

DECLARATION OF THE REPUBLIC OF CUBA TO THE INTERNATIONAL COURT OF JUSTICE IN RELATION TO THE REQUEST FOR AN ADVISORY OPINION ON THE FOLLOWING QUESTIONS:

- (a) What are the legal implications deriving from Israel's continued violation of the right of the Palestinian people to self-determination, longstanding occupation, settlements and annexation of the Palestinian territory occupied since 1967, including the measures aimed at altering the demographic composition, the nature and the status of the Holy City of Jerusalem and the adoption of related legislations and discriminatory measures?**
- (b) How Israel's practices and policies mentioned in paragraph 18 (a) affect the legal status of the occupation and what legal implications will have such status for other States and for the United Nations?**

INTRODUCTION

The United Nations General Assembly, through resolution A/RES/77/247 of December 30, 2022, requested an Advisory Opinion from the International Court of Justice (ICJ) in accordance with Article 96 of the United Nations Charter and Article 65 of the Statute of the Court.

The Republic of Cuba is deeply concerned about Israel's continued violation of International Law through the occupation of the territories of the State of Palestine for more than 60 years, as well as its practices and policies in these territories. In accordance with the International Law in force, Israel, as an occupying Power, is legally responsible for all acts of State as well as the acts of agents under the control of that State in the Palestinian territory.

Publicly available records clearly indicate the continued and flagrant violations of International Law in the aforementioned occupied territories and against the Palestinian people, particularly those related to the disrespect for the principles and purposes of the United Nations Charter, the Right of the Palestinian People to Self-Determination and its

independence, territorial integrity and sovereignty, International Humanitarian Law and human rights.

It is impossible to conceive and impassively tolerate the damages and hardships suffered by Palestinian families, particularly women and children, as a result of the occupation of Palestinian territories, as well as the acts destined to denigrate, humiliate and exterminate the Palestinian people.

The economy of the State of Palestine also suffers the devastating consequences of the policies implemented by Israel as the occupying Power. The change of status of the Holy City of Jerusalem is not only a violation of international agreements; it is also an outrage to the respect for long-standing religious and cultural beliefs which goes beyond the borders of the States of Palestine and Israel.

The Government of the Republic of Cuba observes with deep concern the way in which Israel disregards International Law and the many calls by the international community to put an end to violence and occupation. We note with concern the continued deterioration and worsening of the situation after the confiscation of lands and the changes aimed at altering the demographic composition of the region. The continued escalation by the use of force prevents the achievement of a peaceful, lasting and acceptable solution for the Palestinian people, the region and the international community as a whole.

Equally disturbing are the irresponsible actions by other nations whose policies and decisions, in support of the occupying Power, contribute to foment the conflict and hardships of the Palestinian people. The impunity with which Israel has acted throughout all these years is the result of the complicity of the Security Council, guaranteed by the permanent exercise of the obsolete right to veto by one of its members.

This impunity, guaranteed from the Security Council, foments the extermination policy against the Palestinian people. In this context, it is increasingly important that the International Court of Justice sends a clear message calling for responsibility in the face of the irresponsible actions not only by Israel, the occupying Power, but by the States to which the UN Charter granted a privilege they use for their own benefit and against the very pillars and credibility of the Charter.

The Government of the Republic of Cuba reiterates its condemnation of the continued acts of annexation; the excessive use of force; the violation of the principle of International Humanitarian Law; the respect for the distinction between civilians and combatants; the creation of humanitarian crises as a result of the limited circulation of goods and persons; the inhumane treatment of civilians, particularly women and children; the systematic and widespread destruction of the patrimony of the Palestinian people; and every attempt to change the status of the Holy City of Jerusalem.

We reiterate our firm solidarity with the Palestinian people and our support to its self-determination by means of the establishment of a sovereign and independent State, with East Jerusalem as its capital, and the return of all the occupied Arab territories. A firm action by the entire international community, particularly by the International Court of Justice, is required to establish and facilitate a credible and peaceful negotiation process to bring peace to the Middle East region.

Once again we respectfully call upon the Court so that it unanimously and straightforwardly takes a position in favor of justice and peace for the Palestinian people and their rights, in accordance with International Law.

ELEMENTS FOR THE ADVISORY LEGAL OPINION

- (a) What are the legal implications of Israel's continued violations of the right of the Palestinian people to self-determination; its long-standing acts of occupation, settlement and annexation of the Palestinian territory occupied since 1967, including the measures destined to alter the demographic composition, nature and status of the Holy City of Jerusalem and adoption of related discriminatory legislation and measures?**
- (b) How do Israel's policies and practices referred to in paragraph 18(a) affect the legal status of occupation and what legal implications would such status have for all States and for the United Nations?**

In the opinion of the Republic of Cuba there is a clear and reiterated series of internationally wrongful acts which are a source of international

responsibility for Israel as the occupying Power in the territories and against the Palestinian people.

These internationally wrongful acts can be classified according to the elements listed below as well as the magnitude of the extermination caused by Israel's actions and omissions as an occupying Power, whether carried out by its executive, legislative and judicial bodies or the agencies and private institutions under the leadership and effective control of the occupying power.

Furthermore, the analysis to be made by the distinguished judges of the International Court of Justice should make emphasis on the international responsibility of States and the United Nations to guarantee an effective negotiation process that would allow for the creation of an independent and sovereign Palestinian State based on the pre-1967 borders and with East Jerusalem as its capital; that would ensure Israel's withdrawal from all occupied Arab territories and the return of the refugees and displaced persons.

Likewise, the honorable judges should make special emphasis on the responsibility of the permanent members of the Security Council to guarantee compliance with the United Nations Charter.

The position of the Republic of Cuba on some of these relevant legal aspects is the following:

(a) Violations of the prohibition of threat or the use of force.

All Israel's occupation acts on Palestinian territory are internationally wrongful acts whose reiteration and duration aggravate the responsibility of the occupying Power before the Palestinian people and the international community.

The prohibition to acquire territories by threat or the use of force is a customary law statute with broad regulatory and jurisdictional recognition. This prohibition is applicable whether or not the territory is acquired as a result of an act of aggression or self- defense.

In this regard, it must be emphasized that, from the legal point of view, with the signing of the Kellogg-Briand Pact in Paris in 1928, States renounced

war as a legitimate instrument of national policy to settle their differences and committed to resolve them by peaceful means.

This contemporary international law emergency regulation was consolidated through the signing of the United Nations Charter on June 26, 1945, in San Francisco. After two World Wars, this treaty became the cornerstone of the International Law in force and currently governs the international community's existing order.

That Agreement, which the Statute of the International Court of Justice is an integral part of, states under Article 2.4 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.*'

Article 1.2 of the Charter recognizes, among its purposes, '*the respect for the principle of equal rights and self-determination of peoples*', which is being systematically and flagrantly denied to the Palestinian people.

In relation to the specific question submitted to the consideration of the International Court of Justice, it should be pointed out that since the adoption of Resolution 242 (1967) by the Security Council, the Israeli occupying forces were ordered to withdraw from all occupied territories during the 1967 conflict, and the 1949 Armistice Line (the Green Line) was recognized as the demarcation of the borders between Israel and Palestine.

The occupation of the Palestinian territories is also classified as an unlawful act of annexation in accordance with the provisions of Security Council Resolutions 478 (1980) and 497 (1981), which state that the Israeli actions oriented to the annexation of East Jerusalem and the Golan Heights were '*null and void*' and should not be recognized by States.

Finally, the most universal and democratic body of the UN system, by means of the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States, in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of October 24, 1970) stated that, in addition to the recognition of the prohibition of the self-determination of peoples, '*the territory of a State shall not be the object of acquisition by another State resulting from the threat or*

use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.'

It should be noted that the aforementioned prohibition and right are *ius cogens* rules and given their inalienable character, they generate *erga omnes* obligations among UN member States. Consequently, the analysis of Israel's international responsibility should be made in unison with the responsibilities of the United Nations and the member States that hinder its actions, which leads to an internationally wrongful act that arises from sustained and continued omission, which further aggravates a clear violation of International Law.

(b) Violations of equal rights and self-determination of peoples.

The Palestinian people have been deprived of their fundamental rights, including the right to life, freedom and self-determination. The Israeli occupation of the Palestinian territories, particularly the West Bank and Eastern Jerusalem, as well as the blockade on Gaza, is a violation of International Humanitarian Law.

Equal rights and self-determination of peoples are principles enshrined in the United Nations Charter, the Human Rights Covenants and Resolution 2625 (XXV) of October 24, 1970, in which reference is made to important aspects for the implementation of these customary International Law statutes.

Resolution 1514 (XV) of the United Nations General Assembly states that the Palestinian people have the inalienable right to pursue its own political, economic and social development. The presence of Israeli settlements in the occupied territories, the construction of a separation wall, the control exercised over their natural resources and the restrictions imposed on the mobility of Palestinian citizens undermine their ability to exercise this self-determination.

The right to self-determination is inextricably linked to the concept of territorial sovereignty. A people can only exercise the right to self-determination within a territory, and Israel occupies the Palestinian territory, builds illegal settlements, imposes restrictions on their movements and denies the basic political and civil rights of Palestinians.

Therefore, Israel violates Resolution 242 (1967) of the Security Council and the Oslo Accords. These accords state that *“no party shall commence or take any step that would modify the status of the West Bank and the Gaza Strip, pending the outcome of negotiations on the permanent status.”*

Besides, the Court should take a stand on the obligation of all United Nations member States and the UN itself to guarantee full and equal rights to the State of Palestine. Regarding the United Nations Organization, Cuba continues to support the right of the State of Palestine to be a full member of the United Nations. The Court should consider the legal implications of opposing that within the context of the United Nations.

(c) Violations of Major International Human Rights Instruments.

The Government of the Republic of Cuba is deeply concerned about the systematic and serious violations of International Humanitarian Law and international human rights law, including the right to self-determination, by the State of Israel against the Palestinian people in the occupied Arab territories, including Eastern Jerusalem.

We have all witnessed the strengthening of the blockade by land, air and sea and the closing of Gaza. These actions are considered a collective punishment¹ and are extreme violations of the freedom of movement and the enjoyment of the economic, social and cultural rights, such as the right to an adequate standard of living, health, education, work and family life² by the Palestinian people.

Collective punishment is expressly prohibited by the International Humanitarian Law³ and is incompatible with several international human rights law provisions⁴.

¹ CCPR/ISR/CO/5, paragraph 38

² A/HRC/52/75, paragraph 13

³ The prohibition of collective punishments is described under Article 50 of the Hague Regulations (1907) and the Geneva Covenants III (Article 87 (3)) and IV (Article 33 (1)). Besides, such prohibition is also recognized by the Additional Protocols I (Article 75 (2) (d)) and II (Article 4 (2) (b)) as a fundamental guarantee for all civilians and persons hors de combat.

⁴ International Covenant on Civil and Political Rights, Articles 12 and 14; and International Covenant on Economic, Social and Cultural Rights, Article 11.

Equally alarming are the human rights violations caused by house demolitions and the consequent forced evictions by the Israeli occupying forces.

The destruction and appropriation of property in the occupied territories not justified by military necessity and carried out unlawfully and wantonly is an infringement of Article 147 of the Fourth Geneva Convention and, consequently, is a war crime.

Demolitions and forced evictions negatively affect the right to appropriate housing, water, sanitation, health, education, family life, residence and freedom of movement⁵. These practices disproportionately affect Palestinian women and girls, for they have devastating effects on their physical and psychological wellbeing⁶.

We would like to draw your attention to the fact that the Human Rights Committee has ruled that the systematic practice of demolitions and forced evictions based on discriminatory policies has caused the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which is considered racial segregation⁷.

We further recall that the Committee against Torture called on the occupying Power to take all necessary steps to put an end to the policy of punitive house demolitions, since it violates Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸.

The Committee against Torture has denounced the widespread and systematic practice of torture and ill-treatments by the guards of the Israeli Penitentiary System and security forces against Palestinians, including children, at the time of their arrest and during incarceration⁹, as well as the use of physical and psychological violence, sleep deprivation, the imposition of forced standing and solitary confinement for long periods against children and inmates with intellectual or psychosocial disabilities.

⁵ A/HRC/52/75

⁶ CEDAW/C/ISR/CO/6, paragraphs 32 and 33.

⁷ CCPR/C/ISR/CO/5, paragraph 42. Violation of Articles 2, 7, 12, 14, 17, 26 and 27 of the International Covenant on Civil and Political Rights.

⁸ CAT/C/ISR/CO/5/paragraph 41.

⁹ CAT/C/ISR/CO/5 paragraph 30

The excessive use of force, including lethal force, by the Security Forces of the State of Israel against Palestinians in the West Bank, including Eastern Jerusalem and the restricted areas of the Gaza Strip, is alarming. This has repeatedly resulted in unjustified homicides and even possible extrajudicial executions¹⁰.

According to the United Nations High Commissioner for Human Rights¹¹, in the Occupied Palestinian Territory, the use of lethal force by the Israeli security forces has become a widespread practice often used regardless of the particular level of severity of the possible threat detected, in violation of international regulations.

Even more disturbing is the retention of the corpses of the Palestinians killed by the Israeli security forces, which causes untold suffering to the families of the victims. According to the Human Rights Committee, the retention of the corpses and the denial of the right of families to bury them, can be comparable to torture and ill-treatments¹².

Besides, it is deplorable that the rights of Palestinian women and girls are systematically violated by the occupying State. They have been subject to restrictions on freedom of movement, displacements, house demolitions and illegal settlements; restricted access to health care, particularly in the case of the women and girls living in the Gaza Strip and Eastern Jerusalem¹³.

The Committee on the Elimination of Discrimination against Women (CEDAW) has expressed its concern to the State of Israel, since the Palestinian women and girls continue to be subject to excessive use of force and abuses by the security forces of the State party and the Israeli settlers, including physical, psychological and verbal abuses and sexual harassment, as well as violations of their right to life¹⁴, which is a flagrant violation of the Convention.

Due to the restrictions imposed on freedom of circulation at checkpoints, Palestinian women and girls in the occupied Palestinian territory find it hard

¹⁰ CAT/C/ISR/CO/5 paragraph 32

¹¹ A/HCR/52/75

¹² CCPR/C/ISR/CO/5, paragraph 32.

¹³ CEDAW/C/PSE/CO/1, paragraph 9.

¹⁴ CEDAW/C/ISR/CO/6, paragraph 30

to arrive to health centers like hospitals and clinics and receive emergency care and specialized treatment¹⁵.

The State of Israel implements a segregationist and racist policy against the Palestinian people living in the occupied Palestinian territories. Repeatedly, the Committee on the Elimination of Racial Discrimination has denounced that the existence of two legal systems and two totally separated series of institutions, as well as the establishment of separate institutions for the Jewish communities gathered in illegal settlements, on the one hand, and the Palestinian populations living in Palestinian towns and cities, on the other, is segregationist¹⁶.

The Committee on the Elimination of Racial Discrimination as well as the Committee on Economic, Social and Cultural Rights has requested the State of Israel to review and modify the Basic Law of Israel, the Nation State of the Jewish People, in order to eliminate its discriminatory impact on the non-Jewish population and guarantee equal treatment to all persons within its territories who are subject to its jurisdiction, in accordance with the International Covenant on Economic, Social and Cultural Rights.

An issue of deep concern is the widespread practice of arbitrary arrest and detention, in centers located in Israel and elsewhere, of Palestinians, including journalists, human rights defenders and children, in violation of the International Humanitarian Law and the Covenant; as well as the prevalence of the administrative detention of Palestinians, including children, without charge or trial and without the guarantee of the fundamental legal safeguards¹⁷.

The aforementioned violations, including the expansion of settlements, the Israeli discriminatory policies and measures in terms of lands and planning; demolitions, forced evictions and the systematic and ever more serious individual and cumulative violence by settlers, as well as other systematic human rights violations, create a context in which, very often, Palestinians are left no other choice but to abandon their places of residence.

In this regard, every population movement resulting from the direct demolition of structures or forced evictions, the implementation of coercive

¹⁵ CEDAW/C/ISR/CO/8, paragraph 46 approved b.

¹⁶ CERD/C/ISR/CO/14-16, paragraph 24; CERD/C/ISR/CO/17-19 paragraph 22

¹⁷ CCPR/C/ISR/CO/5, paragraph 34

measures leading to the displacement of protected persons or the lack of adequate protection against such measures, could cause forced displacements, which is a serious infringement of the Fourth Geneva Convention, which is a war crime under the Rome Statute of the International Criminal Court.

In conclusion, Israel, the occupying Power, flagrantly and systematically violates the human rights of the Palestinian people and its legal implications should be clearly determined by the International Court of Justice, which should establish the international responsibility of Israel for internationally wrongful acts.

(d) Violations of the Geneva Convention of August 12, 1949, on the protection of civilian persons in time of war.

The Palestinian question demands a clear statement on the legal implications resulting from non-applicability and violations of the Geneva Convention of August 12, 1949 related to the due protection of civilian persons in time of war (Fourth Geneva Convention).

The customary nature of the rules contained in the aforementioned International Humanitarian Law instrument and Israel's sustained disregard for its applicability to the Palestinian people should be the object of a special statement.

Its non applicability before and after the statement of the International Court of Justice in its Advisory Opinion of 2004 evidences the sustained intention by Israel, the occupying Power, to flagrantly and indiscriminately violate International Humanitarian Law as well as disregard and wipe out, if this were possible, the existence of the State of Palestine.

The undoubted recognition of the State of Palestine and the consequent need to protect the Palestinian people, is a responsibility of the United Nations and the entire international community, which have proved their continued inability to fulfill their obligations, particularly because the irresponsible behavior of a permanent member of the Security Council.

That irresponsible behavior that has prevailed for more than sixty years should also be the object of a special statement by the International Court

of Justice, which should establish the international responsibility resulting from the excessive and sustained use of the antidemocratic right to veto.

This is obviously an abuse of rights the consequences of which are harmful to the principles and purposes of the United Nations Charter.

The history of the international recognition of the State of Palestine is long standing and, in this regard, Cuba reiterates that:

- The United Nations General Assembly (UNGA) recognized the Palestine Liberation Organization (PLO) as the representative of the Palestinian people by virtue of Resolution 3210 (XXIX) of October 14, 1974.
- Resolution 3237 (XXIX) of the United Nations General Assembly of November 22, 1974, granted observer status to that organization before the UN.
- The United Nations General Assembly recognized the proclamation of the State of Palestine by the Palestinian National Council on November 15 of that same year by virtue of Resolution 43/177 of December 15, 1988. Ever since then, and by a decision adopted in that same Resolution 43/177, the word "Palestine" is used instead of "Palestine Liberation Organization" to refer to the entity that, with the full recognition of the international community, was representing the interests of the Palestinian people within the United Nations.
- Finally, Resolution 67(19) of the United Nations General Assembly of November 29, 2012 established the admission of Palestine as an Observer non-member State of the Organization, which further consolidated the establishment of the State of Palestine as a sovereign nation recognized by the international community.

The recognition of the State of Palestine as a full member of the international community is unquestionable, aside from Israel's systematic disregard for its sovereignty and independence and the inability of the Security Council to adopt a relevant decision, due to the anti-democratic right to veto exercised by one of its permanent members. Both situations should have serious legal implications and the International Court of Justice should take a stand in this regard.

In addition to the United Nations, the high number of States recognizing Palestine as a sovereign State and maintaining diplomatic relations with it should also be taken into account. The Republic of Cuba maintains diplomatic relations at ambassadorial level and fully recognizes the State of Palestine.

All of the above is very much in tune with the standing and status of the State of Palestine with regard to the Geneva Conventions. Worth emphasizing is the following chronology:

- On June 21, 1989, the Federal Department of Foreign Affairs of Switzerland, the Depositary of the Four Geneva Conventions of 1949 and their two Additional Protocols of June 8, 1977, received a communication dated June 14, 1989, addressed to the United Nations Office in Geneva by the Permanent Observer from Palestine in relation to the participation of Palestine in the Four Geneva Conventions of August 12, 1949, and their two Additional Protocols of 1977. By means of this communication, Palestine expressed its consent to be a Party to these international agreements, despite the character of customary rules reflected by some of their provisions.
- Consequently, the Conference of High Contracting Parties to the Fourth Geneva Convention, held on June 15, 1999, discussed the enforcement of the international agreement in the Palestinian territory.
- Other important meetings have been held in the context of this agreement, the Security Council and the General Assembly of the United Nations, ratifying the call for Israel, the occupying Power, to accept the applicability of the Fourth Convention and abide scrupulously by its provisions, just as established by Resolution A/RES/59/122 of the United Nations General Assembly.

Consequently, Article 4 of the Fourth Geneva Convention defines the condition of “protected persons” applicable under the International Humanitarian Law. The flagrant and systematic violations against persons protected by the Geneva Convention are thus evident, for these Conventions establish that no measures of discrimination shall be applied against these persons; that they shall be protected against all acts of violence and that despite the occupation, and to the extent possible, they

should be allowed to lead a proper life, in accordance with their own laws, culture and traditions.

Despite that, the humanitarian situation in the State of Palestine continues to deteriorate. The Republic of Cuba reiterates that the well-documented violations of the occupying forces against the Palestinian civilian population should entail an international responsibility by Israel for the acts or omissions attributable to the occupying Power as well as for those which are carried out by organizations or persons under the leadership or control of Israel.

Additionally, we emphasize that resolution A/RES/59/122 calls on all High Contracting Parties to the Convention so that, in conformity with Article 1 which is common to the Four Geneva Conventions, and in line with the advisory opinion of the International Court of Justice of July 9, 2004, they continue to do their utmost to ensure that Israel, the occupying Power, complies with its provisions in the occupied Palestinian territory, including Eastern Jerusalem, as well as in all other Arab territories it has occupied since 1967.

It follows from the above that a new statement by the International Court of Justice must necessarily include a reference to the legal implications of such internationally wrongful acts attributable to Israel; the international responsibility of those States that, far from ensuring compliance with the International Humanitarian Law, guarantee Israel's impunity, especially through the sustained and systematic use of the anti-democratic right to veto at the Security Council.

(e) Breaches of the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.

Historically, the Republic of Cuba has paid great attention to matters related to the prevention and condemnation of any genocide or situation that may result in the consummation of such a horrendous international crime. At the First Session of the United Nations General Assembly, the Republic of Cuba, India and Panama were the countries that presented draft resolution 96 (I) which was adopted on December 11, 1946, thus marking the beginning of the process that concluded two years later with the proclamation of the Convention against Genocide.

In the view of the Republic of Cuba, the analysis of the International Court of Justice should go beyond the legal impact resulting from the flagrant and systematic violation of the Geneva Conventions. It should include the impact on International Humanitarian Law of the proclamation of laws, policies and actions that, given their multiplicity, systematic nature, scope and duration, are clearly aimed at the total or partial destruction of the Palestinian people.

Institutionalized violence against the Palestinian civilian population is easily evident. To cite an example, 214 civilians were recently murdered; 46 of them were underage children. That was the result of the repression of Israeli forces against the demonstrations of 2018 calling for the Palestinians' right to return and the end of the Israeli blockade on the occupied territories.

From the point of their legal impact and consequences, the analysis of these events should not follow a piecemeal approach; they should be addressed as part of a fully articulated State policy aimed against the Palestinian people.

This institutionalized violence that makes no distinction between civilians and combatants is part of a more comprehensive policy that also includes systematic and well planned and massive land and property confiscations; unlawful homicides, tortures, administrative detentions, forcible transfers, restriction on movement and denial of nationality and citizenship to the Palestinian population. All of that is accompanied by a discriminatory economic and cultural policy destined to impoverish the Palestinian population and deny the realization of their fundamental human rights.

The International Court of Justice should make a general assessment of this situation so as to determine the legal implications resulting from it. In this regard, the Republic of Cuba believes that, rather than an obvious apartheid situation, pursued as a crime against humanity, this is an act of low-intensity genocide that is being perpetrated with systematic and effective cruelty.

Do the Palestinian people need to be completely destroyed before we are able to take a stand on the legal obligations and consequences resulting from an ongoing genocide? Justice delayed is justice denied.

Over and above the impact that a delayed statement would have on these issues, the Convention against Genocide provides the legal basis for an analysis on the legal implications of such behavior, punishing not only the consummated crime but also, as independent entities, the attempt to commit genocide, complicity in genocide, incitement and conspiracy to commit genocide (Article III).

Article II of the Convention defines genocide as “*any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*”

- (a) *Killing members of the group*
- (b) *Causing serious bodily or mental harm to members of the group*
- (c) *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.*
- (d) *Imposing measures intended to prevent births within the group.*
- (e) *Forcibly transferring children of the group to another group.”*

Article II clearly establishes that the “*total*” destruction of a group is not required to define this international crime. Likewise, it does not establish any limits as to how many members of the group should die in order to achieve a certain threshold. Neither does it require the existence of a formal declaration on the purposes of the acts described in subparagraphs (a) to (e), because the mere “*intent*” to destroy any given group and the commission of any of the acts listed in the aforementioned subparagraphs will suffice. Article III establishes the obligation to punish not only consummated acts but also the attempt, conspiracy, incitement or complicity. All of these are individually addressed. That is to say, the conspiracy, incitement, complicity or attempt by any State to commit any of the internationally wrongful acts that constitute genocide would be sufficient to declare such State as internationally responsible.

There are enough “acts of State” attributed to Israel as the occupying Power so that, in conformity with the aforementioned customary rules, it could be held liable to international responsibility. Such responsibility emanates from the violation of the primary international obligations contained in the Convention against Genocide, which bind Israel, as occupying Power, to comply; and is based on this legal instruments that generates *ius cogens* and *erga omnes* obligations.

In this regard, we highlight the importance of the Advisory Opinion of the International Court of Justice of May 28, 1951, which became an international customary judicial ruling granting the rules of the Convention against Genocide an *ius cogens* and *erga omnes* condition with regard to the obligations contained in it.

The opinion stated that “The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a Convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a Convention, the Contracting States do not have any interests on their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d’être of the Convention. Consequently, in a Convention of this type one cannot speak of individual advantages or disadvantages to States or of the maintenance of a perfect contractual balance between rights and duties.”

Likewise, based on the above, the comparison between the genocide against the Palestinian people and other unfortunate events of the past is not legally appropriate. The uncountable massacres, serious injuries to the physical or mental integrity of the Palestinian people by deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part would be arguments in favor of a clear and unanimous statement by the distinguished judges of the International Court of Justice.

Rather than a summation of isolated events, the systematic nature of these internationally wrongful acts and their duration reflect the intentions of Israel, the occupying Power.

At this point, it is important to highlight the legal reasoning of the International Criminal Court in the case of Rwanda, when it ruled as follows:

“Regarding the question of knowing how is it possible to determine the specific intention of the agent, the Chamber considers that intent is a mental factor which is difficult, even impossible to determine, but found that, in the absence of a confession from the accused, intent may be inferred from a certain number of facts. For example, the Chamber

considers that it is possible to infer the genocidal intent prevalent in the commission of a particular incriminating act, a series of acts or allegations of defendants or the general context in which other acts were perpetrated by the defendant, or even the general context of the perpetration of other culpable acts, systematically directed against that same group, whether committed by the same offender or by others. Other factors, such as the scale of the atrocities committed, the general nature of the atrocities committed in a region or a country, or even the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can equally make it possible for the Chamber to infer a genocidal intent.”

The Republic of Cuba considers that the advisory opinion should make reference to the legal implications derived not only from the internationally wrongful acts which are individually considered as a breach of international treaty law regulations, but also the consequences that would require a holistic discussion of these violations which are also considered a violation of a *ius cogens* rules and *erga omnes* obligations, whose compliance is compulsory for all States, be them or not a Party to the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.

(f) Legal implications from non-compliance with the decisions of the United Nations General Assembly, the Security Council and the International Court of Justice.

Added to the aforementioned international violations should be the indolence by Israel, the occupying Party, when ignoring the various decisions adopted by the United Nations General Assembly, the Security Council and the International Court of Justice. In this regard, and without attempting to cover all relevant aspects, we would like to draw the attention of the Court to the violations of the following decisions:

Resolutions of the United Nations General Assembly

Resolution 181 of 1947, which established the Plan of Partition of Palestine into a Jewish State and an Arab State. Israel has violated this Resolution when it expanded its settlements into the Palestinian territories and annexed Eastern Jerusalem.

Resolution 194 (III) (1948): This Resolution addresses the issue of the Palestinian refugees and states that the refugees have the right to return to their homes and receive compensation for their losses. Israel has violated this Resolution, since it did not allow the return of the Palestinian refugees and denied the refugees their rights.

Resolution 3236 (1974): This Resolution recognizes the right of the Palestinian people to self-determination; formalizes contacts between the United Nations and the Palestinian Liberation Organization and added the “Question of Palestine” to the United Nations Agenda. Israel’s de facto policy refuses to recognize de State of Palestine.

Resolution 208 (2022): This Resolution reaffirms the right of the Palestinian people to self-determination, including its right to an independent Palestinian State; and urges all States and specialized bodies and organizations of the United Nations system to continue providing support and assistance to the Palestinian State for the prompt realization of the purpose. Israel violates this Resolution, since it persists in its occupation and does not take any action to seek a solution to this conflict.

Resolution 187 (2022): This Resolution reaffirms the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including the land, water and energy resources. It recognizes the right of the Palestinian people to claim compensation for the exploitation, damages, destruction, depletion or endangerment of their natural resources as a consequence of the illegal measures adopted by Israel, the occupying Power, and the Israeli settlers in the Occupied Palestinian Territory, including Eastern Jerusalem. It likewise calls upon Israel not to hinder the Palestinian development or the export of the discovered reserves of oil and natural gas.

Israel, the occupying Power, has continued to exploit and jeopardize the natural resources of the occupied Palestinian Territory, including Eastern Jerusalem, and the occupied Syrian Golan. Likewise, Israel continues to destroy the vital infrastructure, particularly the water pipes, sewage systems and power lines. The occupying Power should put an end to the demolition and confiscation of Palestinian homes, the destruction of the civil infrastructure, arable lands and water wells. All these have a negative impact on the natural resources of the Palestinian people.

Resolutions of the Security Council

Resolution 242 (1967): This Resolution urges Israel to withdraw from the occupied territories during the Six Day War and establishes the principle of “land for peace”. Israel has violated this Resolution, since it maintains the occupation of the West Bank, the Gaza Strip and eastern Jerusalem, and has continued to expand its settlements in those territories.

Resolution 338 (1973): This Resolution calls for a cease fire and the beginning of negotiations to achieve a lasting peace in the Israeli-Palestinian conflict. Israel has violated this Resolution, since it does not fully comply with the cease fire and did not report any progress towards a just and lasting solution.

Resolution 476 (1980): This Resolution reaffirms the status of Jerusalem, particularly the need to protect and preserve the unique spiritual and religious dimension of the holy places of the city. Israel, the occupying Power, remains adamant in its intent to alter the nature and status of the Holy City of Israel, which have no legal basis and are not compatible with International Law and are a flagrant violation of the Geneva Convention relative to the protection of civilian persons in Time of War and are also a serious hindrance to the pursuance of a lasting peace in the Middle East.

Resolution 497 (1981): This Resolution states that Israel’ annexation of the Golan Heights, a Syrian region occupied by Israel, is null and void. However, Israel has continued to maintain its control over this area, in violation of the Resolution.

Resolution 2334 (2016): The Resolution condemns the Israeli settlements in the occupied Palestinian territories, including Easter Jerusalem; and calls for the immediate and complete end of this practice. Israel has violated this Resolution, since it has continued building and expanding the settlements in the occupied territories.

Advisory opinion of the International Court of Justice

In 2004, the International Court of Justice issued an advisory opinion on the separation wall built by Israel in the West Bank. The International Court of Justice concluded that the construction of the wall and the confiscation of the Palestinian lands were illegal and infringed International Humanitarian

Law. Israel has ignored this opinion and has continued building the wall, thus affecting the life of Palestinians and the feasibility of a future Palestinian State.

(g) Consequences of the forced demographic changes to the Palestinian people, occupied by Israel, by means of the occupation of land and the displacement of persons.

Land occupation by Israel has led to the massive displacement of Palestinians from their homes and lands. Many Palestinians have been forced to abandon their homes and become refugees both inside the occupied Palestinian territories and in neighboring countries. This created an unparalleled long-standing displacement and a humanitarian crisis for affected Palestinians.

The occupation by Israel has led to the confiscation of vast extensions of land in Palestine, which has meant a significant loss of natural and agricultural resources for the Palestinian people. This has had a negative impact on their livelihood and economic development and it has exacerbated inequalities and international assistance dependence. This colonial situation is a clear form of robbery and expropriation of the natural resources of the Palestinian people and has an economic impact that should be considered as a legal consequence to determine the reparation of the damage caused.

Such a dispossession policy is accompanied by a clear strategy of territorial fragmentation of the State of Palestine. Land occupation and illegal settlements construction by Israel have resulted in the fragmentation of the Palestinian territory, the division of communities and the creation of physical barriers that restrict the mobility of Palestinians. This has hindered the access to basic services, such as health care and education and has undermined social cohesion and the development of a Palestinian political entity. The International Court of Justice took a stand on the specific act of the construction of a wall, but it should evaluate the legal implications deriving from a clearly defined and systematically executed illegal policy.

Furthermore, all of the above has a significant impact on the demography of the Palestinian people. Israel not only seeks to destroy the clear territorial component of the State of Palestine, whose borders were internationally recognized, but it carries out a policy destined to cause a

negative impact on the second constituent element of every State, which is its population.

The forced changes to the Palestinian demography are the direct result of the territorial dispossession, forced displacement and the apartheid and genocide regime flagrantly and systematically applied against the rights of the Palestinian people. The International Court of Justice should unanimously establish the legal implications for any State that attempts against the population and the territory of another State, with the clear purpose of exterminating them or undermine the bases of their existence.

(h) Urgency to establish and respect the nature and status of the Holy City of Jerusalem.

The City of Jerusalem is not just one more city. It is the focal point of the three most influential monotheist religions in the world. It is an important place for Christianity, since this is the city that hosts the Holy Sepulcher – currently a church- the place where Jesus was allegedly buried and later on resurrected. It is an important place for Judaism, for it is the host of the Wailing Wall or the Western Wall. It is the last vestige of the ancient temple of Jerusalem, where the Ark of the Covenant is believed to be kept. For Islam, Jerusalem is one of the most important holy cities, like Mecca and Medina, because, according to the Koran, Mohammed ascended Allah's throne from Jerusalem after a night journey initiated in Medina.

The United Nations Special Commission on the Question of Palestine (UNSCOP) was established in May of 1947 and by the end of August of that same year it sent its recommendations to the United Nations General Assembly. The Commission did not accept the position of the Zionist movement that granted Israeli sovereignty over Eastern Jerusalem and submitted the eastern part of the city to an international administration regime.

The recommendation suggested dividing the former territory of Palestine into two States, one Palestinian and another Jewish, and submitting the entire city of Jerusalem to an international regime. By means of Resolution 181 of the United Nations General Assembly, a recommendation was made to implement a program that included the internationalization of Jerusalem and the division of Palestine into two States.

That solution required the demilitarization and neutrality of the city. The Arab countries immediately rejected the division proposal and, consequently, the representatives of the future Jewish State considered that they were not obliged to comply with the Resolution that involved the division of Palestine and the internationalization of the Holy City. Eastern Jerusalem was annexed to the Kingdom of Jordan on December 13, 1948. Finally, in 1952, the United Nations General Assembly decided that Israel and Jordan would be responsible for reaching an agreement on the city of Jerusalem.

After the six day war, Israel annexed Eastern Jerusalem but included not only the 6.5 km of the Jordanian part of the city but also the additional 64.4 km of the West Bank and part of Bethlehem and Beit Jala. In order to effectively occupy the city of Jerusalem, the State of Israel has advanced in two directions: increase the Jewish population and engage in big scale housing construction in the Arab areas in order to create an irreversible demographic change.

Altering the nature of the Holy City through occupation and demographic change has serious consequences for the State of Palestine, the region and international peace and security. The honorable International Court of Justice should take a stand in this regard when analyzing the legal implications of these actions carried out by Israel.

On the other hand, while the current situation in Jerusalem presupposes the recognition that it is, *de facto*, under the occupation of Israel, it is important to recognize that the administration of the religious sites for Islam, at the Temple Mount, is not exercised by the government of Israel. Besides, the occupying Power has inalienable and non-transferable obligations with the Palestinian people.

The Law on Jerusalem of 1980 is another clearly internationally wrongful act, whereby Israel unilaterally, unlawfully and illegally declared the city as a unified whole and a single district and proclaimed the city as its “eternal and undivided” capital. This annexation has brought about strong rejection among the international community, materialized in Resolution 478 of the United Nations Security Council which regarded it as contrary to International Law.

The International Court of Justice should thoroughly examine all these legal questions so that its conclusions are in line with the customary prohibition reflected under Article 2.4 of the United Nations Charter. It would be no exaggeration to affirm that legalizing such a violation would jeopardize the very existence of the current international order that, although unfair, is the support of the human civilization and the basis of the very jurisdiction of the Court.

All the more important in this case are the statements in relation to the legal implications for other United Nations member States that incite, allow or support, whether directly or indirectly, Israel's actions, particularly the permanent members of the Security Council.

Privileges without responsibility are a tyrannical burden that in no way should be supported by law. The Republic of Cuba considers as equally worrying the internationally wrongful acts by those who have established their diplomatic representations in the Holy City and intend, as was done by Israel, to disregard the special legal status of Jerusalem. The International Court of Justice should be categorical when it comes to the legal implications resulting from such behavior.

Finally, we would like to emphasize that some UN relevant decisions on this issue should be taken into account by the International Court of Justice, in addition to the aforementioned Resolutions 181 of the United Nations General Assembly and 478 of the Security Council. These are:

- Resolution 446 of the Security Council of the United Nations, adopted by the Security Council on March 22 of 1979. This Resolution states that the establishment of settlements by Israel in the Arab territories occupied since 1967 has no legal validity and constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.

Besides, it calls upon Israel, as an occupying Power, to strictly abide by the Geneva Convention on the Protection of Civilian Persons in Time of War; rescind its previous measures and *“desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories.”*

Resolution 446 was adopted under Chapter VII of the United Nations Charter, which presupposes it is legally binding for Israel as a signatory of said Charter, and states that *“the Geneva Convention relative to the Protection of Civilian Persons in Time of War is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem.”* This presupposes the unequivocal prohibition of Israeli settlements in the occupied territories, since Article 49 of the aforementioned Convention states that *“the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”*

Resolution 2334 of the United Nations Security Council was adopted by the Security Council on December 23, 2016, and reaffirmed that *“the establishment of settlements by Israel in the Palestinian territory occupied since 1967, including Eastern Jerusalem, has no legal validity”*; and *“expressed grave concern that continuing Israeli settlement activities are dangerously imperiling the viability of the two-State solution based on the 1967 lines.”*

- And finally, Resolution ES-10L.22, adopted during the Seventy Second Session of the General Assembly on December 21, 2017. This Resolution was adopted in an emergency session and established the status of Jerusalem as the capital of Israel as “null and void.”

This resolution has a particular value because it is the immediate reaction of the International Community to the infringement of international rules by the executive power of the United States of America.

Consequently, the International Court of Justice should establish what are the legal implications of such acts, the continued and irresponsible use of the veto power by a permanent member of the Security Council throughout history and particularly in the light of International Law and its own previous acts; as well as the legal implications from threatening other States in case they vote in favor of Resolution ES-10/L.22.

- (i) Legal implications from the reiteration of internationally wrongful acts by the State of Israel, its government, legislative and judicial bodies; as well as other actors under the control and leadership of the State of Israel, as the occupying Power.**

In line with all of the above, all other relevant arguments to be contributed by other States as well as the previous statements made by the International Court of Justice, the main legal implication in relation to these violations of International Law should be, in the opinion of the Republic of Cuba, the declaration of the international legal responsibility of Israel as the occupying Power. All of that is based on the series of conventional and customary primary rules of International Law that have been breached, and in conformity with the secondary rules that govern the international responsibility of States for internationally wrongful acts, as established in the report A/56/10 of the Commission on International Law and endorsed by several decisions of the Honorable International Court of Justice.

It would be appropriate for the International Court of Justice to state in its Advisory Opinion that the international responsibility of Israel as the occupying Power comprises all acts or omissions of its State bodies (legislative, executive and judicial bodies) that are contrary to International Law; those executed by persons or entities exercising elements of the governmental authority or acting in the absence of official authorities or under the leadership or control of the occupying Power, but also those by third parties under their guidance and control.

The Republic of Cuba deems it important that, in the analysis of the violations of International Law by Israel as the occupying Power, customary rules making a distinction between the different types of violations are used. There are clearly simple and continued violations of primary rules; as well as composite acts.

The relevance of customary acts described under Articles 14 and 15 on the Responsibility of States for Internationally Wrongful Acts is vitally important to address the legal implications of the violations that take place in the State of Palestine, under the occupation of Israel, because it makes it possible to make a fair assessment of the genocide that is taking place in these territories.

Besides, the International Court of Justice should consider that *ius cogens* rules are currently being violated, which indicates the seriousness of this situation. Likewise, there are *erga omnes* rules involved, which justify the demands from other States to Israel as the occupying Power and other States subject to International Law that aid or assist the commission of the internationally wrongful acts, in conformity with conventional primary rules

and customary secondary rules under Article 16 of the aforementioned Articles codified by the Commission on International Law.

Likewise, the Second Part of the Articles on the Responsibility of States for Internationally Wrongful Acts clearly states the guidelines governing the legal implications of internationally wrongful acts. This would be conducive to a strong statement by the International Court of Justice indicating the immediate obligation of all States, including Israel, the occupying Power, to comply with the conventional and customary rules flagrantly and systematically violated in the Palestinian territory (Article 29), including the cessation and non-repetition obligation (Article 30) and the reparation for the damage caused to the Palestinian people (Article 31), all of that without prejudice to the applicable provisions of conventional law.

(j) Legal implications for other States and the United Nations.

In addition to all of the above the International Court of Justice should separately address the international responsibility of other States for the aid and assistance they offer to Israel.

The International Court of Justice should issue a statement indicating the legal implications incurred into by States that supply, for example, weapons to Israel. There should be a similar statement in relation to those that repeatedly exercise such right as the antidemocratic veto, since that is an abuse of right and a direct affront to the United Nations Charter.

The International Court of Justice should wonder why the United Nations has been unable to abide by its principles and obligations in relation to the Palestinian people in a conflict that has worsened precisely since the creation of the Organization. None of the four purposes declared under Article 1 of the Charter has been achieved for the State of Palestine.

Some members of the Organization violate the principles enshrined under Article 2 of the Charter, for they deny the equal sovereignty and the rights of the State of Palestine; they act in bad faith in a way that preclude any possibility for a negotiated solution to the conflict that, far from resolving, has worsened during the last sixty years. All of that occurs at a time when they systematically and continuously exercise the right of veto to impede any effective action by the Security Council, while offering assistance to

Israel, the occupying Power, despite the decisions adopted by the United Nations General Assembly.

Those countries that have disrespected the status of the Holy City of Jerusalem, thus contributing to encourage the conflict, should be declared as directly responsible.

The International Court of Justice should emphasize the scope of Article 2.5 of the Charter, which states that all members “*shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.*” This entails the obligation of all States to abide by the decisions adopted by the Organization as a whole, particularly when the Security Council remains impassive before the indolent attitude by one of its permanent members, and the United Nations General Assembly has continuously and categorically taken a stand on this issue, supported by the International Court of Justice.

CONCLUSIONS

Based on all of the above, and taking into account in particular the unbearable situation facing the Palestinian people, the honorable International Court of Justice should take a unanimous stand, in the clearest and strongest legal terms, in support of International Law.

The advisory opinion should establish the clear legal implications for Israel, other States and the United Nations of the violations of the rules against the use of threats or force, equitable rights and self-determination of peoples; as well as the main international instruments on Human Rights, the Geneva Convention of August 12, 1949 on the protection of civilian persons in time of war, the Convention on the Prevention and Punishment of the Crime of genocide of December 9, 1948, and the continued non-compliance of the United Nations General Assembly, Security Council and the International Court of Justice decisions.

A special statement will refer to the questions related to the nature and status of the Holy City of Jerusalem, in the light of the continued violation by Israel and other States of its international obligations and the unfortunate inaction by the United Nations, which is a direct result of the abusive and irresponsible exercise of the privilege of veto by one of the permanent members of the Security Council. It is imperative that a clear

and unanimous statement is made on this issue, for it aggravates the Israeli-Palestinian conflict and dooms it to perpetuity or to a consummation of a low-intensity and systematic genocide with which the apartheid system imposed by the Israeli government intends to achieve the political goals that are contrary to International Law.

In this clearly unjust international order, it is up to the honorable International Court of Justice to shed light on and render justice in favor of the Palestinian people without political double standards, as the fundamental instrument to achieve a lasting peace in the Middle East.

Havana, July 24, 2023