INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF THE STATE OF QATAR

25 OCTOBER 2023

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CHAPTER 1
INTRODUCTION

1.1 Pursuant to the Order of the Court dated 3 February 2023, the State of Qatar ("**Qatar**") hereby submits these written comments on the written statements made by other States and international organizations on the questions presented in the United Nations General Assembly's request for an advisory opinion concerning the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem ("**Request**").

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1.2 In its 25 July 2023 Written Statement, Qatar joined the chorus of States, international organizations, and experts sounding the alarm about the unsustainable situation in the Occupied Palestinian Territories ("**OPT**"), and the need for the Court's decisive intervention. Qatar wrote:

> The intervention of the Court is needed now more than ever; the situation on the ground in the OPT continues to deteriorate at an alarming pace. In the first half of 2023 alone, Israel has approved new settlements in unprecedented numbers; killed more Palestinians in the West Bank than any time since 2004; indiscriminately bombed Gaza and the West Bank; beaten worshipers in the holiest sites of Islam and Christianity; and tolerated (and even celebrated) mass violence by Jewish Israeli settlers against Palestinian civilians.
>
> This has occurred alongside its ever-tightening control of all aspects of Palestinians' lives. For 16 years, the approximately two million Palestinians of Gaza have endured what the [OPT Special Rapporteur] has called a 'medieval military blockade'.

> Children born since have known nothing but imprisonment, poverty and hunger. They have also lived through as many as half a dozen large-scale Israeli armed attacks just in their lifetimes, while the fear of Israeli drones and warplanes overhead is ever present.[1]

1.3 Citing the June 2023 statement of former UN Secretary-General Ban Ki-Moon and former High Commissioner for Human Rights Mary Robinson, Qatar warned that the situation in the OPT "risk[ed] an uncontrollable explosion of violence on both sides".[2] Those fears have now become reality with the outbreak of unprecedented violence on 7 October 2023.

1.4 The Court must lead the international community away from the abyss and assist the General Assembly in its functions. As recent events demonstrate, the stakes could not be higher. Qatar respectfully submits that the Court must speak with clarity to the root cause of the present crisis in the Middle East: Israel's 56-year settler-colonial occupation of the OPT to which there is currently no end in sight.

1.5 As the former United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian territories occupied since 1967 ("**OPT Special Rapporteur**") explained, Israel's occupation can only be maintained through ever-increasing violence:

> The past 70 years has taught us that a covetous alien Power has two choices: either to abandon the fever-dream of settler colonialism and recognize the freedom of the indigenous people or instead to double-down with increasingly more sophisticated and harsher methods of population control as the

[1] Written Statement of the State of Qatar (hereinafter, "**QWS**"), paras. 1.9-1.10.

[2] QWS, para. 1.12 (citing The Elders, *Elders warn of consequences of 'one-state reality' in Israel and Palestine* (22 June 2023), *available at* https://tinyurl.com/595fh8a2, p. 1).

> inevitable consequence of entrenching permanent alien rule over a people profoundly opposed to their disenfranchisement and destitution.[3]

1.6 In a similar vein, the United Nations Commission of Inquiry on the Occupied Palestinian Territory concluded in September 2023 that it is the violence perpetrated by the occupying Power—Israel—that has caused and continues to cause all bloodshed in the OPT:

> The increasing use of force in Israeli security forces' operations in the West Bank perpetuates cycles of protraction of conflict, fuelling endless killings and harm. These operations trigger protests, encourage greater armed resistance and lead to further attacks by Palestinian armed groups against Israelis or Israeli security forces, which in turn lead to more military operations. *The use of force against the Palestinian population is thus both a driver and a root cause of conflict*.[4]

1.7 Qatar emphatically agrees. Ending the cycle of violence necessarily means ending the illegal occupation and finally allowing the Palestinian people's right to self-determination to be realized. The Court can provide the international community the roadmap it needs to a just and peaceful solution by answering the Request fully, clearly, and forcefully.

1.8 In hopes of facilitating the Court's task, Qatar submits these written comments to address two discrete issues raised by the written statements made by other States and international organizations.

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[3] Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), para. 36. *See also* QWS, para. 2.5.

[4] UNGA, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UN Doc. A/78/198 (5 Sept. 2023), para. 73 (emphasis added).

1.9 The first issue is whether the Court should exercise its discretion to respond to the Request. The vast majority of written statements expressed the view that the Court should—and, in accordance with its *jurisprudence constante*, must—render the requested advisory opinion. Ten States, however, argued that responding to the Request would somehow undermine the Israeli-Palestinian "peace process". In **Chapter 2** of these written comments, Qatar shows that there is no merit to that argument. In the first place, there is no meaningful "peace process" to speak of. There have not been any negotiations between the two sides in more than ten years and, as explained in the expert report by eminent Oxford historian Avi Shlaim included with Qatar's Written Statement, Israel has never adopted a constructive approach to peace in any event (**Section I**). On the contrary, an advisory opinion answering the Request—which the Court manifestly has jurisdiction to render—could only serve to revive the moribund peace process (**Section II**). The urgent need for the Court to intervene to kick-start the peace process is only underscored by the most recent tragic events (**Section III**).

1.10 The second issue concerns the reasons for concluding that the occupation is unlawful under international law. The vast majority of written statements concluded that in the course of its occupation of Palestinian territory, Israel has systematically committed serious violations of international humanitarian law ("**IHL**") and international human rights law. **Chapter 3** surveys those conclusions and distils five reasons 29 States and all three international organizations submitting written statements have offered as to why the Court should answer the first part of question (b) by finding that the occupation is unlawful. Namely, because it intrinsically violates: (i) the *jus cogens* requirement to respect the right to self-determination; (ii) the *jus cogens* prohibition on apartheid; (iii) the *jus cogens* prohibition on the use of force; (iv) the *jus cogens* prohibition on the acquisition of territory by force; and (v) the law of occupation, including because it is permanent and is not carried out in good faith or in the best interests of the

Palestinian people (**Section I**). As support for this analysis, Qatar submits nine appendices that illustrate the views of various States and international organizations on the illegality of the occupation (**Appendices 1-6**) and their conclusions that Israel has violated the right of the Palestinian people to self-determination, has breached the prohibition on apartheid, and has illegally annexed all or parts of the OPT (**Appendices 7**, **8**, and **9**, respectively). Qatar then further explains why the Court can, and indeed in its view must, make clear in the *dispositif* to its advisory opinion that Israel's occupation is unlawful for each and all of these five reasons. (**Section II**).

1.11 **Chapter 4** contains Qatar's brief conclusions.

CHAPTER 2
THE ISRAELI-PALESTINIAN PEACE PROCESS DOES NOT PRECLUDE THE COURT FROM RENDERING AN ADVISORY OPINION

2.1 There appears to be near unanimity among States in their written statements that the Court enjoys jurisdiction to render the advisory opinion requested by the General Assembly.[5] A small minority of States, however, have expressed the view that the Court should take the extraordinary and unprecedented step of declining to exercise it.[6] As Qatar explained in its Written Statement,[7] while the Court does have discretion whether or not to respond to a request for an advisory opinion, it has consistently held that its answer to such a request, "in principle, should not be refused".[8] It has also consistently held that "only 'compelling reasons' may lead the Court to refuse its opinion in response to a request falling within its jurisdiction".[9]

2.2 The arguments raised against the Court exercising its jurisdiction in the present proceedings are familiar to the Court, which has rejected them, in one form or another, time and again. None of these arguments now remotely constitute

[5] *See, e.g.*, Written Statement of the Hashemite Kingdom of Jordan, para. 2.9; Written Statement of the Government of Canada, para. 11; Written Statement of the People's Republic of China, para. 9; Written Statement of Italy, paras. 4-5; Written Statement of the African Union, para. 34. *See also* **QWS**, para. 6.98.

[6] *See, e.g.*, Written Statement of the United Kingdom of Great Britain and Northern Ireland, para. 59.

[7] *See* QWS, para. 6.99.

[8] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 (hereinafter, "***Chagos* Advisory Opinion**"), para. 65. *See also Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403 (hereinafter, "***Kosovo* Advisory Opinion**"), para. 30; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (hereinafter, "***Wall* Advisory Opinion**"), para. 44.

[9] *Ibid.*

"compelling reasons" that would justify the Court's refusal to respond to the General Assembly's Request:

- The fact that the General Assembly shares competence over international peace and security, including the Question of Palestine, with the Security Council is no obstacle to the Court rendering an advisory opinion;[10]

- The purported political implications of questions before the Court do not and cannot act as a barrier to the Court's judicial function;[11] and

- The existence of a bilateral dispute between two States cannot prevent the Court from providing an advisory opinion on questions of evident concern to the entire international community.[12]

2.3 These stale arguments were rebutted in advance, as a matter of law, in the written statements of at least 30 States and international organizations.[13] In addition to being legally unfounded, these arguments also all rest on a false factual premise: that the advisory opinion would somehow impede or obstruct an ongoing "peace process" between Israelis and Palestinians. A number of States argue that, rather than being the responsibility and concern of the international community as a whole, the end of the occupation should be negotiated under the auspices of the

[10] *See Wall* Advisory Opinion, paras. 28, 35. *See also* QWS, paras. 6.100-102.

[11] *See Wall* Advisory Opinion, paras. 51-53; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 (hereinafter, "***Nuclear Weapons* Advisory Opinion**"), paras. 13, 17; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980,* p. 73, para. 33. *See also* QWS, paras. 6.103-6.106.

[12] *See Chagos Advisory Opinion*, para. 89; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, para. 34.

[13] *See, e.g.*, Written Statement of the Kingdom of Norway, pp. 1-3; Written Statement of the Principality of Liechtenstein, paras. 9-18; Written Statement of the Republic of Chile, paras. 6-27; Written Statement of the Government of the Republic of South Africa, paras. 10-44; Written Statement of the Arab Republic of Egypt, paras. 13-50; Written Statement of the Government of the Republic of Indonesia, paras. 5-22; Written Statement of Ireland, paras. 5-11; Written Statement of the Kingdom of Saudi Arabia, paras. 6-22; Written Statement of the Federative Republic of Brazil, paras. 9-13.

Security Council's 2003 Roadmap for Peace or relegated to a bilateral framework under the 1993 Oslo Accords.[14]

2.4 More than a half century after the beginning of the occupation and more than a decade since the last round of negotiations between Israel and the Palestinians, these hollow talking points do not give rise to any reason, let alone "compelling reasons", to decline the exercise of the Court's statutory powers.

2.5 Political statements and actions by Israeli officials themselves make clear that Israel is no partner for peace. Standing before the General Assembly last month, Prime Minister Benjamin Netanyahu held up a map of the "New Middle East" that depicted the entire OPT as being part of Israel. There is no West Bank, no Gaza. For Israel, peace in this "New Middle East" equates to the total erasure of Palestinians, in contravention of the most basic principles underlying the peace process that Israel claims this advisory opinion will undermine. This was true before 7 October 2023. It is even more true now.

Figure 2.1: An excerpt of a map shown by Israeli Prime Minister Netanyahu during his addresses to the UN General Assembly on 22 Sept. 2023[15]

[14] *See, e.g.*, Written Statement of the United Kingdom of Great Britain and Northern Ireland, para. 71.

[15] B. Wilkins, "Netanyahu Shows Map of 'New Middle East'—Without Palestine—to UN General Assembly," *Common Dreams* (22 Sept. 2023), *available at* https://tinyurl.com/4a5ddm4n.

2.6 As Qatar demonstrates below, from the beginning of the occupation in 1967, Israel has used the so-called "peace process" to provide cover for its ongoing settler-colonial project in Palestine (**Section I**). There is now widespread consensus that there is no viable "peace process" to speak of, let alone one that could compel the Court to decline to render its advisory opinion (**Section II**). To the contrary, in light of the recent tragic escalation in violence in the OPT and beyond, the intervention of the Court is needed more urgently than ever (**Section III**).

I. From the Beginning of Its Occupation, Israel Has Never Been a Constructive Partner for Peace

2.7 Since Israel first occupied the OPT following the 1967 war, there have been many attempts to achieve a final and comprehensive peace agreement between it and the Palestinians (and, relatedly, Israel's Arab neighbours). However, as Professor Avi Shlaim, one of the world's preeminent historians of the Israeli-Palestinian conflict, details in his expert report submitted with Qatar's Written Statement—*The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)*—Israel has consistently obstructed a negotiated solution to the conflict. Although Israel participated in the various iterations of the so-called "peace process" through the years, it has never compromised on the core elements of its settler-colonial project in the OPT; namely, its illegal settlements in and control of the West Bank and East Jerusalem.

2.8 This core reality exposes the fallacy of the claim that there is—or ever was—a genuine Israeli-Palestinian peace process based on equality between the two sides and international law that an advisory opinion might obstruct or derail. Qatar briefly sets out below the key moments in this history. For a fuller account, Qatar respectfully refers the Court to Prof. Shlaim's expert report.

2.9 When the June 1967 war ended, Israel controlled all of Mandatory Palestine, including the OPT, as well as Syria's Golan Heights and Egypt's Sinai Peninsula.[16] Jordan continued to claim sovereignty over the West Bank. In the immediate aftermath of the war, Jordan offered Israel a peace agreement in exchange for its withdrawal from the West Bank.[17] It offered total peace in return for total withdrawal. Israel rejected the proposal and countered with the Allon Plan, pursuant to which Jordan would regain roughly 70% of the West Bank but not the fertile Jordan Valley, most of the Jordan desert along the Dead Sea, or a substantial area around Greater Jerusalem.[18] Jordan rejected this lopsided plan.[19] Israel also ignored a peace proposal put forward by a group of influential Palestinian figures that would have involved the establishment of an autonomous Palestinian State in the West Bank and the Gaza Strip.[20]

2.10 Even as it rejected these initial peace proposals, Israel publicly proclaimed its openness for peace.[21] Yet at the same time, it was already creating the conditions that would prevent reaching any peace agreement that would require it to give up all of the land it seized in 1967, some of which it has since annexed both *de facto* and *de jure*, as detailed in Qatar's Written Statement[22] and 36 other written

[16] Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023) (hereinafter, "**Report of Prof. Avi Shlaim**"), p. 2. QWS, Vol. II, Annex 2.

[17] *Ibid.*, p. 3. *See also* I. Pappe, THE ETHNIC CLEANSING OF PALESTINE (One World Publications, 2006), p. 240; A. Shlaim, THE IRON WALL: ISRAEL AND THE ARAB WORLD (2nd Ed., W. W. Norton & Co., 2014) (hereinafter, "**A. Shlaim, THE IRON WALL**"), p. 279.

[18] Report of Prof. Avi Shlaim, p. 3. *See also* R. Pedatzur, "Coming Back Full Circle: The Palestinian Option in 1967," 49(2) MIDDLE EAST JOURNAL 269 (Spring 1995).

[19] Report of Prof. Avi Shlaim, p. 4.

[20] *Ibid*. *See also* R. Shehadeh, WE COULD HAVE BEEN FRIENDS, MY FATHER AND I: A PALESTINIAN MEMOIR (2022).

[21] Report of Prof. Avi Shlaim, p. 5.

[22] QWS, Chapter 3, § I.

statements.[23] As Prof. Shlaim explains, Israel was already taking "concrete measures to render the occupation permanent".[24] This included "perpetuat[ing] the territorial status quo" by "creat[ing] facts on the ground in the form of Jewish settlements in the occupied territories" and preventing Palestinian refugees from returning to the West Bank.[25] These policies continue to this day.[26]

2.11 Israel's attachment to the OPT doomed the first international effort to bring about a resolution to the Israeli-Palestinian conflict. In November 1967, the UN Security Council passed Resolution 242. The resolution called for a:

> just and lasting peace in the Middle East … includ[ing] the … (i) [w]ithdrawal of Israel[i] armed forces from territories occupied in the recent conflict; [and] (ii) [t]erminaton of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.[27]

2.12 As Professor Rashid Khalidi, another preeminent historian of the Israeli-Palestinian conflict, explains in his expert report also submitted by Qatar with its Written Statement—*Settler Colonialism in Palestine (1917-1967)*—Resolution 242 treated the conflict as one between Israel and its neighbours; the fate of the

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[23] *See* Appendix 9.

[24] Report of Prof. Avi Shlaim, p. 5.

[25] *Ibid*. *See also* Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), pp. 45-46. QWS, Vol. II, Annex 1. On the right of return, *see* I. Pappe, THE ETHNIC CLEANSING OF PALESTINE (One World Publications, 2006), pp. 241-247. On the expansion of settlements since 1967, *see* A. Raz, THE BRIDE AND THE DOWRY: ISRAEL, JORDAN, AND THE PALESTINIANS IN THE AFTERMATH OF THE JUNE 1967 WAR (2012).

[26] QWS, Chapter 2, §§ I-II.

[27] UNSC, Resolution 242 (1967), *The Situation in the Middle East*, UN Doc. S/RES/242(1967) (22 Nov. 1967) (Dossier No. 1245), Preamble, art. 1.

Palestinians was deemed "at best a humanitarian issue".[28] Yet even the flawed framework of Resolution 242 "remains largely unimplemented".[29] For any progress towards peace to be made under its terms, Israel would have to give up the territory it seized in 1967. In other words, Israel would have to end the occupation of the OPT, something it evidently had no intention of doing.

2.13 Prof. Shlaim similarly explains:

> Israel declared that before it would withdraw from any part of the territories, there must be direct negotiations leading to a contractual peace agreement that incorporated secure and recognized boundaries. The problem was that Israel refused to spell out what it meant by 'secure and recognised boundaries' then and it still refuses to do so today. Israel insisted that the peace agreements must be in place before beginning any withdrawal from the territories. … [B]y pursuing its expansionist policy, [Israel] undermined the prospect of a negotiated agreement.[30]

2.14 To achieve the aim of Resolution 242, the UN Secretary-General appointed the Swedish diplomat Dr. Gunnar Jarring as mediator.[31] While consolidating its gains from the 1967 war by, *inter alia*, establishing settlements, Israel strung Dr. Jarring along with various proposals in order to "keep his mission alive and prevent the matter from going back to the UN, where Israel thought it would be blamed for the failure".[32] Dr. Jarring's mission finally came to an end in February

[28] Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), p. 43. QWS, Vol. II, Annex 1.

[29] *Ibid.*, p. 45.

[30] Report of Prof. Avi Shlaim, p. 7.

[31] *Ibid.*, p. 10.

[32] *Ibid*.

1971 when Israel rejected his proposal for peace with Egypt.[33] The plan would have required it "to withdraw to the former Egypt-Palestine international border",[34] but the Israeli response was categorical: "Israel will not withdraw to the pre-5 June 1967 lines."[35] Thereafter, Israel continued to swiftly and categorically reject peace proposals from Jordan and Egypt from 1971 through the October 1973 war.[36]

2.15 In the wake of the October 1973 war, the Palestinian National Council and the Palestine Liberation Organization ("**PLO**") began to advocate political engagement with Israel.[37] Yet, the Israeli leadership remained "firm and inflexible: Israel would never recognize the PLO, enter into any negotiations with the PLO, or agree to the establishment of a Palestinian state".[38]

2.16 In 1977, the Likud Party came to power in Israel.[39] One of the core planks of its platform is that "the West Bank and the Gaza Strip [are] an integral part of the Land of Israel," over which the "Jewish people have an exclusive right to sovereignty".[40] This did not portend well for the next serious third-party attempt to achieve a comprehensive peace agreement—the 1978 trilateral summit between US President Jimmy Carter and the Israeli and Egyptian leaders. There, Israel publicly kept its "claim to sovereignty over the West Bank and the Gaza Strip in abeyance while negotiations were in progress but [did] not … give it up".[41]

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[33] *Ibid.*, pp. 10-11. *See also* A. Shlaim, THE IRON WALL, pp. 301-305.

[34] *Ibid.*, p 10.

[35] *Ibid.*, p. 11. *See also* A. Eban, PERSONAL WITNESS: ISRAEL THROUGH MY EYES (1992), pp. 500-501.

[36] *Ibid.*, p. 12.

[37] *Ibid.*, p. 13.

[38] *Ibid.*, p. 14.

[39] *Ibid.*, p. 16.

[40] *Ibid*. *See also* A. Shlaim, THE IRON WALL, p. 360; C. Shindler, ISRAEL, LIKUD AND THE ZIONIST DREAM: POWER, POLITICS AND IDEOLOGY FROM BEGIN TO NETANYAHU (1995), p. 85.

[41] *Ibid*, p. 17. *See also* A. Shlaim, THE IRON WALL, p. 380.

Internally, however, it "ruled out in advance any notion of an independent, sovereign Palestinian state"[42] and, consequently, relinquishing its control of the OPT.

2.17 The resulting September 1978 Camp David Accords consisted of agreements between Israel and Egypt on (i) a process for achieving Palestinian self-government in the West Bank and Gaza and (ii) a framework for the conclusion of a peace treaty between Israel and Egypt.[43] Egypt and Israel successfully concluded a peace treaty in March 1979 and Israel thereafter withdrew from the Sinai Peninsula.[44] Efforts to address the Palestinian question suffered a different fate, however.[45] Again, "[t]he main obstacle to an agreement was Israel's refusal to give up its claim to sovereignty over the West Bank and the Gaza Strip and its rigidly narrow parameters for Palestinian autonomy."[46]

2.18 After Israeli-Palestinian negotiations under the rubric of the Camp David Accords failed, Israel's strategy was "to gain time, to increase the number of Jewish settlers, and to entrench Israel's occupation [of] the West Bank".[47] By 1981, when Prime Minister Begin presented his new government to the Israeli Knesset, he affirmed Jerusalem's status as "the eternal capital of Israel" and declared the "eternal unassailable right" of "Jewish people to the Land of Israel".[48] In direct

[42] *Ibid*. *See also* A. Shlaim, THE IRON WALL, p. 380.

[43] *Ibid*. *See also* A. Shlaim, THE IRON WALL, p. 383.

[44] *Ibid*. *See also* A. Shlaim, THE IRON WALL, pp. 386-393.

[45] Regarding the contrasting fates of the Camp David and Oslo peace processes, *see* S. Anziska, PREVENTING PALESTINE: A POLITICAL HISTORY FROM CAMP DAVID TO OSLO (2018).

[46] Report of Prof. Avi Shlaim, p. 17.

[47] *Ibid.*, p. 19.

[48] A. Shlaim, IRON WALL (2014), p. 400 (quoting Prime Minister Begin).

contradiction of undertakings made at Camp David, he later promised that "[n]o part of its territory will be given to alien rule, to foreign sovereignty".[49]

2.19 Meanwhile, various international actors presented a succession of peace plans to Israel's leaders.[50] As the Israeli Prime Minster at the time, Itzhak Shamir, would later record in his autobiography, the plans "rarely contained new elements … what they amounted to was 'peace in exchange for territory; recognition in exchange for territory; never 'just' peace".[51] Like those that came before them, these proposals were non-starters for Israel because they would have required it to relinquish its territorial claims. While publicly at least Israel did not reject the idea of peace out of hand, during the 1980s "[s]ettlement activity was strongly encouraged … [t]o reinforce [Israel's] claim to sovereignty over the whole of the West Bank".[52]

2.20 Twenty years after the 1967 war and in the absence of any progress towards the realization of Palestinian's right to self-determination, a powder keg of popular Palestinian discontent with Israeli rule erupted in December 1987 into the First Intifada,[53] which continued for over five years.

2.21 Against this backdrop, and in light of Iraq's invasion of Kuwait in late 1991, the United States and the Soviet Union convened an international peace conference in Madrid, Spain. The Palestinian delegation to the conference "adopted [an] olive branch strategy", signalling that they were "genuinely committed to peaceful co-existence [with Israel], that the Israeli occupation had to end, that the Palestinians

[49] *Ibid.*, p. 401 (quoting Prime Minister begin, and citing Ma'ariv, 9 Aug. 1981).

[50] Report of Prof. Avi Shlaim, pp. 20-21.

[51] *Ibid.*, p. 21. *See also* Y. Shamir, SUMMING UP: AN AUTOBIOGRAPHY (1994), pp. 174-75.

[52] *Ibid.*, p. 21.

[53] *Ibid.*, pp. 21-22. *See also* A. Shlaim, THE IRON WALL, pp. 465-475.

had a right to self-determination, and that they were determined to pursue this right relentlessly until they achieved statehood".[54]

2.22 At the conclusion of the Madrid peace conference, a track for further Israeli-Palestinian negotiations under the auspices of the United States was established.[55] Nothing tangible resulted. Consistent with its two decades-old approach to peace talks, Israel held itself out as willing to negotiate but continued to consolidate its territorial control of the West Bank. "I would have carried on autonomy talks for ten years'", Israeli Prime Minister Itzak Shamir said, "and meanwhile we would have reached half a million people in Judea and Samaria [*i.e.*, the West Bank]."[56] His goal, he said, was "the integrity of the Land of Israel",[57] *i.e.*, Mandatory Palestine. In a defiant speech on the same day talks were due to resume in Washington (but did not as they were boycotted by Israel), Shamir made clear that "[e]ven as they work day and night for peace, Israel's leaders cannot conceive of considering ideas aimed at concessions on Jerusalem, the West Bank, Gaza, and the Golan Heights".[58]

2.23 Next, in 1993, back-channel negotiations in Oslo, Norway, ultimately resulted in the Oslo Accord, according to which "a Palestinian Authority … would be established and assume governing responsibilities in Gaza Strip and part of the West Bank over a five-year period".[59] In turn, the Palestinians formally recognized

[54] *Ibid*., pp. 24-25. *See also* W. Laqueur & B. Rubin, THE ARAB-ISRAELI READER (7th Ed., Penguin, 2008), pp. 394-400; A. Safieh, THE PEACE PROCESS: FROM BREAKTHROUGH TO BREAKDOWN (2010), p. 158.

[55] *Ibid*., p. 25.

[56] *Ibid.*, p. 26. *See also* A. Shlaim, THE IRON WALL, pp. 515-518.

[57] *Ibid.*

[58] A. Shlaim, THE IRON WALL, p. 509 (quoting Prime Miniter Shamir).

[59] Report of Prof. Avi Shlaim, p. 27.

Israel's right to live in peace and security.[60] Like other agreements establishing a framework for peace between Israel and the Palestinians, however, the Oslo Accord posed no threat to the key facets of Israel's settler-colonial project. It "was silent on all the key issues in the conflict: Jerusalem, the right of return of the 1948 Palestinian refugees, the status of the Israeli settlements on occupied Palestinian territory, and the borders of the Palestinian entity".[61] The agreement did not even require Israel to freeze the expansion of its illegal settlements or recognize the Palestinians' rights to statehood or self-determination.[62]

2.24 In the years following the Oslo Accord, violence by Palestinian militants was virtually eliminated. Yet, the Israeli security establishment, led by then-Chief of Staff Ehud Barak, saw the agreement as having offered too many concessions to the Palestinians.[63] Adopting a hard line, and capitalizing on the persistent asymmetry of power, Israel set to "repackage rather than end [the] military occupation".[64] The result was the 1995 Interim Agreement on the West Bank and Gaza Strip ("**Oslo II**").

2.25 Oslo II divided the West Bank into three areas, Areas A, B and C. In Areas A and B, Palestinians were given exclusive control and civilian authority, respectively.[65] However, Israel retained full authority in Area C, which compromises 60% of the West Bank and covers the area where it had consolidated its settlements over the nearly 30 years since it occupied the OPT.[66] As clearly set

[60] *Ibid.*

[61] *Ibid. See also* A. Shlaim, ISRAEL AND PALESTINE (2010), p. 192.

[62] *Ibid*., p. 28.

[63] A. Shlaim, THE IRON WALL, p. 541.

[64] *Ibid.*, p. 542.

[65] Report of Prof. Avi Shlaim, p. 28. *See also* A. Shlaim, ISRAEL AND PALESTINE (2010), pp. 201-203.

[66] *Ibid*.

out in its terms, Oslo II was, within 18 months, to lead to the "powers and responsibilities relating to territory [being] transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory".[67] Following establishment of full Palestinian jurisdiction over Gaza and the West Bank, certain final status issues—including the status of Jerusalem and refugees—were to be agreed in negotiations set to begin no later than May 1996.[68]

2.26 The Oslo Accords raised a faint hope of a negotiated agreement leading to the realization of the Palestinian right to self-determination. But in the three years following the 1996 return of the Likud party to power, Prime Minister Benjamin Netanyahu worked successfully to "freeze, subvert, and undermine the Oslo accords".[69] Though he paid lip service to the principles of the Oslo Accords, and the subsequent 1998 Wye River Memorandum (under which Israel "promis[ed] to turn over another 11 per cent of the West Bank to the Palestinian Authority"[70]), no substantial policy changes were made. Instead, Israel "continued to deny that the Palestinians had any right to national self-determination" and increased the rate of demolitions of Palestinian structures and confiscation of land.[71]

2.27 The Oslo Accords envisaged that a final, comprehensive agreement would be reached by May 1999.[72] No such agreement was reached then or since. In the meantime, power changed hands in Israel and Ehud Barak of the Labour Party became Prime Minister. The dynamic of Israel publicly making a show of

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[67] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) (28 Sept. 1995) (hereinafter, "**Oslo II**"), art. XI(2)(e).

[68] *Ibid.*, art. XXXI(5).

[69] Report of Prof. Avi Shlaim, p. 29. *See also* A. Shlaim, ISRAEL AND PALESTINE (2010), pp. 203-205.

[70] *Ibid.*, p. 30.

[71] *Ibid.*, pp. 30-31.

[72] Oslo II, Preamble, para. 5.

negotiating for peace while consolidating its hold on the West Bank continued, however. During Mr. Barak's administration, Israel actually accelerated the pace of settlement on the West Bank.[73] Though Israel reportedly offered the Palestinians a deal that would have resulted in a "demilitarised Palestinian state on the Gaza Strip and 90% of the West Bank", its offer fell short of recognizing Palestinian sovereignty "over the Muslim holy places in the Old City of Jerusalem and the right of return of the Palestinian refugees".[74] As before, Israel's participation in the peace process was conditioned on preserving the foundations of its settler-colonial project.

2.28 At the turn of the millennium, power in Israel reverted back to the Likud Party. The new Prime Minister, Ariel Sharon, made the conditions of Israel's engagement with the so-called peace process public and explicit. He declared that the Oslo accords were "null and void" and drew up a list of "red lines": no dismantling of settlements, no withdrawal from the Jordan Valley, and no concessions on Jerusalem.[75]

2.29 Indeed, rather than championing peace, Prime Minister Sharon precipitated the Second Intifada through his "much-publicised visit to al-Haram al-Sharif, the Noble Sanctuary … [f]lanked by a thousand security men and in deliberate disregard for the sensitivity of the Muslim worshippers".[76] This led to a wave of violence across Israel and the OPT, including Israel's siege and destruction of most of President Yasser Arafat's office compound in Ramallah, confining him to only a few rooms of the compound that had been left intact.[77] As recalled by U.S.

[73] Report of Prof. Avi Shlaim, p. 32.

[74] *Ibid.*, p. 33. *See also* C. Enderlin, SHATTERED DREAMS: THE FAILURE OF THE PEACE PROCESS IN THE MIDDLE EAST, 1995-2002 (2003), pp. 213, 270, 324.

[75] *Ibid*. p. 34.

[76] *Ibid*.

[77] J. Carter, PALESTINE: PEACE NOT APARTHEID (2006), p. 156.

President Jimmy Carter, "[e]xcept for one brief interlude, Arafat was to be permanently confined to this small space until the final days of his life."[78] When the UN Security Council demanded Israel's withdrawal from Ramallah, "Israel ignored the resolution."[79]

2.30 During his premiership, Mr. Sharon rejected all international peace plans aimed at a two-State solution.[80] This included the 2002 Arab Peace Initiative, which "offered Israel peace and normalization with all 22 members of the Arab League in return for agreeing to an independent Palestinian state on the West Bank and Gaza with a capital city in East Jerusalem".[81]

2.31 In 2003 the United States, Russia, the UN and the European Union (the "**Quartet**") put forward the so-called "Roadmap for Peace", a "long-awaited plan for resolving the Israeli-Palestinian conflict. It envisaged three phases leading to an independent Palestinian state alongside Israel by the end of 2005."[82] Prof. Shlaim explains that while "[t]he Palestinian leaders embraced the Road map with great alacrity", Prime Minister Sharon insisted on no less than fourteen amendments to the Roadmap, and took the position "that he would present the road map to his government for consideration only if all fourteen amendments were included in the text".[83] The result was a watered-down version of the Quartet's

[78] *Ibid.*, p. 157.

[79] *Ibid.*

[80] Report of Prof. Avi Shlaim, p. 35.

[81] *Ibid.*

[82] *Ibid.*, p. 37.

[83] *Ibid. See also* A. Shlaim, IRON WALL (2014), pp. 765-769.

original Roadmap,[84] and "[a]nother major international initiative to resolve the conflict was dead on arrival."[85]

2.32 It is therefore no surprise that no peace negotiations took place between 2001 and 2006.[86] Instead, Israel further intensified the construction of its illegal settlements in the West Bank[87] and constructed the separation barrier, in open contempt of the Court's 2004 advisory opinion on the subject.[88] Even Israel's 2005 unilateral withdraw from Gaza—which was not coordinated or negotiated with the Palestinians—was "not a prelude to a peace deal with the Palestinian Authority but a prelude to further expansion on the West Bank".[89] Indeed, the unilateral withdrawal was a way to remove over a million Palestinians from the "demographic equation", confining them to Gaza and allowing Israel to focus its settlement efforts on the West Bank.[90] In the year following the withdrawal of 8,000 Israeli settlers from Gaza, 12,000 were settled in the West Bank.[91] As explained by the official spokesperson of Prime Minister Sharon, "[t]he significance of the disengagement plan is the freezing of the peace process."[92]

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[84] *See* J. Carter, PALESTINE: PEACE NOT APARTHEID (2006), pp. 243-47 (including Appendix 7, 'Israel's Response to the Roadmap').

[85] Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023), p. 37. QWS, Vol. II, Annex 2.

[86] *Ibid.*, p. 35.

[87] S. L. Whitson, "Ariel Sharon's legacy is deeply disturbing," *CNN* (13 Jan. 2014), *available at* https://tinyurl.com/2s3fnrsn.

[88] QWS, para. 2.25.

[89] Report of Prof. Avi Shlaim, p. 36. *See also* I. Pappe, THE ETHNIC CLEANSING OF PALESTINE (One World Publications, 2006), pp. 248-249.

[90] *See* D. Gerrard, "Israel's Iron Wall Still Stands After Nearly a Century: An Interview With Avi Shlaim," *Jacobin* (18 Sept. 2020), *available at* https://tinyurl.com/f5ftrnxx. *See also* A. Shlaim, "How Israel brought Gaza to the brink of humanitarian catastrophe," *The Guardian* (7 Jan. 2009), *available at* https://tinyurl.com/28cev6ry.

[91] Report of Prof. Avi Shlaim, pp. 36-37.

[92] I. Pappe, THE ETHNIC CLEANSING OF PALESTINE (One World Publications, 2006), p. 248.

2.33 Despite its withdrawal, Israel continued its repeated and calculated attacks on Gaza. These military operations are cynically referred to by Israeli generals as "mowing the lawn", a phrase that reflects the idea that such operations have to be performed regularly and mechanically and "alludes to indiscriminate slaughter of civilians and inflicting the kind of damage on the civilian infrastructure that takes several years to repair".[93]

2.34 The United States sought to bring Israel back to the negotiating table.[94] Though Benjamin Netanyahu, who returned to power in 2009, "rhetorical[ly]" and "grudgingly" "endorsed for the first time a 'demilitarized Palestinian state'", he insisted on Jerusalem as the capital of Israel and insisted on "the right to 'natural growth' in the existing Jewish settlements on the West Bank while their permanent status was being negotiated", among other conditions.[95] The Palestinian side interpreted this position as "clos[ing] the door to permanent status negotiations".[96] During this time Israel bowed to US pressure and "agreed to enter direct talks" and to a "partial ten-month freeze on settlement construction".[97] In reality, however, the purported freeze "had no significant effect on actual housing and infrastructure construction in and around the settlements".[98] Towards its end, Israel made its

[93] Report of Prof. Avi Shlaim, p. 51.

[94] *Ibid.*, pp. 43-45. *See also* C. McGreal & R. McCarthy, "Obama: halt to new Israeli settlements is in America's security interests," *The Guardian* (28 May 2009), *available at* https://tinyurl.com/4cv2xya5.

[95] *Ibid.*, p. 43. *See also* A. Shlaim, IRON WALL (2014), pp. 805-806; I. Kershner, "Netanyahu Backs Palestinian State, With Caveats," *New York Times* (14 June 2009), *available at* https://tinyurl.com/52rn35vc.

[96] *Ibid.*, pp. 43-44.

[97] *Ibid.*, p. 44.

[98] *Ibid.*

priorities clear: instead of pursuing further peace negotiations, it "approved new [settlement] construction in the West Bank and East Jerusalem".[99]

2.35 This brief historical overview shows that, from the time it first occupied the OPT in 1967, Israel's participation in the "peace process" was defined by three contradictory characteristics: (i) a publicly expressed openness to peace talks; (ii) a steadfast refusal to consider a complete end to the occupation, and (iii) the continuing expansion and consolidation of its control over the OPT. In short, Israel manipulated the peace process as a tool for such consolidation. For example, despite the Oslo Accords providing for Israel's *temporary* administration of parts of the West Bank, Israel used the Palestinians' agreement to that effect as an excuse for its *de facto* annexation of Area C, while confining Palestinians to increasingly isolated and shrinking patches of land in the West Bank.

2.36 The on-the-ground results of the half-century of Israel's cynical engagement with the peace process have hindered the realization of a contiguous and viable Palestinian State. They have, moreover, culminated in the *de jure* annexation of East Jerusalem,[100] the creeping annexation of much of the West Bank,[101] and the institution of an apartheid regime across the OPT.[102] At the same time, Israel has taken measures to exacerbate internal political divisions in Palestine, isolate Gaza from the rest of the Palestinian territory, and exhaust the Palestinian people such that, as Prof. Shlaim explains, "they would cease to

[99] *Ibid.*

[100] QWS, Chapter 3, § I(A).

[101] *Ibid.*, Chapter 3, § I(B).

[102] *Ibid.*, Chapter 4, § II.

constitute a coherent political community capable of asserting its right to sovereignty on even a fraction of historic Palestine".[103]

II. There Is General Consensus that There Is No Viable Peace Process Today

2.37 Israel's unwillingness to end the occupation means that no viable peace process exists today. In fact, "[n]o peace negotiations have been held for nearly 10 years".[104] Regrettably, it is not no longer credible to argue that the fate of the occupation should be settled through an established negotiation framework governing the Israeli-Palestinian conflict.

2.38 As Tor Wennesland, the UN Special Coordinator for the Middle East Peace Process, recently briefed the Security Council: "We are a long distance apart from the sentiments prevailing when the Oslo Accord was signed 30 years ago".[105] In a forewarning of recent events, he emphasised: "The lack of progress towards a political horizon that addresses the core issues driving the conflict has left a dangerous and volatile vacuum".[106] This follows prior warnings by his predecessor, Nickolay Mladenov, about the "lack of any perspective to revive" the "complete political deadlock of the Middle East peace process".[107]

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[103] Prof. Avi Shlaim, *The Diplomacy of the Israeli-Palestinian Conflict (1967-2023)* (20 July 2023), p. 49. QWS, Vol. II, Annex 2. *See also* B. Kimmerling, POLITICIDE: ARIEL SHARON'S WAR AGAINST THE PALESTINIANS (2006), pp. 3-4.

[104] Norway, Ministry of Foreign Affairs, *Speech/statement of Minister of Foreign Affairs Anniken Huitfeldt: Time is running out* (15 Sept. 2023), *available at* https://tinyurl.com/3dm2k2jm.

[105] UNSCO, *Briefing to the Security Council on the Situation in the Middle East (As Delivered by Special Coordinator Tor Wennesland)* (21 Aug. 2023), *available at* https://tinyurl.com/39zszxnf.

[106] *Ibid.*

[107] "'Complete political deadlock' over Middle East peace risks more violence, regional escalation, warns UN envoy," *UN News* (27 Aug. 2019), *available at* https://tinyurl.com/yn759yfy.

2.39 The failure of the peace process is a concern echoed by world leaders. Recalling the 30th anniversary of the signing of the Oslo Accords in September 2023, for example, the Norwegian Foreign Minister, lamented that "we are further from a two-state solution than we were in 2011".[108]

2.40 There is no shortage of similar statements about the failure of the peace process by leading experts, including by the very same individuals who negotiated the Oslo Accords. These include:

- A lead US negotiator, Aaron David Miller: "Today, 30 years after that historic day, what remains of the spirit and much of the substance of the Oslo agreement lies bloodied, buried, and betrayed across an Israeli-Palestinian landscape that seems to leave little room for hope and none for illusions."[109]

- Israel's lead negotiator, Yossi Beilin: "The right-wing has dominated and actively works to undermine the Oslo Accords, albeit unofficially. There has been a considerable increase in settlements and settlers, which undoubtedly detracts from any potential political resolution. This has left Palestinians feeling disillusioned, with no visible political prospects."[110]

- The Norwegian State Secretary who facilitated the agreement, Jan Egeland: "The signing of the Oslo Accords was a rare moment of optimism in the long and bitter conflict. The diplomats around me gasped as Israeli prime minister Yitzhak Rabin and Yasser Arafat, chair of the PLO, shook hands. We all got to our feet and applauded. Thirty years on, each visit I make to the still occupied Palestinian territory

[108] Norway, Ministry of Foreign Affairs, *Speech/statement of Minister of Foreign Affairs Anniken Huitfeldt: Time is running out* (15 Sept. 2023), *available at* https://tinyurl.com/3dm2k2jm.

[109] A. D. Miller, "Why the Oslo Peace Process Failed," *Foreign Policy* (13 Sept. 2023), *available at* https://tinyurl.com/27zvvrtv.

[110] A. Pita, "Yossi Beilin: 'The Israeli right has actively worked to undermine the Oslo Accords'," *El País* (14 Sept. 2023), *available at* https://tinyurl.com/5fzcz4my.

> leaves me asking how the situation for the civilian population could possibly get any worse."[111]

2.41 Israeli officials themselves openly recognize their abandonment of Oslo. In Prime Minister Netanyahu's words, he "de facto put an end to the Oslo Accords".[112] As recently as February 2023, he extolled his strategy of avoiding engagement with the Palestinians through the Abraham Accords: "I went around them (Palestinians), I went directly to the Arab states".[113]

2.42 In the context of the present proceedings, States have also not hesitated to recognize that the peace process "has been nothing short of an abject failure",[114] or, more charitably, "seems to be shelved".[115] As Ireland aptly sums up in its statement, "it is the prolonged absence of any prospect of such a solution for many years that makes the provision of an advisory opinion at this moment all the more necessary".[116]

2.43 Assertions that the status of the occupation should be settled through direct negotiations between Israel and Palestine also fail to take into account the fundamental "asymmetry between the parties, where one side dominates the other", making it "impossible to make progress through direct bilateral negotiations".[117] Under the cover of the peace process, Israel continues to intensify its illegal

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[111] J. Egeland, "We can't wait 30 more years for another breakthrough in the Middle East," *Financial Times* (6 Sept. 2023), *available at* https://tinyurl.com/52fn2ju2.

[112] M. Hirsh, "Bibi Netanyahu: The Non-Negotiator," *The Atlantic* (27 Nov. 2013), *available at*: https://tinyurl.com/msrznfyf.

[113] T. John & R. Picheta, "Exclusive: Netanyahu says don't get 'hung up' on peace with Palestinians first," *CNN* (1 February 2023), *available at* https://tinyurl.com/5n6nazwn.

[114] Written Statement of the Government of the People's Republic of Bangladesh, para. 8.

[115] Written Statement of the Republic of Türkiye, p. 2.

[116] Written Statement of Ireland, para. 10.

[117] J. Egeland, "We can't wait 30 more years for another breakthrough in the Middle East," *Financial Times* (6 Sept. 2023), *available at* https://tinyurl.com/52fn2ju2.

unilateral actions in the OPT, creating irreversible facts on the ground. In February 2023, for instance, a "bureaucratic maneuver" by Prime Minister Benjamin Netanyahu's government "all but made annexation official" by transferring control over the OPT from military to civilian leadership.[118] As warned in a statement by numerous UN mandate holders, this move "solidified Israel's annexation of occupied territory".[119]

2.44 As shown in **Figure 2.2** below, the peace process of the 1990s and early 2000s had no perceptible impact on the pace of Israeli settlement. Since Israel signed the Oslo Accords thirty years ago, the number of settlers in East Jerusalem and the West Bank has in fact expanded from around 300,000 settlers then to over 700,000 now.[120] The situation is even worse today. In his latest briefing to the Security Council on 27 September 2023, the UN Special Coordinator for the Middle East Peace Process, highlighted that during this last reporting period alone—*i.e.*, from 15 June to 19 September 2023—plans for 10,000 housing units in the OPT have been advanced.[121]

[118] M. Sfard, "Israel Is Officially Annexing the West Bank," *Foreign Policy* (8 June 2023), *available at* https://tinyurl.com/2xt5buhk.

[119] OHCHR, *Press Release: International community must act to end Israel's annexation of occupied West Bank, including east Jerusalem, and defend international law: UN experts* (26 July 2023), *available at* https://tinyurl.com/56esc66d.

[120] UNSCO, *Report to the Ad Hoc Liaison Committee* (15 Sept. 2023), *available at* https://tinyurl.com/3u5ny2yz, p. 18.

[121] UNSCO, *Briefing to the Security Council on the Situation in the Middle East, Report of the Secretary-General on the Implementation of UN SCR 2334 (As Delivered by Special Coordinator Tor Wennesland)* (27 Sept. 2023), *available at* https://tinyurl.com/4359z5fm, p. 4.

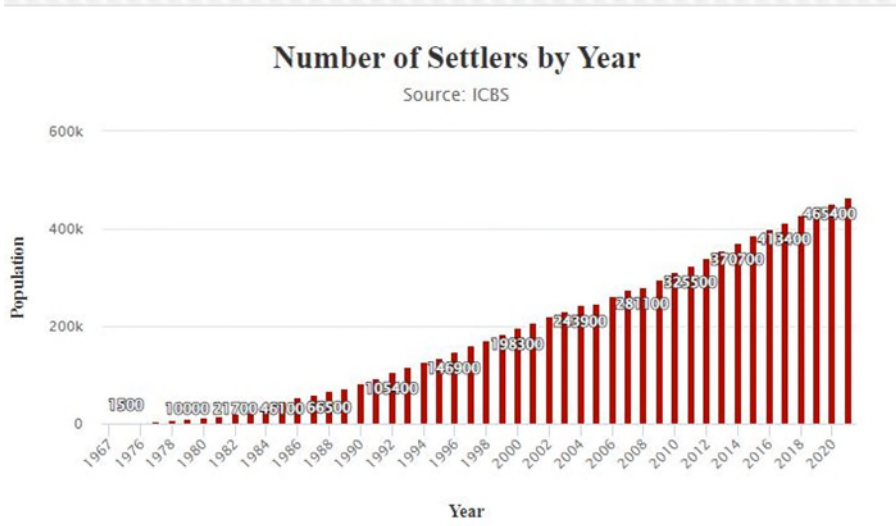

Figure 2.2: Graph showing the number of Israeli settlers in the OPT (excluding East Jerusalem) from 1967-2021[122]

2.45 To facilitate its accelerating colonization of the OPT, Israel also continues its policy of deploying brutal violence against Palestinians. Between September 2000 and September 2023 alone, Israeli forces killed 10,555 Palestinians, including 2,270 children and 656 women.[123] During the same period, Israel has engaged in a policy of "mass incarceration", detaining tens of thousands of Palestinians, often without charge.[124]

2.46 States that invite the Court to decline exercising its jurisdiction to provide an advisory opinion ignore these circumstances and argue that Israel and Palestine have continuously reaffirmed their intent to resolve the future of the occupation through direct negotiations. These arguments fail to acknowledge the context of

[122] Peace Now, "Population" (last accessed: 19 Oct. 2023), *available at* https://tinyurl.com/bddp62k9.

[123] *See* B'Tselem, "Statistics – Fatalities (Palestinians killed by Israeli forces)" (last updated: 26 Sept. 2023), *available at* https://tinyurl.com/4ze97vba.

[124] Human Rights Council, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/53/59 (9 June 2023), *available at* https://tinyurl.com/38r7u9kw.

these purported affirmations. For example, in its Written Statement, Israel argues that as recently as March 2023, at a summit in Egypt, Israel and the Palestinian Authority "reaffirmed their commitment to all previous agreements between them, and reaffirmed their agreement to address all outstanding issues through direct dialogue".[125] Qatar cannot help but note the irony of Israel relying on this alleged reaffirmation even as it has explicitly rejected the relevance of previous agreements, including most notably the Oslo Accords, and continued to deny Palestinians' aspirations for self-determination.[126] Tellingly, only a few hours after the summit in Egypt, Israel's Minister of Finance, Bezalel Smotrich, declared that there is "no such thing as Palestinians"[127] and that Palestine is "an invention of [the] past 100 years",[128] echoing prior offensive remarks made by Israeli Prime Minister Golda Meir.[129]

2.47 Israel also overlooks the fact that the brief summit in Egypt was *not* held in the context of wider peace talks, but was a "diplomatic effort to maintain 'calm' during the Muslim holy month, when matters often escalate between Israeli forces and Palestinians in the occupied Palestinian territories".[130] The Egyptian Foreign

[125] Statement of the State of Israel Pursuant to the Court's Order of 3 February 2023 Relating to the Advisory Proceedings Initiated by UN General Assembly Resolution 77/247, pp. 3-4.

[126] *See supra*, paras. 2.26, 2.28, 2.41.

[127] "Palestinian Authority PM pans Smotrich for saying his people doesn't exist," *The Times of Israel* (20 Mar. 2023), *available at* https://tinyurl.com/28tp7far.

[128] "Smotrich says there's no Palestinian people, declares his family 'real Palestinians'," *The Times of Israel* (20 Mar. 2023), *available at* https://tinyurl.com/bddbb9ar.

[129] A. Soussi, "The mixed legacy of Golda Meir, Israel's first female PM," *Al Jazeera* (18 Mar. 2019), *available at* https://tinyurl.com/3w5em7bb ("'There were no such thing as Palestinians,' [Prime Minister Meir] was quoted as saying in the Sunday Times and Washington Post in June 1969.").

[130] "Israeli, Palestinian Authority officials meet for talks in Egypt," *Al Jazeera* (19 Mar. 2023), *available at* https://tinyurl.com/bdehhbkf.

Ministry confirmed that the talks aimed to "stop unilateral actions and escalation, and to break the existing cycle of violence and achieve calm".[131]

2.48 Tragically, as discussed below, even such modest rhetorical rapprochements—which are themselves a far cry from a genuine peace process—appear out of reach in light of recent events.

III. Recent Events Only Underscore the Urgency and Necessity of the Court's Advisory Opinion

2.49 The international community and numerous experts have warned for years that the *status quo* in the OPT is untenable and that Israel's ongoing occupation is causing a spiralling cycle of violence.[132] The former OPT Special Rapporteur, Michael Lynk, cautioned in 2022 that "[t]he level of violence required by Israel to maintain its occupation has been steadily increasing" and that "[i]nternational inaction in the face of these new levels of violence will only encourage more of the same."[133] A September 2023 policy brief by the European Council on Foreign Affairs further highlighted that, "[i]n the absence of any prospect of reaching a negotiated end to Israeli occupation, violence is escalating across Israel and the occupied Palestinian territory, reaching levels not seen since the second *intifada*."[134]

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[131] *Ibid.*

[132] In the context of these proceedings, *see, e.g.*, Written Statement of the Government of the Republic of South Africa, para. 8 ("The ongoing delay in achieving a settlement has resulted in an unending cycle of violence."); Written Statement of the African Union, para. 19; Written Statement of the United Arab Emirates, paras. 25, 101.

[133] OHCHR, *Press Release: UN expert warns Israeli crackdown will fuel more violence, urges international response* (22 Apr. 2022), *available at* https://tinyurl.com/5n6cbcku.

[134] European Council on Foreign Relations, *House in Disorder: How Europeans Can Help Palestinians Fix Their Political System* (Sept. 2023), *available at* https://tinyurl.com/ycxjfrz2, p. 2.

2.50 These fears were realized on 7 October 2023, when members of Palestinian armed groups launched an unprecedented attack against Israel. These attacks, which included aerial, sea, and ground operations, resulted in the deaths of over 1,300 people in Israel.[135]

2.51 Qatar condemns in the strongest possible terms the targeting and killing of civilians—and all international crimes—regardless of their perpetrators.[136] What cannot be denied, however, is that Israel is capable of ending these cycles of violence by ending the occupation. Regrettably, it refuses to do so. In fact, Israel appears intent to do the opposite as evidenced by its ever-increasing dehumanization and dispossession of, and violence toward, Palestinians.

2.52 2022 was the deadliest year for Palestinians in the West Bank since 2005. Israel killed over 150 Palestinians.[137] Even before the recent escalations, this record had already been broken by 22 August 2023. As of that date, Israel had killed over 200 Palestinians in 2023 alone, among them 34 children.[138] In addition, as of 27 September 2023, Israel held "1,264 Palestinians in administrative detention, the

[135] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #9" (15 Oct. 2023), *available at* https://tinyurl.com/yca3rv3n.

[136] During a joint press conference with the United States Secretary of State, Qatar's Prime Minister and Minister of Foreign Affairs stated: "I reiterated Qatar's firm position in condemning all forms of targeting civilians. I would like to stress here that the killing [of] innocent civilians, especially children and women, and the practice of collective punishment policies are unacceptable under any circumstance. These condemnations should be directed at all parties concerned on an equal basis." Qatar, Ministry of Foreign Affairs, Tweet (13 Oct. 2023), *available at* https://tinyurl.com/245ertcr.

[137] "UN envoy reports 'sharp increase' in violence this year in Israel-Palestine conflict," *UN News* (19 Dec. 2022), *available at* https://tinyurl.com/bp6ukc96.

[138] UNSCO, *Briefing to the Security Council on the Situation in the Middle East (As Delivered by Special Coordinator Tor Wennesland)* (21 Aug. 2023), *available at* https://tinyurl.com/39zszxnf; "West Bank: Spike in Israeli Killings of Palestinian Children," *Human Rights Watch* (28 Aug. 2023), *available at* https://tinyurl.com/2p96xwuv.

highest number in over a decade".[139] Settler attacks on Palestinians reached their highest levels in over a decade, with about three settler attacks per day, resulting in the displacement of over 1,100 Palestinians since 2022. Three Palestinian villages were emptied out in the West Bank this summer alone. As the head of the UN OCHA in the OPT noted in late August 2023: "The displacement of Palestinians amid increasing settler violence is of a magnitude that we have not previously documented".[140]

2.53 The editorial board of *Haaretz*, Israel's newspaper of record, recalled this important context in its scathing 8 October 2023 editorial, one day after the appalling attacks in Israel:

> The disaster that befell Israel on the holiday of Simchat Torah is the clear responsibility of one person: Benjamin Netanyahu. The prime minister, who has prided himself on his vast political experience and irreplaceable wisdom in security matters, completely failed to identify the dangers he was consciously leading Israel into when establishing a government of annexation and dispossession, when appointing Bezalel Smotrich and Itamar Ben-Gvir to key positions, while embracing a foreign policy that openly ignored the existence and rights of Palestinians.[141]

2.54 Members of the Knesset have denounced the actions of the Israeli government that culminated in recent events. For example, MK Ofer Cassif highlighted repeated warnings that "everything is going to erupt and everybody is

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[139] UNSCO, *Briefing to the Security Council on the Situation in the Middle East, Report of the Secretary-General on the Implementation of UN SCR 2334 (As Delivered by Special Coordinator Tor Wennesland)* (27 Sept. 2023), *available at* https://tinyurl.com/5n6tc48c.

[140] J. Frankel, "3 small Palestinian villages emptied out this summer. Residents blame Israeli settler attacks," *Associated Press* (24 Aug. 2023), *available at* https://tinyurl.com/yc2edmbf.

[141] "Netanyahu Bears Responsibility for This Israel-Gaza War," *Haaretz* (8 Oct. 2023), *available at* https://tinyurl.com/5mcb8hp9.

going to pay a price".[142] He condemned the government as "fascist" and as "support[ing], encourage[ing], and lead[ing] pogroms against the Palestinians", stressing that "[t]here is an ethnic cleansing going on."[143] For Cassif, "[i]t was obvious the writing was on the wall, written in the blood of the Palestinians—and unfortunately now Israelis as well".[144]

2.55 The UN Secretary-General himself expressly recognized that this recent escalation "does not come in a vacuum".[145] As the current OPT Special Rapporteur, Francesca Albanese, recently explained, "what is happening now needs to be put in the context of decades of oppression imposed on the Palestinians".[146] As she and many experts have pointed out, "continuing to oppress a population with total impunity would lead to a catastrophe".[147] The Israel and Palestine Director at Human Rights Watch, Omar Shakir, similarly reiterated that "[i]f we've learned anything through prior escalations, it is that so long as there is impunity for serious abuses, we will continue to see more repression and shedding of civilian blood".[148]

2.56 In addition to decades of colonization, violent oppression, and ethnic cleansing of Palestinians in the West Bank and East Jerusalem, the current escalation comes in the specific context of ongoing impunity for Israel's sustained and brutal collective punishment of Gaza, which, as Qatar explained in its Written

[142] E. Freedman, "Israeli lawmaker blames pogroms against Palestinians for 'terrible' attacks," *Al Jazeera* (8 Oct. 2023), *available at* https://tinyurl.com/2shsh35s.

[143] *Ibid.*

[144] *Ibid.*

[145] UN Secretary-General, *Speech: Secretary-General's remarks to the press on the situation in the Middle East* (9 Oct. 2023), *available at* https://tinyurl.com/yurws4na.

[146] "'Necessary' to stand with both Israelis, Palestinians, UN rapporteur says," *Al Jazeera* (9 Oct. 2023), *available at* https://tinyurl.com/muny8fbj.

[147] *Ibid.*

[148] "Israel/Palestine: Devastating Civilian Toll as Parties Flout Legal Obligations," *Human Rights Watch* (9 Oct. 2023), *available at* https://tinyurl.com/3hmatxey.

Submission, amounts to a crime against humanity.[149] Even before the recent escalation, Gaza was "unliveable" or, in the words of the UN Secretary General, "hell on earth".[150]

2.57 To recall, Israel's blockade and collective punishment of Gaza entails, *inter alia*:

- Severely restricting the movement of people and goods into and out of Gaza, including at times by employing mathematical formulas to calculate the minimum amount of goods required for survival of the population and modulating restrictions accordingly;[151]

- At least six large scale military assaults prior to October 2023, killing thousands of civilians, including 1,189 children;[152]

- Policies such as the "Dahiya Doctrine", explicitly designed to unlawfully inflict maximum terror and suffering on the civilian population;[153]

- Innumerable war crimes condemned by the international community, including intentional attacks on civilian targets without warning;[154]

- Brutal suppression of peaceful protests, including killing 214 unarmed civilians, among them 46 children, during the Great March of Return in 2018-2019;[155] and

[149] *See* QWS, paras. 3.153-3.158, 3.183-3.185.

[150] *See ibid.*, paras. 2.88-2.89.

[151] *See ibid.*., para. 2.94.

[152] *See ibid.*, para. 2.108.

[153] *See* R. Khalidi, "The Dahiya Doctrine, Proportionality, and War Crimes," 44(1) JOURNAL OF PALESTINE STUDIES (2014), *available at* https://tinyurl.com/tamptyp8. *See also*, QWS, para. 2.123.

[154] *See* QWS, para. 2.113.

[155] *See ibid.*., para. 2.132.

- Total and repeated destruction of civilian infrastructure, including hospitals, schools, and places of worship.[156]

2.58 Now, Israel has openly declared, in retaliation for the 7 October attacks, that it will go even farther and carry out the most brutal campaign it has ever waged against Gaza. Israeli officials have promised to "set Gaza back 50 years"[157] and vowed to turn it into "rubble".[158] Israel has even gone as far as to expressly state that it will impose a "complete siege" under which "there will be no electricity, no food, no water, no fuel".[159] In the words of Israel's Energy Minister, "[n]o electrical switch will be turned on, no water hydrant will be opened and no fuel truck will enter until the Israeli abductees are returned home".[160]

[156] *See ibid.*, paras. 2.124-1.125. *See also* OHCHR, *Press Release: UN Fact Finding Mission finds strong evidence of war crimes and crimes against humanity committed during the Gaza conflict; calls for end to impunity* (15 Sept. 2009), *available at* https://tinyurl.com/ykvpb3ru.

[157] "Promising merciless war on Hamas, Netanyahu says Israel will 'avenge this black day'," *The Times of Israel* (8 Oct. 2023), *available at* https://tinyurl.com/eydyj8fm.

[158] "Israeli PM vows to turn parts of Gaza into 'rubble'," [video] *PBS* (9 Oct. 2023), *available at* https://tinyurl.com/555mc9wc.

[159] "Israeli defence minister orders 'complete siege' on Gaza," [video] *Al Jazeera* (9 Oct. 2023), *available at* https://tinyurl.com/27wx2exe.

[160] Israel Katz, Tweet (12 Oct. 2023), *available at* https://tinyurl.com/2s4jrhvr.

Figure 2.3: A Palestinian man wades through the rubble of Gaza City on 10 October 2023[161]

2.59 This complete siege is leading to disastrous consequences, plunging "the Gaza strip into darkness".[162] With no access to fuel, essential services such as access to clean water are being depleted. And as soon as diesel for generators runs out, hospitals will no longer be able to operate.[163] The Regional Director of the ICRC, Fabrizio Carboni, declared that without electricity, hospitals are "turning into morgues".[164]

[161] Motaz Azaiza, Instagram post, "A huge area of Gaza city got demolished by the Israeli air strikes" (10 Oct. 2023), *available at* https://tinyurl.com/52x8pffu.

[162] "Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel," *Amnesty International* (12 Oct. 2023), *available at* https://tinyurl.com/57u2hed5.

[163] Physicians for Human Rights–Israel & B'Tselem, *Joint Statement: A Humanitarian Disaster in Gaza must be Averted* (13 Oct. 2023), *available at* https://tinyurl.com/5hys7n2x.

[164] ICRC, *Press Release by F. Carboni: Hospitals risk turning into morgues without electricity; hostages must be released immediately* (12 Oct. 2023), *available at* https://tinyurl.com/44d8wtvc.

2.60 While besieging Gaza, Prime Minister Netanyahu cynically called upon Palestinian civilians to leave,[165] despite knowing full well that they have nowhere to go. Just hours after such calls, Israel started bombing the Rafah crossing as people gathered in hope of entering Egypt.[166] The Country Director at Save the Children Palestine underscored the obvious: "People cannot be crossing, fleeing, when there are active airstrikes."[167] He stressed that, "the population of Gaza really have nowhere to go, they are literally trapped in Gaza, trying to escape from airstrikes".[168] The attack also forced Egyptian trucks carrying fuel and humanitarian goods to turn back, leading to the closure of the only path not controlled by Israel for the delivery of humanitarian goods to Gaza.[169] The OPT Special Rapporteur denounced the bombing, stating that it "hints to an intention to really starve and kill the people who are innocent inside the Gaza Strip".[170] The UN Secretary-General, standing at the Rafah crossing ten days later, stressed that allowing safe passage of humanitarian relief had become "the difference between life and death".[171]

2.61 Further escalating the crisis, on 13 October 2023, Israel ordered 1.1 million Palestinian civilians living in northern Gaza to leave their homes and evacuate to the southern part of Gaza within 24 hours. The UN condemned this ultimatum,

[165] Benjamin Netanyahu, Tweet (7 Oct. 2023), *available at* https://tinyurl.com/2rbhz6hv.

[166] "Israel bombs Gaza's border crossing with Egypt," [video] *Al Jazeera* (11 Oct. 2023), *available at* https://tinyurl.com/yb65mexm.

[167] *Ibid.*

[168] *Ibid.*

[169] G. Pacchiani, "Egyptian trucks bringing fuel, food to Gaza make U-turn after Rafah crossing bombed," *The Times of Israel* (10 Oct. 2023), *available at* https://tinyurl.com/y5mwte6y.

[170] "Alarm as Israel again hits Rafah border crossing between Gaza and Egypt," *Al Jazeera* (10 Oct. 2023), *available at* https://tinyurl.com/yhu97w26.

[171] "Gaza: UN chief at Rafah crossing says aid convoy 'the difference between life and death'," *UN News* (20 Oct. 2023), *available at* https://tinyurl.com/yjr6mk3s.

warning that it would be "extremely dangerous"[172] if not "impossible" to implement and would lead to "devastating humanitarian consequences".[173] The WHO further called it a "death sentence" for patients at Gaza's overwhelmed hospitals.[174] The head of the Norwegian Refugee Council declared that Israel's ultimatum is not "an evacuation opportunity" but a "forcible transfer of populations" amounting to a "war crime".[175]

2.62 Shortly after ordering all civilians to evacuate northern Gaza, Israel bombed—in broad daylight—a convoy of civilian vehicles trying to do just that and travelling south on one of Gaza's "safe" roads.[176] At least 70 Palestinians were killed, among them numerous women and children.[177] This was no isolated incident, with "Israeli airstrikes pound[ing] locations across the Gaza Strip … including parts of the south that Israel had declared as safe zones".[178]

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[172] UN Spokesperson, Tweet (13 Oct. 2023), *available at* https://tinyurl.com/4zj7jtac.

[173] UN Secretary-General, *Statement by Spokesman S. Dujarric: Note to correspondents on Gaza* (12 Oct. 2023), *available at* https://tinyurl.com/y77y7snw.

[174] "Moving severely ill people in Gaza amounts to 'death sentence', WHO says," *Reuters* (13 Oct. 2023), *available at* https://tinyurl.com/3r6tdruh.

[175] "Israel's 'order to relocate' is a 'war crime', says head of Norwegian Refugee Council," [video] *Sky News* (13 Oct. 2023), *available at* https://tinyurl.com/53hjkfs. *See also* Norwegian Refugee Council *et al.*, *Joint Statement: Urgent plea to avert unprecedented humanitarian crisis amid looming Israeli land incursion into Gaza* (13 Oct. 2023), *available at* https://tinyurl.com/53s42rrd (joint statement from the Norwegian Refugee Council and other international aid agencies expressing alarm over Israel's call for over one million Palestinians to leave northern Gaza in less than 24 hours, and demanding that Israel rescind this order immediately).

[176] P. Andriga *et al.*, "Did Israel bomb a civilian evacuation route in Gaza?," *Financial Times* (15 Oct. 2023), *available at* https://tinyurl.com/8h5nc9dh.

[177] P. Brown & J. Herd, "Strike on civilian convoy fleeing Gaza: What we know from verified video," *BBC* (14 Oct. 2023), *available at* https://tinyurl.com/23yjccz8.

[178] "As Israel's bombing hits declared 'safe zones', Palestinians trapped in Gaza find danger everywhere", *PBS* (19 Oct. 2023), *available at*: https://tinyurl.com/4uhmua49.

Figure 2.4: "Nada Jarad's son looks terrified at his mother as she enters the emergency department in Al Aqsa Hospital after being injured by an Israeli air strike."[179]

2.63 As of 21 October 2023, Israel's brutal assault on Gaza has already:

- Killed at least 4,385 Palestinians,[180] mostly civilians, including 1,756 children[181] (while hundreds more are still missing);
- Injured at least 13,162 Palestinians, mostly civilians;[182]

[179] Motaz Azaiza, Instagram post, "Nada Jarad's son looks terrified at his mother as she enters the emergency department in Al Aqsa Hospital after being injured by an Israeli air strike" (16 Oct. 2023), *available at* https://tinyurl.com/mr2hrhfa.

[180] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #15" (21 Oct. 2023), *available at* https://tinyurl.com/nhz625k4.

[181] Defense for Children, Tweet (21 Oct. 2023), *available at* https://tinyurl.com/5n6wwzce.

[182] UNRWA, "Situation Report #10 On The Gaza Strip And The West Bank (Including East Jerusalem)" (21 Oct. 2023), *available at* https://tinyurl.com/4nrbvcey.

- Displaced approximately 1.4 million people across Gaza;[183]
- Destroyed more than 15,100 homes and rendered over 10,600 uninhabitable;[184] and
- Attacked or damaged 205 schools and 29 medical facilities.[185]

2.64 As of the same date, Israel's own casualties amount to 1,400, with 4,932 injured.[186]

2.65 The recent escalations have not only impacted Gaza. In the West Bank, Israel has imposed an unprecedented lockdown on the entire civilian territory, closing its vast network of checkpoints and thereby completely cutting off cities, towns and villages from each other.[187] Residents in the West Bank to live in fear of a further increase of settler violence and a "new wave of killing" given the complete lockdown of the area.[188] Israel has even distributed weapons to settlers, who have already been filmed shooting unarmed Palestinians at point blank range.[189] Between 7 and 21 October 2023, 84 Palestinians have been killed in the

[183] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #15" (21 Oct. 2023), *available at* https://tinyurl.com/nhz625k4. *See also* UNRWA, "Situation Report #9 On The Gaza Strip And The West Bank (Including East Jerusalem)" (20 Oct. 2023), *available at* https://tinyurl.com/bdebzfny.

[184] *Ibid.*

[185] *Ibid.*

[186] *Ibid.*

[187] F. Shalash, "Israel-Palestine war: Violence flares in Jerusalem and the West Bank as funerals become targets," *Middle East Eye* (11 Oct. 2023), *available at* https://tinyurl.com/3u3mupfb.

[188] A. Butler & M. Butt, "Palestinians fear 'new wave of killing' in the West Bank as Israel puts it on lockdown," *Independent* (13 Oct. 2023), *available at* https://tinyurl.com/5ee6vxdr.

[189] Itamar Ben-Gvir, Tweet (10 Oct. 2023), *available at* https://tinyurl.com/yk3djvyy; B'Tselem, Tweet (15 Oct. 2023), *available at* https://tinyurl.com/nhheevz2 ("Settlers, with the full backing of soldiers and sometimes with their participation, have been attacking Palestinians throughout the West Bank, as well as invading villages and initiating clashes, that often end with Palestinian fatalities."); B'Tselem, Tweet (13 Oct. 2023), *available at* https://tinyurl.com/2p8ec327.

West Bank, including 27 children,[190] even though none of the attacks on Israel originated from the West Bank.

2.66 While Israel continues to commit more breaches of international law of the same kind detailed in Qatar's Written Statement,[191] this latest offensive also entails new breaches of international law of a character and gravity seldom seen before, including:

- **Declaring a siege and the complete ban of objects essential for life entering the territory, including food, medical supplies, fuel, electricity, and water**. As multiple UN mandate holders and human rights organizations have noted, these cruel and inhumane actions constitute "intentional starvation",[192] which is a war crime.[193]

- **Forcibly transferring half of Gaza's civilian population**. In a rare public rebuke, the ICRC explicitly confirmed its assessment that "[t]he instructions issued by the Israeli authorities for the population of Gaza City to immediately leave their homes … are not compatible with international humanitarian law".[194] If carried out, they also amount to the crime against humanity of forcible transfer of a civilian population.[195]

[190] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #15" (21 Oct. 2023), *available at* https://tinyurl.com/nhz625k4.

[191] *See* QWS, Chapter 3, § III(B).

[192] OHCHR, *Press Release: Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence* (12 Oct. 2023), *available at* https://tinyurl.com/24mdmzpd.

[193] Rome Statute of the International Criminal Court (17 July 1998), 2187 U.N.T.S. 90 (hereinafter, "**Rome Statute**"), art. 8(2)(b)(xxv).

[194] ICRC, *News Release: Israel and the Occupied Territories: Evacuation order of Gaza triggers catastrophic humanitarian consequences* (13 Oct. 2023), *available at* https://tinyurl.com/j37wukf5.

[195] Rome Statute, art. 7(1)(d).

- **Bombing hospitals, schools and religious sites**. Israel has illegally targeted multiple hospitals,[196] UNRWA schools,[197] and several churches and mosques,[198] which enjoy protected status under international law.[199] This includes the bombing on 20 October 2023 of St. Porphyrius Greek Orthodox Church—one of the oldest in the world—killing at least 18 people.[200]

- **The use of white phosphorus indiscriminately in civilian areas**. For the first time since 2009,[201] Human Rights Watch has confirmed that Israel has employed "[w]hite phosphorous [which] is unlawfully indiscriminate when airburst in populated urban areas, where it can burn down houses and cause egregious harm to civilians".[202]

- **Declaring that no quarter will be given**. Israeli Prime Minister Benjamin Netanyahu declared that "every member of Hamas is a dead man",[203] while Israel's Minister of Energy promised that "[t]hey will not receive a drop of water or a single battery until they leave the world."[204] Orders or threats to

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[196] *See, e.g.*, J. Johnson, "'There Is No Safe Haven': Israeli Bombing Rampage Hits Gaza Refugee Camp, Homes, and More," *Common Dreams* (9 Oct. 2023), *available at* https://tinyurl.com/yke9brr3; UN Secretary-General, *Statement attributable to the Spokesperson for the Secretary-General: on the situation in Gaza* (17 Oct. 2023), *available at* https://tinyurl.com/272njhxh. *See also* A. Thomson, "Who was behind the Gaza hospital blast – visual investigation," *Channel 4* (18 Oct. 2023), *available at* https://tinyurl.com/2ab34tjk.

[197] *See, e.g.*, "At least 6 people killed in Israeli air strike on UNRWA school in Gaza," *Reuters* (17 Oct. 2023), *available at* https://tinyurl.com/5n8v8rtb; UN Secretary-General, *Statement attributable to the Spokesperson for the Secretary-General: on the situation in Gaza* (17 Oct. 2023), *available at* https://tinyurl.com/272njhxh.

[198] OCHA, "Hostilities in the Gaza Strip and Israel | Flash Update #12" (18 Oct. 2023), *available at* https://tinyurl.com/47y7xnpp.

[199] Additional Protocol I to the Geneva Conventions, art. 12. *See also* ICRC, J. Henckaerts & L. Doswald-Beck (eds.), CUSTOMARY INTERNATIONAL HUMANITARIAN LAW – VOLUME I: RULES (2005), *available at* https://tinyurl.com/ytwenx9d, pp. 91-97, 595.

[200] Y. Gostoli & A. Abu Riash, "'We were baptised here and we will die here': Gaza's oldest church bombed," *Al Jazeera* (20 Oct. 2023), *available at* https://tinyurl.com/45kvv6u7.

[201] "Israel used white phosphorus in Gaza civilian areas," *Amnesty International* (19 Jan. 2009), *available at* https://tinyurl.com/bdd8femf.

[202] "Israel: White Phosphorus Used In Gaza, Lebanon," *Human Rights Watch* (12 Oct. 2023), *available at* https://tinyurl.com/acrr94xm.

[203] K. Armstrong & Y. Knell, "Every Hamas member is a dead man, Netanyahu says," *BBC* (12 Oct. 2023), *available at* https://tinyurl.com/2k8anxep.

[204] Israel Katz, Tweet (13 Oct. 2023), *available at* https://tinyurl.com/mryy67pa.

the adversary that no quarter will be given are prohibited and amount to a war crime, whether or not the order is carried out.[205]

2.67 These crimes are accompanied by Israeli officials' racist incitement against Palestinians, which has been condemned by various mandate holders as "appalling" and "dehumanis[ing]".[206] For example:

- Israeli Defence Minister Yoav Gallant referred to the entire civilian population of Gaza as "human animals".[207]

- Ariel Kallner, a member of the Israeli Knesset, called for a new Nakba (the Arabic term meaning catastrophe, used to describe the ethnic cleansing perpetrated against the Palestinians in 1948): "Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 48."[208]

- Ezra Yachin, a 95-year-old veteran of the Israeli Army, recently deployed by the Israeli military to "motivate" IDF troops, stated on video: "Erase them, their families, mothers and children. These animals can no longer live. … Every Jew with a weapon should go out and kill them. If you have an Arab neighbour, don't wait until he comes into your house. Enter his house and shoot."[209]

2.68 On 16 October 2023, the Prime Minister of Israel issued the tweet shown below, which speaks for itself.

[205] Rome Statute, art. 8(2)(e)(x). *See also* ICRC, J. Henckaerts & L. Doswald-Beck (eds.), CUSTOMARY INTERNATIONAL HUMANITARIAN LAW – VOLUME I: RULES (CUP, 2005), p. 161, *available at* https://tinyurl.com/ytwenx9d.

[206] OHCHR, *Press Release: Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence* (12 Oct. 2023), *available at* https://tinyurl.com/24mdmzpd.

[207] D. Gritten, "Israel's military says it fully controls communities on Gaza border," *BBC* (9 Oct. 2023), *available at* https://tinyurl.com/mry7vr9x.

[208] J. Krauss, "In Israel's call for mass evacuation, Palestinians hear echoes of their original catastrophic exodus," *Associated Press* (14 Oct. 2023), *available at* https://tinyurl.com/bdepcr6h.

[209] "'These animals can no longer live' says Israel's oldest reservist," [video] *Al Jazeera* (14 Oct. 2023), *available at* https://tinyurl.com/yu5yuwp5.

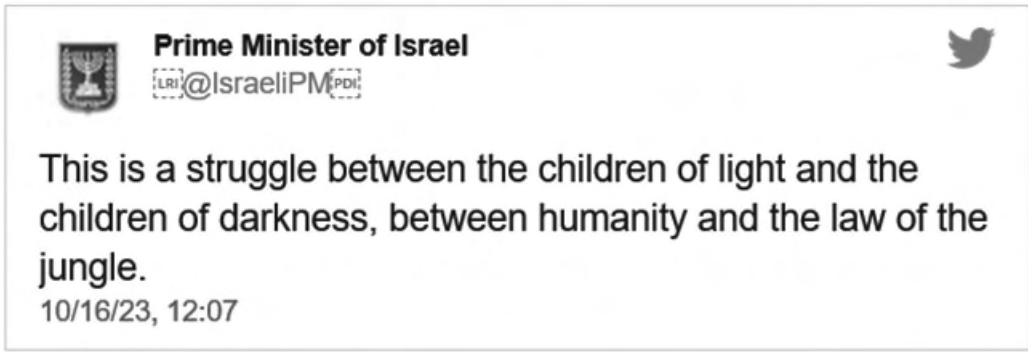

Figure 2.5: X Post by Israeli Prime Minister Benjamin Netanyahu[210]

2.69 According to the Israeli human rights organization B'Tselem, this policy of revenge "is not new, but has been implemented towards Gaza for many years", noting that the "death, destruction, pain and horror it has wrought have led to nothing but more horror".[211]

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2.70 It is this continuous escalation of violence, combined with the prolonged absence of a genuine peace process, that makes it even more critical that the Court render the advisory opinion that the General Assembly has requested of it. The so-called peace process has reached an impasse and the prospect of a resumption of negotiations is bleak. Since the start of the occupation in 1967, Israel has done little other than obstruct, delay and undermine all viable avenues for a negotiated settlement. In the meantime, capitalizing on the asymmetry of power, and in pursuit of its settler-colonial mission, Israel continues to act unilaterally and to establish its desired "*fait accompli*"[212] in the OPT.

[210] Benjamin Netanyahu, Tweet (16 Oct. 2023) (since deleted).

[211] B'Tselem, *Press Release: Revenge policy in motion; Israel committing war crimes in Gaza* (10 Oct. 2023), *available at* https://tinyurl.com/yrbmxf65.

[212] *Wall Advisory Opinion*, para. 121.

2.71 As the former OPT Special Rapporteur, Michael Lynk, explained, and as Qatar previously noted in its Written Statement,[213] this settler-colonial project is the root cause of the spiralling cycle of violence we are witnessing today:

> [I]t is impossible for an acquisitive occupying power to settle hundreds of thousands of its citizens into occupied territory, create for them attractive living conditions equivalent to the home territory, and expropriate and alienate huge swaths of land and resources for their benefit and security, without also immiserating the indigenous people and triggering their perpetual rebellion.[214]

2.72 Rather than impeding the achievement of peace in the region, Qatar is of the view that the Court's opinion will serve as an impetus to revive the political process necessary to achieve the end of the occupation, the end of the current cycle of violence, and an enduring peace.[215] In this sense, an advisory opinion concerning the legal status of the occupation can only "present an additional element in the

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[213] QWS, para. 2.3.

[214] Human Rights Council, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/49/87 (12 Aug. 2022), paras. 35-36.

[215] Written Statement of Ireland, para. 10 ("Finally, as to the argument that an advisory opinion would impede a negotiated, political solution to the Israeli-Palestinian conflict: in Ireland's view it is the prolonged absence of any prospect of such a solution for many years that makes the provision of an advisory opinion at this moment all the more necessary. The Court's authoritative clarification of the important legal issues raised in the present request for an advisory opinion would, in Ireland's view, help to provide an essential basis for a just, lasting and comprehensive peace between Israel and Palestine."); Written Remarks of the Kingdom of Morocco, p. 4 ("the Kingdom of Morocco expresses the hope that the Advisory Opinion that the Court will be willing to give will promote a constructive peace dynamic, with a view to an applicable, equitable and lasting solution"); Written Statement of the Government of the Grand Duchy of Luxembourg, para. 6 (« *Il espère que l'avis consultatif de la Cour pourra guider l'action de l'Assemblée générale et renforcer ainsi le rôle des Nations Unies dans le processus de paix au Moyen-Orient.* »); Written Statement of the African Union, para. 215 ("Beyond clarifying what the law provides for all States and the UN, the Court's direction in this respect cannot but assist the peace process, by jolting all international stakeholders into action, now with a clearer roadmap of their duties and obligations."); Written Statement of the Republic of The Gambia, para. 1.4 ("A clear decision from the Court regarding the illegality of the occupation will help galvanize international action to protect the rights of the Palestinian people.").

negotiations on the matter",[216] and provide Palestine, Israel and the international community with an adequate legal framework to find a lasting solution. From the former Yugoslavia[217] to Ireland[218] and Colombia,[219] recent experience demonstrates that international courts and tribunals often play key roles in establishing the conditions for a true and lasting peace, a peace that must be built on justice. Qatar is confident that the advisory opinion the Court will issue in these proceedings will serve that same goal.

2.73 Beyond facilitating a negotiated solution, the Court's advisory opinion will enable the General Assembly and other United Nations organs to exercise their

[216] *Nuclear Weapons* Advisory Opinion, para. 17.

[217] The Dayton Accords were concluded *after* the establishment of the ICTY by the UN Security Council, and expressly refer to the tribunal as an "entit[y] involved in implementation of this peace settlement". *See General Framework for Peace in Bosnia and Herzegovina*, UN Doc. A/50/79C and S/1995/999 (30 Nov. 1995), p. 23, art. X, *available at* https://tinyurl.com/39f9bvzb.

[218] The 1998 Good Friday Agreement features the full implementation of the European Convention on Human Rights and access to the European Court of Human Rights are "safeguards" of the negotiated peace. *See* The Northern Ireland Peace Agreement (10 Apr. 1998), *available at* https://tinyurl.com/ma7jffnz; Ireland, "About the Good Friday Agreement" (last accessed: 10 Oct. 2023), *available at* https://tinyurl.com/5n65zrnz. *See also* A. O'Donogue & B. Warwick, *Human Rights Reform and Northern Ireland*, Durham University Law School Briefing no. 24 (2015), *available at* https://tinyurl.com/525x9xb8 ("The Good Friday Agreement (a key part of the Northern Irish peace process) enshrined a fundamental role for the ECHR in moderating the values of plurality and equality in the 'new' Northern Ireland.").

[219] Colombia's 2016 Final Peace Agreement was catalysed by the constructive role played by the International Criminal Court and the Inter-American Court of Human Rights, and led to the establishment of the *Jurisdicción Especial para la Paz*. *See* The University of Edinburgh, Peace Agreements Database, "Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace" (24 Nov. 2016), *available at* https://tinyurl.com/bd9eh9pw. *See also* C. Hillebrecht *et al.*, "The Judicialization of Peace" 59(2) *Harvard International Law Journal* 279 (6 Aug. 2018), University of Wisconsin Legal Studies Research Paper No. 1449, *available at* https://tinyurl.com/38kpe4ja, Abstract ("Throughout four years of peace talks, many predicted that the International Criminal Court and the Inter-American Court of Human Rights would impede peace by demanding prosecution of war criminals. Instead, the 2016 Colombian peace accord opens the way to a far less punitive peace than many of those familiar with the courts and underlying treaties would have deemed possible. The effect of the engagement of the international courts in Colombia has not been to impose rigid conditions from afar, but rather to allow domestic players to reinterpret the content of Colombia's international legal obligations: the terms of Colombia's peace were produced through—not despite—the international courts' ongoing deliberative engagement with the peace process.").

functions to oversee the restoration of peace in the region. The absence of a permanent and just solution to the question of Palestine represents an ongoing threat to international peace and security. Recent events only make that reality more painfully clear. Indeed, history teaches that colonial and apartheid regimes always come to an end in one of two ways: through bloodshed or through justice. By providing its advisory opinion, the Court will put its weight firmly behind the latter.

CHAPTER 3
ISRAEL'S PROLONGED OCCUPATION OF THE OPT IS ILLEGAL

3.1 In the first part of question (b) of the Request, the General Assembly asked the Court to determine "[h]ow … the policies and practices of Israel [in the conduct of the occupation of the OPT] … affect the legal status of the occupation …".[220] In answering this question, the General Assembly asked the Court to apply "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".[221]

3.2 Qatar explained in its Written Statement that this question "ask[s] the Court to make a simple but historic assessment: in light of the myriad illegalities revealed by question (a), has the occupation itself become illegal?"[222]

3.3 The State of Palestine takes the view that the answer is plainly "yes". In its written statement, the Palestine explained that:

> Because Israel's prolonged 56-year occupation of the OPT is structurally and existentially reliant upon and inseparable from its egregious violations of peremptory norms of general international law, derogation from which is not permitted, the occupation itself must be regarded as illegal, with all relevant legal consequences that attach under the law of international responsibility.[223]

[220] Request, para. 18(b).

[221] *Ibid.*, para. 18.

[222] QWS, para. 1.8.

[223] Written Statement of the State of Palestine, para. 6.19.

3.4 Qatar agrees. As it demonstrated in Chapter 4 of its own Written Statement, Israel's occupation of the OPT is illegal because it indefinitely violates two different *jus cogens* norms: the requirement to respect the right to self-determination of the Palestinian people and the prohibition on apartheid.

3.5 In addition to Palestine and Qatar, 27 other States, as well as all three international organizations that submitted written statements expressly conclude that the occupation is illegal.[224] In addition to the two reasons that Qatar has identified, other written statements demonstrate that Israel's occupation is illegal because it violates the *jus cogens* prohibition on the use of force enshrined in Article 2(4) of the UN Charter, as well as its corollary, the peremptory prohibition of the acquisition of territory by the use of force. Still other written statements also show that the occupation is illegal because it fundamentally violates the law of occupation insofar as it is permanent and/or is not carried out in good faith or in the best interests of the Palestinian people.

3.6 **Section I** of this Chapter summarizes each of the five reasons participating States and international organizations consider the occupation illegal. **Section II** then explains why the *dispositif* of the Court's advisory opinion should conclude that the occupation is illegal for those five reasons.

I. The Reasons Underlying the Illegality of Israel's Occupation

3.7 Qatar's Written Statement documented the myriad of ways that Israel violates discrete rules of international law in carrying out its occupation of the OPT. This includes the systematic violation of multiple *jus cogens* norms. It is therefore unsurprising that 29 States and all three international organizations concluded that the occupation of the OPT itself is illegal. Five main reasons were given: Israel's

[224] *See* Appendix 1.

occupation violates (i) the *jus cogens* requirement to respect the right to self-determination; (ii) the *jus cogens* prohibition on apartheid; (iii) the *jus cogens* prohibition on the use of force; (iv) the *jus cogens* prohibition on the acquisition of territory by force; and (v) the law of occupation, including because it is permanent and not carried out in good faith or the best interests of the Palestinian people. Appendices 2-6 to these Written Comments identify relevant passages of States' written statements advocating for the illegality of the occupation based on each of these reasons.

A. ISRAEL'S OCCUPATION VIOLATES THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

3.8 Qatar's Written Statement explained that because the obligation to respect the right to self-determination is a *jus cogens* norm, an occupation is illegal where it intrinsically and indefinitely infringes that right.[225]

3.9 The written statements submitted by 31 other States and all three international organizations agree that Israel's prolonged occupation of the OPT violates the Palestinian people's right to self-determination in breach of international law.[226] That is also the unanimous conclusion of the various UN bodies that have considered the issue,[227] the most recent of which is the 28

[225] QWS, paras. 4.10, 4.48.

[226] *See* Appendix 7.

[227] *See, e.g.*, Human Rights Council, Resolution 49/28, *Right of the Palestinian people to self-determination*, UN Doc. A/HRC/RES/49/28 (11 Apr. 2022), para. 7 ("*Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices"); UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 35 ("Altogether, the imposition of settlers, settlements and settlement infrastructure in the topography and space of the Palestinians has served to prevent the realization of the Palestinians' right to self-determination, violating a number of peremptory norms

September 2023 report by the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem. That report concluded that "the continuing violation by Israel of the right of the Palestinian people to self-determination is unlawful under international law".[228]

3.10 As Palestine's written statement aptly put it, the violation of the Palestinian people's right to self-determination is an "essential structural feature[]" of Israel's occupation of the OPT.[229]

3.11 Of the 32 States and three international organizations that concluded that the occupation violates the Palestinian people's right to self-determination, 18 States (including Qatar) and all three international organizations derive the further legal consequence that such a violation renders the occupation illegal as a whole.[230] The following statements are illustrative:

- The Gambia: "As a peremptory norm of international law, no derogation is permitted from respecting the right of the Palestinian people to self-

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of international law, absolutely prohibited under international law."); Request, para. 6 (*Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which, inter alia, gravely and detrimentally impact the human rights of the Palestinian people, including their right to self-determination, and the prospects for achieving without delay an end to the Israeli occupation that began in 1967 and a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides, and calls for the full respect and implementation of all relevant General Assembly and Security Council resolutions in this regard, including Security Council resolution 2334 (2016) of 23 December 2016").

[228] OHCHR, *Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel* (Sept. 2023), *available at* https://tinyurl.com/yrvdrnvz, para. 6.

[229] Written Statement of the State of Palestine, para. 6.18.

[230] *See* Appendix 2. *See also* Written Statement of the African Union, para. 91(b) (arguing as an independent ground of illegality as a whole that "Israel's prolonged occupation of the Palestinian territories deprives the State of Palestine of its full sovereignty, further depriving the Palestinian people of their right to self-determination").

determination. As such, Israel's occupation is illegal and must expeditiously be brought to an end."[231]

- Guyana: "An occupation which involves, and is inextricably founded upon, … serious breaches of jus cogens norms [including the right to self-determination] is not – and could not ever be – a lawful occupation."[232]

- Pakistan: "A breach of self-determination in its own right provides a stand-alone ground for illegality of the occupation."[233]

- Mauritius: "Israel's occupation of the OPT – including through its illegal annexation of Palestinian territory – is an enduring and comprehensive 'impediment to the exercise by the Palestinian people of its right to self-determination'. Accordingly, Israel is under an obligation to immediately end its occupation of the OPT".[234]

3.12 Though the remaining fourteen written statements that concluded that Israel's occupation violates the right to self-determination did not expressly conclude that this requires a finding that the occupation itself is illegal, none in any way opposed that conclusion. Nor could they, given the *jus cogens* character of the right to self-determination.

B. ISRAEL'S OCCUPATION CONSTITUTES A REGIME OF APARTHEID

3.13 As Qatar demonstrated in its Written Statement, insofar as it is indistinguishable from an institutionalized system of racial domination and oppression of the Palestinian people, it amounts to an illegal regime of apartheid.[235]

3.14 In these proceedings, 18 other States, and the League of Arab States and the Organization of Islamic Cooperation likewise conclude that Israel is practicing

[231] Written Statement of the Republic of The Gambia, para. 1.8.

[232] Written Statement by the Cooperative Republic of Guyana, para. 34.

[233] Written Statement of the Islamic Republic of Pakistan, para. 22(ii).

[234] Written Statement of the Republic of Mauritius, para. 22.

[235] QWS, Chapter 4, § II(B).

apartheid in the OPT.[236] Notably, South Africa and Namibia—two countries that themselves experienced apartheid—are among the States confirming this conclusion.[237] South Africa minced no words: "Israeli discriminatory and inhuman treatment of Palestinians has reached the threshold of apartheid within the meaning ascribed to it in the Apartheid Convention."[238]

3.15 Qatar also demonstrated that because the occupation constitutes a regime of apartheid, and because the prohibition of apartheid is a peremptory norm of international law, the occupation is, as a whole, illegal.[239] Qatar was not the only state to so conclude. At least 13 other States argued that the occupation is illegal as a whole because it amounts to an illegal regime of apartheid.[240] The following statements reflect the consensus amongst those States:

- Kuwait: "With robust parallels to the illegal mandate rule of apartheid South Africa over Namibia, Israel's occupation is in fundamental breach of its international obligations and the most fundamental rules of international law and its presence in the occupied territory is illegal."[241]

- Bangladesh: "[I]nsofar as Israel's discriminatory measures rise to the level of apartheid, as is increasingly apparent, the occupation would be illegal … by violating, and indeed being contingent upon, the violation of a peremptory norm of international law".[242]

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[236] *See* Appendix 8.

[237] Written Statement of the Government of the Republic of South Africa, para. 101; Written Statement of the Republic of Namibia, para. 120. *C.f. North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, para. 73 (noting the relevance of the views "of States whose interests [are] specially affected").

[238] Written Statement of the Government of the Republic of South Africa, para. 111.

[239] QWS, para. 4.108.

[240] *See* Appendix 3. In addition, the Republic of Cuba has stated that "the "situation [i.e., the occupation] … is an act of low-intensity genocide that is being perpetrated with systematic and effective cruelty". Written Statement of the Republic of Cuba, p. 15.

[241] Written Statement of the State of Kuwait, para. 34.

[242] Written Statement of the Government of the People's Republic of Bangladesh, para. 31(ii).

- Djibouti: "*Compte tenu de éléments développés ci-dessus, il est permis de conclure que l'occupation du Territoire palestinien est, comme telle, illégale au regard du droit international, et ceci dès l'origine, en ce qu'elle implique des violations de normes impératives de droit internationale, à savoir une entrave fondamentale a l'exercice par le peuple palestinien de son droit à l'autodétermination,* […] *en ce qu'elle conduit à l'établissement d'un régime de ségrégation voire d'apartheid*".[243]

3.16 A finding of apartheid requires the existence of "an institutionalized regime of systematic racial oppression and discrimination".[244] The eight written statements that agreed that Israel has instituted an apartheid regime in the OPT but did not explicitly conclude that the occupation is illegal as a whole for that reason nevertheless buttress the conclusion that Qatar and at least 13 other States have drawn. As Jordan succinctly stated: "The occupation has become an instrument to suppress the right of the Palestinian people to self-determination, becoming indistinguishable from unlawful regimes such as colonial domination or apartheid."[245]

C. ISRAEL'S OCCUPATION VIOLATES THE *JUS COGENS* PROHIBITION ON THE USE OF FORCE

3.17 Twelve States and two international organizations (that collectively represent 57 UN member States) take the view that Israel's occupation is also illegal because it violates the *jus cogens* prohibition on the use of force established under the *jus ad bellum*.[246] Qatar agrees.

[243] Written Statement of the Republic of Djibouti, para. 31.

[244] QWS, para. 4.70.

[245] Written Statement of the Hashemite Kingdom of Jordan, para. 5.13.

[246] *See* Appendix 4.

3.18 The prohibition on the threat or use of force is, of course, a *jus cogens* norm[247] that is also enshrined in Article 2(4) of the UN Charter.[248] Self-defence is the only exception to the prohibition;[249] any exercise of the inherent right to self-defence must also be necessary and proportionate to the threat against which it is directed.[250] Even if a belligerent occupation were to begin with a lawful use of force, its continuation could only be justified by an ongoing, valid claim of self-defence.[251] As a use of force,[252] an ongoing occupation must remain necessary and proportionate to the threat posed to the occupying Power.[253]

3.19 Israel's surprise attack in June 1967 violated this fundamental prohibition on the use of force because it was not justified by self-defence.[254] Israel was plainly the aggressor. In any event, even if the attack had been justified—which it was not—the resulting 56-year (and counting) occupation was not necessary or proportionate to any threat Israel may once have faced. Maintaining an occupation for more than half a century, while annexing parts of the occupied territories *de*

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[247] ILC, *Draft Articles on the Law of Treaties, with commentaries*, in YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1966 (Vol. II), p. 247, Article 50 Commentary, para. 1.

[248] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14 (hereinafter, "***Military and Paramilitary Activities*, Judgment on Merits**"), paras. 187-188.

[249] UN Charter, art. 51; *Military and Paramilitary Activities*, Judgment on Merits, para. 193.

[250] *Military and Paramilitary Activities*, Judgment on Merits, paras. 176; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168 (hereinafter, "***Armed Activities*, Judgment on Merits**"), para. 147.

[251] *Wall* Advisory Opinion, para. 139.

[252] UNGA, Resolution 3314 (XXIX), *Definition of Aggression*, UN Doc. A/RES/3314(XXIX) (14 Dec. 1974), art. 3(a).

[253] *See, e.g.*, *Armed Activities*, Judgment on Merits, para. 147; UNSC, Resolution 545 (1983), UN Doc. S/RES/545 (20 Dec. 1983), para. 1 (condemning South Africa's "continued military occupation of parts of southern Angola which constitutes a flagrant violation of international law and of the independence, sovereignty and territorial integrity of Angola").

[254] *See* Prof. Rashid Khalidi, *Settler Colonialism in Palestine (1917-1967)* (20 July 2023), pp. 40-41. QWS, Vol. II, Annex 1.

jure and *de facto* and subjecting the occupied population to a regime of apartheid, is manifestly unnecessary and disproportionate.

3.20 The following passages from the written statements of other States and international organizations reflect broad agreement on this point.

- Belize: "Israel's occupation of the Palestinian territory in June 1967 resulted from a use of force against Egypt and Jordan, which were then occupying the Palestinian territory. … Accordingly, the occupation was unlawful from its inception and continues to be so. Even if the Court were not to reach a view on the legality of Israel's initial use of force, the occupation is in any event now unlawful: the conditions of necessity and proportionality would have ceased to have been met a very long time ago. At the absolute latest, those conditions would have ceased to have been met once Israel concluded peace agreements with Egypt and Jordan, which occurred in 1979 and 1994 respectively. Consequently, Israel has for a very long time been obliged to end its occupation, but it has instead remained in occupation. Its ongoing occupation, as a whole, is therefore unlawful and an act of aggression."[255]

- The Gambia: "In sum, Israel's decades-long occupation violates the laws on the use of force and is therefore illegal. Even if it had once been a lawful use of force in response to an armed attack—and it was not—it could not possibly have remained lawful for 56 years. Israel has not been facing an ongoing armed attack and the prolonged occupation has been neither necessary nor proportionate. As a result, Israel's occupation is illegal as a whole and must end."[256]

- Namibia: "Israel's use of force against Egypt and other Arab States in 1967 was a pre-emptive use of force in the absence of an armed attack, and therefore an unlawful act of aggression in violation of Article 2(4) and Article 51 of the UN Charter. Israel's presence in the Palestinian territory has been illegal from the outset in 1967 and the consequent occupation is also illegal."[257]

[255] Written Statement of Belize, para. 33 (footnotes omitted).

[256] Written Statement of the Republic of The Gambia, para. 1.31.

[257] Written Statement of the Republic of Namibia, para. 142.

- League of Arab States: "In 1967 there was no actual or imminent threat of armed attack that justified the use of force, including the occupation, in self-defence. Israel's use of force then, which led to the introduction of the occupation, had no valid basis in international law. In consequence, the occupation has lacked a valid legal basis, as a form of self-defence, in the law on the use of force from the outset, and has therefore been an illegal use of force, an aggression, from the beginning."[258]

3.21 In its written statement, Israel notes the national security threat posed by non-State militant groups operating within the OPT,[259] including Gaza.[260] The Court has already ruled, however, that this alleged threat does not trigger Israel's right to self-defence. As it stated in the *Wall* advisory opinion, threats from within the occupied territory—which includes threats from militant groups that have arisen in response to Israel's occupation—cannot support a claim for the exercise of the right to self-defence under Article 51 of the UN Charter:

> 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.[261]

3.22 The Court also clarified in the *Wall* advisory opinion that while Israel has the right and duty to respond to acts from such non-State militant groups, it must do so in compliance with international law:

> The fact remains that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population. It has the right, and indeed the

[258] Written Submission of the League of Arab States, para. 68.

[259] Statement of the State of Israel Pursuant to the Court's Order of 3 February 2023 Relating to the Advisory Proceedings Initiated by UN General Assembly Resolution 77/247, pp. 1-2.

[260] As discussed in Qatar's Written Statement, Gaza is still under Israeli occupation given its near-total military blockade of the territory, which allows Israel full control over Gaza. QWS, p. 2, note 2.

[261] *Wall* Advisory Opinion, para. 139.

> duty, to respond in order to protect the life of its citizens. The measures taken are bound nonetheless to remain in conformity with applicable international law.[262]

3.23 Even if Israel could legitimately invoke Article 51 of the Charter in relation to threats from non-State groups within the OPT (*quod non*), Israel's 56-year-long occupation, and all of its attendant violations of international law as detailed in Chapter 2 of Qatar's Written Statement, are neither necessary nor proportionate to the alleged threat faced.

3.24 Recent developments in and around Gaza—including the clear violations of international humanitarian law since 7 October 2023 detailed in Chapter 2, Section III above, which have been widely condemned by the international community[263]—only confirm the unnecessary and disproportionate nature of Israel's occupation.

3.25 Lest there be any doubt about this, Israel has made clear that its actions are not motivated by military necessity but by revenge. In an explicit confirmation that Israel considers *all* Palestinians in Gaza legitimate targets, the Israeli President, Isaac Herzog, stated that "[i]t's an entire nation out there that is responsible. This rhetoric about civilians not aware, not involved, it's absolutely not true."[264] Israeli

[262] *Ibid.*, para. 141.

[263] *See supra* Chapter 2, § III.

[264] C. McGreal, "The language being used to describe Palestinians is genocidal," *The Guardian* (16 Oct. 2023), *available at* https://tinyurl.com/yc8pr7ar; A. Speri, "Before they vowed to annihilate Hamas, Israeli officials considered it an asset," *The Intercept* (14 Oct. 2023), *available at* https://tinyurl.com/4t5zjbr4. For the original press conference, *see* CNN-News18, "Israel President Isaac Herzog Press Conference LIVE | Israel-Hamas Attack News Updates LIVE | N18L," *YouTube* (12 Oct. 2023), *available at* https://tinyurl.com/523ea72h.

army officials have also stated that they are focused on "damage and not on accuracy".[265]

3.26 Thus, Israel's own representations regarding this latest escalation in violence in Gaza conclusively indicate that its use of force is disproportionate and unjustifiable under a claim of self-defence. This conclusion is supported by other States[266] and UN officials, including Special Rapporteur Albanese, who said:

> Again, in the name of self-defence, Israel is seeking to justify what would amount to ethnic cleansing. Any continued military operations by Israel have gone well beyond the limits of international law. The international community must stop these egregious violations of international law now, before tragic history is repeated. Time is of the essence. Palestinians and Israelis both deserve to live in peace, equality of rights, dignity and freedom.[267]

D. ISRAEL'S OCCUPATION VIOLATES THE *JUS COGENS* PROHIBITION ON ACQUISITION OF TERRITORY THROUGH THE USE OF FORCE

3.27 The acquisition of territory through the use of force is a corollary to the *jus ad bellum* prohibition on the use of force codified in Article 2(4) of the UN

[265] J. Johnson, "Israeli Army Official Admits Gaza Bombing Campaign Is Focused on 'Damage and Not on Accuracy," *Common Dreams* (10 Oct. 2023), *available at* https://tinyurl.com/2jke88hf.

[266] *See, e.g.,* C. Tan, "China says Israel's actions in Gaza are 'beyond self defense' as U.S. races to avert wider conflict," *CNBC* (15 Oct. 2023), *available at* https://tinyurl.com/2hzrx2bv. *See also* OIC, *Final Communiqué of the extraordinary open-ended meeting of the OIC Executive Committee at the level of Foreign Ministers on the brutal Israeli military aggression against the Palestinian people* (18 Oct. 2023), *available at* https://tinyurl.com/vk2k7e9a (condemning Israel's offensive as contravening "all international norms and laws, and of the most basic humanitarian principles and values").

[267] OHCHR, *Press Release: UN expert warns of new instance of mass ethnic cleansing of Palestinians, calls for immediate ceasefire* (14 Oct. 2023), *available at* https://tinyurl.com/4p387m2j.

Charter.[268] As Japan observed in its written statement, this is "the most fundamental rule of the post-war regime for peace based on the rule of law among nations"[269] and it "extends to … acquiring or strengthening control over [another State's] territories through coercion".[270] Indeed, annexation is not compatible with the nature of a lawful occupation, which, as the French Republic puts it, is a "*nécessairement provisoire*" situation.[271]

3.28 In its Written Statement, Qatar demonstrated that Israel annexed East Jerusalem *de jure*[272] and Area C of the West Bank *de facto*.[273] Thirty-four other States and all three international organizations observed that Israel has annexed Palestinian territory in their written statements.[274] As Qatar explained in its Written Statement, the expansion of the illegal settlements of Jewish Israelis in the OPT has been one of the principal methods by which Israel pursues its goal of annexation.[275] Just in the first half of 2023 alone, Israel has approved 12,855 settler

[268] UNGA, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations*, UN Doc. A/RES/2625(XXV) (24 Oct. 1970), Annex, Preamble (a).

[269] Written Statement of Japan, para. 9.

[270] *Ibid.*, para. 12.

[271] Written Statement of the French Republic, para. 50. *See also* Written Statement of the Swiss Confederation, para. 44 ("*Les règles du droit de l'occupation reposent sur l'idée selon laquelle l'occupation n'est qu'une situation temporaire.*"); Written Statement of the Plurinational State of Bolivia, p. 13 ("There is no such thing as '"permanent occupation … in international law'").

[272] QWS, Chapter 3, § I(A).

[273] *Ibid.*, Chapter 3, § I(B).

[274] *See* Appendix 9. *See also* Written Statement of Spain, para 5.2 ("The EU has consistently rejected the continued settlement expansion and all measures that may be tantamount to a *de iure* or *de facto* annexation of the Palestinian territories."); Written Statement of the French Republic, para. 54 ("*depuis 2004, Israël a poursuivi et accentué sa politique d'implantation de colonies en territoire palestinien occupé, en violation de ses obligations au regard du droit international*"), para. 57 ("*Comme l'avait indiqué la Cour dans le cadre de la construction du mur, une telle situation peut amener à un 'fait accompli' et à un processus d'annexion de facto*").

[275] *See* QWS, Chapter 2, § I.

housing units across the West Bank.[276] **Figure 3.1** below illustrates the expansion of settlements in OPT.

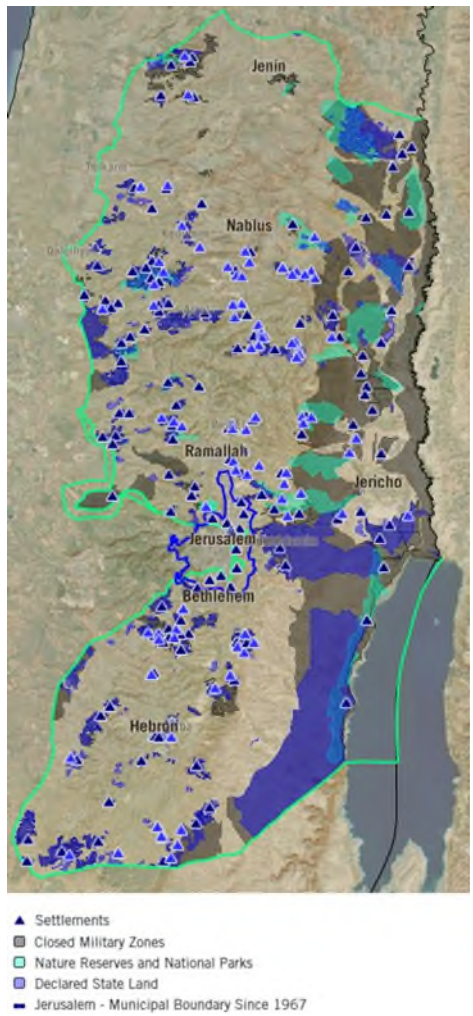

Figure 3.1: Map of Settlements in the West Bank[277]

[276] "A record number of housing units were promoted in the West Bank in only six months," *Peace Now* (13 July 2023), *available at* https://tinyurl.com/4rdmh2h8 ("In the first half of 2023, the Israeli government promoted 12,855 housing units in the West Bank, of which 9,805 were for deposit and 3,500 for validation. This is a record number of housing units in the West Bank, also on an annual scale.").

[277] B'Tselem & Forensic Architecture, "Conquer and Divide" (2018), *available at* https://tinyurl.com/mrxju5ht .

3.29 Of deep concern, Israel has now also threatened to annex portions of Gaza. On 18 October 2023, Israel's Foreign Minister stated that "[a]t the end of this war, not only will Hamas no longer be in Gaza, but the territory of Gaza will also decrease",[278] a clear indication that Israel intends to annex parts of Gaza.

3.30 In this regard, Qatar observes that, in 2016, the UN Security Council condemned "all measures aimed at altering the demographic composition, character and status of the [OPT] including, *inter alia,* the construction and expansion of settlements", reaffirmed "the inadmissibility of the acquisition of territory by force", and called upon all States "to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967". [279] The resolution thus made clear that Israel has no claim or right to sovereignty over these territories.

3.31 Of the 37 statements recognizing Israel's annexation, 24 reached the further legal conclusion that the occupation is illegal as a whole because Israel's annexation of the OPT is an integral feature of the occupation.[280] The following statements are illustrative of this position:

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[278] J. Magid, "Foreign minister: At war's end, not only will Hamas be gone, but Gaza's territory will shrink," *The Times of Israel* (18 Oct. 2023), *available at* https://tinyurl.com/2p96rf3v.

[279] UNSC, Resolution 2334 (2016), *The Situation in the Middle East*, UN Doc. S/RES/2334 (2016) (23 Dec. 2016) (Dossier No. 1372). Just a week before this submission, two UNSC resolutions that would have called for a humanitarian ceasefire in Gaza were vetoed. On 16 October 2023, the United States, the UK, France, and Japan voted against a Security Council resolution proposed by Russia. *See* "Security Council rejects Russian resolution on Gaza," *UN News* (16 Oct. 2023), *available at* https://tinyurl.com/434thf4b. On 18 October 2023, the United States vetoed a new United Nations Security Council resolution proposed by Brazil. *See* Brazil, Ministry of Foreign Affairs, *Press Release: Statement by the Permanent Representative of Brazil to the United Nations on the Draft Resolution S/2023/773*, (18 Oct. 2023), *available at* https://tinyurl.com/2dk8xnte. *See also* Dag Hammarskjöld Library, "Security Council Data - Vetoes Since 1946 for authoritative UN veto dataset," *available at* https://tinyurl.com/3mskrcfk.

[280] *See* Appendix 5. In addition, though it did not conclude that Israel has indeed annexed any part of the OPT *de jure* or *de facto*, the Kingdom of Spain observed that "[a]ny practice conducive to *de*

- African Union: "Israel's occupation of those territories qualifies as an internationally wrongful act of a continuing character" because of, *inter alia*, "the prolonged Israeli occupation and the policies and practices associated with it amount to the *de facto* and *de jure* annexation of the Palestinian territories, which violates the prohibition on the acquisition of territory by force".[281]

- Guyana: "Through its acts in the OPT since 1967, Israel has systematically violated … the jus cogens prohibition on annexation …. The violation[] of th[at] peremptory norm[] of international law—which the evidence shows [is] grave, longstanding and ongoing – [is] not ancillary or accidental or [an] isolated aspect[] of an otherwise lawful temporary occupation. Rather, [it is] an integral feature and a permanent consequence of Israel's continuing presence in the OPT. … An occupation which involves, and is inextricably founded upon, such breaches of jus cogens norms is not—and could not ever be —a lawful occupation."[282]

- Egypt: "[A] protracted occupation that is coupled with measures to … acquire territory in violation of the cardinal principle of the prohibition of the acquisition of territory by force … is illegal *per se* …".[283]

- Jordan: "[T]he colonization, confinement and fragmentation of the Occupied Palestinian Territory, including East Jerusalem, cannot be considered to be compatible with the law of occupation. The latter, read together with the principle of non-acquisition of territory by force, prohibits the annexation of occupied territory, and the occupying Power must always act in accordance with this basic tenet. Israel's policy of settlements and annexation is a direct and continuing affront to this."[284]

3.32 Qatar agrees with and endorses all these statements.

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iure or *de facto* annexation of the Palestinian occupied territories would render such an occupation illegal." Written Statement of Spain, para. 8.2.

[281] Written Statement of the African Union, para. 91(c).

[282] Written Statement by the Cooperative Republic of Guyana, paras. 33-34.

[283] Written Statement of the Arab Republic of Egypt, para. 249.

[284] Written Statement of the Hashemite Kingdom of Jordan, para. 5.9.

E. ISRAEL'S OCCUPATION VIOLATES INTERNATIONAL HUMANITARIAN LAW

3.33 Israel's occupation of the OPT is not temporary in character. To the contrary, it has instituted what is now one of the longest-running military occupations in modern history.[285] Israel has also illegally annexed East Jerusalem and Area C of the West Bank;[286] established permanent settlements of Jewish Israelis there;[287] and, instead of abiding by its obligation to administer the OPT in the best interests of the occupied population,[288] it treats the OPT as a colony over which it is permanently sovereign.[289] In January 2023, Member of the Knesset, Zvika Fogel said that the "occupation of West Bank is permanent and Israel has the right to annex it".[290] And eight months later, Israel's Finance Minister Bezalel Smotrich's actions, exercising new powers in the OPT,[291] swiftly approved thousands of new settlement homes and legalized previously unauthorized

[285] *See* "Decisive international action needed to end Israeli occupation: UN experts," *UN News* (23 Oct. 2019), *available at* https://tinyurl.com/btftu937.

[286] QWS, Chapter 3, § I.

[287] *Ibid.*, Chapter 2, § I; Chapter 3, § I(B).

[288] UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/72/556 (23 Oct. 2017), para. 35 ("Th[e] best interests principle is anchored in the underlying norms of the laws of occupation, specifically those provisions of the Hague Regulations and the Fourth Geneva Convention that preserve the rights of the protected people and strictly regulate the actions of the occupying power. … These protections and prohibitions, together with the application of international human rights law, underscore the centrality of the best interests principle and the trustee character of the occupying power's responsibility.").

[289] *See* QWS, paras. 2.3-2.5.

[290] "Far-right Israeli Lawmaker Reacts to UN Vote: 'As of Now, Israel's Occupation Is Permanent'," *Haaretz* (1 Jan. 2023), *available at* https://tinyurl.com/5n7nzrht.

[291] *See* J. Sharon, "Netanyahu hands Smotrich full authority to expand existing settlements," *The Times of Israel* (18 June 2023), *available at* https://tinyurl.com/yx97djr8.

outposts,[292] thereby implementing his "victory through settlement" policy.[293] Still further, Israel has subjugated the indigenous Palestinian population by means of an illegal discriminatory regime of apartheid,[294] while denying them their right to self-determination.[295] In addition to breaching the *jus cogens* norms identified in the preceding sections, Israel's occupation is marred and defined by systematic, persistent and egregious violations of international human rights law[296] and IHL,[297] all in open contempt of resolutions of the UN Security Council and the General Assembly.[298]

3.34 All of these acts, detailed in Qatar's Written Statement, are not the acts of an occupying Power exercising its authority in a temporary manner, in good faith, and in the best interests of the occupied population. Nor are Israel's recent acts in violation of international law in Gaza, described above.[299] Rather, they evince the wholesale disregard for Israel's obligations as an occupying Power. Eight written

[292] *See* Y. Kubovich & B. Samuels, "Far-right Israeli Minister Lays Groundwork for Doubling West Bank Settler Population," *Haaretz* (18 Mar. 2018), *available at* https://tinyurl.com/y4jkarch; I. Debre, "Israel's finance minister now governs the West Bank. Critics see steps toward permanent control," *Associated Press* (14 Sept. 2023), *available at* https://tinyurl.com/4ycx4wd2.

[293] B. Reiff, "Smotrich wants one million West Bank settlers. That's not so far-fetched," *+972 Magazine* (12 July 2023), *available at* https://tinyurl.com/4wj3eta8.

[294] QWS, Chapter 4, § II.

[295] *Ibid.*, Chapter 4, § I.

[296] *Ibid.*, Chapter 3, § II.

[297] *Ibid.*, Chapter 3, § III.

[298] *See, e.g.*, Request, para. 1 (noting the existence of "measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, … contrary to the relevant resolutions of the Security Council"), para. 6 ("call[ing] for the full respect and implementation of all relevant General Assembly and Security Council resolutions in this regard, including Security Council resolution 2334 (2016) of 23 December 2016), para. 10 ("*reiterat[ing] its demand* for the full implementation of Security Council resolution 1860 (2009)) (emphasis in original), para. 11 ("*demand[ing]* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded in General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003) (emphasis in original).

[299] *See supra* Chapter 2, § III.

statements take the view that, for this reason alone (as distinguished from the violations the four *jus cogens* norms discussed in Sections A through D, *supra*), the occupation is illegal.[300] The following statements are representative of this position:

- South Africa: "Recognition that occupation is a temporary situation at the end of which control of the territory will return to the original sovereign is the most important principle in international humanitarian law relating to occupation. …. However, despite this basic principle, Israel has turned the temporary nature of its occupation in the Palestinian territories into a permanent situation. The total disdain and disrespect for international humanitarian law principles by Israel render its occupation in the Palestinian territories illegal."[301]

- Chile: "[T]he occupation of Palestinian territory is illegal" because, *inter alia*, "Israel has violated its obligation to act in the best interest of the population under occupation."[302]

- The Maldives: "Israel's disregard for its duties under international law as occupying power demonstrates that it has not managed, and is not today managing, the OPT in the best interests of the Palestine people or in good faith."[303]

- Kuwait: Israel has "breached the spectrum of legal duties and obligations required of an occupying power when it administers another territory. … It has consistently acted in bad faith and in conscious defiance of scores of Security Council resolutions and hundreds of General Assembly resolutions. … The State of Kuwait submits that the Israeli occupation of Palestinian territory must be condemned as an ongoing illegal situation…".[304]

[300] *See* Appendix 6.

[301] Written Statement of the Government of the Republic of South Africa, para. 70.

[302] Written Statement of the Republic of Chile, para. 119.

[303] Written Statement of the Republic of Maldives, para. 37.

[304] Written Statement of the State of Kuwait, paras. 33-34.

3.35 The two most recent OPT Special Rapporteurs have reached similar conclusions. In his 2017 report, the former OPT Special Rapporteur Michael Lynk argued that a lawful occupation must satisfy the following four requirements:

> (a) the belligerent occupier cannot annex any of the occupied territory;
>
> (b) the belligerent occupation must be temporary and cannot be either permanent or indefinite; and the occupant must seek to end the occupation and return the territory to the sovereign as soon as reasonably possible;
>
> (c) during the occupation, the belligerent occupier is to act in the best interests of the people under occupation; and
>
> (d) the belligerent occupier must administer the occupied territory in good faith, including acting in full compliance with its duties and obligations under international law and as a member of the United Nations.[305]

He then found that Israel's occupation of the OPT failed to satisfy *any* of those requirements.[306] In their written statements, Bangladesh, Indonesia and South Africa expressly adopted this test and relied on it to conclude Israel's occupation is illegal as a whole.[307]

3.36 The current Special Rapporteur, Francesca Albanese, likewise endorsed this test and similarly determined that "[t]he Israeli occupation is illegal because it has proven not to be temporary, is deliberately administered against the best

[305] UNGA, *Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/72/556 (23 Oct. 2017), pp. 10-12.

[306] *Ibid.*, paras. 45-63.

[307] Written Statement of the Government of the Republic of South Africa, paras. 138-140; Written Statement of the Government of the Republic of Indonesia, para. 51; Written Statement of the Government of the People's Republic of Bangladesh, paras. 19-25.

interests of the occupied population and has resulted in the annexation of occupied territory, breaching most obligations imposed on the occupying Power."[308]

3.37 Qatar agrees with these conclusions and respectfully submits that the Court should conclude that Israel's occupation is illegal as a whole for the additional reason that it is fundamentally at odds with the lawful purposes of a belligerent occupation: it is not carried out in good faith or in the best interests of the Palestinian people, and has become permanent.[309]

II. The Court Should Adopt Each of the Five Reasons Discussed Above in Answering the First Part of Question (b)

3.38 Question (a) of Request asks: "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?"[310] In answering question (a), Qatar submits that the Court should determine that, among

[308] UNGA, *Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/77/356 (21 Sept. 2022), para. 10(b).

[309] Out of an abundance of caution, Qatar emphasizes that a determination the occupation is illegal as a whole by no means entails the non-application of international humanitarian law. *See, e.g.*, Written Statement of the Swiss Confederation, para. 51 ("*Le droit de l'occupation et la légalité de l'occupation sont deux questions distinctes. Le droit de l'occupation s'applique indépendamment de la question de la légalité de l'occupation. L'occupation est une situation qui est régie par le droit international humanitaire alors que la légalité de celle-ci est régie par la Charte des Nations Unies. Le caractère potentiellement illégal d'une occupation ne doit pas remettre en question la séparation fondamentale entre le Ius ad bellum et le Ius in bello. Le droit de l'occupation continue donc de s'appliquer dans le Territoire palestinien indépendamment de la question de la légalité de l'occupation. Dans ce cadre, il serait opportun que la Cour se prononce sur les conséquences du caractère permanent des mesures prises par Israël dans le Territoire palestinien occupé quant au statut de l'occupation au regard du droit international général, en particulier de la Charte des Nations Unies*.").

[310] Request, para. 18(a).

other things, the policies and practices of Israel in the OPT: (i) violate the *jus cogens* right to self-determination of the Palestinian people,[311] (ii) establish a regime of apartheid, a *jus cogens* violation,[312] (iii) violate the *jus cogens* prohibition on the use of force,[313] (iv) violate the *jus cogens* prohibition on the acquisition of territory by force,[314] and (v) violate the law of occupation, including because the occupation is permanent and not carried out in good faith or in the best interests of the Palestinian people.[315]

3.39 Once it reaches those conclusions, the first part of question (b) asks the Court to explain how its conclusions as to question (a) affects the legal status of the occupation. For the reasons stated in its Written Statement and reiterated above, Qatar submits that the Court should make clear in the *dispositif* that Israel's occupation is illegal in itself.

3.40 As stated, the first part of question (b) "ask[s] the Court to make a simple but historic assessment: in light of the myriad illegalities revealed by question (a), has the occupation itself become illegal?"[316] The question is thus "clearly formulated", "narrow and specific".[317] It will permit the Court to "give[] a reply

[311] QWS, Chapter 4, § I. *See also* Appendix 7.

[312] QWS, Chapter 4, § II. *See also* Appendix 8.

[313] *See generally* Appendix 4.

[314] *See generally* Appendix 9.

[315] *See generally* Appendix 6.

[316] QWS, para. 1.8.

[317] *See Kosovo* Advisory Opinion, para. 51.

'based on law'".[318] There are thus no "exceptional circumstances" for it to be reformulated in any way.[319]

3.41 Indeed, in rendering its answer to the first part of question (b), the Court is not limited to any particular treaty or legal regime. The General Assembly requested its views on the legal status of the occupation broadly applying "the rules and principles of international law", without limitation. There is a consensus among States and international organizations that Israel's occupation is illegal as a whole as a result of the application of diverse rules of international law and multiple *jus cogens* norms. To fully and adequately answer the first part of question (b), the Court must therefore address each of the five reasons presented in the written statements demonstrating the existential illegality of the occupation. Indeed, this is the inevitable consequence of applying all of the legal regimes the General Assembly identified.[320]

3.42 There is, moreover, no reason for an advisory opinion may not provide multiple *rationes decidendi* when they are called for, as they are here. It is true that, in contentious proceedings, the Court may consider it appropriate to decline to decide a particular issue if doing so is not necessary to the resolution of the dispute.[321] Indeed, the Court "is free to base its decision on the ground which in its

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[318] *Chagos* Advisory Opinion, para. 135 ("Although, in exceptional circumstances, the Court may reformulate the questions referred to it for an advisory opinion, it only does so to ensure that it gives a reply based on law'") (citing *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, para. 15).

[319] *Ibid*. *See also Kosovo* Advisory Opinion, para. 51.

[320] *See* Request, para. 18 (identifying as applicable law "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").

[321] *See, e.g.*, *Gabčikovo/Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997,* p. 7, para. 76 ("It is not necessary for the Court to determine whether there is a principle of international law or a general principle of law of 'approximate application' because, even if such a principle existed, it could by definition only be employed within the limits of the treaty in question."); *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J.*

judgment is more direct and conclusive".[322] The same is not necessarily true in the context of its advisory jurisdiction. As the Court observed in the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion: "The purpose of the advisory function is not to settle—at least directly—disputes between States, but to offer legal advice to the organs and institutions requesting the opinion."[323] Indeed, rendering an advisory opinion "represents [the Court's] participation in the activities of the Organization".[324]

3.43 In the present proceedings, the General Assembly has deemed that receiving an answer to the first part of question (b) would be "of assistance in carrying out its functions …".[325] Moreover, the General Assembly has requested the Court to provide advice regarding the legal status of the occupation in light of a wide variety of discrete breaches of various areas of international law.

3.44 Against this background, Qatar recalls the Court's recognition in the *Wall* Advisory Opinion that

> [t]he responsibility of the United Nations in this matter also has its origin in the Mandate and the Partition Resolution concerning Palestine. … This

Reports 1960, p. 6 at p. 43 ("Having arrived at the conclusion that the course of dealings between the British and Indian authorities on the one hand and the Portuguese on the other established a practice, well understood between the Parties, by virtue of which Portugal had acquired a right of passage in respect of private persons, civil officials and goods in general", the Court determined it was not necessary "to examine whether general international custom or the general principles of law recognized by civilized nations may lead to the same result".).

[322] *Case of Certain Norwegian Loans (France v. Norway), Judgment. I.C.J. Reports 1957*, p. 9 at p. 25.

[323] *Nuclear Weapons* Advisory Opinion, para. 15.

[324] *Chagos* Advisory Opinion, para. 65 (citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65 at p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62, para. 29; *Wall* Advisory Opinion, para. 44).

[325] *See Chagos* Advisory Opinion, para. 86.

> responsibility has been described by the General Assembly as "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy". … Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people.[326]

3.45 Qatar submits that a comprehensive answer to the first part 1 of question (b) would assist the General Assembly's ongoing efforts to bring about a "just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides".[327] This is all the more true in light of the recent outbreak of renewed hostilities. As Qatar explained in Chapter 2 of these Written Comments, an advisory opinion that thoroughly and completely resolves the question of the legal status of the occupation from all possible angles will help to catalyse a political resolution of the situation.

*

3.46 The written statements submitted in these proceedings show that Israel's occupation of the OPT is illegal as a whole for five reasons: it violates (i) the *jus cogens* requirement to respect the right to self-determination; (ii) the *jus cogens* prohibition on apartheid; (iii) the *jus cogens* prohibition on the use of force; (iv) the *jus cogens* prohibition on the acquisition of territory by force; and (v) the law of occupation, including because it is permanent and is not carried out in good faith

[326] *Wall* Advisory Opinion, para. 49 (citing UNGA, Resolution 57/107, *Committee on the Exercise of the Inalienable Rights of the Palestinian People*, UN Doc. A/RES/57/107 (3 Dec. 2002) (Dossier No. 417).

[327] Request, para 6.

or in the best interests of the Palestinian people. Each is a valid reason that independently requires the Court to determine that the occupation is illegal. And each should form part of the Court's *dispositif* in its answer to the first part of question (b).

CHAPTER 4
CONCLUSION

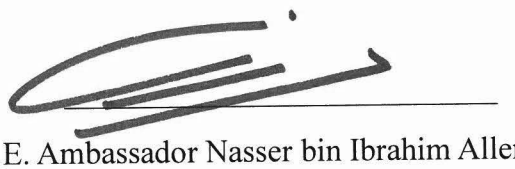
4.1 Qatar hereby reiterates and incorporates by reference the conclusions stated in its Written Statement of 25 July 2023.

4.2 In addition, on the basis of the written comments set forth above, Qatar respectfully submits the following additional conclusions to the Court:

I. There are no compelling reasons for the Court to decline to exercise its jurisdiction to give the Advisory Opinion requested by the General Assembly in its Resolution 77/247 of 30 December 2022.

II. In the *dispositif* answering the first part of question (b), the Court should conclude that Israel's occupation of the Occupied Palestinian Territory is illegal because it violates (i) the *jus cogens* requirement to respect the right to self-determination; (ii) the *jus cogens* prohibition on apartheid; (iii) the *jus cogens* prohibition on the use of force; (iv) the *jus cogens* prohibition on the acquisition of territory by force; and (v) the law of occupation, including because it is permanent and is not carried out in good faith or in the best interests of the Palestinian people.

Respectfully submitted,



H.E. Ambassador Nasser bin Ibrahim Allenqawi

AGENT OF THE STATE OF QATAR

25 OCTOBER 2023

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APPENDICES

Appendix 1 Written statements concluding that Israel's occupation is illegal

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