or claim to sovereignty over these territories. From what precedes, and in light of the definition of belligerent occupation provided above,[176] the African Union therefore considers that the Israeli control of East Jerusalem, the West Bank, and the Gaza Strip, amounts to an ongoing belligerent occupation.

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172 James Crawford, *Israel (1948-1949) and Palestine (1998-1999): Two Studies in the Creation of States, in* THE REALITY OF INTERNATIONAL LAW: ESSAYS IN HONOR OF IAN BROWNLIE 95, 108 (Guy Goodwin-Gill & Stefan Talmon eds., 1999).

173 Jordanian Parliament, 'Resolution for the Decision of Unity', Hashemite Kingdom of Jordan Official Gazette, Special Edition (April 1950). The incorporation of the West Bank and Jerusalem into the Hashemite Kingdom of Jordan was only recognized by the United Kingdom and Pakistan. Furthermore, Article 2 of the Act of Union indicated that Jordan recognized the separate identity and distinct status of this territory. It stipulated that the union was undertaken "to preserve full Arab rights in Palestine, to defend those rights by all lawful means in exercise of its natural rights but without prejudicing final settlement of Palestine's just case within the sphere of national aspirations, inter-Arab cooperation, and international justice."

174 Victor Kattan, *Jordan and Palestine: Union (1950) and Secession (1988), in* RESEARCH HANDBOOK ON SECESSION 275 (Jure Vidmar, Sarah McGibbon, & Lea Raible eds., 2022).

175 Israel also captured territories from other neighbouring Arab States.

176 *Supra*, paras. 61-67.

83. Immediately after the cessation of hostilities, Israel began to take a number of measures designed to incorporate East Jerusalem into Israel. On 27 June 1967, Israel passed the Law and Administration Ordinance that extended Israeli law, jurisdiction, and administration to East Jerusalem. The following day, Israel enacted the Municipalities Ordinance that enlarged the administrative boundaries of Jerusalem beyond the limits established by Jordanian authorities. Finally, in July 1980, Israel passed the Basic Law on Jerusalem, pursuant to which East Jerusalem was formally annexed and declared as the eternal, unified capital of the State of Israel.[177]

84. Israel also continues to exercise effective control over the West Bank. Despite the transfer of limited governmental powers to the Palestinian National Authority over a limited portion of the West Bank, pursuant to the Oslo Accords and subsequent agreements concluded between Israel and Palestine, the West Bank remains subject to Israeli belligerent occupation. Indeed, these agreements recognized that Israel would continue to exercise significant powers over the majority of the territory of the West Bank.[178]

85. Specifically, as shown in the map below,[179] the Oslo II Accords divided the West Bank into three areas. Area A, which covers around 18% of the territory of the West Bank, consists of cities and other large population centres primarily inhabited by Palestinians. Area B, which covers around 22% of the West Bank, consists of towns, villages, and smaller population centres primarily inhabited by Palestinians. The Palestinian Authority exercises limited civil and security authorities in Areas A and B. On the other hand, Area C, which comprises over 60% of the West Bank, remained under Israeli control. Areas A and B are not geographically contiguous; rather, Area C almost completely surrounds and separates the territories, including the urban centres, falling within Areas A and B.[180] Moreover, Israel maintains a substantial military

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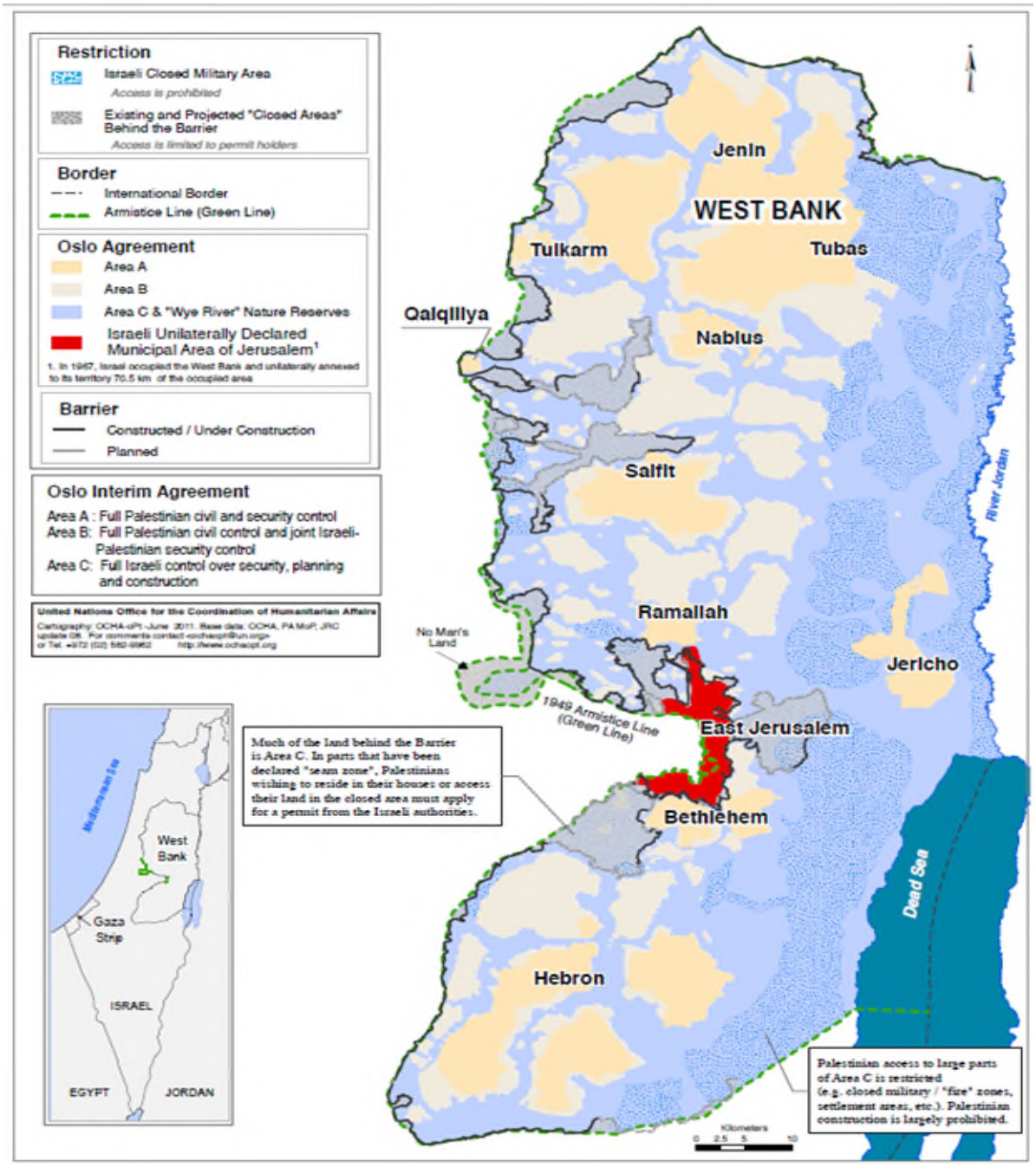
177 Antonio Cassese, *Legal Considerations on the International Status of Jerusalem*, 3 PALESTINIAN YRBK INT'L L. 13 (1986).

178 For example, Article X(4) of the Oslo I Accords states: "Israel shall continue to carry the responsibility for external security, as well as the responsibility for overall security of Israel is for the purpose of safeguarding their internal security and public order." Therefore, as one author noted, "[u]nder the Oslo Accords, Israel redeployed forces and transferred powers and responsibilities to the [Palestinian Authority]." However, this transfer of authority was essentially of the nature of "an occupying power allowing a new local government to be installed during the occupation, [while] 'the existence of Israel's residual powers unmistakably indicates that the belligerent occupation was not over' following a withdrawal that was partial in terms of both geography and contents." AEYAL GROSS, THE WRITING ON THE WALL 184 (2017).

179 United Nations Office for Coordination of Humanitarian Affairs, Occupied Palestinian Territory: Humanitarian Factsheet on Area C of the West Bank, July 2011, available at: https://www.ochaopt.org/sites/default/files/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf

180 For a description of Areas A, B, and C, that also includes maps of those areas, see Joel Singer, *West Bank Areas A. B, and C – How Did They Come into Being?* 26 INTERNATIONAL NEGOTIATION 1-11 (2021).

presence throughout the West Bank, and, as explained below, continues to expropriate lands owned by Palestinian inhabitants, in addition to constructing settlements, bypass roads, and maintaining the Separation Wall.[181]



86. In relation to the Gaza Strip, it has been contended that Israel's 2005 "unilateral disengagement" marked the end the occupation there, in view of Israel's further

[181] *Infra*, Section **B**, on Israel's policies and practices associated with its occupation of the Palestinian territories.

decision the destroy its Gaza settlements and withdraw its permanent military presence from that territory.[182] The African Union considers, however, that Israel continues to exercise effective control over the Gaza Strip, which, accordingly, remains under Israel's belligerent occupation. This is in line with the conclusions of the Security Council,[183] the General Assembly,[184] the Conference of High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War,[185] and successive commissions of inquiry established by the Human Rights Council.[186]

87. Indeed, Israel's effective control over the Gaza Strip is manifested in its control over the border crossings, airspace, and maritime zones of the Gaza Strip.[187] In addition, Israel retains the ability to reestablish control over the Gaza Strip by redeploying its ground forces into that territory, and indeed it has done so repeatedly.[188] Furthermore, Article IV of the Oslo I Accords affirmed that the West Bank and the Gaza Strip are a "single territorial unit, whose integrity will be preserved during the interim period." This further confirms that, in light of Israel's continued occupation of the West Bank and East Jerusalem, a partial withdrawal, redeployment, or unilateral disengagement of Israel's armed forces from the Gaza Strip does not alter the status of the Gaza Strip as a territory that is subject to Israeli belligerent occupation.

88. These facts support the Court's conclusion in the *Wall Advisory Opinion*, that "[a]ll these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying power."[189]

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182 See High Court of Justice of Israel, *Jaber Al-Bassiouni v. Prime Minister and Others*, Judgment, HCJ 9123/07, 30 January 2008.

183 See, e.g., **Dossier No. 1356**, Security Council Resolution 1860 (S/RES/1860 of 8 January 2009), which stated: "*Stressing* that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state."

184 See, e.g., General Assembly Resolution 75/126, 'Assistance to the Palestinian people' (A/RES/75/126 of 21 December 2020), which stated: "*Gravely concerned* at the difficult living conditions and humanitarian situation affecting the Palestinian people, in particular women and children, *throughout the occupied Palestinian territory, particularly in the Gaza Strip* where economic recovery and vast infrastructure repair, rehabilitation and development are urgently needed, especially in the aftermath of the conflict of July and August 2014." (emphasis added)

185 See Declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention.

186 See, e.g., **Dossier No. 1518**, HRC, 'Report of the Independent Commission of Inquiry' (A/HRC/29/52 of 24 June 2015), para. 6: the Commission "interpreted its mandate as requiring it to examine alleged violations of international human rights and humanitarian law occurring between 13 June and 26 August 2014 *across the Occupied Palestinian Territory, in particular in Gaza*, and in Israel, and to determine whether such violations had been committed." (emphasis added)

187 Iain Scobbie, *An Intimate Disengagement: Israel's Withdrawal from Gaza, the Law of Occupation and of Self-Determination*, 11 YRBK ISLAMIC & MIDDLE EASTERN LAW 3 (2004).

188 Yuval Shany, *Faraway, So Close: The Legal Status of Gaza Under Israel's Disengagement*, 8 YRBK INT'L HUMANITARIAN LAW 369 (2005).

189 *Wall Advisory Opinion*, para. 78.

89. Accordingly, it is the view of the African Union that the 1907 Hague Regulations and the Fourth Geneva Convention are applicable to Israel's belligerent occupation of the Palestinian territories, including East Jerusalem.[190] The Court has confirmed that the convention and the regulations annexed thereto are reflective of customary international law.[191] Besides, both the State of Israel and the State of Palestine are parties to the Fourth Geneva Convention,[192] and while Israel has taken the position that it is not applicable to the occupied Palestinian territories,[193] the ICJ,[194] the Security Council,[195] the General Assembly,[196] and the Human Rights Council[197] have found otherwise, confirming that the Convention applies to Israel's belligerent occupation of the Palestinian territories.

3. The Israeli Occupation of the Palestinian Territories Constitutes an Internationally Wrongful Act

90. In light of the above, the African Union invites the Court to conclude that the prolonged Israeli occupation of the Palestinian territories is, in itself, unlawful.[198]

91. While the Court did not, given the nature of the question put to it by the General Assembly, reach this conclusion in the *Wall Advisory Opinion*, other UN organs have, on several occasions, affirmed that the Israeli occupation of the Palestinian territories

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190 Ardi Imseis, *On the Fourth Geneva Convention and the Occupied Palestinian Territory*, 44 HARVARD INT'L L. J. 65 (2003).

191 *Wall Advisory Opinion*, para. 89.

192 The four Geneva conventions came into force for Israel on 6 January 1952. On 2 April 2014, the State of Palestine deposited with the Swiss Federal Council its instrument of accession to the four Geneva Conventions of 12 August 1949 for the Protection of War Victims.

193 See United Nations, The Question of the Observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank, including Jerusalem Occupied by Israel in June 1967, Study prepared for and under the guidance of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, New York (1979). Available at: https://www.un.org/unispal/document/auto-insert-200116/.

194 *Wall Advisory Opinion*, paras. 95 and 101.

195 Security Council Resolutions S/RES/2334 (2016); S/RES/799 (1992); S/RES/726 (1992); S/RES/681 (1990); S/RES/672 (1990); S/RES/641 (1989); S/RES/636 (1989); S/RES/605 (1987); S/RES/592 (1986); S/RES/478 (1980); S/RES/476 (1980); S/RES/465 (1980); S/RES/452 (1979); S/RES/446 (1979); S/RES/271 (1969); and S/RES/237 (1967).

196 General Assembly Resolutions A/RES/77/247; A/RES/77/126; A/RES/76/82; A/RES/75/98; A/RES/75/97; A/RES/73/255; A/RES/71/247; A/RES/70/225; A/RES/69/241; A/RES/64/254; A/RES/63/98; A/RES/62/181; A/RES/60/183; A/RES/60/107; A/RES/59/124; A/RES/58/292; A/RES/56/204; A/RES/ES-10/8; A/RES/55/131; A/RES/54/77; A/RES/53/54; A/RES/44/48; A/RES/45/69; A/RES/42/160; A/RES/41/70; A/RES/32/91; Resolution 2727 (XXV); Resolution 2792 (XXVI); Resolution 2963 (XXVII); Resolution 3330 (XXIX); and Resolution 3525 (XXX).

197 HRC Resolutions A/HRC/RES/52/3; A/HRC/RES/52/35; A/HRC/RES/49/29; A/HRC/RES/49/4; A/HRC/RES/46/26; A/HRC/RES/43/32; A/HRC/RES/43/3; A/HRC/RES/40/24; A/HRC/RES/40/13; A/HRC/RES/37/35; A/HRC/RES/34/28; A/HRC/RES/34/31; A/HRC/RES/31/36; A/HRC/RES/31/35; A/HRC/RES/29/25; A/HRC/RES/28/26; A/HRC/RES/S-21/1; A/HRC/RES/25/28; A/HRC/RES/22/28; A/HRC/RES/19/16; A/HRC/RES/16/32; and A/HRC/RES/S-6/1.

198 As three noted publicists have noted, "[c]uriously, amongst the wealth of legal writings on various aspects of [the Israeli] occupation, most concern Israel's compliance or noncompliance with its obligations as an occupying power; virtually no attention has been paid to the question of the legality of the occupation itself." See Orna Ben-Naftali, Aeyal Gross & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory* 23 BERKELEY J. INT'L L. 551, 551-552 (2005).

is unlawful.[199] Specifically, Israel's occupation of those territories qualifies as an internationally wrongful act of a continuing character on the following grounds:

a. *First*, the Israeli occupation of the Palestinian territories violates the right of the Palestinian people to self-determination;

b. *Second*, Israel's prolonged occupation of the Palestinian territories deprives the State of Palestine of its full sovereignty, further depriving the Palestinian people of their right to self-determination; and

c. *Third*, the prolonged Israeli occupation and the policies and practices associated with it amount to the *de facto* and *de jure* annexation of the Palestinian territories, which violates the prohibition on the acquisition of territory by force.

92. Underlying the positions shared in this section is the contention that the Israeli occupation of the Palestinian territories is an internationally wrongful act that is distinct from the question of the wrongfulness of specific Israeli policies and practices in the occupied territories.[200] As discussed below, in section **B**, many of Israel's activities in the occupied territories – such as the establishment of settlements, the expropriation of Palestinian land and property, the construction of bypass roads and the Separation Wall – constitute internationally wrongful acts that violate Israel's obligations as an occupying power under international humanitarian law and under the applicable rules of international human rights law, while also amounting to composite breaches of international law that contribute to the illegality of the Israeli occupation of the Palestinian territories.[201] In addition to these specific violations of international law, however, Israel's occupation of the Palestinian territories qualifies in itself as an internationally wrongful act, on the three aforementioned grounds.[202]

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199 See, e.g., **Dossier No. 563**, General Assembly Resolution 3414 (XXX) 'The situation in the Middle East' (A/RES/3414 (XXX) of 05 December 1975), paras. 1 and 2. Subsequent General Assembly resolutions also described the Israeli occupation as "illegal." See, e.g., General Assembly resolutions 32/20 (1977), 33/29 (1978), 34/70 (1979), 35/122E (1980), 35/207 (1980), 36/147E (1981).

200 As the Israeli scholar Yael Ronen noted (*Illegal Occupation and its Consequences* 41 ISRAEL L. REV. 201, 205 (2008)), it is important to distinguish between an "occupation which is *accompanied by* a violation of international law from an occupation which *rests on* a violation of international law."

201 International Law Commission ("**ILC**"), Articles on Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/49 ("**Articles on State Responsibility**"), Article 15.

202 General Assembly, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967' (A/72/556 of 23 October 2017). In this report, the Special Rapporteur argued: "[a]s the Israeli occupation of the Palestinian territory has lengthened in time, and with many of its features found to be in flagrant violation of international law, some international legal scholars have raised

a. Israel's Occupation of the Palestinian Territories Violates the Right of the Palestinian People to Exercise Self-Determination

93. It is uncontested that the right of peoples to self-determination is an established rule of general international law.[203] The ICJ has repeatedly affirmed that respect for the right of peoples to self-determination is an obligation *erga omnes*,[204] and the International Law Commission has recognized the right to self-determination as a principle that has attained the status of a peremptory norm of international law.[205]

94. The right to self-determination is codified in several conventions, such as the UN Charter,[206] the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights,[207] and expressed in several declarations adopted by the UN.[208] In the *Chagos Advisory Opinion*, the ICJ affirmed that the content of these resolutions have "a declaratory character with regard to the right of self-determination."[209]

95. The Palestinians are a "people" entitled to exercise the right to self-determination.[210] As the ICJ stated in the *Wall Advisory Opinion*: "the existence of a 'Palestinian people' is no longer in issue."[211] Numerous resolutions adopted by the UN General Assembly

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the issue of whether an occupation that was once regarded as lawful can cross a tipping point and become illegal." On the basis of this observation, the Special Rapporteur proposed the following four-pronged test to determining whether a case of belligerent occupation is lawful: (i) The belligerent occupier cannot annex any of the occupied territory; (ii) The belligerent occupation must be temporary and cannot be either permanent or indefinite; and the occupant must seek to end the occupation and return the territory to the sovereign as soon as reasonably possible; (iii) During the occupation, the belligerent occupier is to act in the best interests of the people under occupation; (iv) The belligerent occupier must administer the occupied territory in good faith, including acting in full compliance with its duties and obligations under international law and as a member of the United Nations.

Similarly, Israeli scholar Professor Aeyal Gross has argued that a normative evaluation of a case of belligerent occupation should be undertaken on the basis of "three related prongs: (1) non-acquisition of sovereignty, (2) management of the territory for the benefit of the local population, (3) temporariness rather than indefinite prolongation." AEYAL GROSS THE WRITING ON THE WALL 35 (2017).

203 As the ICJ noted in *Namibia Advisory Opinion*, para. 52: "[t]he subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them".

204 *Chagos Advisory Opinion*, para. 180; *East Timor* (Portugal v. Australia), Judgment, I.C.J. Rep. 1995, p. 90 ("**East Timor**"), para. 29.

205 ILC, 'Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), with commentaries' (A/77/10 of 2022), p. 88.

206 According to Article 1 of the Charter, one of the purposes of the United Nations is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace," while Article 55 of the Charter also states: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote […]".

207 International Covenant on Civil and Political Rights, 999 UNTS 171 (1966), Article 1; International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (1976), Article 1.

208 Amongst which, in particular, General Assembly Resolution 1514 (XV), 'Declaration on the Granting of Independence to Colonial Counties and Peoples' (A/RES/1514 (XV) of 14 December 1960); General Assembly Resolution 1541 (XV), 'Principles which should Guide Members in Determining Whether or not an Obligation Exists to Transmit the Information called for under Article 73(e) of the Charter' (A/RES/1541 (XV) of 15 December 1960); **Dossier No. 235**, General Assembly Resolution 1803 (XVII), Declaration on Permanent Sovereignty over Natural Resources (A/RES/1803 (XVII) of 14 December 1960), and General Assembly Resolution 2625 (XXV), *supra* note 52.

209 *Chagos Advisory Opinion*, para. 152.

210 Sally Mallison & Thomas Mallison, *The Juridical Bases for Palestinian Self-Determination*, 1 PALESTINE YRBK INT'L L. 36, 44-46 (1984).

211 *Wall Advisory Opinion*, para. 115.

and other UN bodies have also affirmed that the right to self-determination applies to the Palestinian People, which includes the right to establish their own independent and sovereign State.[212]

96. The right to self-determination is exercised in relation to a specific territory.[213] The peoples of a non-self-governing territory are entitled to freely determine their political status by electing to either establish an independent sovereign State, to freely associate with another independent State, or to integrate with another independent State.[214] In the case of Palestine, it is generally recognized that the Palestinian people are entitled to exercise their right to self-determination – including through their own independent, sovereign State – in relation to the territories occupied by Israel since the Six-Day War.

97. It is also established in international law that States are under an obligation to refrain from engaging in activities, especially forcible actions, that prevent peoples from exercising their right to self-determination.[215] It should be noted that the phrase

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[212] The process of recognizing the right of the Palestinian people to self-determination, as distinct from the right of return of refugees, began with **Dossier No. 945**, General Assembly Resolution 2535 (XXIV), 'United Nations Relief and Works Agency for Palestine Refugees in the Near East' (A/RES/2535 (XXIV) (B) of 10 December 1969), which reaffirmed "the inalienable rights of the peoples of Palestine." This was followed by **Dossier No. 286**, General Assembly Resolution 2649 (XXV), 'The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights' (A/RES/2649 (XXV) of 30 November 1970) which gave clearer expression to the right of self-determination of the Palestinian people: "2. *Recognizes* the right of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance; […], 4. *Considers* that the acquisition and retention of territory in contravention of the right of the people of that territory to self- determination is inadmissible and a gross violation of the Charter; 5. *Condemns* those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine."
Similarly, **Dossier No. 946**, General Assembly Resolution 2672 (XXV), 'United Nations Relief and Works Agency for Palestine Refugees in the Near East' (A/RES/2672 (XXV) (C) of 8 December 1970) reaffirmed "the inalienable rights of the Palestinian people in Palestine, including (a) The right to self-determination without external interference; (b) The right to national independence and sovereignty." This was followed by **Dossier No. 1205**, General Assembly Resolution ES 7/2, 'Question of Palestine' (A/RES/ES-7/2 of 29 July 1980) that not only reaffirmed the right to self-determination of the Palestinian people, but also underscored their right to "establish its own independent sovereign State." This has been reaffirmed in numerous resolutions adopted over the subsequent decades, one of the latest of which was **Dossier No. 381**, General Assembly Resolution 77/208, 'The right of the Palestinian people to self-determination' (A/RES/77/208 of 15 December 2022), which, like previous resolutions, reaffirmed "the right of the Palestinian people to self-determination, including the right to their independent State of Palestine." See also UN General Assembly Resolutions A/RES/76/150 (2021); A/RES/75/172 (2020); A/RES/74/139 (2019); A/RES/73/158 (2018); A/RES/72/160 (2017); A/RES/71/184(2016); A/RES/70/141 (2015); A/RES/69/165 (2014); A/RES/68/154 (2013); A/RES/67/158 (2012); A/RES/66/146 (2011); A/RES/65/202 (2010); A/RES/64/150 (2009); A/RES/63/165 (2008); A/RES/62/146 (2007); A/RES/61/152 (2006); A/RES/60/146 (2005); and A/RES/59/179 (2004).

[213] As the late publicist Professor Cherif Bassiouni noted (*Self-Determination and the Palestinians* 65 AMERICAN J. INT'L L. 31, 34 (1971)): "[i]n the abstract, people determine their goals regardless of geographic limitations; however, realistically, it is exercisable only when it can be Actuated within a given territory susceptible of acquiring the characteristics of sovereignty, which is a prerequisite for acquiring membership in the community of nations." Similarly, as explained in **Dossier No. 1710**, 'Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A' (E/CN.4/2004/6 of September 2003), para. 15: "[t]he right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self-determination within a territory."

[214] General Assembly Resolution 1541 (XV), *supra* note 208.

[215] This is reflected in General Assembly Resolution 2625 (XXV), *supra* note 52: all States have a "duty to promote, through joint and separate action, realization of the principle of equal rights and the self-determination of peoples," while "[e]very State has the duty to refrain from any forcible action which deprives peoples refer to above in the elaboration of the present principle of their right to self-determination."

"any forcible action" in Resolution 2625 (XXV) was not limited to the use of *military force*; rather, are prohibited any acts of coercion, institutionalized violence, or repressive practices that prevent a people from freely determining their political status. As the late jurist Professor Antonio Cassese noted: "self-determination is violated whenever there is a military invasion or belligerent occupation of a foreign territory."[216]

98. As such, and as a corollary of the right to self-determination, it is unlawful under international law to undermine or threaten the unity or integrity of the territory in relation to which a people are entitled to exercise their right to self-determination. This principle is reflected in the 1960 Declaration on the Granting of Independence to Colonial Counties and Peoples which affirmed that "[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."[217] Accordingly, it is unlawful for a colonial, administering, or occupying power to detach, annex, acquire, or in any other way establish permanent control over the territory (or a portion thereof) in relation to which a people are entitled to exercise their right to self-determination. This was confirmed by the ICJ in the *Chagos Advisory Opinion*:

> The Court recalls that the right to self-determination of the people concerned is defined by reference to the entirety of a non-self- governing territory […] Both State practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self- determination […] **States have consistently emphasized that respect for the territorial integrity of a non-self- governing territory is a key element of the exercise of the right to self- determination under international law**. The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power.[218]

99. In this regard, it should be recalled that, as discussed above in section **A**, the entirety of Palestine had been provisionally recognized as an independent nation and was

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216 ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 99 (1995).
217 General Assembly Resolution 1514 (XV), *supra* note 208, para. 6.
218 *Chagos Advisory Opinion*, para. 160.

placed under the mandate system of the League of Nations as a single, unified non-self-governing territory that was administered as a trust by the United Kingdom. While taking into consideration the commitment to establish a Jewish national home within Palestine, which had been incorporated into the Palestine mandate, it was in relation to the entire territory of Palestine that the Palestinian people as a whole were entitled to exercise their right to self-determination.[219] However, after the adoption of General Assembly resolution 181 (II), which proposed the partition of Palestine into three territorial units (a Jewish State, an Arab State, and the City of Jerusalem), the subsequent establishment of the State of Israel in 1948, and the conclusion of the armistice agreements between Israel and its Arab neighbours in 1949, the international community gradually recognised that the territories in relation to which the Palestinian people are entitled to exercise their right to self-determination are those territories occupied by Israel since the armed conflict of 1967.

100. Numerous resolutions adopted by UN organs have affirmed that the territories occupied by Israel since 1967, including East Jerusalem, are occupied territories, and that the Palestinian people are entitled to exercise their right to self-determination in relation to these territories. For example, General Assembly resolution 52/250 stated:

> 1. *Affirms* that the status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation, and affirms, in accordance with the rules and principles of international law and relevant resolutions of the United Nations, including Security Council resolutions, that the Palestinian people have the right to self-determination and to sovereignty over their territory and that Israel, the occupying Power, has only the duties and obligations of an occupying Power under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, of 1907;
>
> 2. *Expresses* its determination to contribute to the achievement of the inalienable rights of the Palestinian people and the attainment of a just and comprehensive negotiated peace settlement in the Middle East resulting in

[219] In its 'Report to the General Assembly' (A/364 of 3 September 1947), the UNSCOP observed, in relation to the right of the Palestinian people to self-determination: "176. With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the 'A' Mandates, it was not applied to Palestine, obviously because of the intention to make possible the creation of the Jewish National Home there. Actually, it may well be said that the Jewish National Home and the *sui generis* Mandate for Palestine run counter to that principle."

> two viable, sovereign and independent States, Israel and Palestine, based on the pre-1967 borders and living side by side in peace and security.

101. It is the view of the African Union that Israel's belligerent occupation of the West Bank, the Gaza Strip, and East Jerusalem, constitutes an internationally wrongful act of a continuing character that violates the obligation incumbent upon Israel not to deprive the Palestinian people of their right to self-determination. In other words, the Israeli occupation *per se*, as distinct from policies or practices associated with the occupation, such as Israeli settlements in the West Bank and East Jerusalem, constitutes a forcible action that continues to deprive the Palestinian people of their right to self-determination.

102. In addition, Israel's policies and practices in the occupied Palestinian territories, as described in section **B** below, taken in aggregate, constitute elements of a composite breach of Israel's obligation not to deprive the Palestinian people of their right to self-determination. For instance, in relation to the Separation Wall, the Court recognized in the *Wall Advisory Opinion*, that these policies and practices "severely impede[] the exercise by the Palestinian people of its right to self-determination."[220] Likewise, the UN Secretary General has held that the construction and expansion of Israeli settlements in the West Bank and East Jerusalem has led to a situation where "the territory of the Palestinian people is divided into enclaves with little or no territorial contiguity", and that such "fragmentation of the West Bank […] undermines the possibility of the Palestinian people realizing their right to self-determination through the creation of a viable state."[221]

b. Israel's Prolonged Occupation of the Palestinian Territories Deprives the State of Palestine of its Full Sovereignty, further Depriving the Palestinian People of their Right to Self-Determination

103. Israel's prolonged occupation also violates the territorial integrity of the State of Palestine and deprives it of its ability to completely exercise its full sovereignty over its territory. This internationally wrongful act further deprives the Palestinian people of

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220 *Wall Advisory Opinion*, para. 122.

221 **Dossier No. 62**, Report of the Secretary General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (A/67/375 of 18 September 2012), paras. 11-13, further noting that the Israeli "[s]ettlements and the associated restrictions on the access of Palestinians to large portions of the West Bank do not allow the Palestinian people to exercise permanent control over natural resources."

their ability to exercise their right to self-determination through the establishment of a State of Palestine able to enjoy complete sovereignty over its territory.[222]

104. This sub-section will not engage in an evaluation of whether the State of Palestine has fulfilled the prerequisites of statehood under the applicable rules of customary international law, as this is not a determination that the African Union is entitled to make. The African Union observes, however, that on 15 November 1988, the Palestinian National Council adopted the Declaration of Independence of the State of Palestine.[223] Since then, an overwhelming majority of the Member States of the African Union,[224] just like a majority of the Member States of the UN, including States from every regional grouping at the UN, have recognized the State of Palestine.

105. The State of Palestine also enjoys either member State status or observer State status in many international and regional organizations, including the African Union. The State of Palestine is also member State of several UN specialized agencies and bodies, such as the United Nations Educational, Scientific, and Cultural Organization (UNESCO), the United Nations Industrial Development Organization (UNIDO), the United Nations Conference on Trade and Development (UNCTAD), and the United Nations Economic and Social Commission for West Asia (ESCWA).[225]

106. The admission of the State of Palestine, either as member State or an observer State, by various organs, specialized agencies, or subsidiary bodies of the UN, are the latest measures in a long series of steps taken over several decades to accord access to the representatives of the Palestinian people to the UN. In 1974, the Palestine Liberation Organization (PLO), which had been recognized as "the representative of the Palestinian people," was invited by the General Assembly to participate in the deliberations of the General Assembly on the question of Palestine.[226] Also in 1974, the General Assembly invited the PLO to "participate in the sessions and the work of

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222 While there is a connection between these two breaches of Israel's international legal obligations – namely, the obligation not to deprive the Palestinian people of their right to self-determination, and the obligation to respect the sovereignty and territorial integrity of the State of Palestine –, this sub-section focuses on the latter, as a separate and distinct internationally wrongful act.

223 United Nations, 'Letter dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General' (A/43/827 – S/20278 of 18 November 1988).

224 46 of the 55 AU Member Sates currently recognize the State of Palestine.

225 For a full list of regional and international organizations in which the State of Palestine is a member, see: State of Palestine, Ministry of Foreign Affairs and Expatriates, Membership of the State of Palestine in International Organizations. Available at: http://www.mofa.pna.ps/en-us/mediaoffice/membership-of-the-state-of-palestine-in-international-organizations-as-of-25-may-2018

226 General Assembly Resolution 3210 (XXIX), 'Invitation to the Palestine Liberation Organization' (A/RES/3210 (XXIX) of 14 October 1974).

the General Assembly in the capacity of observer," and decided that the PLO was "entitled to participate as an observer in all sessions and the work of all international conferences convened under the auspices of other organs of the United Nations."[227]

107. After the State of Palestine declared independence, the General Assembly acknowledged it, and affirmed "the need to enable the Palestinian people to exercise their sovereignty over their territory occupied since 1967." The General Assembly also decided that "the designation 'Palestine' should be used in place of the designation 'Palestine Liberation Organization' in the United Nations system." [228] A decade later, in 1998, the General Assembly accorded Palestine "additional rights and privileges of participation in the sessions and work of the General Assembly and the international conferences convened under the auspices of the Assembly or other organs of the United Nations, as well as in United Nations conferences."[229] Finally, in 2012, the General Assembly accorded "Palestine non-member observer State status in the United Nations." [230]

108. In addition, the State of Palestine has also concluded bilateral treaties with many States from various regions,[231] and acceded to several multilateral treaties that relate to a wide-range of matters such as diplomatic and consular relations, [232] human

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227 General Assembly Resolution 3237 (XXIX), 'Observer status for the Palestine Liberation Organization' (A/RES/3237 (XXIX) of 22 November 1974).

228 **Dossier No. 398**, General Assembly Resolution 43/177, 'Question of Palestine' (A/RES/43/177 of 15 December 1988).

229 General Assembly Resolution 52/250, 'Participation of Palestine in the work of the United Nations' (A/RES/52/250 of 13 July 1998).

230 General Assembly Resolution 67/19, 'Status of Palestine in the United Nations' (A/RES/67/19 of 4 December 2012).

231 See, e.g., Agreement between the Government of the Republic of South Africa and the Government of the State of Palestine for the Establishment of a Joint Commission of Cooperation (26 November 2014) UNTS No. 53393; Agreement between the Government of the Republic of South Africa and the Government of the State of Palestine on Higher Education and Training (26 November 2014), UNTS No. 53394; Agreement between the Argentine Republic and the State of Palestine on Education (20 March 2019), UNTS No. 57208; Agreement between the Government of the Republic of Turkey and the Government of the State of Palestine concerning the Reciprocal Promotion and Protection of Investments (5 September 2018).

232 The State of Palestine is a party to the Vienna Convention on Diplomatic Relations, acceded on 2 April 2014, and the Vienna Convention on Consular Relations, acceded on 2 April 2014.

rights,[233] the law of the sea,[234] environmental protection,[235] arms control and disarmament,[236] in addition to the Rome Statute of the International Criminal Court.[237]

109. Of course, recognition by States is not constitutive of the statehood of an entity purporting to be a State, nor is recognition constitutive of the international legal personality of a State.[238] Nonetheless, as Professor Malcolm Shaw explained, "recognition is a statement by an international legal person as to the status in international law of another real or alleged international legal person or of the validity of a particular factual situation."[239]

110. In light of the above, the African Union considers that, in the view of those States that have recognized the State of Palestine, which constitute a broad and representative majority of the Member States of the UN, including the overwhelming majority of the Member States of the African Union, the State of Palestine has satisfied the prerequisites of statehood under the applicable rules of customary international law.

111. In this context, it is established that, under international law, there is no obligation on States to recognize other States or other entities purporting to be a State. However, it is also established in international law that non-recognition of a State does not deprive

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233 For example, the State of Palestine is a party to the following agreements: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, acceded on 2 April 2014; Optional Protocol of the Convention against Torture, acceded on 29 December 2017; International Covenant on Civil and Political Rights, acceded on April 2, 2014; Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, acceded on 18 March 2019; International Covenant on Economic, Social, and Cultural Rights, acceded on 2 April 2014; Convention on the Elimination of All Forms of Discrimination against Women, acceded on 2 April 2014; International Convention on the Elimination of All Forms of Racial Discrimination, acceded on 2 April 2014; Convention on the Rights of the Child, acceded on April 2, 2014; Convention on the Rights of Persons with Disabilities, acceded on 2 April 2014.

234 The State of Palestine acceded to the United Nations Convention on the Law of the Sea on 2 January 2015.

235 For example, the State of Palestine is a party to the following agreements: Convention on Biological Diversity, ratified on 2 January 2015; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, acceded on 2 January 2015; United Nations Convention on the Non-Navigational Uses of International Watercourses, acceded on 2 January 2015; United Nations Framework Convention on Climate Change, signed and ratified on 22 April 2016.

236 For example, the State of Palestine is a party to the following agreements: Anti-Personnel Mine Ban Convention, acceded on 29 December 29, 2017; Arms Trade Treaty, acceded on 29 December 2017; Biological Weapons Convention, acceded on 9 January 2018; Chemical Weapons Convention, acceded on 17 May 2018; Convention on Certain Conventional Weapons, acceded on 5 January 2015; Convention on Cluster Munitions, acceded on 2 January 2015; Convention on Environmental Modification Techniques, acceded on 29 December 2017; International Convention for the Suppression of Acts of Nuclear Terrorism, acceded on 29 December 2017; Treaty on the Non-Proliferation of Nuclear Weapons, acceded on 10/12 February 2015; Treaty on the Prohibition of Nuclear Weapons, ratified on 22 March 2018.

237 The State of Palestine acceded to the Rome Statute of the International Criminal Court on 2 January 2015.

238 As Antonio Cassese explained, "[t]he act of recognition has no legal effect on the international personality of the entity: it does not confer rights, nor does it impose obligations in it." ANTONIO CASSESE, INTERNATIONAL LAW 74 (2nd ed. 2005). Similarly, as put in ANDREW CLAPHAM, JAMES BRIERLY'S INTERNATIONAL LAW 151 (2014), recognition "does not bring into legal existence a state which did not exist before […] The primary function of recognition is to acknowledge as a fact something which has hitherto been uncertain, namely the independence of the body claiming to be a state, and to declare the recognizing state's readiness to accept the normal consequences of that fact – namely the usual courtesies, rights, and obligations of international relations between states."

239 MALCOLM SHAW, INTERNATIONAL LAW 330 (8th ed. 2017).

such an unrecognized State of the rights normally accorded to states under international law, nor does it release an unrecognized State of those duties that are incumbent upon States under international law. Writing on the legal effects of the non-recognition of Israel by many of its Arab neighbours for several decades, Ian Brownlie noted that "[f]ew would take the view that the Arab neighbours of Israel can afford to treat her as a non-entity: the responsible United Nations organs and individual states have taken the view that Israel is protected, and bound, by the principles of the United Nations Charter governing the use of force."[240]

112. This principle also applies to the State of Palestine. All States, including those that do not recognize the State of Palestine, such as the State of Israel, are under an obligation to, *inter alia*, respect the sovereignty and territorial integrity of the State of Palestine. Indeed, as the ICJ affirmed in the *Corfu Channel Case*, "respect for territorial sovereignty is an essential foundation of international relations."[241] It is, therefore, the view of the African Union that Israel's prolonged occupation of the Palestinian territories deprives the State of Palestine of its full sovereignty over its territories and violates its territorial integrity.

113. In this regard, Article V of the Oslo I Accords had identified certain issues that were to be the subject of permanent status negotiations, including the question of Jerusalem, settlements, and borders. That the borders between the State of Israel and Palestine remained subject to negotiations does not, however, affect the validity of the preceding conclusion: while a defined territory is one of the criteria of statehood, it is not required that the boundaries of a State be definitively delimited in order for that State to satisfy the prerequisites of statehood.[242]

114. Likewise, that issues such as the status of Jerusalem and Israel's settlements in the West Bank and East Jerusalem remain to be negotiated does not detract from the fact that Israel's prolonged occupation is depriving the State of Palestine of full sovereignty over its territories, and violates its territorial integrity. This is because, as discussed above, Israel never held a valid title over the Palestinian territories occupied since 1967, nor have its policies and practices that amount to a *de facto* or *de jure* annexation

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240 IAN BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 90 (7th ed. 2012).

241 *Corfu Channel Case* (United Kingdom v. Albania) Judgment, ICJ Reports 1949, p. 35.

242 As the Court noted in the *North Sea Continental Shelf Cases* (Federal Republic of Germany v. Denmark / Netherlands) Judgment ICJ Reports 1969, p. 3, para. 46, "[t]here is for instance no rule that the land frontiers of a State must be fully delimited and defined."

of those territories conferred on it a valid title thereto. Rather, these territories – i.e., the West Bank, East Jerusalem, and the Gaza Strip – are occupied territories that, as a matter of law, are part of the State of Palestine,[243] despite the State of Palestine's inability to fully exercise its sovereignty over those territories as a result of Israel's occupation.

115. A final point must be addressed here. It might be contended that it is inconsistent to argue that Israel's occupation of the Palestinian territories violates the obligation incumbent upon Israel not to deprive the Palestinian people of their right to self-determination, and concurrently, to argue that Israel's prolonged occupation of the Palestinian territories violates the sovereignty and territorial integrity of the State of Palestine.[244] In the view of the African Union, however, these two arguments are not inconsistent with each other.

116. Establishing a sovereign independent State is one of the mechanisms available to a people to exercise their right to self-determination.[245] The Palestinian people, acting through the PLO, which is universally recognized as the legitimate representative of the Palestinian people, opted to exercise their right to self-determination by establishing a sovereign and independent State. In the decades since the State of Palestine declared its independence in 1988, the representatives of the Palestinian people have taken significant steps, including the establishment of governmental structures and the exercise of governmental authority on certain areas within the occupied territories, that, in the view of the overwhelming majority of the Member States of the African Union and a majority of other States and other international legal persons, have satisfied the prerequisites of statehood under customary international law.

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243 In its referral of the situation in the occupied Palestinian territories to the International Criminal Court, the State of Palestine stated the following: "The State of Palestine comprises the Palestinian Territory occupied in 1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip." See State of Palestine, Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute, 15 May 2018, para. 9.

244 Commenting on the views of scholars who have contended that Palestine has satisfied the prerequisites of statehood, the late Professor and Judge James Crawford, *supra* note 172, at 122-123, wrote that: "[t]he essential point is surely that a process of negotiation towards identified and acceptable ends is still, however precariously, in place. It misrepresents the reality of the situation, in my view, to claim that one party already has that for which it is striving [i.e., statehood] (if so, why strive?) […] Thus far, international law has distinguished between the right to self-determination and the actual achievement of statehood, and for good reason. Even the exercise of external self-determination need not result in independence; there are other options."

245 See General Assembly Resolution 1541 (XV) , *supra* note 208, Principle VI.

117. However, due to Israel's continued occupation of the Palestinian territories and the policies and practices associated with the occupation, the State of Palestine has been deprived of its ability to fully exercise its sovereignty over its territories. This is an internationally wrongful act of a continuing character that is distinct from other breaches of international law that are attributable to the State of Israel.

118. Given the unique historical circumstances of the question of Palestine, Israel's deprivation of the ability of the State of Palestine to fully exercise its sovereignty over its territories also impinges on the ability of the Palestinian people to exercise their right to self-determination. In this regard, while the case of the Chagos Archipelago and the question of Palestine are not identical, a parallel may be drawn between these two situations. In the *Chagos Advisory Opinion*, the Court concluded that the Chagos Archipelago had been unlawfully detached by the United Kingdom, meaning that "the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968."[246] Similarly, it is the view of the African Union that Israel's prolonged and continuing occupation of the Palestinian territories is preventing the State of Palestine from completely exercising its sovereignty over the entire territory in relation to which the Palestinian people are entitled to exercise their right of self-determination.

c. Israel's Prolonged Occupation Amounts to an Annexation of the Occupied Palestinian Territories, including the Holy City of Jerusalem, which Violates the Prohibition on the Acquisition of Territory by Force

119. The law of belligerent occupation is predicated on two interrelated principles. The first is that a belligerent occupation is a temporary state of affairs:[247] the occupying power is permitted to exercise authority and take measures to maintain public order in the occupied territory while respecting the established laws of the occupied territory and enabling the peoples of the occupied territory to live normally according to their culture and traditions.[248] This is reflected in Article 43 of the 1907 Hague Regulations, which states:

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246 *Chagos Advisory Opinion*, para. 174.

247 See Salvatore Fabio Nicolosi, *The Law of Military Occupation and the Role of* De Jure *and* De Facto *Sovereignty*, 31 POLISH YRBK INT'L L. 165, 168 and 184 (2011), arguing that temporariness is "the foremost aspect of belligerent occupation" and adding that "[i]n order to test [the] legality [of the occupation], assessments need to be made of its compliance with the two essential tenets of military occupation, i.e. the inalienability of the legitimate sovereignty over the occupied territory, and the temporariness of occupation".

248 As the ICRC noted: "In general terms, the Fourth Geneva Convention protects the civilian population of occupied territories against abuses on the part of an Occupying Power, in particular by ensuring that it is not discriminated against, that it is protected against all forms of violence, and that

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

120. The second principle, a corollary of the first, is that a belligerent occupation does not confer on the occupying power title to the occupied territory, nor does an occupation undermine the sovereignty of the rightful holder of title over the occupied territory.[249] As Lassa Oppenheim observed:

> There is not an atom of sovereignty in the authority of the occupant, since it is now generally recognized that the sovereignty of the legitimate government, although it cannot be exercised, is in no way diminished by the mere military occupation.[250]

121. These principles are also an application of the prohibition on the acquisition of territory by force, which is an established rule of international law.[251] As one writer noted, "it is a corollary of Articles 2(4), 51, and 24(2) of the United Nations Charter that the acquisition of territory by the use of force – whether effected by unilateral annexation or through a treaty of peace imposed upon the defeated state – is inadmissible, even as the result of a lawful use of force."[252] In other words, the prohibition on the acquisition of territory by force is a rule that admits no exceptions, and that rule applies to any case of belligerent occupation, including when such an occupation resulted from a case of the use of force that was consistent with the applicable rules of *jus ad bellum*, including the right to use force in self-defence against an armed attack. Moreover, the prohibition on the acquisition of territory by force, and indeed the entire *corpus* of rules governing situations of belligerent

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despite occupation and war it is allowed to live as normal a life as possible, in accordance with its own laws, culture and traditions. While humanitarian law confers certain rights on the Occupying Power, it also imposes limits on the scope of its powers. Being only a temporary administrator of occupied territory, the Occupying Power must not interfere with its original economic and social structures, organization, legal system or demography. It must ensure the protection, security and welfare of the population living under occupation. This also implies allowing the normal development of the territory, if the occupation lasts for a prolonged period of time." See Conference of High Contracting Parties to the Fourth Geneva Convention, Statement by the International Committee of the Red Cross, 5 December 2001. Available at: https://www.icrc.org/en/doc/resources/documents/article/other/5fldpj.htm.

249 DINSTEIN, *supra* note 143, pp. 58-59.

250 Lassa Oppenheim, *The Legal Relations between an Occupying Power and the Inhabitants*, 33 L. QUART. REV. 363, 346 (1971).

251 *Wall Advisory Opinion*, para. 87. See also General Assembly Resolution 2625 (XXV), *supra* note 52: "The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal."

252 SHARON KORMAN, THE RIGHT OF CONQUEST: THE ACQUISITION OF TERRITORY BY FORCE IN INTERNATIONAL LAW AND PRACTICE 201 (1996). See also ROBERT KOLB, INTERNATIONAL LAW ON THE MAINTENANCE OF PEACE: *JUS CONTRA BELLUM* 346 (2018).

occupation, continue to apply in cases where the status of the territory in question is disputed.[253]

122. While the questions put to the Court by the General Assembly did not invite the Court to opine on the lawfulness of the use of force by Israel during the 1967 armed conflict, the historical record has demonstrated that Israel was not entitled it to use armed force in self-defence. The historical record has similarly demonstrated that Israel's neighbouring states did not intend to launch an armed attack against Israel during that period.[254]

123. Accordingly, the African Union considers that Israel's decision to use force during the Six-Day War, which led to the occupation of the Palestinian territories in the West Bank, the Gaza Strip, and East Jerusalem, in addition to the Sinai Peninsula in the Arab Republic of Egypt and the Golan Heights in the Syrian Arab Republic, was an internationally wrongful act that amounted to an act of aggression in breach of the prohibition on the threat or use of force. This has been the consistent position of the Organization of African Unity, which declared on several occasions that Israel's decision to use force against its Arab neighbours in the armed conflict of 1967 amounted to an act of aggression.[255]

124. The international community has consistently affirmed that the prohibition on the acquisition of territory through the use of force is applicable to Israel's occupation of the Palestinian territories. In particular, Security Council Resolution 242 (1967)[256] emphasized "the inadmissibility of the acquisition of territory by war," and affirmed

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253 Eritrea-Ethiopia Claims Commission, *Partial Award: Central Front, Eritrea's Claims 2, 4, 6, 7, 8, & 22*, 28 April 2004, XXVI RIAA 155, paras. 27-28: "[U]nder customary international humanitarian law, damage unlawfully caused by one Party to an international armed conflict to persons or property within territory that was peacefully administered by the other Party to that conflict prior to the outbreak of the conflict is damage for which the Party causing the damage should be responsible, and that such responsibility is not affected by where the boundary between them may subsequently be determined […] These protections should not be cast into doubt because the belligerents dispute the status of territory."

254 John Quigley, *Israel's Unlawful 1967 Invasion of Palestine*, *in* PROLONGED OCCUPATION & INTERNATIONAL LAW (Susan Power & Nada Kiswanson eds. 2023). See also JOHN QUIGLEY, THE SIX-DAY WAR AND ISRAELI SELF-DEFENSE (2013); AVI SHLAIM & WM. ROGER LOUIS, THE 1967 ARAB-ISRAELI WAR: ORIGINS & CONSEQUENCES (2012); AVI SHLAIM, THE IRON WALL 252, 257 (2014).

255 **Exhibit AU-9**, OAU, Resolution on the Aggression Against the United Arab Republic, OAU Doc. AHG/Res.53 (V), Fifth Ordinary Session of the Assembly of the Heads of State and Government, Algiers, Algeria, 13-16 September 1968; **Exhibit AU-10**, OAU, Resolution on the Situation in the United Arab Republic, OAU Doc. AHG/Res.57/Rev.1 (VI), Sixth Ordinary Session of the Assembly of the Heads of State and Government, Addis Ababa, Ethiopia, 6-10 September 1969; **Exhibit AU-11**, OAU, Resolution on the Continued Aggression Against the United Arab Republic, OAU Doc. AHG/Res.63 (VII), Seventh Ordinary Session of the Assembly of the Heads of State and Government, Addis Ababa, Ethiopia, 1-3 September 1970; **Exhibit AU-12**, OAU, Resolution on the Continued Aggression Against the Arab Republic of Egypt, OAU Doc. AHG/Res.67 (IX), Ninth Ordinary Session of the Assembly of the Heads of State and Government, Rabat, Morocco, 12-15 June 1972; **Exhibit AU-13**, OAU, Resolution on the Continued Occupation by Israel of Part of the Territory of the Arab Republic of Egypt, OAU Doc. AHG/Res.70 (X), Tenth Ordinary Session of the Assembly of the Heads of State and Government, Addis Ababa, Ethiopia, 27-28 May 1973.

256 *Supra*, note 33.

that a "just and lasting peace in the Middle East" should be realized on the basis of the principle of the "[w]ithdrawal of Israel armed forces from the territories occupied in the recent conflict."[257]

125. In addition, Israel's policies and practices in the occupied Palestinian territories further violate the prohibition on the acquisition of territory by force. These policies and practices demonstrate that Israel is intent on holding the territory permanently through a process that involves both the *de jure* and *de facto* annexation of these areas.[258]

126. Likewise, as relates to East Jerusalem, Israel has undertaken policies and practices that amount to both *de jure* and *de facto* annexation. As discussed above, in the aftermath of the 1967 armed conflict, Israel took legislative and administrative measures that incorporated East Jerusalem into Israel. These included the adoption of both the Law and Administration Ordinance and the Municipalities Ordinance in 1967, which were followed by the promulgation of the Basic Law on Jerusalem in 1980, pursuant to which East Jerusalem was formally annexed by Israel. These legislative and administrative measures constitute internationally wrongful acts that amount to a *de jure* annexation of Palestinian territories.

127. In addition, Israel has taken measures, such as the forced eviction of Christian and Muslim Palestinian families, expropriation of their property, restricting access to East Jerusalem, including the Old City, and the continued construction of settlements and associated bypass roads, all of which are intended to alter the physical character and demographic composition of East Jerusalem. [259] Beside qualifying as internationally wrongful acts under the applicable rules of international humanitarian law and international human rights law, these policies and practices, in aggregate, constitute an internationally wrongful act of a composite character that

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[257] It has been argued that the phrasing of Resolution 242 does not require Israel to withdraw from *all* the territories occupied since the armed conflict of 1967. The historical record shows, however, that that was not the intention of the Resolution's drafters. Rather, as noted the principal author of the resolution, UK delegate Lord Caradon: "it is necessary to say again that the overriding principle was the 'inadmissibility of territory by war' and that meant that there could be no justification for annexation of territory on the Arab side of the 1967 line merely because it had been conquered in the 1967 war." *Quoted in* Michael Lynk, *Conceived in Law: The Legal Foundations of Resolution 242,* 37 J. PALESTINIAN STUDIES 7, 12 (2007).

[258] See Omar Dajani, *Israel's Creeping Annexation,* 111 AMERICAN J. INT'L L. 51, 52-53 (2017).

[259] See Al-Haq, *Occupying Jerusalem's Old City: Israeli Policies of Isolation, Intimidation and Transformation* (2019), available at: https://www.alhaq.org/publications/15212.html.

is part of a systematic policy intended to lead to the *de facto* annexation of East Jerusalem by Israel.

128. The international community has consistently expressed the position that these Israeli policies and practices in East Jerusalem are unlawful. For instance, in resolution 252 (1968), the Security Council underscored that it considered "all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status."[260] This was followed by Resolution 267 (1969) in which the Security Council reaffirmed "the established principle that the acquisition of territory by military conquest is inadmissible", and stated that it "[*c*]*onfirms* that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status."[261] Then, in 1980, the Security Council adopted Resolutions 476 and 478 that reaffirmed the invalidity of Israeli policies and practices, including the adoption of the Basic Law, that seek to alter the status of East Jerusalem.[262] The General Assembly likewise stressed the unlawfulness of the acquisition of territory by force, and reaffirmed that East Jerusalem is an occupied territory and that Israeli measures designed to alter the status of the City are invalid.[263]

129. Furthermore, Israel has recently taken additional steps to *de jure* annex further areas of the West Bank beyond East Jerusalem. An agreement has recently been reached within the Israeli government pursuant to which authority over significant territories within the West Bank would be transferred from the Israeli armed forces to civilian

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260 **Dossier No. 1247**, Security Council Resolution 252, *supra* note 37, para. 2.

261 **Dossier No. 1253**, Security Council Resolution 267 (S/RES/267 of 3 July 1969). See also **Dossier No. 1254**, Security Council Resolution 271 (S/RES/271 of 15 September 1969), which was adopted in the aftermath of an act of arson committed against the Holy Al Aqsa Mosque in Jerusalem on 21 August 1969. Likewise, in **Dossier No. 1257**, Security Council Resolution 298 (S/RES/298 of 25 September 1971), the Security Council confirmed "in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status."

262 **Dossier No. 1273**, Security Council Resolution 476, and **Dossier No. 1274**, Security Council Resolution 478, *supra* note 39.

263 See, e.g., **Dossier No. 388**, General Assembly Resolution 35/169(E), 'Question of Palestine' (A/RES/35/169 (E) of 15 December 1980), paras. 1 to 3. Similarly, **Dossier No. 577**, General Assembly Resolution 42/209, 'The situation in the Middle East' (A/RES/42/209 (A-D) of 11 December 1987) stated: "7. *Deplores* Israel's failure to comply with Security Council resolutions 476 (1980) of 30 June 1980 and 478 (1980) of 20 August 1980 and General Assembly resolution 35/207 of 16 December 1980 and 36/226 A and B of 17 December 1981; determines that Israel's decision to annex Jerusalem and to declare it as its 'capital' as well as the measures to alter its physical character, demographic composition, institutional structure and status are null and void and demands that they be rescinded immediately; and calls upon all Member States, the specialized agencies and all other international organizations to abide by the present resolution and all other relevant resolutions and decisions".

administration.[264] This shift of governing authority has been described as amounting to a *de jure* annexation of those areas of the West Bank already under Israeli military control, the most important and largest of which are the settlements established by Israel in Area C of the West Bank.[265]

130. In addition to *de jure* measures through which Israel has formally annexed parts of the occupied Palestinian territories, other Israeli policies and practices in the occupied territories, including in East Jerusalem, demonstrate that Israel is implementing a strategy of *de facto* annexation of significant areas of the territories.

131. The concept of *de facto* annexation has been recognized in the *Wall Advisory Opinion*, with the Court warning of the possibility that the construction of the Separation Wall might "create a '*fait accompli*' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation."[266]

132. The Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967 has explained that the term "*de facto* annexation":

> […] has been generally employed as a descriptive term to illustrate the actions of a State in the process of consolidating – often through oblique and incremental measures – the legislative, political, institutional and demographic facts to establish a future claim of sovereignty over territory acquired through force or war, but without the formal declaration of annexation.[267]

133. Likewise, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, has applied the notion of *de facto* annexation to the situation in the occupied Palestinian territories. On the basis of its investigation and analysis of Israeli policies and practices, the Commission determined the following:

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264 Dan Williams, *Israeli Pro-Settler Minister Formally Gains West Bank Powers*, REUTERS, 23 February 2023.

265 For an explanation and illustrations of the consequences of this shift, see Michael Sfard, *Israel is Officially Annexing the West Bank*, FOREIGN POLICY, 8 June 2023, available at: https://foreignpolicy.com/2023/06/08/israel-palestine-west-bank-annexation-netanyahu-smotrich-far-right/; Dhalia Scheindlin & Yael Berda, *Israel's Annexation of the West Bank has Already Begun*, FOREIGN AFFAIRS, 9 June 2023, available at: https://www.foreignaffairs.com/israel/israels-annexation-west-bank-has-already-begun; Tamar Megiddo, Ronit Levine-Schnur, & Yael Berda, *Israel is Annexing the West Bank. Don't be Misled by its Gaslighting*, JUSTSECURITY, 9 February 2023, available at: https://www.justsecurity.org/85093/israel-is-annexing-the-west-bank-dont-be-misled-by-its-gaslighting/.

266 *Wall Advisory Opinion*, para. 121.

267 **Dossier No. 1425**, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 'Situation of human rights in the Palestinian territories occupied since 1967' (A/73/447 of 22 October 2018), para. 29.

> 75. […] [T]he Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure. […]
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> 76. The Commission concludes that Israel treats the occupation as a permanent fixture and has – for all intents and purposes – annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. Actions by Israel constituting de facto annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank.
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> 77. The commitment of Israel to supporting this enterprise has resulted in a series of policies that are intended to sustain and extend the enterprise, which have negatively affected all areas of Palestinian life. They include evictions, deportations and the forcible transfer of Palestinians within the West Bank, the expropriation, looting, plundering and exploitation of land and vital natural resources, movement restrictions and the maintenance of a coercive environment with the aim of fragmenting Palestinian society, encouraging the departure of Palestinians from certain areas and ensuring that they are incapable of fulfilling their right to self-determination. The Commission stresses that business enterprises are contributing to the expropriation and exploitation by Israel of Palestinian land and resources and are supporting the transfer of Israeli settlers into the Occupied Palestinian Territory.[268]

134. Lastly, from a policy perspective, the question of demography is shaping Israel's control over Palestinian territories – whether through *de facto* or *de jure* annexation. As Dr. Merav Amir explained, "[d]emography is the most consequential stumbling block [to complete formal annexation]: close to three million Palestinians reside in the West Bank, and their integration into Israel's citizenry will, it is presumed, erode the Jewish majority of the state – an eventuality that most Jewish Israelis dread."[269] In other words, Israeli policies and practices are informed by a desire on the part of Israel to retain the largest possible area of the Palestinian territories in the West Bank and East Jerusalem with the smallest possible number of Palestinians.

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[268] **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel' (A/77/328 of 14 September 2022), paras. 75-77.

[269] Merav Amir, *Unfastening Israel's Future from the Occupation: Israeli Plans for Partial Annexation of West Bank Territory,* ANTIPODE 1 (2023).

135. In its report to the General Assembly in 2022, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, opined that "[i]t is unclear in international law and practice when a situation of belligerent occupation becomes unlawful."[270] Other scholars have considered that, although specific Israeli policies and practices in the occupied territories have been consistently condemned as unlawful, the status and lawfulness of the occupation as a whole has not been the subject of a systematic legal evaluation.[271]

136. This section has filled that gap. In the African Union's view, Israel's occupation is *per se* unlawful on three grounds: (1) Israel's occupation deprives the Palestinian People of their right to self-determination; (2) Israel's prolonged occupation deprives the State of Palestine of its full sovereignty, thereby further depriving the Palestinian people of their right to self-determination; and (3) Israel's prolonged occupation, and the policies and practices associated with the occupation amount to the *de jure* and *de facto* annexation of the Palestinian territories.

B. Policies and Practices Associated with the Israeli Occupation of the Palestinian Territories that Constitute Internationally Wrongful Acts

137. As noted above,[272] some of the policies and practices associated with the Israeli occupation of the Palestinian territories, especially the maintenance, expansion, and establishment of settlements in East Jerusalem and the West Bank, amount, in aggregate, to an internationally wrongful act of a composite character, resulting in the deprivation of the Palestinian people of their ability to exercise self-determination; the deprivation of the State of Palestine of its ability to exercise its full sovereignty over its territory; and the *de jure* and *de facto* annexation of occupied Palestinian territories.

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270 **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', *supra* note 268, para. 8.

271 See *supra* note 198, and accompanying text.

272 *Supra*, paras. 102, 127.

138. However, these policies and practices also constitute separate and distinct internationally wrongful acts in breach of specific obligations incumbent on Israel as the occupying power.

139. In particular, Israel is breaching international law through the following policies and practices: (*1*) the construction and expansion of settlements in East Jerusalem and the West Bank; (*2*) the construction of bypass roads in the same areas; (*3*) the expansion of the Separation Wall; and (*4*) other measures such as the expropriation of land and restrictive zoning policies, measures aimed at altering the demographic composition and character of the Holy City of Jerusalem, and Israel's control of water resources.

140. Before proceeding it is necessary to identify the rules of international law that are applicable in the context of Israel's occupation of the Palestinian territories.

141. As discussed above in section **A**, the Palestinian territories are under the belligerent occupation of the State of Israel. Accordingly, these are territories to which international humanitarian law applies. As an occupying power, Israel is under an obligation to respect the rules enshrined in the Fourth Geneva Convention, in addition to the applicable rules of customary international law, such as the 1907 Hague Regulations.[273] As noted above, this position has been repeatedly affirmed by several UN organs.[274]

142. Israel is also under an obligation to respect human rights. As the Court underlined in the *Wall Advisory Opinion*, "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights."[275] That human rights law apply to the occupied Palestinian territories has

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273 *Wall Advisory Opinion*, paras. 89, 101.
274 *Supra*, para. 89.
275 *Wall Advisory Opinion*, para. 106.

been reaffirmed by the General Assembly,[276] the Human Rights Council,[277] the Secretary General, and the High Commissioner for Human Rights.[278]

1. Israeli Settlements in East Jerusalem and the West Bank

143. A report recently submitted to the Human Rights Council by the Office of the High Commissioner for Human Rights ("**OHCHR**") has documented the significant increase of Israeli settlements in the West Bank and East Jerusalem, and the growing population residing in these settlements. Between 2012 and 2022:

> [T]he settlement population in the occupied West Bank, including East Jerusalem, has grown from 520,000 in 2012 to just under 700,000. The population lives in 279 Israeli settlements spread across the West Bank, including 14 settlements in East Jerusalem, with a total population of more than 229,000 persons. Of those settlements, at least 147 are outposts, which are illegal even under Israeli domestic law.[279]

144. This same report by the OHCHR has further documented the *accelerating rate* of expansion of settlement activity: "[s]ettlement expansion has continued year upon year over the course of the decade," whereas "[o]fficial data on settlement construction approvals indicated an average quarterly rate of 763 units […] Settlement advances in and around East Jerusalem also continued, threatening to sever the connection between the southern West Bank and the northern West Bank and further detaching East Jerusalem from the rest of the West Bank."[280] A report issued by the European Union shed further light and provided additional information on the continued expansion of Israeli settlement activity in the West Bank and East Jerusalem. To wit:

> A stark increase in the advancement of settlement plans (West Bank, including East Jerusalem) can be observed since 2017, with a continuous rise

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276 See, e.g., **Dossier No. 831**, General Assembly Resolution 71/98, 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem' (A/RES/71/98 of 6 December 2016), preamble: "*Recalling* also the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child, and affirming that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem."

277 See, e.g., **Dossier No. 1461**, HRC Resolution 31/35, 'Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem' (A/HRC/RES/31/35 of 24 March 2016), preamble: "*Recalling* also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child […] *Affirming* the obligation of all parties to respect international humanitarian law and international human rights law"

278 See, e.g., **Dossier No. 1568**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan' (A/HRC/34/39 of 13 April 2017): "Israel bears responsibility for implementing in the Occupied Palestinian Territory the human rights obligations enshrined in the seven core human rights treaties and conventions it has ratified." See also **Dossier No. 1564**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan' (A/HRC/25/38 of 12 February 2014).

279 **Dossier No. 1574**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan' (A/HRC/52/76 of 15 March 2023).

280 *Ibid.*, para. 6.

> since 2019. While 2020 experienced a 40% increase in the advancement of settlement units compared to 2019 (from 11733 to 16439), 2021 saw a 10% rise (from 16439 to 18246). The advancement of tenders slightly decreased from 2020 to 2021 (from 3841 to 3784), yet remains relatively high when put in contrast and comparison with the years since 2017.
>
> Settlement advancement in the West Bank, excluding East Jerusalem, experienced a drawback in 2021. Compared to 13,992 units (12,150 plans and 1833 tenders) in 2020, a total of 7136 units (3645 plans and 3491 tenders) got advanced in 2021, representing a high decrease.
>
> Therefore, it is particularly the advancement of housing units in settlements located in East Jerusalem that is unprecedented, greatly contributing to the overall number of settlement units advanced in 2021 […] a total of 14,601 housing units in outline plans got advanced in Israeli settlements/enclaves over the green line in Jerusalem.[281]

145. In addition to settlements, so-called "outposts" are also frequently established by Israeli citizens in the occupied Palestinian territories. These "outposts" are, formally, unlawful under Israeli law. Yet, despite that domestic legal status, the OHCHR has reported that "[t]here are currently 147 outposts in the West Bank, 78 of which have been erected since 2012. Of that number, 77 are 'farms', 66 of which have been established in the past decade."[282]

146. The establishment and expansion of both settlements and outposts is actively supported by the Israeli government, which has adopted a wide-range of incentives and benefits, including through the provision of essential services and infrastructure, designed to assist in the establishment, maintenance, and expansion of settlements and outposts and to encourage Israelis to relocate to these settlements. As the Israeli human rights organization B'Tselem has noted:

> [F]or more than five decades, all Israeli governments have openly and officially encouraged Jews to move to the settlements and develop financial ventures in and around them. The policy is implemented via two types of financial benefits and incentives: those offered to settlers on an individual basis, and those given to settlements, discriminating in their favor compared to Israeli local councils west of the Green Line.

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281 European Union, Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), 2021 Report on Israeli settlements in the occupied West Bank, including East Jerusalem Reporting period January-December 2021, 20 July 2022, available at: https://www.eeas.europa.eu/sites/default/files/documents/EU%20Settlement%20Report%202021.pdf.

282 **Dossier No. 1574**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan', *supra* note 279, para. 12.

> The main types of benefits on offer are housing benefits. These can amount to hundreds of thousands of NIS per family and make it possible for families of lesser means to purchase a residence. Further benefits, which can amount to as much as NIS one million per person, are given to entrepreneurs and farmers living in both settlements and outposts – which may have been established without official authorization, but almost always with help and support from the state.[283]

147. Consolidating Israeli control over the entirety of East Jerusalem and large portions of the West Bank has been a long-standing policy objective of Israel. Since the years immediately following the armed conflict of 1967, successive commissions established by the UN to investigate Israeli policies and practices in the occupied territories have documented the underlying pattern of Israel's settlement activities, which appear aimed at perpetuating its control of the occupied territories, especially East Jerusalem. For instance, in 1971, a Special Committee appointed by the General Assembly to investigate human rights violations attributable to Israel as a result of its policies and practices in the occupied territories, stated the following:

> The evidence, including testimony before the Special Committee regarding annexation and settlement, supports the allegation that the Government of Israel is following a policy of annexing and settling occupied territories in a manner calculated to exclude all possibility of restitution to lawful ownership. In the view of the Special Committee evidence of annexation is stronger with respect to some areas, such as Jerusalem, while in others occupied as a result of the hostilities of June 1967 the evidence justifies the conclusion that, irrespective of the ultimate objectives of Israel's policy, the Government of Israel is engaged in practices constituting a violation of human rights [...] every attempt on the part of the Government of Israel at carrying out a policy of annexation and settlement amounts to a denial of the fundamental human rights of the local inhabitants, in particular the right of self-determination and right to retain their homeland, and a repudiation by the Government of Israel of accepted norms of international law.[284]

148. Similarly, a commission established by the Security Council in 1979 to examine the situation relating to Israeli settlements in the occupied territories determined that:

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283 B'Tselem, *This is Ours – And This, Too*, March 2021, p. 11, available at: https://www.btselem.org/sites/default/files/publications/202103_this_is_ours_and_this_too_eng.pdf

284 **Dossier No. 707**, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories' (A/8389 of 5 October 1971), paras. 44-46. The following year, the same committee reaffirmed its conclusion regarding Israel's policies and practices relating to settlements in the occupied Palestinian territories: see **Dossier No. 708**, *idem* (A/8828 of 9 October 1972), para. 83, finding that "[t]he evidence that it had received reflected a policy on the part of the Government of Israel designed to effect radical changes in the physical character and demographic composition of several areas of the territories under occupation by the progressive and systematic elimination of every vestige of Palestinian presence in these areas."

> [s]upported by the strong influence of various private groupings, the settlement policy is an official government programme which is implemented by a number of organizations and committees representing both the Government and the private sector inside and outside Israel … [T]he Israeli government is engaged in a willful, systematic and large-scale process of establishing settlements in the occupied territories for which it should bear full responsibility.[285]

As discussed above, as the occupation became further prolonged, these policies and practices continued in order to create facts on the ground that entrench Israel's *de jure* and *de facto* annexation of vast areas of the occupied Palestinian territories.

149. As the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967 has explained, "[n]o country creates civilian settlements in occupied territory unless it has annexationist designs in mind […] The political purpose of the Israeli settlement enterprise has always been to establish sovereign facts on the ground and to obstruct Palestinian self-determination."[286] The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, reached a similar conclusion, finding that:

> […] the continuous expansion by Israel of settlements and related infrastructure actively contributes to the entrenchment of the occupation and makes the two-State solution an increasingly unviable option. This strategy has allowed successive Governments of Israel to uphold the appearance of agreement with the international community while maintaining its permanent occupation and *de facto* annexation policies largely undisturbed."[287]

150. In a further expression of the growing concern of the international community over Israel's expanding settlements, the Security Council recently issued an unanimous Presidential Statement, reiterating that "Israeli settlement activities are dangerously imperilling the viability of the two-State solution based on the 1967 lines," and underscoring the need for all parties to comply with their "international obligations and commitments; [the Security Council] strongly opposes all unilateral measures that

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285 **Dossier No. 1263**, 'Report of the Security Council Commission established under resolution 446 (1979)' (S/13450 of 12 July 1979), paras. 226-228.

286 **Dossier No. 1425**, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 'Situation of human rights in the Palestinian territories occupied since 1967', *supra* note 267, para. 49.

287 **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', *supra* note 268, para. 51.

impede peace, including, *inter alia*, Israeli construction and expansion of settlements, confiscation of Palestinians' land, and the 'legalization' of settlement outposts, demolition of Palestinians' homes and displacement of Palestinian civilians."[288]

151. Despite international condemnations, senior Israeli officials have, on several occasions, clearly expressed Israel's intention to make irreversible the settlements and the resulting annexation of significant portions of the West Bank, and of East Jerusalem.[289] For example, in a speech to settlers in Elkana on 17 May 2022, then Prime Minister Bennet emphasized the perpetual nature of the settlements: "With the help of God, we will also be here at the celebrations of Elkana's fiftieth and seventy-fifth, 100th, 200th and 2,000th birthdays, within a united and sovereign Jewish State in the Land of Israel."[290] In 2017, Prime Minister Netanyahu had been even more explicit about the permanent nature of Israel's occupation of the West Bank, stating that: "We are here to stay forever. There will be no further uprooting of settlements in the Land of Israel […] This is our land."[291]

152. The African Union thus invites the Court to find, as it did in the *Wall Advisory Opinion*, that "the Israeli settlements in the Occupied Palestinian Territories (including East Jerusalem) have been established in breach of international law."[292] This determination was primarily based on the application of article 49(6) of the Fourth Geneva Convention, prohibiting the transfer of the occupant's population in occupied territories.[293] Other UN organs and bodies, including the Security Council,[294]

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288 Statement by the President of the Security Council, *supra* note 86.

289 **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', *supra* note 268, para. 52.

290 *Ibid.*, para. 53.

291 Noga Tarnopolsky, *Netanyahu says Israel won't retreat on Jewish settlements: 'We are here to stay forever'*, LOS ANGELES TIMES, 28 August 2017.

292 *Wall Advisory Opinion*, para. 120.

293 The principle enshrined in article 49(6) of the Fourth Geneva Convention also appears in other instruments. For example, article 85(4)(a) of Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, which Israel is *not* a party to, states that "the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention" shall be considered a grave breach of Additional Protocol I. Article 8(2)(b)(viii) of the Rome Statute of the ICC also states that: "The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory" shall constitute a war crime in international armed conflicts.

294 See, e.g., **Dossier No. 1262**, Security Council Resolution 446 (S/RES/446 of 22 March 1979), paras. 1-3: "*Determines* that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East […] *Calls once more upon* Israel, as the occupying Power, to abide scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories". See also, Security Council Resolutions 452 (1979), 465 (1980), and 2334 (2016).

the General Assembly,[295] and the Human Rights Council,[296] have consistently confirmed the Court's 2004 conclusion.

153. In addition to constituting an internationally wrongful act under the applicable rules of international humanitarian law, the continued expansion of existing Israeli settlements and the establishment of new settlements and outposts in the West Bank and East Jerusalem are in breach of the agreements concluded between the State of Israel and the PLO. This activity indeed jeopardize the matters, such as borders, designated by the Oslo I Accords as the subject of future negotiations.[297] Likewise, this activity violates article XXXI(7) of the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (also known as the "**Oslo II Accords**"), which provides that "[n]either side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."

154. According to Antonio Cassese, these provisions from the Oslo Accords constitute a *pactum de negotiando* requiring both parties to negotiate in good faith to reach an agreement, and not to: "(1) advance excuses for not engaging into or pursuing negotiations, or (2) to accomplish acts which would defeat the object and the purpose of the future treaty."[298]

155. In this context, the African Union believes that the continued expansion of existing Israeli settlements and the establishment of new settlements and outposts in the

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[295] See, e.g., General Assembly resolutions 2253 (ES-V 1967); A/RES/2851 (XXVI); A/RES/3005 (XXVII); A/RES/3092 (XXVIII); A/RES/3240 (XXIX); A/RES/3525 (XXX). See also: A/RES/31/106; A/RES/32/91; A/RES/33/113; A/RES/34/90; A/RES/35/122, A/RES/35/207; A/RES/36/147; A/RES/37/88; A/RES/37/222; A/RES/38/79; A/RES/38/166; A/RES/39/95; A/RES/40/201; A/RES/41/63; A/RES/42/160; A/RES/42/190; A/RES/43/58; A/RES/44/48; A/RES/45/74; A/RES/45/130; A/RES/46/47; A/RES/46/82; A/RES/46/162; A/RES/46/199; A/RES/47/70; A/RES/48/41; A/RES/49/36; A/RES/50/29; A/RES/51/135; A/RES/51/132; A/RES/51/133: A/RES/51/223; A/RES/52/67; A/RES/52/65; A/RES/53/56; A/RES/53/57; A/RES/55/61; A/RES/55/62; A/RES/ES-10/6; A/RES/ES-10/7; A/RES/ES-10/6; A/RES/ES-10/9; A/RES/ES-10/16; A/RES/57/127; A/RES/58/96; A/RES/59/123; A/RES/59/121; A/RES/60/108; A/RES/60/106; A/RES/62/84; A/RES/62/109; A/RES/63/98; A/RES/64/91: A/RES/64/94; A/RES/65/17; A/RES/66/18; A/RES/66/76; A/RES/66/225; A/RES/66/77; A/RES/66/78; A/RES/69/90; A/RES/69/91; A/RES/69/92; A/RES/70/88; A/RES/70/90; A/RES/71/95; A/RES/71/96; A/RES/71/97; and A/RES/71/98.

[296] See, e.g., Human Rights Council resolutions A/HRC/RES/2/4|A/HRC/2/9 A/HRC/RES/7/18; A/HRC/RES/10/18; A/HRC/RES/13/7; A/HRC/RES/19/17; A/HRC/RES/22/29; A/HRC/RES/25/29; A/HRC/RES/28/27; A/HRC/RES/31/34; A/HRC/RES/34/30; A/HRC/RES/34/31; A/HRC/RES/37/35; A/HRC/RES/40/23; A/HRC/RES/46/3; A/HRC/RES/46/26; A/HRC/RES/49/4; and A/HRC/RES/52/3.

[297] *Supra*, para. 113.

[298] Antonio Cassese, *The Israel-PLO Agreement and Self-Determination*, 4 EUROPEAN J. INT'L L. 564, 567 (1993)

West Bank and East Jerusalem are acts that "defeat the object and the purpose of the future treaty" on the permanent status issues.[299]

156. This is because, as noted above, Israel's settlement activity in the West Bank and East Jerusalem is part of a broader policy of *de jure* and *de facto* annexation of vast areas of the occupied Palestinian territories, which prejudices any future negotiations with the State of Palestine. The African Union further considers that the establishment, maintenance, and expansion of settlements and outposts, in aggregate, amounts to internationally wrongful acts of a composite character that contribute to perpetuating Israel's occupation of East Jerusalem and the West Bank, thereby depriving the State of Palestine of its ability to exercise full sovereignty over it territory, in addition to depriving the Palestinian people of their ability to exercise their right of self-determination.

2. Israeli Bypass Roads in East Jerusalem and the West Bank

157. In addition to establishing and expanding settlements and outposts in East Jerusalem and the West Bank, Israel continues to maintain and expand a network of so-called bypass roads. As their name suggests, these roads are intended to connect Israeli settlements to each other and to Israel while bypassing Palestinian population centres. According to the OHCHR:

> Israel has spent billions of dollars on consolidating settlement blocs with networks of so-called bypass roads, which are designed to circumvent the Palestinian presence in the West Bank. A 1997 Israeli planning document explained that separate roads were a preferred planning model because they "provide a better solution for the issue of segregation". Indeed, some roads are only for Israeli use, segregating Jewish and Palestinian travelers. Even when Palestinians are allowed to travel on some roads, they are primarily designed to connect settlements and outposts to each other, to Israel and to Jerusalem.
>
> In addition, an extensive system of checkpoints and roadblocks allows Israel to control access to the bypass roads and the main highways in the West

[299] As noted by GEOFFREY WATSON, THE OSLO ACCORDS 135, 136 (2000): "Surely this provision [article XXXI(7) of the Oslo II Accords] outlaws any significant new settlement construction in the West Bank and Gaza Strip, since the expansion of Jewish housing there tends to change the 'status' of the area by making it more likely to remain in Israeli hands. Much of the *point* of settlements is to increase the likelihood that the settled area will enjoy the 'status' of Israeli territory. Only an exceedingly formalistic reading of the word 'status' would permit Israel to construct vast new settlements under the pretence that they were prompting no change in 'status' of the territories. […] There are other, structural, arguments that the Oslo Accords limit settlement activity. The redeployment process, for example, implies that Israel will stop building new settlements in the West Bank. The purpose of those provisions is to shrink, not expand, the Israeli presence in the West Bank. Likewise, the Interim Agreement makes reference to existing settlements; to add new settlements, or expand existing ones, is to alter the factual foundations of the parties' agreement."

> Bank. Furthermore, some roads segment Palestinian governorates into isolated enclaves of village clusters, hindering connectivity and restricting Palestinians' movement in the West Bank in a manner that severely infringes upon their freedom of movement and access to livelihoods and services, with negative results.[300]

158. Beside connecting Israeli settlements to each other and to Israel, and thus facilitating the further expansion of Israeli settlement activity, many of these bypass roads have encircled Palestinian urban centres in East Jerusalem and the West Bank, thereby isolating Palestinian towns and cities and preventing their natural expansion. As the Israeli human rights organization B'Tselem explained:

> Contrary to the customary purpose of roads, which are a means to connect people with places, the routes of the roads that Israel builds in the West Bank are at times intended to achieve the opposite purpose. Some of the new roads in the West Bank were planned to place a physical barrier to stifle Palestinian urban development. These roads prevent the natural joining of communities and creation of a contiguous Palestinian built-up area in areas in which Israel wants to maintain control, either for military reasons of for settlement purposes.[301]

159. Israeli bypass roads in East Jerusalem and the West Bank also often include a buffer zone of 50-70 meters on each side of the road.[302] This expands the amount of private property that is either expropriated and destroyed, and the Palestinian territory that is expropriated by Israeli authorities in order to construct these roads.

160. The African Union views the maintenance and continued construction of a network of bypass roads by Israel in East Jerusalem and the West Bank as constituting internationally wrongful acts of a continuing character.[303] These activities violate

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300 **Dossier No. 1574**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan', *supra* note 279, para. 9.

301 B'Tselem, *Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank*, August 2004, at p. 6.

302 **Dossier No. 1409**, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 'Question of the violation of human rights in the occupied Arab territories, including Palestine' (A/56/440 of 1 October 2001), para. 19.

303 Samira Shah, *On the Road to Apartheid: The Bypass Road Network in the West Bank*, 29 COLUMBIA HUMAN RIGHTS REVIEW 221 (1997).

Articles 43,[304] 46,[305] and 52[306] of the 1907 Hague Regulations, as well as articles 49,[307] 52,[308] and 53[309] of the Fourth Geneva Convention. More specifically:

a. In resulting in expropriations and by blocking access to land and water resources, Israel's network of bypass roads has led to an increase in rates of unemployment among Palestinian residents of the occupied territories, thereby violating Article 52.

b. The resulting expropriation of land and the destruction of property is also unnecessary in light of military operations, in further violation of Article 53.

c. In addition, the bypass roads have proven indispensable to Israel's expanding settlement enterprise in the occupied territories, thus contributing to the violation of Article 49 of the Fourth Geneva Convention.

In the opinion of the African Union, Israel's network of bypass roads thus amounts to an "extensive destruction and appropriation of property not justified by military necessity," within the meaning of Article 147 on grave breaches of the Fourth Geneva Convention.

161. In addition, these bypass roads are, in aggregate, internationally wrongful acts of a composite character that contribute to the further fragmentation of the Palestinian territories into disjointed cantons. Beside further depriving the State of Palestine of its ability to exercise its full sovereignty over a contiguous territory, and thus contributing to the deprivation of the Palestinian People of its ability to exercise its right of self-determination, the construction of bypass roads partake in the *de facto* and *de jure* annexation of the occupied Palestinian territories.

162. Closely associated with Israel's maintenance and continued construction of the network of bypass roads throughout the West Bank and East Jerusalem, Israel has

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304 Article 43 states: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

305 Article 46 states: "[…] Private property cannot be confiscated."

306 Article 52 states: "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country […]"

307 Article 49(6) states: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

308 Article 52 states: "[…] All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited."

309 Article 53 states: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

also instituted policies and practices that impose severe restrictions on the freedom of movement of Palestinians residing in these areas. These policies and practices include administrative measures relating to the issuance of permits to allow Palestinians to move in the West Bank, to enter East Jerusalem, and to access the so-called "seam zone," which is an area between the Separation Wall and the Green Line.

163. The Palestinians' freedom of movement within the occupied territories is further restricted by a system of checkpoints maintained by the Israeli military. Some of these checkpoints are fixed, while others are mobile and scattered throughout the West Bank. Crossing these checkpoints often requires extended periods of time, involving rigorous security checks and vehicle inspections resulting in long delays. Israel also exercises complete control over the entry and exit points to and from the West Bank. As documented, such "[m]ovement restrictions undermine individuals' rights to health care, work, education and family life, and result in the rupture of social, economic, cultural and family ties. Cumulatively, these violations undermine the right of Palestinians to self-determination and to an adequate standard of living."[310]

164. Needless to say, the restrictions imposed by Israel on the freedom of movement in the West Bank and East Jerusalem do not apply to Israeli citizens, including the inhabitants of Israeli settlements in the West Bank and East Jerusalem.

165. These policies and practices amount to internationally wrongful acts that breach Israeli obligations under international humanitarian law and international human rights law. In particular, these policies and practices – which, given their breadth, permanence, and discriminatory application, are not justifiable on the basis of military necessity or security considerations – violate Article 27 of the Fourth Geneva Convention,[311] and Article 12 of the International Covenant on Civil and Political Rights.[312] Furthermore, these policies and practices are inconsistent with Israel's

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310 **Dossier No. 1496**, HRC, 'Human rights situation in the Occupied Palestinian Territory, including East Jerusalem' (A/HRC/31/44 of 20 January 2016), para. 11.

311 Article 27 states: "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs." As the Commentaries to the Geneva Conventions explains: "The right to personal liberty, and in particular, the right to move about freely, can naturally be made subject in war time to certain restrictions made necessary by circumstances. So far as the local population is concerned, the freedom of movement of civilians of enemy nationality may certainly be restricted, or even temporarily suppressed, if circumstances so require. That right is not, therefore, included among the other absolute rights laid down in the Convention, but that in no wise means that it is suspended in a general manner. Quite the contrary: the regulations concerning occupation and those concerning civilian aliens in the territory of a Party to the conflict are based on the idea of the personal freedom of civilians remaining in general unimpaired."

312 Article 12 states: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

obligations under the Oslo I Accords, which stipulate that: "[w]ithout derogating from Israel's security powers and responsibilities in accordance with this Agreement, movement of people, vehicles and goods in the West Bank, between cities, towns, villages and refugee camps, will be free and normal, and shall not need to be effected through checkpoints or roadblocks."[313]

3. *Israel's Separation Wall*

166. It is unnecessary to recapitulate the legal analysis undertaken by the Court in the *Wall Advisory Opinion* on the question of the lawfulness of the construction of a Separation Wall by Israel in East Jerusalem and the West Bank. Suffice it to say that Israel has failed to fulfil its obligation to cease the Separation Wall's erection, and to dismantle it.

167. According to the United Nations Office for the Coordination of Humanitarian Affairs, around 65% of the projected 713km Separation Wall is now complete. This will effectively incorporate into Israel over 85% of the population inhabiting Israel's settlements in East Jerusalem and the West Bank. Territorially, when completed, the Separation Wall will isolate – and effectively incorporate into Israel – over 9% of the West Bank area.[314]

168. The maintenance and continued construction of the separation barrier has also had serious adverse effects on every aspect of the lives of Palestinian communities. As the Israeli human rights organization B'Tselem has noted:

> When it erected the barrier, Israel cut off residents of some 150 Palestinian communities from their land – including farmland and pastureland – leaving the communities east of the barrier and their land on the other, between the barrier and the Green Line. By so doing, Israel blocked thousands of Palestinians from freely accessing and cultivating their land. Israel did install 84 gates in the completed sections of the barrier to theoretically enable the owners access to their lands. In practice, however, the gates obstruct access to the land and are largely there for the sake of appearances, making a show of enabling life to go on undisturbed as before.
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> It is not only land that the Separation Barrier severed from the rest of the West Bank and its residents. There are some 11,000 Palestinians living in 32

[313] Article IX(2)(a), Annex I – Protocol Concerning Redeployment and Security Arrangements.

[314] United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 'The Humanitarian Impact of 20 Years of the Barrier – December 2022' (30 December 2022), available at: https://www.ochaopt.org/content/humanitarian-impact-20-years-barrier-december-2022.

> communities that are now trapped between the Separation Barrier and the Green Line. This number does not include Palestinians living in areas annexed to the municipal boundaries of Jerusalem. Therefore, in order to keep up any accustomed routine – including getting to work, visiting friends and family, or even going shopping – residents must cross checkpoints on a daily basis. Such restrictions on freedom of movement limit the access of rural populations to hospitals in neighboring cities; education suffers as many teachers who work in schools located in the enclaves live on the other side of the barrier; and important personal relationships must endure the strain of friends and relatives not being able – with very rare exceptions – to receive permits to pay a visit.[315]

169. The maintenance and continued construction of the Separation Wall amounts to an internationally wrongful act of a continuing character that violates the rules of international law cited by the Court in the *Wall Advisory Opinion*. In particular, the Separation Wall violates several rules of international humanitarian law, including Article 46 of the 1907 Hague Regulations, and Articles 47, 49, 52, 53, and 59 of the Fourth Geneva Convention, as well as the applicable rules of international human rights law, including freedom of movement, and the human rights to work, health, education, and to an adequate standard of living.

170. In addition, maintenance and continued construction of the Separation Wall constitutes, in combination with the other Israeli policies and practices discussed in this part, an internationally wrongful act of a composite character that deprives the Palestinian people of their ability to exercise their right to self-determination, in addition to contributing to the *de facto* and *de jure* annexation of Palestinian territories and depriving the State of Palestine of its ability to exercise its full sovereignty over its territory.

4. Israel's Expropriation of Land and Restrictive Zoning Policies, Measures Aimed at Altering the Demographic Composition and Character of the Holy City of Jerusalem, and Control of Water Resources

171. Several further Israeli policies and practices associated with its occupation of the Palestinian territories qualify as breaches of international law. But while these breaches are distinct, they remain connected and ultimately form part of a broader policy designed to further entrench Israel's occupation of the Palestinian territories,

[315] B'Tselem, *The Separation Barrier*, 11 November 2017, available at: https://www.btselem.org/separation_barrier

especially in East Jerusalem. This is especially relevant in light of the fact that the first question by the General Assembly relates to the legal consequences arising from "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."

a. Israel's Expropriation of Land and Restrictive Zoning Policies, as well as Measures Aimed at Altering the Demographic Composition and Character of the Holy City of Jerusalem

172. A recent report by the United Nations Economic Commission for West Asia (ESCWA) has evidenced that Israel's policies and practices in the occupied Palestinian territories form part of a "matrix of control and domination that imposes and entrenches demographic and physical 'facts on the ground', laying the basis for potential eventual incorporation or annexation of parts of the occupied territory and its resources into Israel, while securing subjugation of the Palestinian population."[316] As discussed in this section, these policies and practices, which are applied in a manner that systematically discriminates against Palestinians and Palestinian communities, include exercising control over land and natural resources, especially water resources, implementing discriminatory zoning and urban planning policies, expropriating and destroying Palestinian property, and restricting the mobility of Palestinians through various measures, including a restrictive access-permit regime.

173. As discussed above,[317] the Oslo II Accords divided the West Bank, excluding East Jerusalem, into three areas. Areas A and B constitute around 40% of the West Bank, with the rest falling within Area C. Israeli zoning policies and practices have effectively closed off Area C to the Palestinian People and the Palestinian Authority. This was achieved through various mechanisms, including classifying around 18% of the West Bank, especially in the Jordan Valley, as so-called "firing zones" for military training purposes, designating around 10% of the West Bank as nature reserves and archaeological sites, and declaring most of what remains of Area C as "state land".

316 United Nations Economic Commission for West Asia, 'Palestine Under Occupation III: Mapping Israel's Policies and Practices and their Economic Repercussions in the Occupied Palestinian Territory' (E/ESCWA/CL6.GCP/2021/3 of 2022).

317 *Supra,* para. 85.

Palestinians are either denied access to these territories or prohibited from utilizing these areas.[318] The overall result of these Israeli policies and practices has been:

> the expropriation of more than 2 million dunams of land by Israel since 1967. Israel has expropriated land throughout the West Bank for a variety of purposes, including settlement construction, industrial zones, farming and grazing for settlers, and roads, in contravention of international law.[319]

174. Israel has implemented similar zoning and land-use policies and practices in occupied East Jerusalem. Indeed, East Jerusalem is perhaps the area of the occupied Palestinian territories in which the overarching objectives of Israel's discriminatory zoning policies, and its practices relating to the expropriation and destruction of property, are most pronounced. Israel's policies and practices reflect an intent to alter the demographic composition and character of occupied East Jerusalem, in order to further consolidate its control of the city and entrench its unlawful *de jure* annexation. These policies and practices include, as discussed above, the continued expansion of settlement activity, which is designed not only to transfer more Israeli Jewish citizens into the area, but also to further encircle East Jerusalem and territorially disconnect it from the surrounding Palestinian territories in the West Bank. As the OHCHR recently observed:

> [s]ettlement advancements continued with the aim of further consolidating a ring of settlements around occupied East Jerusalem continued […] The completion of the plans for Givat Hamatos, Har Homa E and the E1 area would create a contiguous built-up area of Israeli settlements along the southern and eastern perimeters of East Jerusalem, sever the connection between the northern and southern West Bank and detach East Jerusalem from the rest of the West Bank, thereby seriously undermining the possibility of a viable and contiguous Palestinian State.[320]

175. As the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 observed, these policies and practices reflect "Israeli attempts to permanently change the Palestinian character of East Jerusalem and pave the way for further settler expansion, thus further cementing the Israeli

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318 United Nations Office for Coordination of Humanitarian Affairs, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank*, December 2009, available at https://www.ochaopt.org/content/restricting-space-planning-regime-applied-israel-area-c-west-bank.

319 **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', *supra* note 268, para. 39. A dunam is equivalent to 1 acre.

320 **Dossier No. 1573**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan' (A/HRC/49/85 of 28 April 2022), para. 6.

annexation."[321] Similarly, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, determined that "[o]ver one third of East Jerusalem has been expropriated for the construction of Israeli settlements, and only 13 per cent of the annexed area is currently zoned for Palestinian construction."[322] The Commission notes that the specific location of some new settlements being developed by Israel "further reduces the likelihood of ending the occupation and violates the right of Palestinians to self-determination."[323]

176. Furthermore, as the OHCHR documented in a recent report:

> The Israeli zoning and planning policy in East Jerusalem is inherently discriminatory […] forcing Palestinians to leave communities they have lived in for generations […] Israeli authorities have zoned only 15 per cent of the area illegally annexed in 1967 for the housing needs of Palestinians, compared to 38 per cent allocated to settlement construction. Data provided by the Jerusalem Municipality show that while Palestinian residents account for 38 per cent of the overall population of Jerusalem, between 1991 and 2018 only 16.5 per cent of building permits were issued for construction in Palestinian neighborhoods, mainly for small-scale private projects. By contrast, 37.8 per cent of permits were issued for settlement construction in East Jerusalem. Discriminatory planning, coupled with costly and complicated procedures, make it almost impossible for Palestinian residents to obtain building permits. As a result, at least one third of all Palestinian homes in Jerusalem were built without an Israeli-issued permit.[324]

177. A recent report by the United Nations Office for the Coordination of Humanitarian Affairs provides an illustrative example of the impact of Israel's discriminatory zoning policies and practices on the Palestinian residents of East Jerusalem. In the first quarter of 2023, Israel demolished or forced people to demolish 79 structures in East Jerusalem. All but three of these structures were demolished due to the lack of Israeli-issued building permits. As the OHCHR explained, "[t]his is double the number of structures demolished during the same period of 2022. February, saw the highest number of demolished structures in East Jerusalem in a single month since April

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321 **Dossier No. 1573**, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 'Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements' (A/HRC/47/57 of 29 July 2021), para. 18. See also **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', *supra* note 268, para. 39.

322 *Ibib.*, para. 14.

323 *Ibid.*, para. 15.

324 **Dossier No. 1571**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan' (A/HRC/43/67 of 30 January 2020), paras. 41-42.

2019; with a total of 36 structures demolished, compared to a monthly average of eleven demolished in 2022 […] About 45 per cent of the structures demolished in East Jerusalem were homes, while agricultural or livelihood-related structures accounted for some 55 per cent of all demolitions in East Jerusalem."[325]

178. The eviction of Palestinians from East Jerusalem, and the confiscation or destruction of their property, is often undertaken pursuant to two Israeli laws: the Absentee Property Law, and the Legal and Administrative Matters Law. These laws have been applied in a discriminatory manner to enable the further expansion of Israeli settlements in the area and entrench Israel's unlawful annexation of East Jerusalem. Having reviewed these laws, the method of their application, and their impact on Palestinian communities in East Jerusalem, the Secretary General concluded the following:

> Under international humanitarian law, private property in occupied territory must be respected and cannot be confiscated by the occupying Power. The application of the Absentee Property Law and the Legal and Administrative Matters Law in East Jerusalem is seemingly inconsistent with this obligation. International humanitarian law also requires the occupying Power to respect, unless absolutely prevented, the laws in force in the country. Furthermore in practice, the measures taken by Israel facilitate the transfer by the occupying Power of its population into parts of the Occupied Palestinian Territory. The transfer of parts of an occupying Power's civilian population into the territory that it occupies is prohibited under international humanitarian law and may amount to a war crime. In addition, confiscations under the Laws are carried out solely on the basis of the nationality or origin of the owner, rendering them inherently discriminatory.[326]

179. Zoning and land-use policies in Area C are similarly discriminatory against Palestinian communities, and are designed to support the continued expansion of Israel's settlements in the West Bank. Zoning in this area is governed by Israel's Military Order No. 148, which has largely excluded Palestinian communities from the decision-making processes relating to urban planning and zoning. The result, observers noted, is that:

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[325] United Nations Office for the Coordination of Humanitarian Assistance, 'West Bank Demolitions and Displacement (January – March 2023)', available at: https://www.un.org/unispal/document/west-bank-demolitions-and-displacement-january-march-2023-ocha-quarterly-report/.

[326] **Dossier No. 70**, Report of the Secretary-General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, Report of the Secretary General' (A/75/376 of 1 October 2020), para. 54.

> Only 1% of Area C is planned for Palestinian development, construction is heavily restricted in 29%, and the remaining 70% is completely off-limits for Palestinian use and development. Palestinians in Area C must submit building permit requests for all structures, but due to the limited area (1%) planned for development, a negligible amount of permit applications are granted. Between 2010-2015, only 1.5% of permit applications were approved. Given the lack of a planning scheme in most Palestinian areas and the high rate of permit denials, Palestinians are essentially forced to build illegally and thus are exposed to demolitions.[327]

180. The African Union considers that Israel's discriminatory zoning policies are internationally wrongful acts that violate the relevant provisions of the 1907 Hague Regulations, especially Articles 43, 46, 47,[328] 52, and 53, and the relevant provisions of the Fourth Geneva Convention, in particular Articles 33,[329] 49, 52, and 53.

181. Israeli zoning and land-use policies and practices in East Jerusalem and the West Bank, which are ultimately designed to further entrench and perpetuate Israel's control of these occupied Palestinian territories, have contributed to providing justification for unlawful demolitions of Palestinian homes and properties. The OHCHR has found that from 2012 to 2022:

> Israel demolished 6,821 Palestinian-owned structures in the West Bank, including East Jerusalem (Area C accounting for 77 per cent; East Jerusalem for 21 per cent), forcibly evicting 9,766 Palestinians (5,036 children, 2,483 men and 2,247 women). Structures demolished included 2,525 residential structures, 1,502 donor-funded structures provided as humanitarian aid and 571 water, sanitation and hygiene structures. Twenty schools were affected by demolition or confiscation, affecting the education of 1,297 children.77 All but 131 of the total number of demolitions were in Area C or in East Jerusalem, and all but 146 were carried out on the grounds of a lack of Israeli-issued building permits.[330]

182. The African Union considers that demolitions of Palestinian homes and confiscations of their property in the West Bank and East Jerusalem, which are not justified by military necessity, are internationally wrongful acts that violate the relevant provisions of the 1907 Hague Regulations, especially Articles 43, 46, 47, and 52, and the relevant provisions of the Fourth Geneva Convention, especially articles 33, 49,

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327 Marya Farah, *Planning in Area C: Discrimination in Law and Practice*, 21 PALESTINE-ISRAEL JOURNAL (2016)

328 Article 33 states: "[…] Pillage is prohibited."

329 Article 47 states: "Pillage is formally prohibited."

330 **Dossier No. 1574**, HRC, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan', *supra* note 279, para. 25.

and 53. These Israeli policies and practices also amount to "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly," which amounts to a grave breach of the Fourth Geneva Convention. It is also the view of the African Union that Israeli policies and practices relating to zoning, urban planning, and access to land, and the expropriation and demolition of houses and other properties, are internationally wrongful acts under the applicable rules of international human rights law.[331]

b. Israel's Control of Water Resources

183. Israel's policies and practices relating to the management and use of water resources in the occupied territories have also been discriminatory, and have had a similarly adverse effect on the Palestinian people.

184. Israel established control over the water resources in the West Bank pursuant to a series of military orders issued after the cessation of hostilities following the Six-Day War.[332] These orders, which are still in force, govern the allocation of water resources to the Palestinian population in the West Bank, while Israeli settlements and their use of water resources are governed by Israeli law. The aforementioned Israeli military orders fundamentally changed the legal regime governing the use of water resources in the West Bank and East Jerusalem: under the pre-occupation laws applied by the Jordanian authorities, water was considered either the private property of landowners, or property over which landowners had vested rights. Under the Israeli military orders, however, all water resources in the West Bank became public property controlled and managed by Israeli authorities. Starting in 1982, the Israeli company Mekorot, which operates under the Israeli Ministry of Energy and Water Authority, began managing the water supply systems in the area.[333]

185. The legal and administrative regime established by Israel for the management of the water resources of the West Bank provided the foundation for policies and practices that support and enable the expansion of Israel's settlement activities in East Jerusalem and the West Bank. This legal and administrative regime also enables Israel

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331 These rights are enshrined in the ICCPR and ICESR, *supra* note 207, and include the freedom of movement, the ability to work, the rights to housing and to own and enjoy property, the inherent right to life, the right to engage in political activity, the right to liberty and security of the person, the right to an adequate standard of living, and the right to be free from arbitrary interference with one's privacy, family and home.

332 This includes military orders Nos. 92 (1967), 158 (1967), and 291 (1968).

333 Jeffrey Dillman, *Water Rights in the Occupied Territories,* 19 J. PALESTINIAN STUDIES 46, 52-58 (1989).

to engage in the trans-basin transfer of water resources from the West Bank for consumption in Israeli territory.[334]

186. Pursuant to the Oslo Accords, which, as discussed above,[335] were intended to apply for an interim period until an agreement was reached on the permanent status issues, Israel retained control over the water resources of the West Bank. This agreement allocated 80% of the water resources extracted from the West Bank aquifer for use by Israel, and 20% for use by the Palestinians. As a result, despite the fact that, under the Oslo Accords, the Palestinian Authority exercised greater administrative powers in Areas A and B of the Palestinian territories, the Palestinian population remains entirely dependent on Israel for the supply of water resources.

187. The administrative mechanisms for the management of water resources established pursuant to the Oslo Accords have been found to be inequitable and to be applied in a manner that discriminates against the Palestinian population and systematically favours Israel and Israeli settlers.[336] As a recent report submitted to the Human Rights Council by the OHCHR documented:

> 27. The water arrangements in the Oslo Accords have proven inequitable. This is partially because the Palestinian population has doubled in size since the Oslo Accords were signed, but also because the practical implementation of the Oslo Accords in relation to water presented additional challenges in coordination and collaboration between the two parties. Key reported constraints have included Israeli reluctance to agree to projects proposed by Palestinians, technical challenges on the Palestinian side in seeking to exploit the extra resources allocated from the eastern aquifer, movement and access restrictions imposed by Israel, and the Palestinian Authority's withdrawal from the Joint Water Committee for nearly a decade. These constraints have led to an extremely inequitable distribution of water, whereby, as estimated in 2014, 87 percent of the mountain aquifer waters were used by Israelis and only 13 per cent by Palestinians.

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334 Permanent Sovereignty over National Resources in the Occupied Palestinian and Other Arab Territories, Report prepared pursuant to UN General Assembly resolution A/RES/38/144, 14 J. PALESTINIAN STUD. 173 (1985). See also Jamil Al-Hindi, *The West Bank Aquifer and Conventions Regarding Laws of Belligerent Occupation* 11 MICHIGAN J. INT'L L. 1400 (1990).

335 *Supra*, para. 113.

336 **Dossier No. 1563**, HRC, 'Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem' (A/HRC/22/63 of 7 February 2013), paras. 80-88. A report by Amnesty International (*The Occupation of Water*, 29 November 2017, available at: https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/) reached a similar conclusion, observing that the "disparity in access to water between Israelis and Palestinians is truly staggering. Water consumption by Israelis is at least four times that of Palestinians living in the OPT. Palestinians consume on average 73 litres of water a day per person, which is well below the World Health Organization's (WHO) recommended daily minimum of 100 litres per capita." According to Amnesty International, this is the result of the application of Israeli military orders, laws, and discriminatory administrative practices.

[…]

> 31. In addition, Israeli authorities treat the nearly 450,000 Israeli settlers and 2.7 million Palestinians residing in the West Bank (excluding East Jerusalem) under two distinct bodies of law, resulting in unequal treatment on a range of issues, including access to water. Israeli settlements have had a significant impact on Palestinians' access to their natural resources, especially as a result of the diversion of water resources, including the seizure of water wells by Israeli settlers. Israeli settlements have taken over, destroyed or blocked Palestinian access to natural water resources. Israeli settlements have also appropriated dozens of Palestinian water springs, assisted by the Israeli military. Palestinians who have lost access to their springs often have no connection to water networks and had relied upon the springs as their main or only source of drinking water and for agricultural requirements.
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> 32. Mekorot prioritizes Israeli settlements to ensure their permanent water supply, in particular during summer droughts. Palestinian communities connected to the Mekorot network often suffer lengthy water outages, while neighboring settlements are largely spared any significant water reduction.[337]

188. These Israeli policies and practices that relate to the use and management of water resources in the occupied Palestinian territories are ultimately designed to reinforce Israel's policy of entrenching and perpetuating its occupation of the Palestinian territories. Palestinian communities have either been denied access to water resources in the West Bank, such as the Jordan River, or subjected to a management regime that has been administered in a discriminatory manner that favours Israeli settlements in the West Bank and East Jerusalem and that has permitted Israel to transport water from the West Bank to benefits its own citizens inside its territory.[338]

189. As such, Israel's use and management of water resources in the occupied Palestinian territories amount to internationally wrongful acts in breach of the applicable rules of international humanitarian law and international human rights law. Specifically, these Israeli policies and practices are inconsistent with Article 55 of the 1907 Hague Regulations, which requires the occupying power to act as an administrator and

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337 **Dossier No. 1512**, HRC, 'Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem' (A/HRC/48/43 of 15 October 2021), paras. 27, and 31-32.

338 Jan Selby, *Cooperation, Domination and Colonization: The Israeli-Palestinian Joint Water Committee*, 6 WATER ALTERNATIVES 1, (2013).

usufructuary of immovable public property,[339] and the relevant provisions of the applicable human rights instruments.[340]

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190. While the Israeli policies and practices discussed above constitute separate and distinct internationally wrongful acts under the relevant rules of international humanitarian law and international human rights law, they are also integral elements of an overarching pattern of behaviour that serves broader policy objectives. In over five decades of occupation, the State of Israel has consistently pursued a policy designed to entrench and perpetuate its control of the occupied Palestinian territories. The centrepiece of this policy is Israel's "settlement enterprise,"[341] which is designed to establish a permanent, irreversible reality of Israeli control over the Palestinian territories, benefit from these policies and practices. Indeed, Israel's settlements in the West Bank and East Jerusalem are an embodiment of Israel's unlawful occupation and a manifestation of its drive to *de facto* and *de jure* annex Palestinian territories.

191. The impact of these policies and practices on both the Palestinian people and the State of Palestine have been disastrous. As the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 observed:

> No other society in the world faces such an array of cumulative challenges that includes belligerent occupation, territorial discontinuity, political and administrative divergence, geographic confinement and economic disconnectedness.[342]

192. This reality continues to be perpetuated through policies and practices that, over decades, have dispossessed Palestinians of their land, fragmented their territories,

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339 As Iain Scobbie, *Natural Resources and Belligerent Occupation*, *in* INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT 229, 235 (Susan Akram, Michael Dumper, Michael Lynk, & Iain Scobbie eds., 2011), explains, "in relation to the exploitation of non-renewable natural resources in the occupied territory, the Hague Regulations indicate that while the occupant may continue their exploitation at pre-occupation levels, this should only be for the benefit of the army of occupation," and not for the benefit of the occupying power's own population or for the benefit of its population unlawfully transferred into the occupied territory.

340 These include: the ICESR, Article 11; the Convention on the Elimination of all Forms of Discrimination against Women (Article 14(2)(h)); and the Convention on the Rights of Persons with Disabilities (Article 28(2)(a)). Both the State of Israel and the State of Palestine are parties to these instruments.

341 This phrase has been repeatedly used in reports submitted to the General Assembly and the Human Rights Council. See, e.g., **Dossier No. 1408**, 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', *supra* note 268, para. 24-25.

342 **Dossier No. 1423**, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 'Situation of human rights in the Palestinian territories occupied since 1967' (A/71/554 of 19 October 2016).

denied them access to natural resources, and subjected them to discriminatory legislative and administrative measures and oppressive practices. In addition, as discussed above in section **A**, these policies and practices continue to deprive the Palestinian people of the ability to exercise their right to self-determination, and deprive the State of Palestine of its ability to exercise full sovereignty over its territory.

193. The overall result is that Israel's prolonged occupation – which has long lost any pretence of temporariness – has evolved into a comprehensive regime of territorial annexation and dispossession that is subjecting the Palestinian people in the occupied territories to alien domination, systematic discrimination, and the denial of their basic human rights.[343]

C. LEGAL CONSEQUENCES FOR THE STATE OF ISRAEL ARISING FROM ITS INTERNATIONALLY WRONGFUL ACTS THAT RELATE TO ITS OCCUPATION OF THE PALESTINIAN TERRITORIES

194. Several legal consequences arise out of the internationally wrongful acts that are attributable to the State of Israel as a result of its occupation of the Palestinian territories. In particular, the international legal responsibility of the State of Israel is engaged as a result of the internationally wrongful acts discussed above. The African Union therefore submits that the State of Israel is under an obligation to: (*1*) cease the internationally wrongful acts attributable to it; (*2*) make full reparation for the injuries caused by those internationally wrongful acts, including, where appropriate, through restitution, compensation, and satisfaction; and (*3*) offer appropriate assurances and guarantees of non-repetition.

1. The Obligation on the State of Israel to Cease the Internationally Wrongful Acts that relate to its Occupation of the Palestinian Territories.

195. Per Article 30(a) of the Articles on State Responsibility, "[t]he State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is

[343] See also **Dossier No. 1539**, 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk', *supra* note 116, para. 51; MICHAEL SFARD, THE WALL & THE GATE: ISRAEL, PALESTINE, AND THE LEGAL BATTLE FOR HUMAN RIGHTS 126-127 (2018).

continuing […]." This principle is firmly established in international law. In the *Jurisdictional Immunities Case*, for instance, the Court affirmed that:

> [a]ccording to general international law on the responsibility of States for internationally wrongful acts, as expressed in this respect by Article 30 (a) of the International Law Commission's Articles on the subject, the State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing.[344]

196. In order to invoke the obligation to cease an internationally wrongful act, two prerequisites must be met. First, the primary obligation that has been breached by the internationally wrongful act in question must still be in force between the parties in question, and, second, the breach must be of a continuing character.[345] Both of these prerequisites are met in the present case.

197. In section **A**, the African Union demonstrated that the Israeli occupation of the Palestinian territories amounts to an internationally wrongful act of a continuing character on three separate grounds, namely: (i) the Israeli occupation of the Palestinian territories violates the right of the Palestinian people to self-determination; (ii) Israel's occupation of the Palestinian territories deprives the State of Palestine of its full sovereignty, further depriving the Palestinian people of their right to self-determination; and (ii) the prolonged Israeli occupation, and the policies and practices associated with it, amount to the *de facto* and *de jure* annexation of the Palestinian territories, which violates the prohibition on the acquisition of territory by force.

198. Furthermore, section **B** has demonstrated that Israel's policies and practices that are associated with its occupation of the Palestinian territories constitute internationally wrongful acts of a continuing character. These include the construction, maintenance, and expansion of Israeli settlements in the West Bank and East Jerusalem, the maintenance, expansion, and construction of bypass roads and of the Separation Wall, and the expropriation of land and other natural resources and discriminatory zoning

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344 *Jurisdictional Immunities of the State*, Judgment, I.C.J. Reports 2012, p. 99, para. 137. Similarly, in the *Wall Advisory Opinion*, para. 150, the Court underscored that "[t]he obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law."

345 ILC, 'Responsibility of States for Internationally Wrongful Acts, with commentaries', Supplement No. 10 (A/56/10) ("**ILC Commentaries to the Articles on State Responsibility**"), Article 30, para. 3.

policies. These policies and practices violate a whole range of obligations under international humanitarian law and international human rights law.

199. Accordingly, the African Union believes that, as a consequence of these internationally wrongful acts attributable to it, Israel is under an obligation to:

a. End the occupation of the Palestinian territories, by completely withdrawing from the West Bank, East Jerusalem, and the Gaza Strip. This accords with resolutions previously adopted by the UN calling upon Israel to withdraw – completely, immediately and unconditionally – from the occupied Palestinian territories. For instance, in Resolution 36/226, the General Assembly stated:

> *Declares once more* that peace in the Middle East is indivisible and must be based on a comprehensive, just and lasting solution of the Middle East problem, under the auspices of the United Nations, **which ensures the complete and unconditional withdrawal of Israel from the Palestinian and other Arab territories occupied since 1967, including Jerusalem** […][346]

b. Cease all settlement activity in the West Bank and East Jerusalem.

c. Cease the construction of all bypass roads in the West Bank and East Jerusalem.

d. Cease the construction of the Separation Wall.

e. Repeal and render ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to the *de facto* or *de jure* annexation of the occupied Palestinian territories.

f. Repeal and render ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to the expropriation of lands in the West Bank and East Jerusalem.

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346 **Dossier No. 572**, General Assembly Resolution 36/226 (A), 'The situation in the Middle East' (A/RES/36/226 (A) of 17 December 1981). See also **Dossier No. 665**, General Assembly Resolution 36/147 (E), 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories' (A/RES/36/147E of 16 December 1981): "*Recalling* its previous resolutions … in which it, *inter alia*, **called upon Israel to put an end to its illegal occupation of the Arab territories and to withdraw from all those territories** […] *Reaffirming* that the acquisition of territory by force is inadmissible under the Charter of the United Nations and **that all territories thus occupied by Israel must be returned**" (emphasis added); **Dossier No. 572**, General Assembly Resolution 37/123 (F), 'The situation in the Middle East' (A/RES/37/123F of 16 December 1982): "*Condemns* Israel's continued occupation of the Palestinian and other Arab territories, including Jerusalem, in violation of the Charter of the United Nations, the principles of international law and the relevant resolutions of the United Nations, **and demands the immediate, unconditional and total withdrawal of Israel from all these occupied territories**" (emphasis added). In the same vein, see General Assembly Resolutions A/RES/38/180 (D); A/RES/39/146 (A); A/RES/40/168 (A); A/RES/41/162 (A); A/RES/42/209 (B); A/RES/43/54 (A); A/RES/44/40 (A); A/RES/45/83 (A); and A/RES/46/82 (A).

g. Repeal and render ineffective forthwith all legislative, administrative, or regulatory acts that constitute discriminatory zoning practices in the West Bank and East Jerusalem.

h. Repeal and render ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to Israeli control of the water resources in the West Bank.

200. This accords with the Court's conclusion in the *Wall Opinion*:

> Israel accordingly has the obligation to cease forthwith the works of construction of the wall being built by it in the Occupied Palestinian Territory, including in and around East Jerusalem […] All Legislative and regulatory acts adopted with a view to its construction and to the establishment of its associated regime, must forthwith be repealed or rendered ineffective […][347]

2. The Obligation on the State of Israel to make Full Reparation for the Injuries caused by those Internationally Wrongful Acts, including, where appropriate, through Restitution, Compensation, and Satisfaction

201. In the *Chorzów Factory Case*, the PCIJ stated that it is "a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form." The Court also explained that the purpose of reparation is to "as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[348]

202. Full reparation for the injuries caused by an internationally wrongful act may take several forms. As stated in Article 34 of the Articles on State Responsibility, full reparation may take the form of restitution, compensation, or satisfaction, either singly or in combination.

203. Restitution is a method of providing reparation for injuries caused by an internationally wrongful act by returning the situation to the *status quo ante*. In many

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347 *Wall Advisory Opinion*, para. 151.

348 *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47. See also *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgment, ICJ Reports 2010, p. 14, para. 273; *Case Concerning Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo) Judgment, I.C.J. Reports 2010, p. 639, para. 161; *Case Concerning the Arrest Warrant if 11 April 2000* (Democratic Republic of the Congo v. Belgium) Judgment, I.C.J. Reports 2002, p. 3, paras. 75-76; *United States Diplomatic and Consular Staff in Tehran* (United States of America v. Iran), Judgment, ICJ Reports 1980, p. 3, para. 95.

cases, cessation of an internationally wrongful act entails providing restitution, including by returning territory or property wrongfully acquired or controlled by a State.[349] This is the case in relation to many of the policies and practices associated with Israel's occupation of the Palestinian territories. In addition to ceasing the internationally wrongful acts associated with its occupation of the Palestinian territories, Israel is under an obligation to provide restitution by undertaking the following:

a. Ending the occupation of the Palestinian territories that has continued since 1967 by completely withdrawing from the West Bank, East Jerusalem, and the Gaza Strip. This accords with resolutions previously adopted by the United Nations that called upon Israel to withdraw – completely, immediately and unconditionally – from the occupied Palestinian territories.[350]

b. Dismantling all established settlements and outposts in the West Bank and East Jerusalem.

c. Dismantling all established bypass roads in the West Bank and East Jerusalem.

d. Dismantling those portions of the Separation Wall that have been constructed.

e. Returning all lands or properties expropriated from any natural or legal persons in the West Bank and East Jerusalem.

f. Repealing and rendering ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to the *de facto* or *de jure* annexation of the occupied Palestinian territories.

g. Repealing and rendering ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to the expropriation of lands in the West Bank and East Jerusalem.

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[349] JAMES CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART 465-468, 511 (2013), noting that "[t]he result of cessation may be indistinguishable from restitution," and explaining that "[m]aterial restitution may include the return or restoration of territory, individuals, or property".

[350] *Supra* note 346, citing UN resolutions demanding the complete, immediate, and unconditional withdrawal from the occupied Palestinian territories.

h. Repealing and rendering ineffective forthwith all legislative, administrative, or regulatory acts that constitute discriminatory zoning practices in the West Bank and East Jerusalem.

i. Repealing and rendering ineffective forthwith all legislative, administrative, or regulatory acts that amount or contribute to Israeli control of the water resources in the West Bank.

204. Here as well, these conclusions are in line with the Court's analysis in the *Wall Advisory Opinion*, according to which:

> Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction.[351]

205. If restitution were to prove "materially impossible" or if it were to "involve a burden out of proportion to the benefit deriving from restitution," then the responsible State may provide reparation in the form of compensation for the injuries incurred as a result of the internationally wrongful acts attributable to it.[352]

206. The ILC has underscored that restitution is not considered materially impossible "merely on grounds of legal or practical difficulties, even though the responsible State may have to make special efforts."[353] Indeed, in this regard, history provides several examples of an occupying or colonizing power removing its population from an occupied or formerly colonized territory. For instance, and as pointed out by scholars in this context, "France's repatriation of more than a million *pieds noirs*, many of whom had resided in Algeria for generations, points to what is possible when there is political will. Israel itself repatriated some 9,000 settlers from the Gaza Strip in 2005 and around 3,000 from the Sinai in 1982."[354]

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351 *Wall Advisory Opinion*, para. 153.

352 Articles on State Responsibility, Article 35

353 ILC Commentaries to the Articles on State Responsibility, *supra* note 345, Article 35, para. 8.

354 Omar Dajani and Hiba Husseini, *The Emerging Reality in Palestine: Entrenched Occupation and 'Fragnation'*, Norwegian Peacebuilding Resource Centre, October 2014, available at: https://www.files.ethz.ch/isn/185391/61bf3bfd436ac63f27ae3c12a2a6371c.pdf.

3. *The Obligation of the State of Israel to Offer Assurances and Guarantees of Non-Repetition of those Internationally Wrongful Acts*

207. Article 30(b) of the Articles on State Responsibility provides that "[t]he State responsible for the internationally wrongful act is under an obligation: […] (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."

208. As the ILC explained, "[w]here assurances and guarantees of non-repetition are sought by an injured State, the question is essentially the reinforcement of a continuing legal relationship and the focus is on the future, not the past."[355] Assurances and guarantees of non-repetition are, indeed, inherently "future-looking", concerned as they are with "other potential breaches" that may occur, as opposed to providing remedies to ongoing violations of specific obligations.[356]

209. In this regard, it is the view of the African Union that assurances and guarantees of non-repetition may serve a valuable function in relation to the Palestinian-Israeli conflict and may contribute to laying the foundation of a lasting peace in the Middle East. By providing assurances and guarantees of non-repetition – which may take many forms, such as an expression of a legal or political commitment to the two-state solution, or the recognition of the State of Palestine, or the renunciation of any claims to title of a legal or historical nature to the Palestinian territories in the West Bank and East Jerusalem – Israel would reassure the Palestinian people, its neighbours in the region, and the international community that it is committed to upholding its obligations under international law. This would ensure that any peace agreement that may be reached in the future is final, durable, and sustainable, which would unlock limitless opportunities of peace and prosperity for all the peoples of the region.

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210. To conclude on the question of the consequences for the State of Israel arising from its internationally wrongful acts that relate to its occupation of the Palestinian territories, the African Union reiterates its long-standing position that the key to reaching a just and lasting peace in the Middle East is ending the Israeli occupation

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355 ILC Commentaries to the Articles on State Responsibility, *supra* note 345, Article 30, para. 11.

356 See Rosalyn Higgins, *Overview of Part Two of the Articles on State Responsibility, in* THE LAW OF INTERNATIONAL RESPONSIBILITY 534, 543 (James Crawford, Alain Pellet, Simon Olleson, Kate Parlett eds., 2010).

through the complete, unconditional, and immediate withdrawal of Israel from the Palestinian territories, including East Jerusalem. This is an obligation that is incumbent on Israel under international law. The modalities of discharging this obligation is a matter to be determined by the United Nations, in accordance with the rules of international law.

IV – THE LEGAL CONSEQUENCES FOR ALL STATES AND THE UNITED NATIONS ARISING FROM THE UNLAWFUL OCCUPATION UNDER INTERNATIONAL LAW

211. The second question asked to the Court by Resolution 77/247 is the following:

> How do the policies and practices of Israel referred to in [the first question] 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?

212. By focusing squarely on the legal consequences for "all States and the United Nations", the General Assembly has deliberately opted for a question whose scope is broader than the one at stake in the *Wall Advisory Opinion*.[357] This did not prevent the Court from ruling at the time on the obligations of third states, but resulted in the relevant holding being all too succinct. In his Separate Opinion, Judge Kooijmans's insisted that the Court's Advisory Opinion should have gone beyond vague appeals to general norms, and indicate "what States are expected to do or not to do in actual practice."[358]

213. As explained in Chapter III, the policies and practices of Israel referred to in the General Assembly's first question render the occupation of Palestine unlawful under international law, which answers the first part of the General Assembly's second question.

214. As the Court itself noted, "the qualification of a situation as illegal does not by itself put an end to it[; i]t can only be the first, necessary step in an endeavour to bring the illegal situation to an end."[359]

215. Accordingly, the second part of that question now invites the Court to focus on the concrete consequences of this unlawful situation.[360] Beyond clarifying what the law provides for all States and the UN, the Court's direction in this respect cannot but

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357 Judge Kooijmans's Separate Opinion in that case was predicated, notably, on his view that the Court had gone out of its way to opine on the responsibilities of third states and the United Nations, in a context where the underlying question by the General Assembly did not have this scope: see *Wall Advisory Opinion*, Separate Opinion of Judge Kooijmans, paras. 1, 39.

358 *Ibid.*, para. 1. See also *ibid.*, para. 10: "It is now up to the General Assembly in discharging its responsibilities under the Charter to treat this Advisory Opinion with the respect and seriousness it deserves, not with a view to making recriminations but to utilizing these findings in such a way as to bring about a just and peaceful solution to the Israeli-Palestinian conflict".

359 *Namibia Advisory Opinion*, para. 111.

360 See Yaël Ronen, *supra* note 200, p. 244: "There is no doubt that illegality of an occupation may have concrete legal outcomes."

assist the peace process, by jolting all international stakeholders into action, now with a clearer roadmap of their duties and obligations.

216. This is why, in the following sections, the African Union will describe not only the obligations bearing on all States and the United Nations (**A**), as well as the principles common to these obligations (**B**), but also list a number of concrete steps – inspired by all these obligations – that should be taken by all States and the UN (**C**).

A. THE OBLIGATIONS BEARING ON ALL STATES AND THE UNITED NATIONS

1. All States and the United Nations have a Duty of Non-Recognition with Respect to the Situation of Unlawful Occupation

217. First and foremost, all States and the United Nations have a duty not to recognise or otherwise endorse Israel's unlawful occupation of the Palestinian territory, or the consequences of its conduct with respect to East Jerusalem.[361] This obligation of non-recognition has several, non-mutually exclusive roots:

a. Under customary international law, as reflected in Article 41(2) of the Articles on State Responsibility, states have a duty not to "recognize as lawful a situation created by a serious breach [of a peremptory norm], nor render aid or assistance in maintaining that situation." Both the prohibition on the acquisition of territory by force and the right of self-determination, not to mention the prohibition of apartheid, qualify as peremptory norms.[362]

b. In line with the Court's jurisprudence, most notably in the *Namibia Advisory Opinion* and the *Wall Advisory Opinion*, non-recognition is a key legal consequences of an underlying situation of unlawful occupation.[363] In this context, the "character and importance of the rights and obligations involved" weigh heavily in the obligation of non-recognition: as explained above, the Palestine situation involves the right of self-determination, a right that "all

[361] See, notably, General Assembly Resolution 42/22, 'Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations' (A/RES/42/22 of 18 November 1987), para. 10: "Neither acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation."

[362] ILC Commentaries to the Articles on State Responsibility, *supra* note 345, Article 40, para. 4.

[363] *Namibia Advisory Opinion*, para. 119; *Wall Advisory Opinion*, para. 159.

States have a legal interest in protecting",[364] as well as the paramount prohibition of acquisition of territory by force.

c. All Member States to the UN are under an obligation under the Charter to "accept and carry out the decisions of the Security Council".[365] Where a conduct has been – continuously – found illegal by the Security Council,[366] all states have a duty not to recognise its validity. As the Court put it in the *Namibia Advisory Opinion*, "[a] binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence."[367] And while the "language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect",[368] the Resolutions relevant to the situation in Palestine have been repeatedly framed in mandatory terms. As such, states are bound and should comply with the numerous resolutions that have underlined the obligation not to recognise the unlawful situation,[369] in particular with respect to East Jerusalem.[370]

d. From the general principle of law *ex inuiria jus non oritur* – namely, "acts contrary to international law cannot become a source of legal rights for a wrongdoer".[371] Any benefit accruing to Israel from the unlawful situation of occupation should therefore be non-recognised.[372]

e. As should be clear from the preceding arguments, the obligation of non-recognition is all the stronger in case of breaches of obligations that are *erga omnes* in character, such as the obligation not to acquire territory by force,[373]

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364 *Chagos Advisory Opinion*, para. 180. See also *Wall Advisory Opinion*, para. 155; Resolution 2625 (XXV), *supra* note 52.

365 Charter, Article 25.

366 See *Wall Advisory Opinion*, Separate Opinion of Judge Higgins, para. 38: "the Court's position as the principal judicial organ of the United Nations suggests that the legal consequence for a finding that an act or situation is illegal is the same[: t]he obligation upon United Nations Members of non-recognition and non-assistance […]."

367 *Namibia Advisory Opinion*, para. 117. See also *ibid.*, para. 112: "When confronted with such an internationally unlawful situation, Members of the United Nations would be expected to act in consequence of the declaration made on their behalf."

368 *Ibid.*, para. 114.

369 **Dossier No. 1372**, Security Council Resolution 2334, *supra* note 2, para. 3.

370 **Dossier No. 1274**, Security Council Resolution 478, *supra* note 39, para. 5.

371 *Republika Srpska v. The Federation of Bosnia and Herzegovina*, Award, 14 February 1997, 36 ILM 422, para. 77.

372 As put by Yaël Ronen, *supra* note 200, p. 233: "[t]he objective of the refusal to recognise as lawful a situation created through a violation of a peremptory norm...is to induce the responsible state to revert to legality. An alternative policy would constitute legitimization of the acts of the wrong-doing state. An alternative policy would constitute legitimization of the acts of the wrong-doing state."

373 General Assembly Resolution 2625 (XXV), *supra* note 52, at 1.

or the duty to respect the right to self-determination.[374] Also relevant in this respect is the "sacred trust" held by the international community over "the Palestinian People as a former mandated territory",[375] a trust that survives in the Charter.[376] The African Union believes that independent states, and especially formerly subjugated peoples, have a duty to refrain from recognising situations that involve the impediment of the right of self-determination.

218. If there were any doubt as to the applicability of those customary norms, the ILC's commentary to Article 41 singles out situations involving "attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples"[377] – exactly the situation at stake in this case. Recent state practice evidences the salience of this obligation.

219. The Court, of course, has recognised the importance of the obligation of non-recognition, ruling in the *Wall Advisory Opinion* that "all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem".[378] There is no reason why this conclusion does not extend to the present case, in which the unlawful situation is but coterminous with the conduct at stake in the *Wall* case.

220. The obligation of non-recognition likewise applies to the United Nations, which should not condone or otherwise recognise the unlawful occupation of Palestine. This obligation can be made concrete through the United Nations' continuing efforts to achieve a just and lasting resolution of the Palestine situation, as well as through the support granted to the Palestinian People in its quest for justice.

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374 *East Timor*, para. 29.

375 *Wall Advisory Opinion*, Separate Opinion of Judge Koroma, para. 7.

376 Charter, Article 73. While this article is addressed to states "which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government", the end of the original mandate over Palestine means that this sacred trust has reverted to the international community. See *Namibia Advisory Opinion*, para. 52: "Obviously the sacred trust continued to apply to League of Nations mandated territories on which an international status had been conferred earlier."

377 ILC Commentaries to the Articles on State Responsibility, *supra* note 345, Article 41, para. 5.

378 *Wall Advisory Opinion*, para. 159.

2. *All States and the United Nations are under an Obligation not to Lend Aid or Support to the Unlawful Occupation*

221. The flip side of the obligation not to recognise, as expressed by Article 41(2) of the Articles on State Responsibility, lies in the associated obligation not to "render aid or assistance in maintaining that situation" of breach of international law. The ILC commented that this obligation covers any aid or support that would "assist[] the responsible State in maintaining a situation" of illegality under international law.[379]

222. In the *Namibia* case, the court explicitly spelled out that obligation, calling upon all states to "refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia".[380] The Court's findings in this respect echoed several resolutions from the Security Council that related to breaches of the right of self-determination,[381] or to the fight against systems of apartheid.[382]

223. The Security Council repeated this language with respect to the Palestinian situation, calling upon, for instance, "all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories."[383] Likewise, the General Assembly has called upon "all States not to recognize any such changes and measures carried out by Israel in the occupied Arab territories and invites them to avoid actions, including actions in the field of aid, that could constitute recognition of that occupation".[384]

224. Accordingly, all States should refrain from acts and conduct that could, directly or indirectly, contribute to the unlawful situation in Palestine. Such acts or conduct could include support provided to Israel directly, or to the settlers that contribute to the fragmentation of the West Bank, included support provided through economic ties and commercial agreement; it also includes acts and conduct conducive to the

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379 ILC Commentaries to the Articles on State Responsibility, *supra* note 345, Article 41, para. 11.

380 *Namibia Advisory Opinion*, para. 119.

381 See Security Council Resolution 218 (S/RES/1965 of 23 November 1965), para. 6: "*Requests* all States to refrain forthwith from offering the Portuguese Government any assistance which would enable [Portugal] to continue its repression of the people of the Territories under its administration; and to take all the necessary measures to prevent the sale and supply of arms and military equipment to the Portuguese Government for this purpose, including the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition to be used in the Territories under Portuguese administration".

382 Security Council Resolution 569 (S/RES/596 of 26 July 1985), on South Africa.

383 **Dossier No. 1267**, Security Council Resolution 465, *supra* note 43, para. 7.

384 **Dossier No. 562**, General Assembly Resolution 2949 (XVIII), 'The situation in the Middle East' (A/RES/2949 (XXVIII) of 8 December 1972), para. 8.

normalisation of a situation that is and remains thoroughly illegal, such as any engagement with Israel's military activities.[385]

225. Crucially, this obligation should extend to entities and individuals under the jurisdictions of all States, who should "take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations."[386] The African Union observes that this aligns with other sources of international law, and notably with the Guiding Principles of Business and Human Rights.[387] General Assembly Resolutions have, indeed, long stressed that these Principles' underlying framework "provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem".[388]

226. As for the United Nations, this obligation entails pursuing its efforts not to assist Israel in normalising the situation. In this respect, the African Union notes the contribution of the UN organs in coordinating the actions of third States, notably through the establishment of a database of business enterprises operating in, or otherwise engaging in various actions susceptible to entrench the Israeli occupation of the West Bank and East Jerusalem.[389] The United Nations should also continue its efforts on the ground, in the form of "activities aimed at protecting Palestinians, in the form of diplomacy; support for the Palestinian State and institution-building; the provision and coordination of humanitarian aid; monitoring, reporting and advocacy; and other programmatic assistance."[390]

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385 **Dossier No. 1213**, General Assembly Resolution ES-9/1, 'The situation in the occupied Arab territories' (A/RES/ES-9/1 of 05 February 1982), paras. 12(a) and (b).

386 **Dossier No. 1563**, 'Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem', *supra* note 336, para. 117.

387 HRC, 'Guiding Principles on Business and Human Rights' (A/HRC/17/31 of 21 March 2011).

388 See, e.g., **Dossier No. 28**, General Assembly Resolution 69/92, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (A/RES/69/92 of 5 December 2014), para. 9.

389 **Dossier No. 1509**, HRC, 'Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem' (A/HRC/43/71 of 28 February 2020, "**UN Database**").

390 **Dossier No. 1240**, 'Protection of the Palestinian civilian population', *supra* note 9, para. 12.

3. *All States are Obliged to Cooperate to bring an End to the Unlawful Occupation*

227. Article 41(1) of the Articles on State Responsibility further provides that: "States shall cooperate to bring to an end through lawful means any serious breach [of a peremptory norm]."

228. Cooperation is the lifeblood of international relations. The Court has, more than once, emphasised the duty of states to cooperate in a variety of endeavours. The African Charter on Human and Peoples' Rights reaffirm the state parties' "pledge […] to coordinate and intensify their cooperation and efforts to […] promote international cooperation having due regard to the Charter of the United Nations".[391] This duty is of paramount importance in a world ruled by laws and comity between sovereign nations. As put by the Inter-American Court of Human Rights:

> […] the need to eradicate impunity reveals itself to the international community as a duty of cooperation among states for such purpose. Access to justice constitutes a peremptory norm of International Law and, as such, it gives rise to the States' *erga omnes* obligation to adopt all such measures as are necessary to prevent such violations from going unpunished.[392]

229. This obligation was also recently confirmed by the Court in the *Chagos* Advisory Opinion, whose very last words were that "all Member States must co-operate with the United Nations to complete the decolonization of Mauritius."[393]

230. Since the same legal principles apply to the Palestinian People, who have also been deprived of their right to self-determination, it follows that all States have a duty to cooperate to bring an end to the unlawful occupation. The United Nations, for its part, should coordinate that cooperation and contribute to its end goals: the end of the occupation, leading to a just and lasting peace in Palestine.

4. *All States should Cooperate to Contribute to the Palestinian People's Right of Self-Determination*

231. Likewise, all States and the United Nations should cooperate to bring about the Palestinian people's exercise of its right to self-determination.

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391 ACHPR, Preamble.

392 *La Cantuta v. Peru,* Merits, Reparations and Costs, Series C No. 162, Inter-American Court of Human Rights, 29 November 2006, para. 160.

393 *Chagos Advisory Opinion,* para. 182.

232. Under Article 56 of the UN Charter, all States should "take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55". Article 55, in turn, refers to the self-determination of peoples.[394] States and the UN organs are therefore obliged to take steps that would promote the self-determination of the Palestinian People.

233. This duty was, further, aptly stated in Resolution 2625 (XXV):

> Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.[395]

234. That duty is founded also in international human rights law. The African Charter on Human and Peoples' Rights provides that "All Peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination".[396] In the same vein, in interpreting Article 1 of the International Covenant on Civil and Political Rights, the Human Rights Committee stressed that:

> Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. […] The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination.[397]

235. In line with these principles, the Court rightly found in the *Wall Advisory Opinion* that "[i]t is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of

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394 Article 55 of the Charter reads: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

395 General Assembly Resolution 2625 (XXV), *supra* note 52.

396 ACHPR, Article 20(3).

397 HRC, 'ICCPR General Comment No. 12: The right to self-determination of peoples (Art. 1)' (HRC/GC/12 of 13 March 1984), para. 6.

the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."[398]

236. The same solution should govern this case: given the unlawfulness of the occupation, and the illegality of Israel's acts within the occupied territory and with respect to East Jerusalem, all states are therefore under an obligation to make sure that any impediment to the self-determination of the Palestinian People is removed. The General Assembly explicitly spelled out this obligation in the very same Resolution that lodged this request for an Advisory Opinion with the Court.[399]

5. *All States Parties to the Geneva Conventions should Ensure Respect for the Convention*

237. As confirmed by the Court in the *Wall Advisory Opinion*, some of the obligations breached by Israel in the field of international humanitarian law have an *erga omnes* character.[400] This character is derived from the object of humanitarian rules, concerned as they are with "the respect of the human person and 'elementary considerations of humanity'".[401]

238. While the rules of humanitarian law constitute "intransgressible principles of international customary law",[402] they are also embodied in the Geneva Conventions[403] – to which 196 states are party, including all Member States of the African Union.[404]

239. These Conventions share a common Article 1, whereby all state parties "undertake to respect and to ensure respect for the present Convention in all circumstances." As pointed out by the Court in the *Wall Advisory Opinion*, this provision means what it means: whether or not involved in a given conflict, every state party to these conventions has an interest in ensuring their respect.[405] The Court singled out, in particular, the Fourth Geneva Convention, ruling that all states were under an

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398 *Wall Advisory Opinion,* para. 159.

399 Resolution 77/247, para. 16: "Urges all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their inalienable human rights, including their right to self-determination, as a matter of urgency, in the light of the passage of more than 55 years of the Israeli occupation and the continued denial and violation of the human rights of the Palestinian people".

400 *Wall Advisory Opinion,* para. 155.

401 *Nuclear Weapons Advisory Opinion*, para. 79.

402 *Ibid.*

403 See *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Judgment, I.C.J. Reports 1986, p. 114 ("**Nicaragua Case**"), para. 220, seeing the roots of the Geneva Conventions in "the general principles of humanitarian law to which the Conventions merely give specific expression."

404 All African states have signed and ratified that four Geneva Conventions, while a majority is a party to the first two Protocols.

405 *Wall Advisory Opinion,* para. 159

obligation "to ensure compliance by Israel with international humanitarian law as embodied in that Convention."[406]

240. While the scope of that obligation has been questioned,[407] the doctrine and the jurisprudence largely confirm that Article 1 is designed to impose obligations on all States, including States not party to a given conflict. As aptly put by commentators more than two decades ago:

> […] the historical interpretation of an international instrument can never prove decisive in identifying the current status of a legal norm. Far more relevant in this respect is the meaning conferred by international practice as it has developed since the instrument was adopted. Indeed, over the last half century the practice of States and international organizations, buttressed by jurisprudential findings and doctrinal opinions, clearly supports the interpretation of common Article 1 as a rule that compels all States, whether or not parties to a conflict, not only to take active part in ensuring compliance with rules of international humanitarian law by all concerned, but also to react against violations of that law.[408]

241. More recent commentaries have taken stock of the sum of state practice and legal developments since the Geneva Conventions were adopted in 1949, and concluded that the "external aspect" of common Article 1, which "relates to ensuring respect by others, in particular other parties to a conflict regardless of whether the State itself is party to that conflict […] has become increasingly important."[409] This position is supported by the decision in *Nicaragua* case, whereby the Court reminded that United States to comply with common Article 1 of the Geneva Conventions, stressing that this obligation applied "in all circumstances"[410] – and thus, including in the context of the Nicaraguan, non-international conflict. In line with this interpretation, the Security Council has called upon "the High Contracting Parties to the said Convention to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with article 1 thereof".[411]

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406 *Ibid.*

407 *Ibid.*, Separate Opinion of Judge Kooijmans, para. 47.

408 Laurence Boisson de Chazournes & Luigi Condorelli, *Common Article 1 of the Geneva Conventions revisited: Protecting collective interests,* INTERNATIONAL REVIEW OF THE RED CROSS 837 (2000).

409 See Lindsey Cameron *et al., The updated Commentary on the First Geneva Convention – a new tool for generating respect for international humanitarian law,* 900 INTERNATIONAL REVIEW OF THE RED CROSS 1209-1226, 1215 (2015).

410 *Nicaragua Case, supra* note 403, para. 220.

411 **Dossier No. 1293**, Security Council Resolution 681 (S/RES/681 of 20 December 1990).

242. Accordingly, all States are meant to ensure respect for the Conventions. In a Declaration,[412] the High Contracting to the Fourth Geneva Convention laid out one concrete step that should be taken in this respect, namely, that states should "permit the free passage of humanitarian relief and shall guarantee its protection", and "make all possible efforts to allow and facilitate rapid and unimpeded passage of humanitarian relief for the population of the occupied territory".[413]

6. *All States Parties to the Geneva Convention are Obliged to Prevent and Punish International Crimes and Violations of International Humanitarian Laws*

243. Under the Geneva Conventions, all State Contracting Parties have the duty to prosecute the authors of grave breaches of the Convention, and to prevent the commission of acts contrary to the Conventions. Article 146 of the Fourth Geneva Convention for instance provides that:

> The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.
>
> Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.
>
> Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

244. As explained above, many Israeli policies and practices qualify as breaches of the Fourth Geneva Convention, including grave breaches.[414] Already in 2004, the Court in the *Wall Advisory Opinion* had found that, by facilitating and pursuing the settlement of the occupied Palestinian territory, Israel had breached Article 49(6) of that Convention.[415] Additional Protocol I to the Geneva Conventions clarified that

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412 Declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention.
413 *Ibid*, at 5.
414 *Supra*, paras. 160, 182.
415 *Wall Advisory Opinion*, paras. 120, 134.

"the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention" qualifies as a "grave breach" for the purpose of the Convention.

245. The status of these provisions as a norm of customary international law is debatable.[416] Be that as it may, most states are party to the Geneva Conventions, resulting in their duty to prevent breaches of the Geneva Conventions, and to either prosecute or extradite (*aut dedere aut judicare*) individuals that have partaken in grave breaches of the Conventions. As put by the Turkel Commission:

> Violations of the law are to be prevented but, if they do occur, States are obliged to hold those responsible accountable. Article 146 of the Fourth Geneva Convention (as well as the other three Geneva Conventions and the First Additional Protocol) imposes a general duty to prevent all violations of international humanitarian law ('suppress'). 'Suppression' of violations requires States to ensure compliance with international humanitarian law in its entirety and to prevent future violations from being committed or repeated.[417]

246. These obligations are also pertinent in view of the investigation currently pending before the International Criminal Court (**ICC**), regarding the situation in Palestine. The focus of the ICC, under the Rome Statute, is on individual criminal responsibility – not on the obligations of states. Nonetheless, to the extent the ICC finds individual liability, all states parties to the Rome Statute will have an obligation to extradite or prosecute all individuals involved in these crimes. UN reports have suggested that the Israeli settlements may qualify as a war crime under the Rome Statute.[418]

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416 See JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOLUME I: RULES* (2005), p. 606, Rule 157, proposing that under customary international law "States have the right to vest universal jurisdiction in their national courts over war crimes", and citing these provisions of the Geneva Conventions as an alternative to that rule. See also *La Cantita v. Peru*, *supra* note 392, para. 160: "Access to justice constitutes a peremptory norm of International Law and, as such, it gives rise to the States' *erga omnes* obligation to adopt all such measures as are necessary to prevent such violations from going unpunished, whether exercising their judicial power to apply their domestic law and International Law to judge and eventually punish those responsible for such events, or collaborating with other States aiming in that direction. The Court points out that, under the collective guarantee mechanism set out in the American Convention, and the regional and universal international obligations in this regard, the States Parties to the Convention must collaborate with one another towards that end."

417 Turkel Commission – Second Report, available at: https://www.gov.il/en/departments/general/turkel_committee, p. 74.

418 Note by the Secretary General, 'Situation of human rights in the Palestinian territories occupied since 1967' (A/75/532 of 22 October 2020), paras. 43, 53, and 62.

B. THE PRINCIPLES COMMON TO THESE OBLIGATIONS

247. These obligations are not mutually exclusive, and share a number of features that it is appropriate to list and further explicate.

1. States are Expected to Exercise Due Diligence

248. The General Assembly's question is concerned with the obligations bearing on *all* States. Undoubtedly, given the importance and unfortunate permanence of the Palestinian situation, all States have indeed at heart to see its resolution and a lasting and just peace being achieved. While, as explained above, the African Union has a heightened interest in the resolution of this conflict and the self-determination of the Palestinian People,[419] this may not be the case of all states, especially given the number of global challenges concurrently facing the international community. In this context, the African Union expects that the Court will be able to stress the core obligations bearing on all states, while also acknowledging that the concrete manifestations of these obligations may vary.

249. This is not surprising, as the African Union further suggests that the obligations listed above mostly qualify as obligations of means – not of result – and therefore pertain to the due diligence of States. In line with the jurisprudence of the Court, the scope of these obligations for each individual state should therefore be premised on an analysis *in concreto* of that state's ability to bear upon the breaching state, and contribute to putting an end to the unlawful situation.[420]

250. In the *Genocide* case, the Court made clear however that no state may claim that its actions, on its own could not have brought about the desired end. In discussing such an excuse, the Court replied:

> As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce.[421]

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419 *Supra*, para. 9.

420 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43, para. 430.

421 *Ibid.*

251. Accordingly, all States should contribute to the obligations highlighted above, to the extent feasible and in line with their duty of due diligence. Concretely, this means that the lighter the burden of a given step, the more imperious it will be on a given State. For instance, the obligation of non-recognition requires little of States and is generally applicable; there does not seem to be any conceivable excuse to fail to comply with that obligation.

252. As for the choice of actions to take, states have a large variety of options,[422] providing (as explained below) that they remain within the domain of the lawful. While the Court opined in the *Namibia Advisory Opinion* that the "precise determination of the acts permitted or allowed – what measures are available and practicable, which of them should be selected, what scope they should be given and by whom they should be applied – is a matter which lies within the competence of the appropriate political organs of the United Nations acting within their authority under the Charter",[423] this should not be read as preventing independent actions by other states. The Court itself, in the same *Opinion*, had recognised that some category of conduct – namely, in their relationships with South Africa – was left to the coordinated conduct of all States.[424] Besides, the situation in this case is different: in the *Namibia* case, there was no similar hurdle at the UN, and in particular in the context of the Security Council, to adopt coordinated measures by the community of States.

253. Accordingly, while all States should make sure to operate and adopt actions in line with the guidance of the United Nations with respect to the situation in Palestine, they should also be free to act independently, as long as their conduct does not contradict this guidance. In exercising their obligations under international law, States will not impinge on any exclusive right or power of the UN organs – they will merely take their part in making sure that international law is complied with.

2. All States should Distinguish Between Relevant Territories

254. Some of the obligations listed above entail states making a distinction between Israeli territory, and the unlawfully occupied Palestinian territory.

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422 See *Namibia Advisory Opinion*, Separate Opinion of Judge Petrén, p. 123: "the notion of non-recognition leaves to States, as I have said, a wide measure of discretion."

423 *Namibia Advisory Opinion*, para. 120. See also *Western Sahara Advisory Opinion*, para. 71.

424 *Ibid.*, paras 121-125.

255. That distinction is not new, and the Security Council has called for "all States […] to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".[425] In its most recent Resolution, the Security Council confirmed that it would "not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations".[426]

256. As explained above,[427] these lines are particularly relevant as they offer a point of reference for the Palestinian People's exercise of its right to self-determination.

3. States should Employ Lawful Means

257. It is settled law that that the obligations highlighted above, and the resulting measures adopted by States, should only involve lawful means, "the choice of which will depend on the circumstances of the given situation."[428] The Court itself has stressed it.[429]

258. Likewise in the context of the obligation to ensure other peoples' right of self-determination, the Human Rights Committee has stressed that:

> It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law […].[430]

4. The Paramount Concern for the Palestinian People

259. Finally, it is evident that the obligations of all States and the United Nations in this respect, arising from their duty towards the Palestinian People, cannot result in situations that would worsen the plight of that People.

260. As put by the Court in the *Namibia* case, the invalidity of South Africa's acts at that time could not "be extended to those acts, such as, for instance, the registration of

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425 **Dossier No. 1372**, Security Council Resolution 2334, *supra* note 2, para. 5.
426 *Ibid.*, at 3.
427 *Supra*, paras. 99 and 100.
428 ILC Articles on State Responsibility with Commentaries, Article 41, p. 114, at 3.
429 *Wall Advisory Opinion*, para. 163 (dispositif), 3(D), specifying that the obligations of states parties to the Geneva Convention should respect "the United Nations Charter and international law".
430 HRC, ICCPR General Comment No. 12: The right to self-determination of peoples (Art. 1), *supra* note 397, para. 6.

births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory."[431] Likewise, the Court considered that states should not uphold international instruments benefitting South Africa to the extent they pertained to Namibia – with the exception of "certain general conventions such as those of a humanitarian character, the non-performance of which may adversely affect the people of Namibia."[432] Considerations of humanity and practicality underpin these concerns.[433]

261. In the same vein, in performing the obligations highlighted above, including by way of the concrete steps listed below, states should at all times remember that "the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted."[434]

C. The Concrete Steps to be Taken by all States and the United Nations

262. It is of crucial importance that the duty not to recognise does not amount "to an obligation without real substance".[435] In the context of the obligations of third states towards breaches of a peremptory norm, the Articles on State Responsibility refer to a "a joint and coordinated effort by all States to counteract the effects of these breaches."[436] The term "counteract" is particularly meaningful, as it evidences that the cooperation and actions expected of third states cannot stop at decrying or otherwise protesting the actions of the state in breach.

263. Instead, concrete steps must be taken to ensure that the breach's consequences are minimised, and in particular that the breaching state obtains no benefit thereof. These steps may include:

    a. The non-recognition of the annexation of the occupied Palestinian territory, and of the conduct that tends to deprive the Palestinian People of its right of

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431 *Namibia Advisory Opinion*, para. 125.
432 *Ibid.*, para. 122.
433 *Ibid.*, Separate Opinion of Judge Petrén, p. 122: "necessities of a practical or humanitarian nature may justify certain contacts or certain forms of co-operation".
434 *Namibia Advisory Opinion*, para. 127.
435 *Wall Advisory Opinion*, Separate Opinion of Judge Kooijmans, para. 44.
436 ILC Articles on State Responsibility with Commentaries, Article 41, p. 114, para. 3.

self-determination. States should thus refrain from any conduct that, explicitly or even implicitly,[437] would result in a recognition of the *fait accompli* by Israel.

b. Refrain rendering any aid or assistance "that might be used by Israel in its pursuit of the policies of annexation and colonization or any of the other policies and practices" that would entrench that *fait accompli*.[438] This includes, in particular, any military assistance, or engagement with the Israeli military or weapon industry.[439]

c. A moratorium on any international legal agreement with the breaching state that would apply or extend its benefits to the unlawfully occupied territory.[440] Existing international instruments between any state and Israel, to the extent that they extend to the occupied territories (if the definition of "territory" in that instrument is capacious enough), should be disregarded to that extent.

d. A prohibition on diplomatic or consular activities that would involve the unlawfully occupied territory, and the withdrawal of any diplomatic or consular personnel posted there.[441] This includes any diplomatic or consular activity that would have the effect of entrenching Israel's efforts to extend its jurisdiction over East Jerusalem. In particular, states should not recognise Jerusalem as the capital of Israel,[442] or relocate their Embassy there, especially while a related matter is pending before the Court.[443]

e. The refusal to cooperate with Israeli institutions that are either located, or benefit, from the occupied territory, in line with the Security Council's direction for all States to "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".[444] For

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437 See, for instance, Security Council Resolution 662 (S/RES/662 of 9 August 1990), para. 2: "*Calls upon* all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation".

438 **Dossier No. 676**, General Assembly Resolution 47/70, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories' (A/RES/47/70 of 14 December 1992), para. 15.

439 On the model, e.g., of General Assembly Resolution 47/20, 'The situation of democracy and human rights in Haiti' (A/RES/47/20 of 22 March 1993), para. 8, whereby the General Assembly called upon Member States to "refrain from supplying materials for the use of military forces or police in Haiti, including arms, ammunitions and petroleum, until the present crisis has been resolved." See also, in this respect, **Dossier No. 1213**, General Assembly Resolution ES-9/1, 'The situation in the occupied Arab territories', *supra* note 385, paras. 12(a) and (b).

440 *Namibia Advisory Opinion*, para. 122.

441 *Ibid.*, para. 123.

442 *Supra*, para. 10.

443 *Relocation of the United States Embassy to Jerusalem* (Palestine v. United States of America).

444 **Dossier No. 1372**, Security Council Resolution 2334, *supra* note 2, para. 5.

instance, all States and their institutions should not recognise or cooperate with Ariel University, a state-owned higher education entity whose premises are located in the occupied West Bank.

f. The refusal to trade, or otherwise engage in commerce with firms or individuals that are located or otherwise benefit from the unlawful occupation of the West Bank.[445] This includes not only trade in goods or services,[446] investment,[447] but also, for instance, the promotion of tourism.[448] States should give particular regard to the data collected by the UN listing business enterprises involved in activities related to the unlawful Israeli settlements in the West Bank.[449]

g. Prosecute any individual or corporate entity that is engaged in economic activities in the unlawfully occupied territory, especially where that activity contributes to the violation of the Palestinian people's human rights.[450] In particular, states should be mindful of enforcing the Guiding Principles on Business and Human Rights, which – as stressed by the General Assembly[451] – are particularly relevant to the Palestinian situation.

h. Contribute to the protection of the Palestinian People under occupation, for instance by supporting the deployment of UN personnel dedicated to the monitoring of the situation,[452] or the establishment of "an international

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445 As put by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk ('Situation of human rights in the Palestinian territories occupied since 1967', *supra* note 418, para. 56): "Corporate and business activities contribute significantly to the economic viability of the Israel settlement enterprise."

446 And notably agricultural produces, which may result from Israel's denial of Palestine's sovereignty over its natural resources. See James Crawford, 'Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories', available at https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf, para. 88: "Given that Israeli settlement agricultural practices are highly dependent on water irrigated under a system established in breach of Article 43 [of the 1907 Hague Regulations], there is an argument to be made that the purchase of settlement agricultural produce by third States aids and assists in the ongoing commission of an internationally unlawful act – the breach of Article 43."

447 See, e.g., Security Council Resolution 569 (S/RES/596 of 26 July 1985), para. 6(a): "*Urges* States Members of the United Nations to adopt measures against South Africa, such as the following: (a) Suspension of all new investment in South Africa".

448 See 'Situation of human rights in the Palestinian territories occupied since 1967', *supra* note 418, para. 69(e). For a model, see, e.g., Security Council Resolution 283 (S/RES/283 of 29 July 1970), para. 11: "[the Security Council] *Calls* upon all States to discourage the promotion of tourism and emigration to Namibia."

449 **Dossier No. 1509**, UN Database, *supra* note 389.

450 **Dossier No. 1429**, 'Situation of human rights in the Palestinian territories occupied since 1967', *supra* note 56, para. 78(d).

451 **Dossier No. 30**, General Assembly Resolution 71/97, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (A/RES/71/97 of 6 December 2016), para. 12.

452 **Dossier No. 1240**, 'Protection of the Palestinian civilian population', *supra* note 9, paras. 43-44.

protective presence to constrain the violence routinely used in the occupied Palestinian territory and protect the Palestinian population".[453]

i. Provide relief to the Palestinian People and funding to the institutions dedicated to that work.[454] All states should, for instance, help the UNRWA, and contribute to its funding.[455] UNRWA's mandate has been extended until 2026 by the General Assembly in late 2022, with 157 votes in favour and 1 against (Israel);[456] there could be no better endorsement of the Agency's works and necessity. States should also cooperate to facilitate the work and actions of the HRC in this respect.[457] The United Nations, through the Office for the Coordination of Humanitarian Affairs, should likewise continue supporting the UNRWA.

264. As can be evidenced from the copious footnotes, most of these obligations had already been spelled out, time and again, by various international actors. While this reinforces the strength and urgency of these concrete steps, it also evidences how little the situation has evolved over the past few decades, to the detriment of the Palestinian People. Yet, there is no doubting that, in performing these steps, states can contribute to bring a lasting and just peace to Palestine, and relief to its people.

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453 As suggested by the Special Rapporteur in **Dossier No. 1429**, 'Situation of human rights in the Palestinian territories occupied since 1967', *supra* note 56, para. 78(b). In line with the Secretary-General's observations in **Dossier No. 1240**, 'Protection of the Palestinian civilian population', *supra* note 9, para. 52, however, such deployment would "would require a United Nations mandate and the consent and cooperation of the relevant parties on the ground." See also **Dossier No. 1303**, Security Council Resolution 904 (S/RES/904 of 18 March 1994), para. 3, noting that a "temporary international or foreign presence […] was provided for in the Declaration of Principles (S/26560), within the context of the ongoing peace process".

454 See **Dossier No. 1240**, 'Protection of the Palestinian civilian population', *supra* note 9, para. 41, deploring that "assistance to and protection operations for Palestinians in the Occupied Palestinian Territory by the United Nations already suffer from an acute shortage of funding", and para. 53, urging "all Member States to step up their financial contributions and political support for these efforts."

455 See, e.g., Declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, at 5; see also Special Political and Decolonization Committee (Fourth Committee), 77th session (10 November 2022), Declaration of Niger, p. 3: "A cet égard, tout en rappelant l'importance des principes humanitaires, ma Délégation exhorte la communauté internationale à davantage de solidarité vis-à-vis du peuple palestinien, notamment par le soutien à l'Office de secours et de travaux des Nations Unies pour les réfugiés palestiniens au Moyen-Orient."

456 General Assembly Resolution 77/123, 'Assistance to Palestine refugees' (A/RES/77/123 of 15 December 2022).

457 See **Dossier No. 1472**, HRC, 'Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel' (A/HRC/RES/S-30/1 of 27 May 2021), at 3-4.

V – CONCLUSION

265. Lasting and just peace to Palestine, and relief to its people. This is what animates and has embolden countless lives and individuals over the past few decades. Through this Advisory Opinion, the Court has the opportunity – once more – to contribute to this goal, and this contribution should not be wasted.

266. For the reasons set out in this Written Statement, the African Union respectfully submits that the Court should answer the questions put to it by the General Assembly as follows:

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

b. Israel is the occupying power in the Palestinian territories; namely, the West Bank, East Jerusalem, and the Gaza Strip;

c. The Israeli occupation of the Palestinian territories is contrary to international law on the following grounds:

i. The Israeli occupation violates the right of self-determination of the Palestinian people;

ii. The Israeli occupation of the Palestinian territories violates the sovereignty and territorial integrity of the State of Palestine;

iii. The Israeli occupation amounts to the *de facto* and *de jure* annexation of the Palestinian territories, in contravention of the prohibition on the acquisition of territory by force.

d. Israel is under an obligation to terminate its breaches of international, including by withdrawing – completely, immediately, and unconditionally – from the occupied Palestinian territories, and ceasing all policies and practices associated with the occupation, especially the settlements established in the occupied Palestinian territories;

e. Israel is under an obligation to make reparation for all damages caused by its breaches of international law; and

f. All States and the United Nations have the following obligations:

i. All States and the United Nations have a duty of non-recognition with respect to the situation of unlawful occupation;

ii. All States and the United Nations are under an obligation not to lend aid or support to the unlawful situation;

iii. All States and the United Nations are obliged to cooperate to end the unlawful occupation;

iv. All States and the United Nations are obliged to cooperate to contribute to the Palestinian People's right of self-determination;

v. All States parties to the Geneva Convention should ensure respect for the Convention; and

vi. All States parties to the Geneva Convention should prevent and punish international crimes and violations of international humanitarian laws.

267. Finally, the African Union respectfully invites the Court to recommend to the General Assembly to take all necessary measures to ensure the compliance by all parties with its Advisory Opinion.

The African Union reserves the right to revise, supplement or amend the terms of this written statement as well as the grounds in light of further pleadings and as necessary.

Respectfully submitted,

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