INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR AN ADVISORY OPINION)

WRITTEN STATEMENT

SUBMITTED BY THE ISLAMIC REPUBLIC OF PAKISTAN

25 JULY 2023

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I. Introduction

1. In Resolution 77/247 of 30 December 2022, the United Nations General Assembly (UNGA) requested an Advisory Opinion from the International Court of Justice (hereinafter referred to as ICJ or the Court) in the following terms:

> "18. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:
>
> (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
>
> (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"[1]

2. By its Order of 3 February 2023, the ICJ fixed the date of 25 July 2023 as the time-limit within which written statements on the questions may be presented to the Court.[2] The Court decided that all Member States of the United Nations (UN) as well as the observer State of Palestine are entitled to file written statements. It also decided subsequently that the League of Arab States, the Organisation of Islamic Cooperation, and the African Union may participate in the advisory proceedings.[3]

3. Pakistan is filing this written statement in accordance with the aforementioned Order of the Court.This written statement is structured in the following way:

(a) Section II will briefly consider the jurisdiction of the Courtin light of its statutory provisions, precedents and discretionary authority to render the requested Advisory Opinion. In Pakistan's view, the Court is competent to issue this opinion and there are no compelling reasons preventing it from doing so.

[1]UNGA Res 77/247, UN Doc A/RES/77/247 (adopted on 30 December 2022), para. 18.
[2] ICJ, Legal Consequences arising from the Policies and Practices of Israel in Occupied Palestinian Territory, including East Jerusalem (Request for an Advisory Opinion), Order of 3 February 2023, p. 2.
[3] ; ICJ, 'The Court authorizes the League of Arab States to participate in the proceedings' (ICJ Press Release No 2023/12, 10 March 2023); ICJ, 'The Court authorizes the Organisation of Islamic Cooperation to participate in the proceedings' (ICJ Press Release No 2023/16, 31 March 2023); ICJ, 'The Court authorizes the African Union to participate in the proceedings' (ICJ Press Release No 2023/19, 13 April 2023)

(b) Section III will address questions of international law arising out of the UNGA's request for the Advisory Opinion from the Court, focussing on five substantive issues, on the basis of the rules and principles of international law, including the UN Charter, international humanitarian law, international human rights law, relevant resolutions of the UN Security Council and UNGA, customary international law and jurisprudence of the ICJ, along the following lines:

(i) First, the right to self-determination will be emphasized as one of the basic principles and *jus cogens* norm of international law, and a right *erga omnes.* The violations by Israel[4] in denying this fundamental right to Palestinians on the basis of its prolonged occupation as well as*de facto* and *de jure* annexation of Occupied Palestinian Territory (OPT)[5] will also be covered.

(ii) Second, in terms of the law on the use of force – *jus ad bellum*, the prohibition on the use of force, and the inapplicability of Israel's exercise of the right of self-defence in the given context, will be elaborated to highlight Israel's prolonged occupation of OPT as a grave breach of the principles of international law.

(iii) Third, considering illegal occupation as an issue of international humanitarian law, Israel's non-fulfilment of its legal obligations as an occupying power will be explained.

(iv) Fourth, the discriminatory legislation and measures and the question of apartheid will be dealt at length to expound on the legal definition of apartheid, the recognition of its prohibition as a peremptory norm (*jus cogens*) and crime against humanity, and the crime of apartheid in OPT on the basis of Israel's inhuman acts, with the intent to establish or maintain domination of Jewish Israelis over Palestinians, in the context of an institutionalized regime of systematic racial discrimination and oppression.

(v) Fifth, other violations of international humanitarian law and international human rights law will cover Israel's illegal policies and actions to transfer its population to the occupied territory, forcibly evict protected persons from the occupied territory, and confiscate and demolish property in the occupied territory, to stress that the establishment of illegal settlements by Israel to change the demographic composition and character of OPT contradicts the

[4] The Government of Pakistan does not recognize the State of Israel.
[5]Occupied Palestinian Territory (OPT) covers Gaza, West Bank and East Jerusalem under the effective control and siege of the Israeli Government and Forces.

Fourth Geneva Convention and the universal human rights treaties which also remain applicable in armed conflict.

(c) Section IV will elaborate on the legal consequences that arise for Israel, for all other States, and for the UN from Israel's violation of international law in OPT. It will make the case that Israel, on account of its violations of *jus cogens* norms (use of force, denial of the right to self-determination, prolonged occupation, discriminatory legislation, illegal settlements to change the demography of OPT, etc.), is bound to cease its internationally wrongful conduct and make reparations for compensating the Palestinian people. The breaches of *jus cogens* norms by Israel create *erga omnes* obligation on all States to cooperate with each other and with the UN to put an end to these violations, and also give rise to *erga omnes partes* obligation on all States – which not only necessitate condemnation, non-recognition and non-assistance of the Israeli actions in OPT, but also dictate the condemnation and non-recognition of the duplication of Israeli models in other similar factual and legal situations.

(d) Section V sets out final submissions encompassing Pakistan's requests to the Court regarding its response to the UNGA's request for Advisory Opinion.

4. Pakistan reserves the right to address other substantive questions of international law, including the legal consequences that arise for all States, in its written comments on the written statements filed by other States and international organizations, as well as during the subsequent oral proceedings.

II. Jurisdiction of the International Court of Justice to Render the Requested Advisory Opinion

5. Article 96 of the UN Charter gives the Security Council and the UNGA the authority to request the ICJ to issue an advisory opinion on "any legal question." On the basis of past precedents and practices of the Court, as discussed below, the Court has the jurisdiction to render the opinion requested. The questions before the Court are of a legal nature, and can be located in a broader frame of reference than the settlement of a bilateral dispute; thus, giving the opinion would not circumvent the principle of consent.

6. The first paragraph of Article 65 of the Court's Statute provides the authority to render the requested advisory opinion, in the following terms:

> "The Court may give its opinion on any legal question on the request of whatever body authorized by or in accordance with the UN Charter to make such a request".

7. Article 96 of the UN Charter provides that the subject matter of an advisory opinion from the Court must be a question of a legal nature, as a condition for the competence of the Court to issue its advisory opinion, irrespective of whether such request for an opinion came from the UNGA, the Security Council, or some other UN organs. This requires defining the intended meaning of *a question of a legal nature* that gives the Court jurisdiction to issue advisory opinions. This requires a discussion of the extent of the discretionary authority of the Court in deciding to render or not render an opinion.

8. It may be inferred from the text of Article 65 of the Court's Statute that it may refrain from issuing such an opinion, even when the conditions for requesting an opinion are satisfied. In the present case, the Court may like to consider whether the questions on which the UNGA requested its advisory opinion in Resolution 77/247 of 30 December 2022, constitute a question of a legal nature or not.

A. The Meaning of "Questions of a Legal Nature"

9. The issues pertaining to the situation of human rights, self-determination, the use of force *et al.* in the Palestinian territory occupied by Israel since 1967, including the legal consequences of Israeli practices in the OPT, fall squarely within the UN General Assembly's express powers in accordance with Article 10 of the UN Charter, and are appropriately framed as questions of legal nature as per UNGA resolution 77/247 of 30 December 2022.

10. Reviewing of the Court's consistent precedents related to its advisory function reveals that it has refused objections to its advisory jurisdiction on the grounds that the relevant questions are of a political nature, as opposed to legal nature.

11. In the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[6] and in *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, the Court held that: if a legal question also has political aspects, it does not suffice to deprive it of its character as a "legal question" and to "deprive the Court of a competence expressly conferred on it by its Statute".

B. The Discretionary Authority of the International Court of Justice to Issue or Refrain from rendering Advisory Opinions

12. Under Article 65 of its Statute, the Court may decline to give an opinion falling within its jurisdiction to protect the integrity of its judicial function[7]. However, the Court has also characterized advisory opinions as its "participation in the activities of the Organization [the UN]"; thus, "in principle", the Court tends not to refuse such participation, unless there are

[6] Hereinafter referred to as *Wall.*
[7] *Wall* and *Advisory Opinion on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in* 1965 – hereinafter referred to as *Chagos*.

"compelling reasons" to do so[8]. One such compelling reason is "lack of consent of an interested State", which "may render the giving of an advisory opinion incompatible with the Court's judicial character"[9],or it "would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent"[10] .

13. The Court has never declined to respond to a request for an advisory opinion based on considerations of judicial impropriety, including when the request related to existing disputes[11].The Court has limited the relevance of consent in advisory proceedings by placing the issues raised in the requests "in the broader frame of reference"[12].

III. Questions of International Law arising out of the Request for an Advisory Opinion

14. This section will focus on five substantive issues, in each case framing potential questions arising out of UNGA's request. These are:

A. The right to self-determination;

B. The law on the use of force –*jus ad bellum*;

C. Illegal occupation as an issue of international humanitarian law;

D. Discriminatory legislation and measures and the question of apartheid; and

E. Other violations of international humanitarian law and international human rights law.

A. The Right to Self-Determination

15. The key issue addressed to the Court by the UNGA relates to the legal consequences of "the ongoing violation by Israel of the right of the Palestinian people to self-determination" on the basis, inter alia, of the "prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967".

16. In the *Chagos* case, the Court stated that "The nature and scope of the right to self-determination of peoples….. were reiterated in the [*Friendly Relations Declaration*]. By

[8] *Wall*, para. 44; and *Chagos*, para. 91
[9] *Chagos*, para. 90
[10] *Advisory Opinion on Western Sahara,* hereinafter referred to as *Western Sahara*, Para 33
[11] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* – hereinafter referred to as *Namibia; Western Sahara*; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* (Mazilu); *Wall*; and *Chagos*.
[12] In *Western Sahara* it stated that the legal questions of which the Court was seized were located "*in a broader frame of reference than the settlement of a particular dispute and embrace[d] other elements*" (para. 38).

recognizing the right to self-determination as one of the 'basic principles of international law', the Declaration confirmed its normative character under customary international law"[13].

17. In the *Wall* case, the ICJ found that the "construction [of the Wall], along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right."

18. The ICJ has observed in the *Wall* case that: "The Court recalls its previous case law, which emphasized that current developments in "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 [such territories]", and that the right of peoples to self-determination is today a right *erga omnes*."

19. In the *East Timor (Portugal v. Australia)* case, the Court held that "The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court."[14]

20. Articles 1(2) and 55 of the UN charter on "the principle of equal rights and self-determination of peoples" and Common Article 1 of the International Covenant on Civil and Political Rights, and the International Covenant on Social, Economic and Cultural Rights recognize self-determination as a collective human right. The UN General Assembly has affirmed in the *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* that "[b]y virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development" [15]. It has further affirmed that "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter."[16]

21. The application of the aforementioned principle of equal rights to Palestine is also no longer in dispute. The said principle was also rooted in UNGA Resolutions 181 (II) of 29 November 1947, 2535 B (XXIV) of 10 December 1969, 2649 (XXV) of 30 November 1970, 2672 C (XXV) of 8 December 1970, 3236 (XXIX) of 22 November 1974, 58/163 of 22 December 2003; and in UNSC Resolution 242 (1967) of 22 November 1967, confirmed by Resolution 338 (1973) of 22 October 1973, Resolution 1397 (2002) of 12 March 2002, and Resolution 1515 (2003) of 19 November 2003.

[13] *Chagos* (para. 155)
[14] See also *Namibia* (paras. 52-53); *Western Sahara* (paras. 54-59)
[15] UNGA Declaration on Principles of the International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the UN, A/RES/2625(XXV), 24 Oct 1970 – hereinafter referred to as *Friendly Relations Declaration*.
[16] Ibid

22. There are two central legal considerations in the context of violation of the right to self-determination due to the illegality of an occupation:

(i) A prolonged occupation, with its *de facto* and *de jure* annexations and various violations of international humanitarian law, is a breach of the right to self-determination. Moreover, these violations together indicate that the military necessity and proportionality requirements for self-defence, are no longer satisfied, making the occupation illegal on the basis of *jus ad bellum*;

(ii) A breach of self-determination in its own right provides a stand-alone ground for illegality of the occupation. The establishment of the "occupation" breaches the right to self-determination and renders the "occupation" illegal.

23. Prolonged occupation breaches the right of the occupied people to self-determination. It is clear from the UNGA resolutions mentioned in paragraph 19 above that the illegality of the occupation was considered to derive from a continuing act of aggression. UNGA has adopted numerous resolutions calling for Israel's "unconditional and total withdrawal."This means withdrawal is not to be made the subject of negotiations, but is rather the termination of an internationally wrongful act.

24. In terms of State responsibility, the International Law Commission (ILC) Commentary refers to the prohibition of both formal and implied acts of recognition of an "attempted acquisition of sovereignty over territory through the denial of the right to self-determination of peoples"[17]. Any forcible action to deprive people of their right to self-determination is prohibited under the *Friendly Relations Declaration*. Therefore, any use of force to deny self-determination is an unlawful use of force.

25. In the *Namibia* case,where the UNGA formally ended the Mandate in 1966, recognizing South West Africa (later renamed Namibia) as a territory having international status until its full independence was recognized, the Court noted that the UN Charter expanded the concept of "sacred trust" to apply to "all territories whose peoples have not yet attained a full measure of self-government" and that territories under a "colonial regime" retained the right to self-determination. The ICJ determined that "the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory"[18].

26. Quite apart from the prolonged nature of an occupation, the right to self-determination is violated in situations where the occupying power annexes all or parts of the occupied territory. The *Friendly Relations Declaration* affirms that "The territory of a colony or other Non-Self-

[17] *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries, 2001, Report of the International Law Commission on the work of its fifty-third session, P114.
[18] *Namibia* Advisory Opinion

Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination …"[19]

27. This principle means that the OPT has a separate status from Israel and that distinct status is to be maintained until the Palestinian people have exercised their right to self-determination. Clearly, any annexation of territory would be a breach of the obligation to maintain that separate and distinct status.

28. It is worth noting that annexation which breaches the right to self-determination may take a number of forms. The clearest case of such a breach would be an attempt to annex occupied territory *de jure*. However, there may be a breach of the right to self-determination on the basis of a *de facto* annexation by the occupying power. In the *Wall* case, the Court stated that it "considers that the construction of the wall and its associated regime 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."

29. The prolonged occupation by a State of foreign territory and peoples is by that very fact a violation of the right to self-determination. In situations of occupation, the occupied people are unable to determine their own political status and unable to pursue their economic, social and cultural development. As one leading author and judge put it "alien subjugation, domination and exploitation" covers those situations in which any one Power dominates the people of a foreign territory by recourse to force.[20] "He goes on to explain that, "[i]f this is correct, self-determination is violated whenever there is a military invasion or belligerent occupation of a foreign territory, except where the occupation – although unlawful – is of a minimal duration or is solely intended as a means of repelling, under Article 51 of the UN Charter, an armed attack initiated by the vanquished Power and consequently is not protracted."

30. Finally, as already explained, even without annexation, permanence or a fait accompli occupation which is prolonged in the sense that it lasts longer than the justifications which might have existed for it under the law relating to the use of force, will violate the right to self-determination.

B. The Law on the Use of Force – *Jus ad Bellum*

31. The question put to the Court by the UNGA refers in para (a) to "the violation by Israel of the right of the Palestinian people to self-determination, from *its prolonged occupation*" (emphasis added).

[19]UNGA Declaration on Principles of the International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the UN, A/RES/2625(XXV), 24 Oct 1970
[20]Cassese, Self-Determination of Peoples: A Legal Appraisal (Cambridge University Press, 1995) p. 99.

32. The prohibition of use of force applies in the relations between Israel and Palestine. Israel has an obligation under customary international law not to use force against Palestine. The obligation under customary international law is commonly taken to be identical to that contained in Article 2(4) of the UN Charter. In the *Wall* case, the Court stated that:"The Court first recalls Article 2, paragraph 4, of the United Nations Charter, which provides that 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

33. An occupation, particularly one that results from an invasion or attack, constitutes an ongoing use of force.To the extent that the legality of the occupation is claimed on notions of self-defence, it must still respect the customary international law principles of necessity and proportionality.

34. In the *Wall* case, the Court held that: "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case."

35. UNGA has stated that "[a]ggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations …"[21]. The UNGA further states that "any military occupation, however temporary, resulting from such invasion or attack"[22] shall qualify as an act of aggression. Since all acts of aggression are a use of force, it must follow that a military occupation is a use of force.

36. The law of occupation prevents the occupying power from treating the occupied territory as if it were a portion of its own territory because the law assumes that the occupation is temporary and that the occupying territory must be returned to the ousted sovereign. Consequently, the use of armed force in the occupied territory cannot be considered an internal employment of armed force.[23]

37. The prohibition of force also extends to the use of force "in any other manner inconsistent

[21]United Nations General Assembly Resolution 3314 (XXIX) on *Definition of Aggression*, adopted by consensus in 1974 (Art. 1)
[22] Ibid (Art. 3.a.)
[23]Longobardo, The Use of Armed Force in Occupied Territory (Cambridge University Press, 2018) p. 112.

with the Purposes of the United Nations". As the principle of self-determination is referred to in Article 1(2) of the UN Charter as one of the Purposes of the United Nations, it may, thus, be argued that use of force which deprives a people of their right to self-determination is a use of force inconsistent with the Charter, even if the entity against which the force is being used is not a State. The *Friendly Relations Declaration*, in interpreting the prohibition of force, proclaims that "[e]very State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence."

C. Illegal Occupation as an Issue of International Humanitarian Law

38. This sub-section is focused on the conduct within the context of occupation. The law of occupation is regulated under international humanitarian law as codified under the Geneva Conventions. It may be helpful to think about the question here as to whether the illegality of an occupation arises "internally" to international humanitarian law – that is, without reference to other bodies of international law.

39. The traditional starting point has been that occupation is a *factual* phenomenon. As set out in Article 42 of the Hague Regulations of 1907, occupation arises where territory '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. The Hague Regulations annexed to The Hague's Fourth Convention of 1907 with Respect to the Laws and Customs of War on Land (Articles 42 to 56) and the Fourth Geneva Convention on the Protection of Civilian Persons at the Time of War signed on 12 August 1949, and Articles 27 to 34 and 47 to 78, dealt war occupation and identified the authorities of the occupying power and the duties of the persons on the occupied territory. They also identified the duties of the occupying power towards them and the rights they are entitled to.

40. In the *Wall* case, on the question of the applicability of the Geneva and Hague Conventions to Palestine or Occupied Palestinian Territory the Court stated that:

> "The Court notes that, according to the first paragraph of Article 2 of the Fourth Geneva Convention, when two conditions are fulfilled, namely that there exists an armed conflict (whether or not a state of war has been recognized), and that the conflict has arisen between two contracting parties, then the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties. The object of the second paragraph of Article 2, which refers to 'occupation of the territory of a High Contracting Party', is not to restrict the scope of application of the Convention, as defined by the first paragraph, by excluding the territories not falling under the sovereignty of one of the contracting parties, but simply to making it clear that, even if occupation affected during the conflict met no armed resistance, the Convention is still applicable."

41. Israel has specific legal obligations under the international humanitarian law towards the territorial integrity of the occupied land, and public and private property, under Articles 46, 53, 55 of The Hague Regulations on War on Land dated 1907. These obligations have been repeatedly reiterated and declared through numerous UNSC resolutions [24] calling on the Government of Israel to respect and to comply with the provision of the Geneva Convention relative to the Protection of Civilian Persons in the Time of War, as well as with the relevant resolution of the Security Council, and reaffirm the overriding necessity to end the prolonged occupation of the Palestinian territories occupied by Israel since 1967, including Jerusalem.

D. Discriminatory Legislation and Measures and the Question of Apartheid

42. The fourth set of issues flows from Israel's "adoption of related discriminatory legislation and measures." In this respect, international humanitarian law and international human rights law impose duties of non-discrimination on occupying powers.

43. As to the former, customary international humanitarian law prohibits "adverse distinction in the application of international humanitarian law" on a set of protected grounds.[25] As to the latter, both the International Covenant on Civil and Political Rights(ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) impose obligations of non-discrimination on State parties[26]. Israel is party to both of these Conventions, as well as a number of other international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[27]. Moreover, in the *Wall*case, the Court confirmed both the extraterritorial application of the ICCPR and ICESCR, as well as their applicability in occupied territories.[28]

44. The prohibition of apartheid is one existing in customary international law and under Article 3 of ICERD, both of which are binding on Israel. However, the term "apartheid" in Article 3 of ICERD is not defined in that instrument but is defined in the Apartheid Convention.

[24]UNSC Resolutions 242 (1967) of 22 November 1967, 267 (1969) of 3 July 1969, 298 (1971) of 25 September 1971, 338 (1973) of 22 October 1973, 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of I March 1980, 467 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 904 (1994) of 18 March 1994, 1073 (1996) of 28 September 1996, 1397 (2002) of 12 March 2002 and 1515 (2003) of 19 November 2003.

[25]Henckaerts and Doswald-Beck, Customary International Law (Vol 1, Cambridge University Press, 2005) ('ICRC Customary Study') Rule 88.

[26]4 International Covenant on Civil and Political Rights (opened for signature 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') Article 26; International Covenant on Economic, Social and Cultural Rights (opened for signature 19 December 1966, entered into force 3 January 1976) 993 UNTS 3 ('ICESCR') Article 2(2). Israel ratified both of these conventions on 3 October 1991.

[27] International Convention on the Elimination of All Forms of Racial Discrimination (entered into force, 4 January 1969) - ratified by Israel on 3 January 1979 ('ICERD'). Other treaties to which Israel is a party, as provided for in the UN Treaty Series Collection, include the Convention on the Elimination of All Forms of Discrimination against Women (opened for signature 1 March 1980, entered into force 4 January 1969) 660 UNTS 195 ('CEDAW') and the Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC'), both of which were ratified by Israel on 3 October 1991.

[28]Wall Advisory Opinion, pp. 102–103

i. Legal Definitions: The Crime of Apartheid in International Law

45. The definition of apartheid requires the following enumerated acts to be practiced within an institutionalized regime of systematic racial discrimination and oppression. As discussed below, the Israeli occupation has created and deployed legal frameworks and institutions that directly enable rampant violations of Palestinians' human rights and suppress the exercise of their civil and political rights. These frameworks and institutions, taken together with ongoing long-term Israeli policies of land confiscation and dispossession, restriction of the movement of Palestinians, and expansion of illegal Israeli settlements, systematically serve the purpose of privileging and maintaining the domination of Jewish Israelis over Palestinians. Within this context, Israeli policies and actions in the occupied Palestinian territories are far from isolated incidents, but rather represent a systematic deployment of laws, policies, and institutions to enshrine a dual legal regime that entrenches Israel's control over Palestinians, and the suppression of the rights of Palestinians as a group, while privileging the interests and nurturing the growth and expansion of Jewish Israeli settlement communities.

46. While the term "apartheid" was originally coined and applied in the context of South Africa, the crime of apartheid is well-recognized in international law and is understood to apply universally. International law prohibits the crime of apartheid both as a matter of customary international law and treaty law.

47. The analysis of the crime of apartheid in this submission is informed by the definitions set forth in the Apartheid Convention and considers only acts that meet the requirements of both instruments. The Apartheid Convention defines the crime of apartheid as "similar policies and practices of racial segregation and discrimination as practiced in Southern Africa", which include "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.[29]"

48. Customary international law recognizes apartheid as a peremptory norm (*jus cogens*) and prohibits the crime of apartheid. The ILC Special Rapporteur, in the fourth report on peremptory norms of general international law, recognized the prohibition of apartheid as a peremptory norm of general international law, from which no derogation is permitted.[30] Practices of apartheid committed in the context of an armed conflict also amount to a grave breach of Protocol I Additional to the Geneva Conventions, which, notwithstanding that Israel is not a State Party to Protocol I, is widely regarded as customary international law.[31]

[29] Apartheid Convention, Art. 2.

[30] International Law Commission, "Fourth Report on Peremptory Norms of General International Law (*jus cogens*) by Dire Tladi, Special Rapporteur," U.N. Doc. A/CN.4/727 at [94], 2019,

[31]See Henckaerts, Jean-Marie and Doswald-Beck, Louise, "Rule 88," Customary International Humanitarian Law, ICRC, 2005, https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf ("State practice establishes this rule [prohibiting adverse distinction in the application of international humanitarian

49. The prohibition of apartheid is also codified in Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which both Israel and Palestine have ratified. Under article 2 of ICERD, States "undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." In short, although Israel is not a State Party to the Apartheid Convention, or Protocol I Additional to the Geneva Convention, the prohibition of the crime of apartheid extends to its laws, policies, and practices in the OPT.

50. Furthermore, the applicability of international humanitarian law in the OPT due to Israel's decades-long occupation does not displace the applicability of international human rights law or the prohibition of apartheid. As the Courtheld in the *Armed Activities* case, both branches of law are applicable during armed conflict.[32]

51. The Human Rights Committee has adopted a similar approach, stating that "both spheres of law [international humanitarian law and international human rights law] are complementary, not mutually exclusive.[33]" For purposes of the analysis here, it is important to note the peremptory status of the prohibition on apartheid. Importantly, the prohibition of apartheid is also enshrined in international humanitarian law within Protocol I Additional to the Geneva Conventions.

52. The crime against humanity of apartheid, therefore, entails: (i) inhuman acts; (ii) committed with the intent to establish or maintain the domination of one racial group over another; and (iii) in the context of an institutionalized regime of systematic racial discrimination and oppression. Article 2 of the Apartheid Convention outlines the list of "inhuman acts" that may amount to acts of apartheid, when committed systematically for the purpose of establishing or maintaining domination by one racial group over another.

53. Palestinians are a distinct racial group for purposes of the apartheid definition under international law.[34]The understanding of the term "racial group" in international law has evolved away from the traditional category of "race" to encompass broader group identification which may form the basis of discrimination. In the absence of a clear definition of the term "racial group" in the Apartheid Convention, the jurisprudence of international tribunals[35] and international human rights law can be used to clarify the term.

law based on race, colour, sex, language, religion or belief, or political belief or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria] as a norm of customary international law applicable in both international and non-international armed conflicts.").

[32] See Armed Activities on the Territory of the Congo (Dem. Rep. of the Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶ 215-221.

[33]See General Comment no. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, U.N. Doc. CCPR/C/GC/36,

[34]For a discussion of the issue of "racial groups" in the context of Israel-Palestine, see Dugard, John and Reynolds, John, "Apartheid, International Law, and the Occupied Palestinian Territory," Euro. J. of Int'l L. 24(3), August 2013, pp. 885-

[35]In *Rutaganda*, the ICTR held that group membership under the Genocide Convention was to be understood as "a subjective rather than an objective concept" where "the victim is perceived by the perpetrator as belonging to a

54. The ICERD, which is referenced in the preamble of the Apartheid Convention, offers further guidance to understanding the term "racial group." The ICERD's definition of "racial discrimination" is broad and incorporates a subjective understanding similar to that used by international criminal tribunals. In its definition of racial discrimination, Article 1 of the ICERD clarifies that "race" is not the sole indicator of racial discrimination, but that it may cover "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin." In its 2019 review of Israel, the Committee on the Elimination of Racial Discrimination (CERD) expressed grave concerns at the consequences of policies and practices which amount to de facto segregation, and called on Israel "to eradicate all forms of segregation between Jewish and non-Jewish communities," and to "to take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory," finding them to be in violation of Articles 1(2), 1(3), 3 of ICERD.[36]

55. Finally, it should also be noted that Israeli law has interpreted the term "race" broadly, extending the definition of racism to acts committed against parts of the population because of their national origin.[37]

ii. Apartheid in the Occupied Palestinian Territory

56. A finding of apartheid in the OPT requires ascertaining whether the Israeli occupation has committed: (i) inhuman act(s), (ii) with the intent to establish or maintain domination of Jewish Israelis over Palestinians, (iii) in the context of an institutionalized regime of systematic racial discrimination and oppression.

57. Israel's deployment of a dual legal system in the OPT, and the resulting systematic discrimination against Palestinians and subordination of Palestinians' civil and political rights to the rights of Jewish Israeli citizens settled in the OPT, amount to a breach of the prohibition of apartheid under international law.

group slated for destruction.[35]" In *Blagojevich and Jokic*, the ICTY held that "a national, ethnical, racial or religious group is identified by using as criterion the stigmatisation of the group, *notably by the perpetrators of the crime*, on the basis of its *perceived* national, ethnical, racial or religious characteristics.

[36]Consideration of reports submitted by States parties under article 9 of the Convention: Concluding Observations, Committee on the Elimination of Racial Discrimination, 19 March 2012, CERD/C/ISR/CO/14-16, https://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf. Earlier in 2014, the Human Rights Committee noted the existence of the two as separate groups and expressed concerns that "the Jewish and non-Jewish population are treated differently in several regards." Human Rights Committee, Concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4,

[37] The Israeli Penal Code defines racism, in the context of the crime of "publication of racist incitement," as "persecution, humiliation, degradation, a display of enmity, hostility or violence, or causing violence against a public or parts of the population, all because of their color, racial affiliation or national ethnic origin" (Penal Law 5737-1977

58. An examination of relevant Israeli law and practice, suggests that Israeli officials are responsible for committing several inhuman acts as defined in Article 2 of the Apartheid Convention, particularly Articles under 2(a), 2(c), and 2(f).

59. Article 2(a) of the Apartheid Convention relates to depriving members of a racial group the right to life and liberty of person. Israel's prevalent and well-documented practices of arbitrarily detaining Palestinians under the guise of broadly defined security offenses, denying Palestinian detainees' basic fair trial and due process rights, using ill-treatment and torture with impunity, and placing Palestinians in prolonged administrative detention without charges or trial i.e. Military Order 1651[38], together can amount to the inhuman act of denying Palestinians the right to liberty of person under Article 2(a)(ii) and 2(a)(iii). Israeli practices of tolerating, and in certain cases, enabling and encouraging violent attacks by Israeli Jewish settlers on Palestinian residents[39] in the OPT constitute another basis for a finding of an inhuman act under Article 2(a) of the Apartheid Convention.

60. Article 2(c) of the Apartheid Convention addresses the inhuman act of persecution and encompasses a broad range of legislative and other measures that are calculated to prevent the participation of a racial group in the political, social, economic, and cultural life of the country, and the deliberate creation of conditions preventing the full development of such a group by denying them basic human rights and freedoms. A wide range of Israeli policies and prevalent practices in the OPT can amount to a finding of persecution under the Article, including the discriminatory deployment of draconian military orders that severely restrict Palestinians' exercise of their basic rights to free expression and free association and assembly, targeting Palestinian individuals and civil society organizations with criminalization and suppression, denying Palestinian detainees basic fair trial and due process rights, and failing to protect Palestinian residents from ideologically-motivated acts of violence and intimidation by Jewish Israeli settlers. Additionally, Israel's harassment, arrest, and detention of Palestinian Legislative Council members—eight of whom were currently detained as of February 2022—appear calculated to prevent the full participation of Palestinians in the political life of their country, by forcing them to languish in Israeli prisons, potentially indefinitely, based on "secret evidence," in violation of Article 2(c) of the Apartheid Convention.

61. Article 2(f) of the Apartheid Convention concerns the persecution of organizations and persons by depriving them of their fundamental rights and freedoms, specifically because they oppose apartheid. Since 1967, Israel has weaponized military orders and the military courts to

[38] Military Order no. 1651 provides that the Israeli military commander may authorize the "administrative" detention, for up to six months, of a Palestinian individual not charged with a crime if the commander has reasonable grounds to believe that the individual "must (?) be held in detention for reasons to do with regional security or public security." This detention is not subject to a warrant, and charges do not need to be disclosed to the detainee. Military Order no. 1651 further grants the Israeli military broad powers to withhold a detainee's right to communicate with a lawyer and to be brought before a judge in a timely manner.

[39] B'Tselem, "Settler Violence=State Violence," 25 November 2021, https://www.btselem.org/settler_violence; Yesh Din, "Position Paper: Settler Crime and Violence Inside Palestinian Communities, 2017-2020," 27 May 2021,

persecute those who oppose its prevalent discriminatory policies and actions in the OPT, including through criminalization of peaceful expression and assembly that may "incite" against the occupation. This persecution was demonstrated most recently in 2021 and in Jenin in 2023 by resorting to excessive use of force with the mass criminalization and targeting of Palestinian civil society organizations, community activists and human rights defenders.

62. Since 1967, the Israeli Supreme Court, sitting as the High Court of Justice, has exercised jurisdiction to hear petitions concerning the activities of the Israeli military in the OPT. However, it has maintained discretion to accept or reject any petition, with a limited standard of review in comparison to the "regular" appeal process, thus preventing many petitions from reaching the Court. Notably, the Israeli Supreme Court has accepted that "Israeli nationals who reside in territory under the state's control are subject to different arrangements from those that apply to the Palestinians," without questioning the implications of the existence of different legal arrangement governing both groups and the nature of the regime in the OPT.[40]

63. Apartheid involves commission of specified inhuman acts with an intent to dominate. The totality of Israeli actions and policies in the OPT manifests an intent to establish and maintain Jewish domination and suppression of Palestinians. Since 1967, Israel has put in place institutions, legal instruments, and mechanisms that systematically discriminate against Palestinians in the OPT, enshrine Jewish supremacy, suppress Palestinians' exercise of their civil and political rights, and deny Palestinians' basic human rights and freedoms.

64. The explicit objective of ensuring Jewish character and domination across Israel and the OPT was affirmed in the 2018 Jewish Nation-State Law, which enshrines the character of Israel as a "nation-state of the Jewish people" and constitutionally entrenches the privileging of one group of people over another. The law also declares "the development of Jewish settlement" as a "national value," which the state would act to encourage and promote, without limiting settlement to the boundaries of the State of Israel.[41] In 2020, the former prime minister of Israel declared a plan to formally annex parts of the OPT, bringing them under Israeli sovereignty, while specifically excluding Palestinians [42] who have been openly described by Israeli policymakers as a demographic threat to the existence of Israel as a Jewish state. That there is "no end in sight" to Israel's prolonged occupation of the OPT, in conjunction with its encouragement of settlement building, further compels the conclusion that Israel's actions are done with an intent to establish and maintain Jewish dominance over Palestinians in the OPT.

[40] Id., p. 512 (noting that in the Hebron Municipality case (2019), the Israeli Supreme Court described the existence of a "different legal system that applies to Israeli nationals who reside in the OPT as a preordained situation, without so much as querying whether this was lawful."
[41] See Basic Law: Israel – the Nation-State of the Jewish People, 2018,
[42] Explainer: Israel, Annexation, and the Occupied Palestinian authorities," BBC News, 25 June 2020, https://www.bbc.com/news/worldmiddle-east-52756427.

E. Other Violations of International Humanitarian Law and International Human Rights Law

65. The relationship between international humanitarian law and international human rights law is not one of exclusion but of coordination. Where international human rights law deals in general terms with an issue (e.g. "arbitrary" deprivation of life) which is regulated in more detail and specificity by international humanitarian law, the latter provides the content to the applicable law, i.e. it determines the scope of the legal standard. Where on the other hand international human rights law prohibits certain treatment entirely (e.g. torture) then that treatment remains internationally unlawful at all times and places including during armed conflict or occupation. Accordingly, the applicable law in the OPT, including East Jerusalem, is both the international humanitarian law and the international human rights law.

66. In order to facilitate its actions in the occupied territory, Israel has used a variety of legal tools. Applying Israeli domestic law to East Jerusalem has enabled Israel to enforce its land laws on the occupied territories, including those passed after the 1967 War. These legislations include, inter alia, the *Basic Law:*[43] *Jerusalem, Capital of Israel* (adopted in 1980 and amended in 2000) declaring, inter alia, that "Jerusalem, complete and united, is the capital of Israel"; and the *Legal and Administrative Matters Law* (enacted in 1970) which exclusively allows Jews to pursue claims to land and property allegedly owned by Jews in East Jerusalem before the establishment of the "State of" Israel in 1948.

67. By continuing with the actions described above, Israel has breached its obligations not to alter the original legislation in the occupied territory unless the changes are necessary for the preservation of public life and order and for the benefit of protected persons. In addition, the legislation introduced by the Israeli authorities raises great concerns in relation to its compatibility with international law standards. As these above-mentioned legislations and actions arguably facilitate, inter alia, transfer of Israeli population to the annexed territory, forcible transfer of protected persons, confiscation and demolition of property in contradiction with the following rules and principles of the international humanitarian law:

i. Prohibition on forcible transfer

68. Article 49 (1) of the Fourth Geneva Convention stipulates that "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territoryof the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive".

69. Forcible transfer entails consequences including the abandonment of one's home and possessions and potentially losing one's rights in the property. Whereas deportation requires the displacement of persons across a national border, forcible transfer may take place within national

[43]Israel has no constitution but a series of Basic Laws having superiority on all other legislations.

boundaries or the occupied territory. The seriousness of this act is emphasized by the inclusion and categorization of forcible transfer as a grave breach of the Fourth Geneva Convention.

70. The forcible nature of deportation or eviction is not limited to physical force, but may encompass threat of force or coercion. The act of deportation or forcible transfer is prohibited, irrespective of the motive and the purpose of such displacement. Even the fact that an eviction or deportation order is issued pursuant to judicial proceedings is irrelevant to this rule.

ii. Prohibition on transfer of occupying power's population into occupied territory

71. Article 49 (6) of the Fourth Geneva Convention stipulates that the transfer of civilians from the occupying power into the territory it occupies is strictly forbidden. It also constitutes a grave breach of the Convention (Article 147 of the Convention).

iii. Property Rights under Occupation Law

72. International humanitarian law has long recognized that property rights should be protected from most types of state intervention. The foundation of this notion is found in Article 46 of the Hague Regulations of 1907 which lays down the general obligation of respecting private property in occupied territory. The Article mandates that private property must be respected and "cannot be confiscated".Thus, it forbids confiscation, namely, the permanent taking of private property with the transfer of title to it. With regard to public property, Article 55 of the Hague Regulations states that: "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct".

73. The Fourth Geneva Convention added some supplemental provisions in regard to property rights. One of them is Article 53, which provides that "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". In addition, Article 147 provides that the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" constitutes a grave breach of the Convention.

iv. International Human Rights Law

74. The important aspects of international human rights law have entered into customary international law. Therefore, it is sufficient here to rely on the universal human rights treaties which Israel itself has accepted by becoming a party to them.

75. Israel is a party, in particular, to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Cultural and Social Rights (ICESCR) – both of which it ratified on 3 October 1991. In particular Article 2(1) of ICCPR provides that each State Party "undertakes to respect and to ensure to al1 individuals within its territory and subject to its jurisdiction" the rights recognized in the Covenant. The term "within its territory and subject to its jurisdiction" in Article 2(1) is disjunctive; States Parties are bound to apply the Covenant to territories over which they exercise jurisdiction, including as a belligerent occupant.

76. Thus, the United Nations Human Rights Committee is correct in concluding that ICCPR applies to the benefit of the populations in the OPT, and Israel is in violation of them.[44]

77. Israel has offered the Palestinian residents of East Jerusalem the opportunity to better their situation and ensure their right to live in the city, but conditioned it by applying for Israeli citizenship – a procedure that requires swearing allegiance to the State of Israel, which, under international law, is the occupying power of East Jerusalem. In this regard it is worth mentioning that Article 45 of the Hague Regulations which stipulates that "it is forbidden to compel residents of occupied territory to swear allegiance to the hostile power". Conditioning fundamental rights – such as the right not to be transferred or deported from the occupied territory – on swearing loyalty to the occupying power, therefore contravenes the provisions of the Article.

78. According to the Universal Declaration of Human Right of 1948, East Jerusalem residents should be entitled, like any other person, to leave their home and to return to it, without thereby being at risk that their travels abroad or their departure to other areas of Palestine, and even their acquisition of status in another country, will lead to the deprivation of their rights to return to their homeland. The right of persons to leave and return to their country is secured in international human rights law.

79. Article 13(2) of the Universal Declaration of Human Rights (1948) states: "Everyone has the right to leave any country, including his own, and to return to his country". Article 12(4) of ICCPR continues and states the following: "No one shall be arbitrarily deprived of the right to enter his own country"[45]. It should be noted, in this regard, that the United Nations Human Rights Committee,[46] the body charged with monitoring the implementation of the ICCPR, held that the right to return to one's country as per Article 12(4) of the Covenant is not available

[44] Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Fifty-third session 19 June–14 July 2023

[45]International Covenant on Civil and Political Rights, Article 12(4). This principle is enshrined in other human rights conventions. *See*: Article 10(2) of the Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *ent*ered into force 2 September 1990; Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc A/6014 (1966), 660 U.N.T.S. 195, *entered into force* 4 January 1969.

[46]The Human Rights Committee's General Comment 27, CCPR/C/21/Rev.1/Add.9 (1999), par. 20.

exclusively to those who are citizens of that country. It most certainly also applies, so the Committee held, to those who, because of their special ties to that country, cannot be considered a mere "alien". As an example, the Committee points out that this right shall also be available to residents of territories whose rule has been transferred to a foreign country of which they are not citizens.

80. Israel maintains that the applicable law in the OPT is international humanitarian law rather than international human rights law. In its view, there is a well-established distinction between the two areas of international law, and in times of armed conflict, the applicable law is international humanitarian law. ICCPR and ICESCR are claimed by Israel to be not applicable during armed conflict, but only during peacetime.

81. Many international human rights treaties explicitly state that they apply in both times of war and peace. For example, Article 2(2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 provides:

> "No exceptional circumstances whatsoever, whether a state of war or a threat of war, interna1 political instability or any other public emergency, may be invoked as a justification of torture."

82. The Genocide Convention likewise provides in Article 1:

> "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

83. Many international and regional human rights conventions, including the ICCPR, contain provisions permitting States to derogate from certain provisions of the convention during war: see especially Article 4of the ICCPR. The explicit exception for derogation during war clearly implies that absent derogation, the human rights convention will apply fully during war. Moreover, it sets a limit to the kinds of derogation that will be acceptable even in time of war or national emergency, and it confers a special status upon non-derogable rights-many of which, as we have seen, are violated by Israel's settlement practices and changes in the demographic character of the East Jerusalem and the OPT.

84. As the Court pointed out in the *Nuclear Weapons Advisory Opinion*, there is a conceptual distinction between the body of international law comprising international humanitarian law and that of international human rights law. At the same time the Court affirmed the continued application of international human rights law to territories affected by armed conflict, subject to the application of international humanitarian law as a *lexspecialis*. The Court was presented with the argument that the ICCPR applied only to the protection of human rights in peacetime. The Courtsaid:

> "the protection of the International Covenant on Civil and Political Rights does not cease in time of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle the right not arbitrarily to be deprived of one's life applies also in hostilities."

IV. Legal Consequences of a Finding of Violations of International Law

85. The UNGA's request to the ICJ does not merely require the Court to examine whether certain practices and policies constitute violations of international law, but specifically asks the Court to pronounce on the legal consequences of any violations found, as well as on the legal status of the occupation. In considering the legal consequences of any violations found, the Court will also address the consequences for (i) Israel (whose conduct is at issue); (ii) other States; and (iii) the UN.

A. Legal consequences of those violations for Israel

86. As analysed and submitted in preceding paragraphs, Israel's practice regarding use of force, denial of the right to self-determination, its prolonged occupation, discriminatory legislation and settlements to change the demography of OPT are contrary to the Geneva Conventions, laws of occupation, and peremptory and *jus cogens* norms of international law.

87. Israeli actions are in direct violation of Articles 1 and 40 of the *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*[47]. This entails,Art. 1: "Every internationally wrongful act of a State entails the international responsibility of that State." And Art 40:

> "This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
>
> 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation."

88. Article 40 serves to define the scope of the breaches covered by the chapter. It establishes two criteria in order to distinguish "serious breaches of obligations under peremptory norms of general international law" from other types of breaches. The first relates to the character of the obligation breached, which must derive from a peremptory norm of general international law, In accordance with article 53 of the 1969 Vienna Convention, a peremptory norm of general international law is one which is: accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified

[47]Draft articles on Responsibility of States for Internationally wrongful Acts, with commentaries, 2001, Report of the International Law Commission on the work of its fifty-third session.

only by a subsequent norm of general international law having the same character. The second qualifies the intensity of the breach, which must have been serious in nature, systematic and gross. To be regarded as systematic, a violation would have to be carried out in an organized and deliberate way. In contrast, the term "gross" refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule. The terms are not of course mutually exclusive; serious breaches will usually be both systematic and gross. As we have mentioned earlier Israel has seriously breached its international obligations.

89. As per Conclusion no. 23 of the *Draft Conclusions on Identification and legal consequences of peremptory norms of General International Law*[48] , the principle of self-determination and the basic rules of international humanitarian law are part of non-exhaustive list of *jus cogens* norms. According to the ICJ*,* obligations *erga omnes* "derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.[49]"

90. The core legal consequences of an internationally wrongful act set out in Part Two of the *Draft Articles on the Responsibility of the States for Internationally Wrongful Act,* are the obligations of the responsible "State" i.e. Israel, to cease the wrongful conduct (Art. 30) and to make full reparation for the injury caused by the internationally wrongful act (Art. 31). Article 34 describes the forms of reparation in the form of restitution (Art.35), compensation (Art.36) and satisfaction (Art. 37).[50]

91. Under the law of State responsibility for internationally wrongful acts, reparation constitutes, in case of injury, the classical legal consequence of responsibility. As stated by the Permanent Court of International Justice, reparation "must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed"[51]. As described above, reparation may take various forms, including restitution (so-called *restitutio in integrum*) and compensation. Restitution is a form of reparation for injury which is aimed at the reestablishment of the situation which existed before the breach, by reverting to the status quo ante. Restitution may take the form of material restoration or return of territory, persons or property, or the reversal of some juridical act, or some combination of them. Examples of material restitution include the release of detained

[48]*Draft Conclusions on Identification and legal consequences of peremptory norms of General International Law (jus cogens)*, with commentaries, 2022, adopted by International Law Commission at its 73rd session, and submitted to the General Assembly.

[49]*Barcelona Traction,* at p. 32, para. 34. See also *East Timor; Legality of the Threat or Use of Nuclear Weapons; and Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections(Bosnia and Herzegovina v. Serbia and Montenegro).*

[50]Draft articles on Responsibility of States for Internationally wrongful Acts, with commentaries, 2001, Report of the International Law Commission on the work of its fifty-third session

[51]Factory at Chorzbw, Merits, 1928, P.C. I.J., Series A, No. 1 7, p. 47.

individuals, the handing over to a State of an individual arrested in its territory, and the restitution of ships or other types of property,[52] including documents, works of art, share certificates, etc. The term "juridical restitution" is sometimes used where restitution requires or involves the modification of a legal situation either within the legal system of the responsible State or in its legal relations with the injured State. Such cases include the revocation, annulment or amendment of a constitutional or legislative provision enacted in violation of a rule of international law,[53] the rescinding or reconsideration of an administrative or judicial measure unlawfully adopted in respect of the person or property of a foreigner or a requirement that steps be taken (to the extent allowed by international law) for the termination of a treaty[54]. In the present case, both material and juridical restitution are involved.

92. This principle has been affirmed in the Court's jurisprudence.[55] Thus, Israel is under an obligation to make reparation for all injury caused to Palestine and the Palestinian people by the annulment of legislative acts, or decrees, or administrative acts or orders, which are contrary to the principles of international law outlined in the previous chapters of this Written Statement.

93. The Court in the *Wall* case stated that:

> "The Court finds further that Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned. The Court recalls the established jurisprudence that 'The essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.' 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."

94. In the *Chagos* case, the Court reiterated the same principles by stating that:

> "The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago

[52] For example, Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962, p. 6, at pp. 36–37, where ICJ decided in favour of a Cambodian claim which included restitution of certain objects removed from the area and the temple by Thai authorities. See also the Hôtel Métropole case, UNRIAA, vol. XIII (Sales No. 64.V.3), p. 219 (1950); the Ottoz case, ibid., p. 240 (1950); and the Hénon case, ibid., p. 248 (1951).

[53] For cases where the existence of a law itself amounts to a breach of an international obligation, see paragraph (12) of the commentary to article 12 of State Responsibility. Report of the ILC on the work of its fifty-third session.

[54] In the Bryan-Chamorro Treaty case (Costa Rica v. Nicaragua), the Central American Court of Justice decided that "the Government of Nicaragua, by availing itself of measures possible under the authority of international law, is under the obligation to re-establish and maintain the legal status that existed prior to the Bryan-Chamorro Treaty between the litigant republics in so far as relates to matters considered in this action" (Anales de la Corte de Justicia Centroamericana (San José, Costa Rica), vol. VI, Nos. 16–18 (December 1916–May 1917), p. 7); and AJIL, vol. 11, No. 3 (1917), p. 674, at p. 696; see also page 683

[55] See, e.g., Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 149 sub (13) and (14).

> constitutes a wrongful act entailing the international responsibility of that State …….It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius. Accordingly, the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self determination."

95. As Israel has violated peremptory norms of international law, it is bound to cease its wrongful conduct, should make reparation for its internationally wrongful conduct, compensate the Palestinian people for the damage caused to them, and satisfy the Palestinian people by acknowledging the breach, and furnishing an expression of regret, a formal apology or another appropriate modality.

B. Legal Consequences for Other States

96. All States are bound by the principles enumerated under the following paras and the prior ICJ ruling to cease to assist and aid Israel in its continued violations of the *jus cogens* norms of international law related to the right to self-determination, use of force, and violations of the basic principles of International humanitarian law, along with the continued anti racial policies in the OPT. All the States are under the obligation not to recognize the situation created by Israel in OPT by its serious and consistent breach of the *jus cogens* norms of the international law, and must cooperate with each other to bring an end to such unlawful and systematic violations by Israel.

97. Where the internationally wrongful act constitutes a serious breach by the State of an obligation arising under a peremptory norm of general international law, the breach may entail further consequences both for the responsible State and for other States. In particular, all States in such cases have obligations to cooperate to bring the breach to an end, not to recognize as lawful the situation created by the breach, and not to render aid or assistance to the responsible State in maintaining the situation so created (Arts. 16, 40 and 41) of the *Draft Articles on the Responsibility of the States for Internationally Wrongful Acts.*[56] As per Article 16:

> "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
>
> (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
>
> (b) the act would be internationally wrongful if committed by that State."

[56] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, Report of the International Law Commission on the work of its fifty-third session

98. Article 16 limits the scope of responsibility for aid or assistance in three ways. First, the relevant State organ or agency providing aid or assistance must be aware of the circumstances making the conduct of the assisted State internationally wrongful; secondly, the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so; and thirdly, the completed act must be such that it would have been wrongful had it been committed by the assisting State itself.

99. The obligation not to provide aid or assistance to facilitate the commission of an internationally wrongful act by another State is not limited to the prohibition on the use of force or violation of other peremptory norms. For instance, a State may incur responsibility if it assists another State to circumvent sanctions imposed by the Security Council or provides material aid to a State that uses the aid to commit human rights violations.

100. As per Article 41:

> "1.States shall cooperate to bring to an end through lawful means any seriousbreach within the meaning of article 40.
>
> 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance inmaintainingthatsituation.
>
> 3.This article is without prejudice to the other consequences referred to in thisPart and to such further consequences that a breach to which this chapter applies may entail under international law."

101. Article 41 sets out the particular consequences of breaches of the kind and gravity referred to in article 40. It consists of three paragraphs. The first two prescribe special legal obligations of States faced with the commission of "serious breaches" in the sense of article 40, the third takes the form of a saving clause. Pursuant to paragraph 1 of Article 41, States are under a positive duty to cooperate in order to bring to an end serious breach in the sense of article 40. Cooperation could be organized in the framework of a competent international organization, in particular the UN. However, paragraph 1 also envisages the possibility of non-institutionalized cooperation.

102. The second obligation contained in paragraph 2 prohibits States from rendering aid or assistance in maintaining the situation created by a serious breach in the sense of Article 40, and no State to recognize the situation created by the serious breach as lawful. This obligation applies to all States, including the responsible State. This goes beyond the provisions dealing with aid or assistance in the commission of an internationally wrongful act, which are covered by Article 16. It deals with conduct "after the fact" which assists the responsible State in maintaining a situation "opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law". It extends beyond the commission of the serious breach itself to the maintenance of the situation created by that breach, and it applies whether or not the breach itself is a continuing one. As to the elements of "aid or assistance",

Article 41 is to be read in connection with Article 16. In particular, the concept of aid or assistance in Article 16 presupposes that the State has "knowledge of the circumstances of the internationally wrongful act". There is no need to mention such a requirement in Article 41, paragraph 2, as it is hardly conceivable that a State would not have notice of the commission of a serious breach by another State. In some respects, the prohibition contained in paragraph 2 may be seen as a logical extension of the duty of non-recognition.

103. In as similar fashion, draft conclusion 19 *of the Draft Conclusions on Identification and legal consequences of peremptory norms of General International Law*[57] concerns particular consequences of serious breaches of obligations arising under peremptory norms of general international law (*jus cogens*). It is based on Article 41 of the articles on responsibility of States for internationally wrongful acts. It provides that States shall cooperate to bring to an end serious breaches of obligations arising under peremptory norms of general international law (*jus cogens*). The obligation to "cooperate to bring to an end through lawful means" serious breaches of peremptory norms of general international law (*jus cogens*) builds on the general obligation to cooperate under international Law.

104. Conclusion 19, Particular consequences of serious breaches of peremptory norms of general international law (*jus cogens*) states that:

> "1. States shall cooperate to bring to an end through lawful means any serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens).
>
> 2. No State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens), nor render aid or assistance in maintaining that situation.
>
> 3. A breach of an obligation arising under a peremptory norm of general international law (jus cogens) is serious if it involves a gross or systematic failure by the responsible State to fulfil that obligation.
>
> 4. This draft conclusion is without prejudice to the other consequences that any breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens) may entail under international law."

105. The relationship between *jus cogens* norms and the *erga omnes* obligations are reflected in the Draft conclusion 17[58] which addresses obligations *erga omnes*. It consists of two paragraphs. Paragraph 1 states that peremptory norms of general international law (*jus cogens*)

[57] *Draft Conclusions on Identification and legal consequences of peremptory norms of General International Law(jus cogens), with commentaries,* 2022, adopted by International Law commission in its 73rd session, and submitted to the General Assembly.

[58] *Draft Conclusions on Identification and legal consequences of peremptory norms of General International Law(jus cogens), with commentaries, 2022, adopted by International Law commission in its 73 session, 2022, and submitted to General Assembly.*

give rise to obligations owed to the international community as a whole (obligations *erga omnes*). The relationship between peremptory norms of general international law (*jus cogens*) and obligations *erga omnes* has been recognized in the practice of States and by the Court. In the *East Timor* case, the Court said that "Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an erga omnes character, is irreproachable". In the *Wall* case the Court held that: "the obligations violated by Israel include certain obligations erga omnes. As the Court indicated in the Barcelona Traction case, such obligations are by their very nature the concern of all States" and, "In view of the importance of the rights involved, all States can be held to have a legal interest in their protection."

106. An example of the practice of non-recognition of acts in breach of peremptory norms and *erga omnes* obligations is provided by the reaction of the Security Council to the Iraqi invasion of Kuwait in 1990. Following the Iraqi declaration of a "comprehensive and eternal merger" with Kuwait, the Security Council, in resolution 662 (1990) of 9 August 1990, decided that the annexation had "no legal validity, and is considered null and void", and called 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 a recognition of it, whether direct or indirect.

107. As regards the denial by a State of the right to self-determination of peoples, the advisory opinion of Court in the *Namibia* case is similarly clear in calling for a non-recognition of the situation. [59]The same obligations are reflected in the resolutions of the Security Council and General Assembly concerning the situation in Rhodesia[60] and the Bantustans in South Africa. [61]These examples reflect the principle that where a serious breach in the sense of Article 40 has resulted in a situation that might otherwise call for recognition, this has nonetheless to be withheld.

108. The violations of the *jus cogens* norms creates *erga omnes partes* obligations on all States in the "sense that each State party has an interest in compliance with them in any given case"[62],

[59]*Namibia* case, where the Court held that "the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law" (p. 56, para. 126).

[60] Cf. Security Council resolution 216 (1965) of 12 November 1965.

[61] See, e.g., UNGA resolution 31/6 A of 26 October 1976, endorsed by the Security Council in its resolution 402 (1976) of 22 December 1976; UNGA resolutions 32/105N of 14 December 1977 and 34/93G of 12 December 1979; see also the statements of 21 September 1979 and 15 December 1981 issued by the respective Presidents of the Security Council in reaction to the "creation" of Venda and Ciskei (S/13549 and S/14794).

[62]In its Judgment in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, the Court observed that the relevant provisions in the Convention against Torture were "similar" to those in the Genocide Convention. The Court held that these provisions generated "obligations [that] may be defined as "obligations *erga omnes partes*" in the sense that each State party has an interest in compliance with them in any given case" (Judgment, I.C.J. Reports 2012 (II), p. 449, para. 68). It follows that any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view

which implies not only the condemnation, non-recognition and non-assistance of the Israeli actions in OPT, but to also condemn and deny recognition of the duplication of the Israeli models in toto, in any other similar factual and legal situation.

109. It is an established principle that a serious breach in the sense of Article 40 and 41of the *Draft Articles on the Responsibility of the States for Internationally Wrongful Act* warrants a denial of recognition. Collective non-recognition would seem to be a prerequisite for any concerted community response against such breaches and marks the minimum necessary response by States to the serious breaches referred to in the said Article 40 and 41. As mentioned above, the breaches of *jus cogens* norms also create obligations extended *erga omnes partes* on all States to not recognize similar breaches and wrongfulness in other similar factual and legal situations.

110. The *Friendly Relations Declaration* affirms this principle by stating unequivocally that States shall not recognize as legal any acquisition of territory brought about by the use of force.

C. Legal Consequences for the United Nations

111. The obligation of States to act collectively to bring to an end serious breaches of peremptory norms of general international law (*jus cogens*) has particular consequences for cooperation within the organs of the UN and other international organizations. It means that, in the face of serious breaches of peremptory norms of general international law (*jus cogens*), international organizations should act, within their respective mandates and when permitted to do so under international law, to bring to an end such breaches. Thus, where an international organization has the discretion to act, the obligation to cooperate imposes a duty on the members of that international organization to act with a view to the organization exercising that discretion in a manner to bring to an end the breach of a peremptory norm of general international law (*jus cogens*).

112. Depending on the type of breach and the type of the peremptory norm in question, the collective system of the UN lays down the framework for cooperative action. It is for this reason that, in light of the determination by the Court of a breach of "self-determination" and "basic principles of humanitarian law", the Court stated that "the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation".[63] Similarly, in the *Chagos* case, the Court referred to the obligation of "all Member States" to "co-operate with the United Nations" to end the breach in question. [64] Other international organizations may also adopt measures, consistent with international law, to bring to an end serious breaches of peremptory norms of general international law (*jus cogens*) if their mandates permit them to do so.

to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.

[63] *Wall* Advisory Opinion(para. 160).

[64] *Chagos* Advisory Opinion (pp. 139–140, para. 182).

113. There are numerous examples of resolutions of organs of international organizations, in particular the UN, that illustrate the duty to cooperate to bring to an end serious breaches of obligations that are widely recognized as arising from peremptory norms of general international law (*jus cogens*). These include resolutions condemning breaches of such obligations[65], including the right to self-determination, calling for an end to violation of such obligations,[66] and resolutions establishing accountability mechanisms to address such breaches.[67]

V. Final Submissions

114. For the reasons set out in this Written Statement, Pakistan respectfully requests the Court to respond to the request of the UNGA and to advise that:

1) The Court is competent to give the advisory opinion requested by the General Assembly in its Resolution 77/247 of 30 December 2022, and there are no compelling reasons preventing the Court from giving the requested opinion.

2) Israel's obligations in the OPT, including in and around East Jerusalem, are those of an Occupying Power, governed by the provisions of international humanitarian law, including in particular the Hague Regulations, the Fourth Geneva Convention and customary international humanitarian law; and by the provisions of international human rights law, including in particular ICCPR, ICESCR, ICERD, Apartheid Convention, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women; and customary international human rights law.

[65]See UNGA resolution 2022 (XX) of 5 November 1965, para. 4 ("Condemns the policies of racial discrimination and segregation practiced in Southern Rhodesia, which constitute a crime against humanity"); General Assembly resolution ES-8/2 of 14 September 1981, para. 4 ("Strongly condemns South Africa for its continued illegal occupation of Namibia"); General Assembly resolution 36/27 of 13 November 1981, concerning Israeli aggression against Iraqi nuclear installations, para. 1 ("Strongly condemns Israel for its premeditated and unprecedented act of aggression in violation of the Charter of the United Nations and the norms of international conduct"); UNGA resolution 46/47 of 9 December 1991, para. 5 ("Condemns the continued and persistent violation by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War … and condemns in particular those violations which the Convention designates as 'grave breaches' thereof");

[66]UNGA resolution 36/27 of 13 November 1981, para. 3 ("Reiterates its call to all States to cease forthwith any provision to Israel of arms and related material of all types which enable it to commit acts of aggression against other States"); Security Council resolution 2334 (2016) of 23 December 2016, para. 2 ("Reiterates its demand that Israel immediately and completely cease all settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard");

[67] See UNGA resolution 2184 (XXI) of 12 December 1966, para. 5 ("Calls upon Portugal to apply immediately the principle of self-determination to the peoples of the Territories under its administration"), para. 6 ("Appeals to all States to give the peoples of the Territories under Portuguese domination the moral and material support necessary for the restoration of their inalienable rights and to prevent their nationals from cooperating with the Portuguese authorities, especially in regard to investment in the Territories"); UNGA resolution 36/27 of 13 November 1981, para. 3 ("Reiterates its call to all States to cease forthwith any provision to Israel of arms and related material of all types which enable it to commit acts of aggression against other States");

3) The prolonged occupation by a State of foreign territory and peoples is by that very fact a violation of the right to self-determination.

4) Israel use of force to prolong the occupation of OPT is illegal, amounting to annexation, and is contrary to the principles of international law.

5) Israel's practices and procedures of deployment of a dual legal system, forced evictions, demolitions in the OPT, and the resulting systematic discrimination against Palestinians and subordination of Palestinians' civil and political rights to the rights of Jewish Israeli citizens settled in the OPT, including East Jerusalem, amount to a breach of the prohibition of apartheid under international law.

6) As consequences of these grave breaches of international law, Israel is bound to:

   (a) Immediately and completely cease and reverse all settlements, and related activities in the OPT, including East Jerusalem, in accordance with relevant UN resolutions,

   (b) Rescind all policies and practices contributing to a coercive environment and/or increasing the risk of forcible transfer of Palestinians;

   (c) Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights law and international humanitarian law;

   (d) Refrain from implementing evictions and demolition orders on the basis of discriminatory and unlawful planning policies and practices that may lead to the forcible transfer of Palestinians, affecting women and the vulnerable disproportionally;

   (e) Take all steps necessary to protect the Palestinian population and their property from settler violence and ensure that all incidents of violence by settlers and Israeli security forces against Palestinians and damage to their property are promptly, effectively, thoroughly and transparently investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies, including adequate compensation, in accordance with international standards;

7) In terms of legal consequences that arise for other States from these grave breaches of international law, the Court may declare that:

(a) The breaches of the peremptory norms create *erga omnes* obligation to cooperate, with each other and with the UN and other competent international bodies, with a view to putting an end to Israel's violations of *jus cogens* norms of the right to self-determination and its illegal occupation through force and acts of aggression.

(b) That UN to establish a compensation tribunal with the aim to address the damages and losses of the Palestinian people suffered due to the prolonged illegal occupation by Israel of OPT.

(Ambassador Suljuk Mustansar Tarar)
Ambassador of the
Islamic Republic of Pakistan to the
Kingdom of The Netherlands

The Hague, 25 July 2023