

GENEVA INTERNATIONAL CENTRE FOR JUSTICE (GICJ)

LEGAL IMPACT OF ISRAELI POLICIES IN OCCUPIED PALESTINIAN TERRITORIES



SEPTEMBER 2024

International Court of Justice, 19 July 2024 Advisory Opinion

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

Report and Position

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September 2024

Executive Summary

On 19 July 2024, the International Court of Justice issued the Advisory Opinion *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem*. This document aims to provide an overview of the Advisory Opinion, express the Geneva International Centre for Justice's position, and highlight the Court's most significant findings.

The Advisory Opinion

The Advisory Opinion concluded that Israel's continued presence in the Occupied Palestinian Territory is unlawful and that Israel is obliged to end occupation, cease all settlement activities, evacuate settlers, and make reparations for damages caused. The Opinion emphasized that all States are under an obligation not to recognize the situation created by Israel's illegal presence and to refrain from aiding or assisting in maintaining it. The Court also called on the United Nations to consider measures to end Israel's unlawful presence in the Palestinian territory.

Appended Opinions

The report includes analyses of the appended opinions and declarations from various judges. While there was only one dissenting opinion, the document reviews the separate opinions and declarations, offering a comprehensive view of the different perspectives expressed by the judges individually and jointly.

GICJ Position

GICJ fully supports the Court's conclusions, reaffirming its commitment to the Palestinian people's right to self-determination and urging Israel and the international community as a whole to conform to the Advisory Opinion. The Organization calls for concrete actions to uphold international law and facilitate a just resolution to the conflict.

Key Findings

In the final section, the report addresses and explains the main innovations and significant points of the Advisory Opinion:

- i. Authority of the Advisory Opinion;
- ii. Reverberating Effects on Other Proceedings;

iii. The Right to Self-Determination Recognized as Jus Cogens

iv. Extraterritorial Applicability of IHRL, Including CERD, and Violations of the Prohibition of Racial Segregation and Apartheid

v. The Relevance of the Oslo Accords

vi. Israel's Security Concerns

Advisory Opinion

On 19 July 2024, the International Court of Justice (ICJ) delivered its Advisory Opinion "*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*" (hereinafter, the "Advisory Opinion").

Procedure and Questions

On 19 January 2023, the Secretary-General of the United Nations communicated to the ICJ the decision by the United Nations General Assembly (UNGA) to seek an advisory opinion in accordance with Article 96 of the Charter of the United Nations (UN Charter) and pursuant to Article 65 of the Court's Statute. This decision, stemming from Resolution 77/247 adopted on 30 December 2022, requested the Court to address the following questions (Res., para. 18):

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"

I. Jurisdiction and Discretion

Before examining the merit of the questions, the Court needs to ascertain whether it has jurisdiction to issue the advisory opinion and, if so, whether it should, in the exercise of its discretion, decline to fulfil the request.

A. Jurisdiction

The Court must first of all determine whether it has authority, under the law, to examine the request and provide the opinion. According to Article 65 of the Court's Statute, in compliance with Article 96 of the UN Charter, the ICJ may give an advisory opinion on any 'legal question' at request of an authorized body.

The Court noted that the UNGA presented two questions (i) the legal consequences of Israel's policies and practices as an occupying power since 1967 and (ii) the impact of these policies and practices on the legal status of the occupation in light of international law rules and principles, and established that these inquiries were indeed legal questions. Thus, it affirmed to possess jurisdiction to render the advisory opinion.

B. Discretion

Article 65, para. 1, of the Court's Statute allows the Court to decline giving an advisory opinion even when jurisdictional conditions were met. However, the Court recalled that it should not, in principle, refuse to provide an opinion unless so demanded by compelling reasons.

In evaluating the existence of such reasons, the Court addressed the arguments expressed by some participants to the proceeding.

1. Some participants argued that the request related to an exclusively **bilateral dispute** between Palestine and Israel, with Israel not having consented to the Court's jurisdiction. The Court observed that the matter could not be regarded as solely bilateral, given the long-standing involvement of United Nations (UN) organs, the historical context, and the broad impact of the "Palestinian question."

2. It was argued that the UNGA sought the Court's **confirmation on specific conclusions rather than legal assistance**. The Court disagreed, stating that the request was aligned with the General Assembly's responsibilities and functions concerning the Occupied Palestinian Territory.

3. Concerns were raised that the Court's opinion might **undermine the Israeli-Palestinian negotiations** established under the Oslo Accords. The Court regarded this assertion as speculative.

4. Some participants suggested that the opinion might **interfere with the established framework of negotiations**, considered that it is the United Nations Security Council (UNSC) – rather than the UNGA – the primary responsible for the Israeli-Palestinian conflict. The Court noted that whether its opinion would affect the negotiations is merely a conjecture, and it further recognized the UNGA too has competence to address peace and security issues.

5. The argument that the Court **lacked sufficient information** was raised. The Court found that the submissions from over 50 States and international organizations, and a comprehensive dossier from the UN Secretary-General provided, instead, ample information.

6. The Court addressed concerns about potential **bias in the questions**, affirming its ability to interpret and reformulate them if necessary. The Court stated it would independently determine whether Israel's actions violated international law.

In conclusion, the Court found no compelling reasons to refuse the UNGA's request for an advisory opinion.

II. General Context

The Court recalled the historical context before examining the questions.

After the First World War, Palestine transitioned from being part of the Ottoman Empire to being placed under a British Mandate, as entrusted by the League of Nations. In 1947, the United Kingdom announced its plan to withdraw from the Mandate, initially setting the date for 1 August 1948 and later advancing it to 15 May 1948.

Amidst these developments, the UNGA adopted Resolution 181 (II) on 29 November 1947, proposing a partition plan for Palestine. The plan aimed to create two independent states, one Arab and one Jewish, and to establish a special international regime for the city of Jerusalem. The Jewish community accepted the partition plan, which was instead rejected by the Arab population of Palestine and the neighboring Arab states, who deemed the partition unbalanced.

On 14 May 1948, Israel declared its independence, citing the partition plan outlined in UNGA Resolution 181 (II). This declaration led to an armed conflict with several Arab states, preventing the implementation of the proposed partition. In response to the ongoing hostilities,

the UN Security Council passed Resolution 62 on 16 November 1948, which called for an armistice across all sectors of Palestine.

The general armistice agreements were negotiated in 1949 in Rhodes, with mediation by the United Nations. The outcome was the establishment of demarcation lines, referred to as the "Green Line," which delineated the positions between Israeli and Arab forces on maps.

In its application for UN membership, on 29 November 1948, Israel referred to Resolution 181. The UNGA admitted Israel as a member state on 11 May 1949, acknowledging its commitments concerning said resolution through UNGA Resolution 273 (III).

In 1967 when the Six-Day War broke out between Israel and neighboring countries Egypt, Syria, and Jordan. By the end of the conflict, Israeli forces had occupied all territories of Palestine that were under originally the British Mandate beyond the Green Line. In response, the UNSC unanimously adopted Resolution 242 on 22 November 1967, affirming the inadmissibility of acquisition of territory by war and calling for Israel's withdrawal from the occupied territories.

In the following years, Israel began establishing settlements in the occupied territories and enacted measures aimed at to changing the status of the city of Jerusalem. The UNSC repeatedly condemned these actions, reaffirming the prohibition of annexation. On 25 September 1971, Resolution 298 declared that Israeli legislative and administrative acts aimed at altering the status of Jerusalem were invalid.

In October 1973, another armed conflict erupted between Israel and the neighboring states of Egypt and Syria. The UNSC's Resolution 338, adopted on 22 October 1973, called for an end to military activities and urged the implementation of previous Resolution 242 in full.

On 14 October 1974, the UNGA passed Resolution 3210 (XXIX), recognizing the Palestinian Liberation Organization (PLO) as the representative of the Palestinian people. This was followed by Resolution 3236 (XXIX) on 22 November 1974, which affirmed the Palestinian people's right to self-determination.

A breakthrough in peace efforts came on 17 September 1978, with the signing of the Camp David Accords between Israel and Egypt. These led to a formal Peace Treaty between the two countries in the following year. On 26 October 1994, Israel and Jordan signed a peace treaty, establishing their boundary along lines defined under the Mandate for Palestine.

On 15 November 1988, the PLO declared the establishment of the State of Palestine, referencing the partition plan outlined in Resolution 181 (II) as a basis for this declaration.

The 1990s marked a period of negotiation with the signing of the Oslo Accords. In 1993 and 1995, Israel and the PLO signed the Oslo I and Oslo II Accords, respectively. In an exchange of letters on 9 September 1993, the PLO recognized Israel's right to exist in peace and security, while Israel recognized the PLO as the legitimate representative of the Palestinian people. The Oslo I Accord laid out general guidelines for future negotiations between Israel and Palestine. Oslo II divided the West Bank into three administrative areas (A, B, and C), with Area C, comprising over 60 percent of the West Bank, remaining under exclusive Israeli administration. As for Areas A and B, Israel agreed to transfer certain powers and responsibilities to Palestinian authorities. However, these transfers have been limited and partial, with Israel retaining significant control over security matters in those regions.

In the early 2000s, escalating violence originating from the West Bank prompted Israel to initiate the construction of a "continuous fence," commonly referred to as the "wall," primarily within the West Bank and East Jerusalem. The Israeli government approved the plan in July 2001, and by 31 July 2003, the first section of the wall was completed. Despite the ICJ's 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (hereinafter, the "Wall Advisory Opinion"), which deemed the wall and its associated regime as contrary to international law, construction continued unabated, as did the expansion of Israeli settlements in the Occupied Palestinian Territory (OPT).

Pursuant to the Israeli "Disengagement Plan," by the end of 2005 settlers were evacuated from the Gaza Strip. However, by 2023, approximately 465,000 settlers resided in the West Bank across about 300 settlements and outposts. In East Jerusalem, around 230,000 settlers had established residence. The Settlers were predominantly Israelis and non-Israeli Jews eligible for Israeli nationality under Israeli law.

On 29 November 2012, the UNGA, referencing Resolution 181 (II), granted Palestine non-member observer State status through Resolution 67/19.

In 2016, the UNSC adopted Resolution 2334, calling for increased international and regional diplomatic efforts to achieve a comprehensive, just, and lasting peace in the Middle East. The Resolution emphasized the importance of relevant UN resolutions, the Madrid terms of reference, including the land-for-peace principle, the Arab Peace Initiative, and the Quartet Roadmap, all aimed at ending the Israeli occupation that began in 1967.

Recent developments saw the UNGA, on 10 May 2024, adopt resolution ES-10/23, which determined that Palestine qualified for full UN membership under Article 4 of the UN Charter. The Resolution advocated for Palestine's admission as a member state.

On 10 June 2024, the UNSC passed Resolution 2735, reaffirming its commitment to a two-State solution. The Resolution envisioned Israel and Palestine as two democratic states coexisting peacefully within secure and recognized borders, consistent with international law. It also emphasized the necessity of unifying the Gaza Strip with the West Bank under the Palestinian Authority's administration, highlighting the necessity of cohesive governance.

III. Scope and Meaning of the Questions Posed by the General Assembly

The Court then turn to examined the meaning of the two questions posed by the UNGA, which define the material, territorial, and temporal scope of its inquiry.

Starting from the **material scope**, the Court determined that question (a) involved three specific types of conduct, referred to as "policies and practices of Israel":

1. The ongoing violation by Israel of the Palestinian people's right to self-determination.
2. Israel's prolonged occupation, settlement, and annexation of Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character, and status of the Holy City of Jerusalem.
3. The adoption of related discriminatory legislation and measures by Israel.

The Court noted that the questions assumed these policies and practices were contrary to international law. However, it reiterated it was the Court's responsibility to independently assess their legality. The Court concluded that question (a) required an evaluation of whether Israel's policies and practices conformed to international law.

The UNGA did not request a detailed factual determination of Israel's actions. Therefore, the Court stated it would only need to establish the main features of Israel's policies and practices and, on that basis, to assess their compliance with international law.

Moving on to the **territorial scope**, the Court interpreted question (a) as referring to "the Palestinian territory occupied since 1967," which includes the West Bank, East Jerusalem, and the Gaza Strip. The Court noted that the UN various bodies frequently referred to the different parts of the OPT, but it emphasized that, from a legal perspective, the territory is a single unit whose unity, contiguity, and integrity must be preserved. Thus, all references in the Advisory Opinion to the OPT relate to this single territorial unit so composed. The Court also

addressed the term "Holy City of Jerusalem," noting that, within the context of the questions, the term referred specifically to measures taken by Israel in East Jerusalem.

As for the **temporal scope**, the Court recognized that question (a) requested an assessment of measures adopted by Israel since 1967. However, it stated it was not precluded from considering facts prior to 1967 when necessary for its judicial function. Recalling that the request for an advisory opinion was adopted on 30 December 2022, and that the questions referred to Israel's "ongoing" or "continuing" policies and practices, the Court deemed that Israel's actions in response to the attack by Hamas and other armed groups on 7 October 2023 were excluded from the scope of the Advisory Opinion.

The Court then observed that question (b) had two parts. The first part asked how Israel's policies and practices affect the **"legal status of the occupation."** The Court interpreted the use of "affect" as implying potential changes to the legal status, and it determined that this called for an examination of how Israel's actions impacted the legality of its continued presence as an occupying power in the OPT. Both question (a) and the second part of question (b) required the Court to determine the **legal consequences** of Israel's policies and practices and its continued presence as an occupying power. The Court indicated that, in case any of these actions were found contrary to international law, it would then examine the stemming legal consequences for Israel, other states, and the UN bodies.

IV. Applicable Law

The Court proceeded to identify the relevant rules needed to answer the questions posed by the UNGA.

Status of the Occupied Palestinian Territory: the Gaza Strip

The ICJ noted that the applicable law depended, in part, on the status of the Palestinian territory. That is, its recognition as occupied territory. The Court observed that the UNGA's questions were based on the premise that the OPT was under Israeli occupation. Already in its 2004 Wall Advisory Opinion the Court had outlined the conditions necessary to establish a state of occupation and determined that during the 1967 armed conflict, Israel had occupied territories between the Green Line and the former eastern boundary of Palestine under the British Mandate, specifically the West Bank and East Jerusalem. The Court affirmed that subsequent developments had not altered the status of these territories as occupied or Israel's status as the occupying power.

While the Wall Advisory Opinion did not specifically address the Gaza Strip's legal status, the Court acknowledged that it remained an integral part of the territory occupied by Israel since 1967. The Court emphasized that the decisive factor for determining whether a territory remains occupied under international law is not the constant physical military presence but whether the occupying power's authority is established and can be exercised. The Court found that Israel continued to exercise significant control over the Gaza Strip, including control over land, sea, and air borders, restrictions on movement, tax collection, and military oversight of the buffer zone, even after withdrawing its military presence in 2005. This control was particularly noted after 7 October 2023. Consequently, the Court concluded that Israel's withdrawal from the Gaza Strip did not absolve it of its obligations under the law of occupation, with its responsibilities remaining proportional to its level of effective control.

Relevant Legal Principles and Rules

Having determined that the Palestinian territory as a whole unit is under occupation, the Court laid down the rules and principles relevant to answer the questions, which included:

1. The prohibition of acquisition of territory by threat or use of force and right of peoples to self-determination, enshrined in the UN Charter and part of customary international law.

2. International Humanitarian Law (IHL), and particularly the **law of occupation** codified in the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereinafter, the "**Fourth Geneva Convention**") and the Hague Regulations Respecting the Laws and Customs of War on Land (hereinafter, the "**Hague Regulations**") which form part of customary international law.

3. International Human Rights Law (IHRL), notably the International Covenant on Civil and Political Rights (**ICCPR**) the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), and the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**). The Court recalled that IHRL instruments apply in respect of acts done by a State in the exercise of its jurisdiction outside its own territory, particularly in occupied territories, and that the protection they afford does not cease during armed conflicts. Referring to its Wall Advisory Opinion, the Court observed that Israel remained bound by the ICCPR and the ICESCR regarding its actions in the OPT. About CERD, the Court noted that no provision thereby contained restricts its territorial application. Thus, it concluded that Israel must comply with its obligations also under CERD when exercising jurisdiction outside its own territory, in the OPT.

Relevance of the Oslo Accords

The Court acknowledged divergent views among participants to the proceeding regarding the relevance of the Oslo Accords signed by Israel and the PLO. It noted that, while the Accords must be taken into account where appropriate, they cannot be understood as to detract from Israel's obligations under the relevant rules of international law.

V. Israel's Policies and Practices in the Occupied Palestinian Territory

The Court continued to evaluate the compliance of Israel's policies and practices in the OPT with its international law obligations, as identified in question (a). In particular, it addressed the prolonged occupation, Israel's settlement policy, the annexation of Palestinian territory, and the adoption of allegedly discriminatory legislation and measures. The Court also considered how these policies and practices impact the right of the Palestinian people to self-determination.

A. The Question of the Prolonged Occupation

Regarding the prolonged occupation, the Court noted that question (a) involved examining the legal consequences of Israel's extended occupation of the OPT. The Court highlighted that Israel's occupation has persisted for more than 57 years. To address this issue, the Court assessed the relationship between Israel, as the occupying power, and the protected population of the occupied territory, governed by the law of occupation.

The Court emphasized that an occupying power assumes certain powers and duties concerning the territory under its effective control. These responsibilities include administering the territory for the benefit of the local population.

As the law of occupation is founded on the assumption that occupation is temporary, intended to respond to military necessity, and does not transfer sovereignty to the occupying power, the Court determined that the prolonged nature of an occupation does not alter its legal status under international humanitarian law.

However, the law of occupation does not impose temporal limits that would change its legal status. Accordingly, the legality of the occupying power's presence must be evaluated in light of other rules, particularly those prohibiting the threat or use of force and the acquisition of territory by force, as well as the right to self-determination.

The Court noted that the prolonged nature of an occupation might affect the justification under international law for the occupying power's continued presence in the territory. It is within this framework that Israel's policies, practices, and continued presence in the Occupied Palestinian Territory were to be examined.

B. Settlement Policy

The Court evaluated the legal consequences of Israel's settlement policy, as inquired by question (a).

1. Overview

The Court observed that the distinction sometimes made between "settlements" and "outposts" is immaterial for determining whether these communities are part of Israel's policy. The critical factor is whether the communities are established or maintained with Israel's support.

The Court noted that Israel's settlement policy was implemented between 1967 and 2005 in the West Bank, East Jerusalem, and the Gaza Strip. Since the removal of settlements from the Gaza Strip in 2005, the settlement policy has continued in the West Bank and East Jerusalem. Therefore, the Court limited its analysis to Israel's ongoing settlement policy in those latter areas. The Court also observed that the policy implemented in the Gaza Strip until 2005 was not substantially different from the current policy in the West Bank and East Jerusalem.

2. Transfer of Civilian Population: Violation of Article 49, Paragraph 6, of the Fourth Geneva Convention

The Court reaffirmed its findings from the Wall Advisory Opinion, where it determined that Israel's settlement policy breached Article 49, para. 6, of the Fourth Geneva Convention, which prohibits the occupying power to deport or transfer parts of its own civilian population into the territory it occupies.

The Court found no indication in the provision's terms, context, object and purpose, or drafting history suggesting it only prohibits the forcible transfer of the occupying power's civilian population into occupied territory. The Court noted extensive evidence of Israel's policy of incentivizing the relocation of Israeli individuals and businesses to the West Bank, and of promoting industrial and agricultural development by settlers. Furthermore, the Court observed that Israel regularly legalizes outposts established in violation of its domestic

legislation, and that settlement construction is accompanied by infrastructure that integrates these settlements into Israeli territory.

Based on this evidence, the Court concluded that Israel's transfer of settlers to the West Bank and East Jerusalem, and the maintenance of their presence there, are contrary to the Fourth Geneva Convention.

3. Confiscation or Requisitioning of Land: Violation of Articles 46, 52, and 55 of the Hague Regulations

The Court noted that the expansion of Israel's settlements in the West Bank and East Jerusalem relied heavily on the confiscation or requisitioning of large areas of land. It observed that public property confiscated for the development of Israeli settlements primarily benefited the settler population to the detriment of the local Palestinian population. Based on this assessment, the Court concluded that Israel's land policies are inconsistent with Articles 46, 52, and 55 of the Hague Regulations.

4. Exploitation of Natural Resources: Violation of Article 55 of the Hague Regulations

The Court addressed the issue of natural resource exploitation, recalling that, under customary international law and Article 55 of the Hague Regulations, the occupying power must act as an administrator and usufructuary of the natural resources in the occupied territory. This includes safeguarding the capital of these resources and ensuring that their use does not exceed what is necessary for the purposes of occupation. Additionally, the occupying power bears the duty to ensure the local population has adequate access to foodstuffs, including water, and to use resources sustainably to avoid environmental harm.

The Court determined that Israel's use of natural resources in the OPT violated its obligations under international law. Furthermore, by diverting significant natural resources to its own population, including settlers, Israel breached its duty as an administrator and usufructuary. The Court also found that Israel's severe restrictions resulting in limited access to water for Palestinians were inconsistent with its obligation to ensure water availability in sufficient quantity and quality. The Court concluded that Israel's exploitation of natural resources violates the Palestinian people's right to permanent sovereignty over their resources.

5. Extension of Israeli Law to the OPT: Violation of Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention

The Court examined the extension of Israeli law to the Occupied Palestinian Territory, recalling that, under Article 43 of the Hague Regulations, the occupying power must respect the existing laws in the occupied territory unless absolutely prevented to do so. The law of occupation grants the occupying power regulatory authority on an exceptional basis and under specific grounds.

The Court observed that Israel had significantly expanded its legal regulations in the West Bank, substituting military law to the local law in place since the beginning of the occupation.

In East Jerusalem, Israeli domestic law had been applied exclusively, treating it as Israeli national territory. The Court was not convinced that the extension of Israeli law in these regions was justified under any grounds listed in Article 64, para. 2, of the Fourth Geneva Convention. Therefore, the Court found that Israel's regulatory authority as an occupying power was exercised inconsistently with international law.

6. Forced Displacement of the Palestinian Population: Violation of Article 49, Paragraph 1, of the Fourth Geneva Convention

The Court examined the impact of Israel's settlement policy on the displacement of the Palestinian population. It noted that land confiscation and restricted access to resources deprived Palestinians of basic means of subsistence, pressuring them to leave their homes. The Court recalled that Article 49, para. 1, of the Fourth Geneva Convention prohibits individual or mass forcible transfers of protected persons from occupied territory.

The Court determined that forced transfer occurs not only through physical force but also when people have no choice but to leave. It recalled that evacuations are permissible only as temporary measures, reversible once military reasons subside. The Court found that Israel's policies, including forcible evictions, house demolitions, and movement restrictions, left Palestinians, particularly in Area C, with little choice but to relocate. The measures were not temporary and did not qualify as permissible evacuations. Therefore, the Court concluded that Israel's policies violated the prohibition of forcible transfer under the Fourth Geneva Convention.

7. Violence Against Palestinians: Violation of Article 46 of the Hague Regulations, Article 27 of the Fourth Geneva Convention, and Articles 6 and 7 of the ICCPR

The Court noted that Israel's settlement policy has led to violence by settlers and security forces against Palestinians. It found that violence by settlers, combined with Israel's failure to

effectively prevent or punish such acts, and the excessive use of force by Israeli security forces, contributed to a coercive environment against Palestinians.

The Court concluded that Israel's systematic failure to prevent or punish attacks on the life and bodily integrity of Palestinians, along with its excessive use of force, is inconsistent with its obligations under international humanitarian law and human rights law, namely Article 46 of the Hague Regulations, Article 27 of the Fourth Geneva Convention, and Articles 6 (Right to life) and 7 (Prohibition of torture and cruel, inhuman or degrading treatment or punishment) of the ICCPR.

8. Conclusion on Israel's Settlement Policy

In light of its findings, the Court reaffirmed its previous conclusions from the Wall Advisory Opinion that Israeli settlements in the West Bank and East Jerusalem, along with the regime associated with them, have been established and maintained in violation of international law. The Court expressed grave concern over reports indicating that Israel's settlement policy has continued to expand since the issuance of its previous opinion.

C. The Question of the Annexation of the Occupied Palestinian Territory

The Court moved to analyze the legal consequences of Israel's alleged annexation of the Occupied Palestinian Territory, as referenced in the question posed by the UNGA.

It recalled that annexation entails the forcible acquisition of the occupied territory by the occupying power, specifically its integration into the occupying power's territory. Annexation implies the intent of the occupying power to exercise permanent control over the occupied territory. The Judges noted that, under the law of occupation, control by the occupying power is temporary. Any actions indicating an intent to exert permanent control over the occupied territory may suggest an act of annexation. Annexation can manifest as either "*de jure*" (formal legal integration) or "*de facto*" (informal control) but both aim for permanent control over the territory.

The Court assessed Israel's conduct to determine whether it was aimed at establishing permanent control over the OPT, amounting to annexation. Upon examining Israel's policies and practices, including settlement expansion, infrastructure development, wall construction, exploitation of natural resources, and the proclamation of Jerusalem as Israel's capital, the Court concluded that these actions entrench Israel's control over the Occupied Palestinian Territory, particularly East Jerusalem and Area C of the West Bank. It noted that these policies

and practices are intended to remain indefinitely and create irreversible effects on the ground. Consequently, the Court stated that these actions amount to annexation of significant parts of the OPT.

The ICJ concluded that Israel's attempt to acquire sovereignty over the occupied territory, as evidenced by its actions in East Jerusalem and the West Bank, contravenes the prohibition of the use of force in international relations and the principle of the non-acquisition of territory by force.

D. The Question of Discriminatory Legislation and Measures

The Court examined the legal consequences of Israel's adoption of discriminatory legislation and measures, as referenced in question (a) posed by the UNGA. A prejudicial assessment required determining whether the legislation and measures identified were, in fact, discriminatory.

The ICJ defined 'discrimination' as differential treatment between individuals belonging to different groups. Stating that the existence of the Palestinian people was not in question, the Court acknowledged that differential treatment of Palestinians could constitute discrimination.

To address question (a), the Court analyzed Israel's policies and practices in several key areas. It examined how Israel's residence permit policy affects Palestinians in the OPT, assessed the restrictions of movement imposed on Palestinians, and the demolition of Palestinian properties in the West Bank and East Jerusalem, noting that nearly 11,000 Palestinian structures had been demolished since 2009.

The Court concluded that a wide range of legislation and measures adopted by Israel treat Palestinians differently based on grounds specified by international law, without a legitimate aim and a reasonable justification. Consequently, it determined that the restrictions imposed by Israel on Palestinians in the OPT constitute systemic discrimination based on race, religion, or ethnic origin, in violation of Articles 2, para. 1, and 26 of the ICCPR, Article 2, para. 2, of the ICESCR, and Article 2 of CERD.

The Court further observed that Israel's legislation and measures maintain a near-complete separation between settler and Palestinian communities in the West Bank and East Jerusalem. Therefore, it deemed these actions to breach Article 3 of CERD (Prohibition of racial segregation and apartheid).

E. The Question of Self-Determination

Having determined that Israel's settlement policy, acts of annexation, and related discriminatory legislation and measures violate international law, the Court examined the impact of these actions on the Palestinian people's right to self-determination, as referenced in question (a) posed by the UNGA.

Reaffirming the existence of the Palestinian people's right to self-determination, as previously acknowledged in its Wall Advisory Opinion, the Court concluded that the prolonged nature of Israel's unlawful policies and practices aggravate the violation of such right.

The Court determined that Israel's actions breach its obligation to respect the Palestinian people's right to self-determination, which constitutes, as the ICJ recognized, a peremptory norm of international law.

VI. Effects of Israel's Policies and Practices on the Legal Status of the Occupation

A. The Scope of the First Part of Question (b) and Applicable Law

The Court referred to the first part of question (b) posed by the General Assembly, focusing on how Israel's policies and practices have affected the legal status of the occupation. It clarified that the question concerned the manner in which these policies and practices affect the legal status of the occupation, and thus the legality of Israel's continued presence as an occupying power in the OPT under the rules and principles of general international law, including the Charter of the United Nations.

B. The Manner in Which Israeli Policies and Practices Affect the Legal Status of the Occupation

The Court determined that Israel's policies and practices, and the manner in which they are implemented, significantly impact the legal status of the occupation. These actions include the extension of Israeli sovereignty over parts of the occupied territory, their gradual annexation into Israeli territory, the exercise of Israeli governmental functions, and the application of Israeli domestic laws in these areas. Additionally, the transfer of Israeli nationals to these territories and the impediment of the Palestinian people's right to self-determination were noted.

The ICJ found that Israel's assertion of sovereignty and annexation of occupied territory violated the prohibition of the acquisition of territory by force. This breach directly affected the legality of Israel's continued presence in the OPT as an occupying power. The Court emphasized that Israel cannot claim sovereignty or exercise sovereign powers over any part

of the OPT due to its occupation, nor can its security concerns override the prohibition on acquiring territory by force.

The Court further observed that Israel's exercise of sovereignty over certain parts of the OPT, especially the West Bank and East Jerusalem, obstructs the Palestinian people's right to self-determination. The effects of these policies include the annexation of parts of the territory, fragmentation undermining its integrity, deprivation of natural resources, and impairment of the Palestinian people's right to pursue economic, social, and cultural development. These effects constitute a breach of the fundamental right to self-determination and impact the legality of Israel's presence as an occupying power.

The Court stressed that occupation should not leave the occupied population in a state of suspension and uncertainty, denying them their right to self-determination while integrating parts of their territory into the occupying power's own territory. The Palestinian people's right to self-determination cannot be conditional upon the occupying power, given its status as an inalienable right.

C. The Legality of the Continued Presence of Israel in the Occupied Palestinian Territory

The Court considered that Israel's violations of the prohibition of the acquisition of territory by force and of the right to self-determination of the Palestinian people directly impact the legality of its continued presence as an occupying power. The sustained abuse of its position, through annexation and assertion of permanent control, violates fundamental principles of international law, rendering its presence in the OPT unlawful.

The Judges specified that this finding applies to the entirety of the Palestinian territory occupied by Israel in 1967. While Israel has imposed policies to fragment the territory and hinder the Palestinian people's ability to exercise self-determination, this right regards the entirety of the OPT, which integrity must be respected.

In response to arguments made by participants, the Court noted that the Oslo Accords do not authorize Israel to annex parts of the Occupied Palestinian Territory or maintain a permanent presence for security needs.

The Court emphasized that the conclusion of Israel's illegal presence does not absolve it of its obligations under international law, particularly the law of occupation. Israel remains responsible for its actions affecting the Palestinian population and other States until its

presence is terminated. The responsibility of a State is determined by its effective control over a territory, regardless of its legal status under international law.

VII. Legal Consequences Arising from Israel's Policies and Practices and from the Illegality of Israel's Continued Presence in the Occupied Palestinian Territory

The Court found that Israel's policies and practices, as referenced in question (a), violate international law. The continuation of these policies and practices constitutes an ongoing wrongful act, resulting in Israel's international responsibility. In response to the first part of question (b), the Court also found that Israel's continued presence in the OPT is illegal. Accordingly, it addressed the legal consequences arising from these findings for Israel, other states, and the United Nations.

A. Legal Consequences for Israel: State Responsibility

The ICJ determined that Israel's continued presence in the OPT represents a wrongful act of a continuing character, entailing international responsibility. This wrongful act has been perpetuated by Israel in violation of the prohibition on acquiring territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has first of all the obligation to end its presence in the OPT as rapidly as possible.

Termination

The Court further noted that, concerning the unlawful policies and practices identified in question (a), Israel is obligated to cease all unlawful acts. Israel must immediately halt all new settlement activities and repeal legislation and measures that create or maintain the unlawful situation, including those discriminating against the Palestinian people and those modifying the demographic composition of any parts of the territory.

Reparation

Israel is also required to provide full reparation for the damage caused by its internationally wrongful acts to all affected natural or legal persons, including restitution, compensation, and/or satisfaction.

Israel must return land and other immovable property, as well as all assets seized from any natural or legal person since the occupation began in 1967. This includes cultural property and assets taken from Palestinians and Palestinian institutions, such as archives and documents. Restitution also requires the evacuation of settlers from existing settlements and

dismantling parts of the wall constructed in the OPT. All Palestinians displaced during the occupation must be allowed to return to their original place of residence.

Where restitution is materially impossible, Israel must compensate all natural or legal persons, and populations that have suffered material damage due to its wrongful acts under the occupation.

Duties under the Law of Occupation

The Court finally reiterated that the obligations arising from Israel's wrongful acts do not absolve it from its ongoing duty to perform the international obligations it is in breach of. Israel remains bound to respect the Palestinian people's right to self-determination and all its obligations under international humanitarian law and human rights law.

B. Legal Consequences for Other States

The Court examined the legal consequences of Israel's internationally wrongful acts in the Occupied Palestinian Territory concerning other states. The Judges pointed out that Israel's violations involve obligations *erga omnes*, which are owed to the international community as a whole. These include the obligation to respect the Palestinian people's right to self-determination and the prohibition on acquiring territory through force, as well as certain obligations under international humanitarian and human rights law.

Obligations Regarding the Right to Self-Determination: Cooperation with UN bodies

The Court acknowledged that it is the role of the UNGA and the UNSC to determine the modalities to end Israel's illegal presence in the OPT and fully realize the Palestinian people's right to self-determination. However, all states must cooperate with the UN to implement these modalities effectively.

Obligations Concerning the Prohibition of Acquiring Territory by Force: Non-Recognition, Non-Assistance

The Court observed that, according to the UNSC and UNGA relevant resolutions, member states are obligated not to recognize any changes to the physical character, demographic composition, institutional structure, or status of the territory occupied by Israel as of 5 June 1967, including East Jerusalem. Changes are only permissible if agreed upon by the parties

involved through negotiations. States must distinguish in their interactions with Israel between the State of Israel's territory and the Palestinian territory occupied since 1967.

The Court determined that all states have an obligation not to recognize the legal validity of the situation arising from Israel's unlawful presence in the OPT. Additionally, states must not provide aid or assistance in maintaining the situation created by Israel's illegal presence. States are required, in accordance with the UN Charter and international law, to work towards ending any impediments caused by Israel's illegal presence that hinder the Palestinian people's exercise of their right to self-determination.

Obligations Under the Fourth Geneva Convention: Ensure Respect of IHL

The Court further noted that all states parties to the Fourth Geneva Convention must ensure compliance by Israel with international humanitarian law as embodied in the Convention. This responsibility must be fulfilled while respecting the UN Charter and international law.

C. Legal Consequences for the United Nations

The Court finally addressed the legal consequences for the UN arising from Israel's internationally wrongful acts in the OPT, particularly in light of obligations *erga omnes* under international law.

Duty of Non-Recognition

The Court stated that the duty of non-recognition, previously outlined for states, also applies to international organizations, including the United Nations. This duty arises from the serious breaches of *erga omnes* obligations under international law. Consequently, the UN is obligated not to recognize as the legal situation created by Israel's unlawful presence in the OPT. The UN too must distinguish in its dealings with Israel between the territory of Israel and the OPT.

Role of the General Assembly and Security Council

The Court opined that determining the precise modalities to end Israel's unlawful presence in the OPT is a matter for the UNGA, which requested this opinion, as well as the UNSC. It is the responsibility of these bodies to consider further actions necessary to terminate Israel's illegal presence, informed by the Court's Advisory Opinion.

The ICJ emphasized the urgent necessity for the UN as a whole to intensify efforts to resolve the ongoing Israeli-Palestinian conflict, which continues to threaten international peace and

security, and whose resolution is essential for establishing a just and lasting peace in the region.

Right to Self-Determination and Regional Stability

The Court highlighted that realizing the Palestinian people's right to self-determination, including the establishment of an independent and sovereign state alongside Israel, with secure and recognized borders for both, would contribute to regional stability and security in the Middle East. This vision aligns with resolutions from both the UNSC and UNGA.

Operative Clause (para. 285), full text:

For these reasons,

THE COURT,

(1) Unanimously,

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

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

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

AGAINST: *Vice-President* Sebutinde;

(3) By eleven votes to four,

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

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

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

(4) By eleven votes to four,

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

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

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

(5) By fourteen votes to one,

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

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

AGAINST: *Vice-President* Sebutinde;

(6) By fourteen votes to one,

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

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

AGAINST: *Vice-President* Sebutinde;

(7) By twelve votes to three,

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

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

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

(8) By twelve votes to three,

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

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

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

(9) By twelve votes to three,

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

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

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

Declarations, Dissenting and Separate Opinions

All Judges appended either a declaration, a separate opinion or a dissenting opinion to the Advisory Opinion of the Court.

Declaration of President Salam

President Salam concurred with the conclusions and reasoning of the Court in the Advisory Opinion. In his declaration, he rather elaborated on additional reasons supporting the Court's conclusions, emphasizing the need to end Israel's presence in the OPT swiftly.

Refencing to the settlement policy and discriminatory laws, he noted that Israel was well aware of the illegality of its acts as early as of September 1967, when the Israeli Ministry of Foreign Affairs' legal adviser and various UN bodies warned of the unlawful nature of such practices.

He described Israel's discriminatory measures as tantamount to the crime of apartheid, involving systematic oppression and domination of one racial group over another through numerous inhumane acts.

President Salam expressed regret that the Court did not fully address the legal implications on the matter of UNGA Resolution 181(II) of November 1947. He asserted that Israel remains bound by its commitment to the Resolution, which formed the basis for its declaration of independence and UN membership application. Pursuant to the same Resolution, Israel is equally obligated not to impede the Palestinian people's right to self-determination and to cooperate with the UN to enable Palestine to exercise full sovereignty and achieve independence, necessitating Israel's complete withdrawal from the OPT.

The declaration further emphasized that states and the UN must take concrete and effective measures against Israel's violations of peremptory norms (*jus cogens*) and obligations *erga omnes*. For states, this involves more than diplomatic protests, including refraining from unconditional financial, economic, military, or technological aid to Israel and punishing violations per relevant treaties. President Salam urged UN bodies to adopt new, concrete measures to end Israel's violations promptly, stressing that ending the occupation should not be contingent upon negotiations with Israel, as this would grant the occupying power a veto over continued violations.

President Salam concluded by affirming that the Court's statement of the law lays the foundation for a justice-based process, essential for achieving a just and lasting peace.

Dissenting Opinion of Vice-President Sebutinde

Vice-President Sebutinde dissented from the Advisory Opinion on several grounds. She found that the Court lacked reliable information to reach fair conclusions on disputed factual issues, and criticized the prejudicial formulation of the questions and the one-sided narrative presented by many participants in the proceedings.

Sebutinde argued that the advisory opinion circumvented Israel's lack of consent to the jurisdiction of the Court. She pointed out that addressing these issues without Israel's agreement could undermine the existing negotiation frameworks.

She expressed disagreement with many aspects of the Court's findings, particularly the impractical timeline for Israel's withdrawal from occupied territories. She argued that this timeline disregarded the existing negotiation framework, Israel's security concerns, and the need to balance competing sovereignty claims.

The Judge held that the application of the principle of full reparation was inappropriate for the Israeli-Palestinian conflict, in light of the concurring violations from the counterpart. She also

stated that the Court misapplied the law of belligerent occupation and accepted assumptions formulated in the UNGA's question without critically analyzing relevant issues, as the lawfulness of certain practices.

Vice-President Sebutinde finally underscored the importance of negotiated agreements for a lasting resolution and highlighted the role of the UN in supporting peace efforts. She maintained that the negotiation framework outlined in UN resolutions and bilateral agreements remains the only viable avenue for a permanent solution to the Israeli-Palestinian conflict.

Declaration of Judge Tomka

Judge Tomka, having co-signed a joint opinion with Judges Abraham and Aurescu (below), provided additional observations to explain his vote in the Advisory Opinion.

The Judge observed that Israel, and particularly some significant political circles within it, seeks to claim a wide area of Palestine as its own territory. He condemned Israel's settlement policy in the West Bank, including East Jerusalem, acknowledging that Israel knew this policy violated international law.

He then sought to clarify his position from the joint opinion that Israel's occupation of the Palestinian Territory is not unlawful *per se*; instead, the issue lies with Israel's annexation efforts in the OPT.

While disagreeing with the Court on the (il)legality of Israel's continued presence in the OPT, he stressed that all states are obliged not to recognize the situation resulting from it, and must refrain from assisting Israel in maintaining such situation. He affirmed that states should not support Israel's annexation ambitions and should instead assist in achieving peace in the Middle East, where Israel and Palestine coexist peacefully within recognized boundaries.

Judge Tomka emphasized that the UN, particularly the UNSC and UNGA, should develop strategies to end Israel's presence in the OPT swiftly. He affirmed this can only occur when security is assured for both states. Achieving peace is a long-overdue obligation, and he urged all involved parties to intensify their efforts, highlights this as an unfulfilled historical responsibility of the UN.

Joint Opinion of Judges Tomka, Abraham, and Aurescu

Judges Tomka, Abraham, and Aurescu provided a joint opinion, expressing disagreement with certain points in the Advisory Opinion regarding the legality of Israel's presence in the OPT.

The judges argued that it is legally incorrect to conclude, as the Opinion does, that Israel's presence in the OPT is unlawful and that Israel must withdraw without guarantees concerning its security. They emphasized the importance of considering Israel's security needs in achieving a lasting peace.

Considering the territorial scope of the Court's inquiry, they held that the Gaza Strip should have been excluded from the Opinion's scope due to insufficient information about Israel's control post-2005. They agreed with excluding the situation in Gaza after 7 October 2023 but felt the Court should not have ruled on Gaza prior to that date.

The Judges noted that the conduct of an occupation and the use of force involve distinct legal rules. Accordingly, Israel's violations of international law do not inherently render its occupation unlawful. They argued that Israel's policies in the OPT do not affect the legal status of the occupation, as the legality of presence should be analyzed exclusively under the rules of the use of force. The judges stressed that it is the annexation of Area C, rather than the occupation itself, that constitutes an internationally wrongful act.

Further on, the Judges highlighted that Israel's withdrawal from the OPT "as rapidly as possible" might be challenging in absence of guarantees of security, as it could expose Israel to substantial threats.

Tomka, Abraham and Arescu criticized the Opinion for having largely ignored the Oslo Accords and relevant UNSC resolutions, which they deemed crucial for understanding the intertwined nature of self-determination and security. These resolutions and agreements, they argued, remain legally binding and central to the negotiation framework for the Israeli-Palestinian conflict. They also recalled that many Security Council resolutions concerning the Middle East peace process are legally binding, not merely declaratory, and expressed regret that the Opinion failed to acknowledge their relevance.

The Judges continued to uphold that Israel's obligation under the Oslo II Accords were breached by settlements in Area C and beyond, post-1995, which reflect an intention to annex rather than merely occupy such territory.

They also regretted that the Opinion did not emphasize the obligation of Israel and Palestine to resume negotiations for a two-state solution. They felt the Court should have reinforced the need for the UN and international community to sustain this process actively.

The judges, in conclusion, expressed concern that the Advisory Opinion might not adequately support the goal of achieving the two-state solution, which is essential for peaceful coexistence between Israelis and Palestinians.

Separate Opinion of Judge Yusuf

Judge Yusuf provided a separate opinion emphasizing the unlawfulness of Israel's continued presence in the OPT, arguing that it violates both the law of occupation (*jus in bello*) and the law on the use of force (*jus ad bellum*).

The Judge concurred with the view that Israel's continued presence in the OPT is unlawful due to violations of the prohibition on acquiring territory by force and of the Palestinian people's right to self-determination. However, he also argued that the unlawfulness extends beyond these violations, highlighting the excessively prolonged nature of the occupation.

He noted that while the rules of occupation law do not specify a time limit, they are based on the premise that occupation must be temporary. Israel's 57-year occupation has become excessively prolonged, defying the temporary nature intended by occupation law. He also reiterated that this prolonged occupation subjects the Palestinian people to alien domination, akin to colonial occupation or conquest, rather than a belligerent occupation under contemporary law. Therefore, Israel's occupation is unlawful under *jus in bello*.

At the same time, he argued that occupation represents a continued use of force in foreign territory, subject to the law on the use of force under the UN Charter. For an occupation to be lawful, it must satisfy the conditions of necessity and proportionality as an exercise of the right to self-defense. Consequently, he contended that Israel's excessively prolonged occupation fails to meet these conditions, making its maintenance a violation of *jus ad bellum*.

Declaration of Judge Xue

Judge Xue concurred with the operative part of the Advisory Opinion and provided clarifications regarding the application of the principle of self-determination.

She emphasized that the right to self-determination of the Palestinian people has a strong legal foundation in international law, as reflected in UNGA Resolutions 1514 (XV) and 2625 (XXV), which also affirms the peremptory character of the right to self-determination.

The Judge then noted that resolutions from the UNGA and UNSC strongly support the Court's conclusion on the unlawfulness of Israel's continued presence in the OPT, providing a robust legal basis for the findings contained in the Advisory Opinion.

She continued to underscore that Israel's policies and practices in the OPT cannot be justified by its security concerns, and shared the conclusion that its actions constitute internationally wrongful acts.

Judge Xue concluded that Israel must immediately cease all violations. However, she recognized that the ultimate realization of the Palestinian people's right to self-determination depends on the final settlement of the conflict between the State of Palestine and the State of Israel.

Separate Opinion of Judge Iwasawa

Judge Iwasawa provided a separate opinion discussing the scope of the Advisory Opinion as well as its findings.

He noted a significant temporal limitation in the opinion, as it does not address Israel's conduct in the Gaza Strip after 7 October 2023. The Judge highlighted that while "the Occupied Palestinian Territory" includes the West Bank, East Jerusalem, and Gaza, Gaza's situation is distinct. He explained that the Court applied a "functional approach" regarding the law of occupation, indicating that Israel is bound by certain obligations proportional to its effective control over Gaza. In doing so, however, the Court did not explicitly state whether Gaza remained "occupied" after 2005.

On the issue of discriminatory practices, Judge Iwasawa largely agreed with the Court's analysis but stressed that the discriminatory nature of the dual legal system in the West Bank would have required a deeper examination. In this regard, for instance, the Court found that Israel's "separation" policy in the West Bank is in breach of Article 3 of CERD, but did not qualify it as apartheid.

Moving on to the question of occupation, the Judge concurred with the Court's conclusion that Israel's continued presence in the OPT is illegal due to violations of the prohibition of acquiring territory by force and the right to self-determination. He specifies that the unlawfulness of the occupation does not descend from violations of the law of occupation, rather of other rules of general international law.

While agreeing with the Court's determination that Israel must end its presence in the OPT "as rapidly as possible," Judge Iwasawa clarified that this does not entail an immediate and unconditional withdrawal of all armed forces.

Separate Opinion of Judge Nolte

Judge Nolte provided a separate opinion to clarify the scope of the Court's analysis and to express disagreement with certain conclusions, particularly regarding Israel's compliance with CERD.

The Judge emphasized the differences between advisory and contentious proceedings, in the factual and legal scope of the analysis, and in the standards by which the Court makes its determinations. The responsibility of Israel for its conduct in the OPT with regard to specific acts, he argued, cannot be fully evaluated in an advisory proceeding, but needs to be addressed in more suitable venues.

He then highlighted the importance of considering Israel's security concerns when assessing its responsibility and suggested that the advisory opinion would have benefited from more engagement with information from official Israeli sources.

The Judge disagreed with the Court's observation that Israel's policies and practices violate Article 3 of CERD. He contended that the Court did not sufficiently discuss the subjective intent necessary to establish a violation of apartheid, a core element of the prohibition.

He held that the Court lacked sufficient information to conclude that Israel's actions amounted to apartheid or racial segregation, and thus, he believed the Court should have refrained from stating that Article 3 of CERD was breached. While acknowledging the segregative effects of Israel's policies, the Judge suggested that the Court could have addressed these effects as violations of other CERD provisions without making a specific finding on apartheid.

Joint Declaration of Judges Nolte and Cleveland

Judges Nolte and Cleveland provided a joint declaration supporting the Court's opinion that Israel's continued presence in the OPT is unlawful and that Israel must withdraw "as rapidly as possible." However, they wished to further elaborate on certain findings.

They highlighted that the Court's opinion excludes consideration of Israel's conduct in the Gaza Strip following the attack by Hamas and other armed groups on 7 October 2023, emphasizing that this exclusion is necessary for a focused legal analysis. The Judges agreed

that the legality of occupying forces is governed by *jus ad bellum*, which prohibits the acquisition of territory by force. Yet, they pointed out that the Court did not address whether Israel's initial presence in 1967 was lawful, but it focused on whether Israel's continued presence can still be justified 57 years after the beginning of the occupation.

While acknowledging Israel's legitimate security concerns due to threats from states and non-state actors, the Judges asserted that the right to self-defense cannot justify any acquisition of territory by force. They argued that Israel's settlement expansion and related policies indicate a clear intent to annex East Jerusalem and the West Bank, violating the aforementioned prohibition.

They concluded that Israel's actions violate the prohibition of annexation and impede the Palestinian right to self-determination, making Israel's presence in the OPT unlawful. They stated that Israel is obligated to withdraw from the OPT "as rapidly as possible." However, they highlighted that the duty to retire does not need to be fulfilled uniformly across all parts of the OPT and emphasized that their assessment does not address Israel's actions in Gaza following the 7 October 2023 attack.

Declaration of Judge Charlesworth

Judge Charlesworth expressed agreement with the Court's responses to the UNGA's questions but addressed two issues where she believed more detailed reasoning would have been necessary.

She argued that the Court should have provided a more detailed explanation of the discrimination faced by Palestinians in the OPT. She highlighted that the material presented to the Court indicates discrimination based on multiple and potentially intersecting grounds, such as gender and age.

Judge Charlesworth also explained why Israel's effective control of the OPT lacks a valid legal basis, asserting that the occupation is lawful only if justified under the rules regarding the use of force. In this regards, she observed that the right to self-defense must be exercised in accordance with the principles of necessity and proportionality. She held that the intensity, territorial scope, and duration of Israel's policies and practices undermine the claim that the occupation constitutes an act of self-defense.

Declaration of Judge Brant

Judge Brant agreed with the Court's reasoning and conclusions in the Advisory Opinion, emphasizing Israel's violation of Article 3 of CERD, which prohibits racial segregation and apartheid. He elaborated on this aspect by pointing out the importance of an evolutive interpretation of these concepts.

He noted that racial segregation and apartheid are not explicitly defined in CERD. However, interpreting these terms in their context and in light of subsequent developments in international law, such as the Apartheid Convention and the Rome Statute, was deemed crucial. These instruments, although not ratified by Israel, helped to clarify, in the Judge's view, apartheid's constituent elements: inhumane acts, an institutionalized regime of systematic oppression and domination, and the intent to maintain such a regime.

Judge Brant emphasized that Israel's policies of separation and settlement in the OPT have resulted in both physical and juridical separation of communities, constituting racial segregation and potentially apartheid. He underscored that such practices made the fulfillment of the Palestinian people's right to self-determination impossible and highlighted the illegitimacy of using security needs to justify segregation or apartheid.

He concluded that respect for international law, including its peremptory norms, remains in Israel's interest, as prolonged occupation and discriminatory measures undermined both Palestinian and Israeli security. Only adherence to international law could bring lasting peace to the region.

Separate Opinion of Judge Gómez Robledo

Judge Gómez Robledo fully supported the Court's findings that Israel's continued presence in the OPT is illegal and outlined the obligation for Israel to cease settlement activities, evacuate settlers, and make reparations. He stressed the Advisory Opinion's importance in guiding the UN resolve the Israeli-Palestinian conflict and highlighted two main areas for further development: Palestine's statehood and the peremptory status of the right to self-determination.

Regarding Palestine's statehood, he asserted that the Advisory Opinion should have explicitly recognized Palestine as a State under international law. He argued this would correct the imbalance in negotiations with Israel and supported this with historical context, emphasizing that Palestine's statehood is already a reality acknowledged by the majority of the international community.

On the right to self-determination, Judge Gómez Robledo discussed its recognition as a *jus cogens* norm, highlighting the importance of UN resolutions in establishing this right as a fundamental principle of international law. He argued that the Advisory Opinion should have linked the peremptory nature of self-determination to the legal consequences of its violation, reinforcing the international community's obligation not to recognize or support the illegal situation in the OPT.

He concluded that the Court's recognition of the right to self-determination as a peremptory norm reaffirmed its centrality in international law and emphasized the need for international efforts to promote Palestinian statehood and resolve the conflict.

Separate Opinion of Judge Cleveland

Judge Cleveland, in her separate opinion, elaborated on the Court's approach to Gaza, the concept of annexation, and the peremptory status of the right to self-determination under international law. She also joined Judge Nolte (above) in a joint declaration concerning Israel's continued presence in the OPT.

The Judge noted that the Advisory Opinion focuses on the denial of the Palestinian people's right to self-determination, which she supports. However, she emphasized that both Palestinians and Israelis have the right to self-determination, which encompasses the fair expectation to live in peace within secure and recognized borders. She asserted that the Court should have considered ongoing threats to Israel and regretted that Israel did not participate meaningfully in the advisory proceeding. She also observed that the UNGA's request focused solely on Israel's actions, suggesting that a more comprehensive approach, addressing the conduct of all relevant actors, would have been more appropriate.

Judge Cleveland observed that the opinion, excluding from the assessment of Israel's reaction to the attack by Hamas on 7 October 2023, provides little analysis on Gaza, focusing on East Jerusalem and the West Bank. She founds that the Court's considerations on Israel's practices and policies could not directly apply to Gaza, where there are no claims of settlement expansion or annexation. However, she emphasized that Israel maintains responsibilities under the law of occupation, human rights law, and other international principles also in Gaza.

Turning to annexation, Judge Cleveland clarified that the prohibition on acquiring territory by force includes scenarios where a state controls a territory through force with the intent to appropriate that territory permanently, and not just formal sovereignty claims. She agreed with

the Court that Israel's actions in East Jerusalem and the West Bank violate the prohibition on acquiring territory by force.

The Judge also noted the Court's recognition, for the first time, that the right to self-determination is a peremptory norm of international law, equating it with the right to be free from alien subjugation and foreign domination. She pointed out that the obligation's character and importance as *erga omnes*, rather than its peremptory status, underpin the Court's conclusions on the responsibilities of states and the UN.

Declaration of Judge Tladi

Judge Tladi fully concurred with the Court's finding that Israel's continued presence in the OPT is unlawful. However, he addressed several key points in his declaration that warranted further analysis.

He agreed with the Court's rejection of the view that the Israeli occupation of the OPT is merely a bilateral dispute, highlighting the UN's special responsibility towards Palestine. However, he expressed regret that the Court did not further emphasize the international community's responsibility and moral imperative to resolve the situation.

Judge Tladi underscored that the Court's discretion to decline giving an advisory opinion is extremely limited, particularly when requests come from UN organs. He suggested that the Court should rely on considerations of judicial propriety, rather than traditional discretion, to refuse an advisory opinion.

Judge Tladi commended the Court for recognizing self-determination as a peremptory norm but noted ambivalence about its consequences. He expressed concern that the Court's language might imply that consequences for third states arise from the *erga omnes* character of obligations, rather than the peremptory status of self-determination.

The Judge further argued that Israel's policies and practices breach the prohibition of racial segregation and apartheid, highlighting their severe and systematic nature.

While acknowledging Israel's security concerns, Judge Tladi stressed that international law protects security through cooperation duties and the prohibition on the use of force, with the exception of self-defense. He concluded that security interests cannot override fundamental legal rules, especially *jus cogens* norms.

He moved on to explore practical measures that the UN could adopt to implement its obligations, such as supporting Palestine's membership in the UN and ensuring Israel's compliance with reparation obligations identified in the opinion. Judge Tladi urged the UN to act on the Court's advice to promote the resolution of the Israeli-Palestinian conflict, emphasizing the need for concrete steps towards peace.

Geneva International Centre *for* Justice

Geneva International Centre for Justice (GICJ) welcomes the Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* delivered on 19 July 2024 by the International Court of Justice, and strongly supports its conclusions.

This landmark statement represents a significant step towards justice and accountability, as it unequivocally confirms the violations of international law perpetrated by Israel throughout its 57-year occupation, sweeping away all its legally unfounded defenses. The Court's findings finally bestow authoritative legal recognition to the positions long held by civil society organizations, States, and UN bodies, which have consistently condemned Israel's actions as illegal under international law.

The Advisory Opinion enshrines a vital affirmation of the Palestinian people's right to self-determination, which has been relentlessly crushed under Israel's domination.

The Court openly upholds that Israel's practices and policies, consisting of the transfer of its civilian population into the territory it occupies, the confiscation and requisitioning of land, the exploitation of natural resources, the extension of Israeli law, the forced displacement of the Palestinian population, and all measures altering the demographic composition, character, and status of the occupied territory, are not only unlawful *per se*, but also manifest the occupying power's intent to acquire permanent control over the usurped land.

Any attempt by Israel to annex Palestinian territory must be firmly opposed, and full sovereignty must be restored to the Palestinian people.

The Court is finally clear in declaring that Israel's system of oppression must be swiftly and completely dismantled. GICJ supports the reasoning that Israel's actions cannot be justified by security concerns and do not meet the requirements to qualify as lawful exercise of the right to self-defense. It follows that the occupation must be swiftly brought to an end, and Israel

must be held responsible for all violations of international law, particularly of international humanitarian law and human rights law, perpetrated since the beginning of the occupation.

GICJ commends the Court for bravely addressing Israel's breaches of its obligations under CERD, and for recognizing that its practices and policies in the OPT amount to racial segregation and apartheid.

The international community must now take concrete steps to make the operative clause of the Advisory Opinion effective. GICJ calls on all States and International Organizations to conform to the Court's opinion and to act decisively to uphold the international legal order. The responsibility to end Israel's illegal occupation does not rest solely on the affected parties; it is a collective duty that demands the cooperation of all States and international actors.

This requires not only diplomatic engagement but also the adoption of practical measures aimed at ensuring compliance. States must actively support initiatives that facilitate Israel's withdrawal from the OPT, and foster the implementation of reparations schemes for the affected Palestinian population. The ICJ's ruling provides a clear legal framework for these actions, and it is imperative that all members of the international community work together to fulfil it.

The obligation, incumbent on all States, to refrain from aiding or assisting violations of peremptory norms of international law must be given full effect.

All States must stop providing assistance to Israel that enables the continuation of its illegal presence and activities in the OPT. This includes the immediate cessation of arms supply and financial support that facilitate Israel's military operations and settlement expansion. As affirmed by the Court, States must at all times distinguish, in their interactions with Israel, between the State's legitimate territory and the Palestinian territory occupied since 1967. Even political support falls within the meaning of aiding. Rendering aid or assistance in maintaining a situation created by a serious breach of peremptory norms of international law constitutes, in itself, an internationally wrongful act, entailing State responsibility.

The UNGA and UNSC, as opined by the Court, bear the responsibility to establish the modalities to bring to an end Israel's unlawful presence in the OPT.

It is time for the General Assembly to also take the decisive steps to definitively recognize Palestine's statehood, together with its full UN membership. Such recognition is crucial for

advancing the Palestinian people's right to self-determination and for promoting a just and lasting peace in the Middle East.

The Security Council must overcome its current impasse and take all appropriate measures to protect the Palestinian population, halt the ongoing conflict in Gaza and the related humanitarian crisis, and coerce Israel into compliance with international law ensuring its withdrawal from the OPT. The role of the UNSC Permanent Members in these endeavors is critical. In particular, the United States must cease the unjustified use of veto power that has repeatedly hindered the Council's ability to adopt necessary measures for restoring peace and security in the region. It is essential that the United States and other key international actors cooperate to ensure that these measures are effectively implemented.

GICJ notes that some Judges, in their appended opinions, expressed concern over the fact that Israel did not participate in the proceeding, and argued that the material upon which the Court founded its opinion was incomplete and biased. However, it is crucial to recognize that Israel was granted every opportunity, under the rules and procedures of the Court, to present its perspective and challenge the assertions of other participants. Yet, it deliberately decided to defy the advisory proceeding.

In fact, with its Order of 3 February 2023, the Court duly invited to submit information all the UN Members States, Israel included, as well as the UN bodies, and the observer State of Palestine. With its written statement on 24 July 2023, Israel declared that it would not engage with the subject-matter.

Israel purportedly avoids to confront itself with the Court's scrutiny, as it is well aware of the wrongfulness of its acts. To speak of "one-sided narrative" in such circumstances is misleading. GICJ is pleased that the majority did not embrace this view and proceeded to render its opinion, which is based on indisputable facts, reported coherently by independent observers and United Nations bodies.

GICJ firmly believes that the ICJ's Advisory Opinion sets a valuable precedent for international accountability and reinforces the global commitment to uphold human rights and international law. It is incumbent upon all States and International Organizations to act upon the Court's findings and to intensify efforts towards achieving a peaceful resolution to the Israeli-Palestinian conflict.

A solution to the “Palestinian Question” is long overdue. The time for action is now, and GICJ remains committed to advocating for justice, peace, and the realization of the Palestinian people's rights.

Key takeaways

i. Authority of the Advisory Opinion

An advisory opinion is a legal interpretation provided by the ICJ at the request of a UN body or specialized agency. Unlike contentious cases, which involve disputes between states that consent to the Court's jurisdiction, advisory opinions are sought to clarify legal questions and receive guidance on complex issues of international law. The purpose of an advisory opinion is to assist the requesting entity in carrying out its functions by offering an analysis of the relevant legal principles and rules.

Contrary to rulings, which are binding upon the parties concerned, advisory opinions are generally not binding. The requesting entity remains free to follow or disregard the Court's opinion. However, as the ICJ itself explains:

Despite having no binding force, the Court's advisory opinions nevertheless carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and help to keep the peace. In their own way, advisory opinions also contribute to the clarification and development of international law and thereby to the strengthening of peaceful relations between States.

Although not strictly legally binding, ICJ's advisory opinions perform an important function within the international legal system.

In the context of the Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the Court's findings reinforce the international community's obligations under international law. It underscores the duty of States and International Organizations not to recognize or assist in maintaining illegal situations, such as Israel's presence and practices in the OPT, and to actively work towards upholding the rights of the Palestinian people. The Advisory Opinion thus acts as a catalyst for international efforts to address and resolve the “Palestinian Question”, promoting adherence to international law and the principles of justice and human rights.

ii. Reverberating effects on other proceedings

The Court's findings and legal determinations could have an impact on other, parallel, contentious proceedings currently pending before the ICJ itself and other international courts, particularly the International Criminal Court (ICC).

(i) ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)

The ICJ case on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (hereinafter, the "Genocide Convention") *in the Gaza Strip* was initiated on 29 December 2023, with South Africa filing allegations against Israel, accused of committing genocide in Gaza. On 26 January 2024, the Court issued a first set of provisional measures (later reinforced) ordering Israel to prevent the acts prohibited under the Genocide Convention and to ensure the protection and safety of the Gazan population.

The Court still has to consider the merits of the case, which are yet to be examined in full.

The Court's conclusion that Gaza has remained under Israeli occupation even after the withdrawal of troops in 2005 (Advisory Opinion §§ 91-94), may support South Africa's arguments.

Where a State has placed territory under its effective control, it might be in a position to maintain that control and to continue exercising its authority despite the absence of a physical military presence on the ground. Physical military presence in the occupied territory is not indispensable for the exercise by a State of effective control, as long as the State in question has the capacity to enforce its authority, including by making its physical presence felt within a reasonable time [...]

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

The recognition that Israel still exercises effective control over the Gaza Strip (circumstance that the occupying power has always denied, at least after 2005) might help to prove the material conduct of "deliberately inflicting on [a] group conditions of life calculated to bring

about its physical destruction in whole or in part", listed in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide.

The perpetration of such act does require the capacity to exercise a certain degree of direct or indirect control over the targeted group. The Advisory Opinion suggests that this capacity existed before, and even more after, 7 October 2023.

(ii) ICJ, Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)

The ICJ case *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory* was introduced on 1 March 2024, with Nicaragua claiming that Germany is violating international law by assisting and supplying Israel, as well as providing other forms of support, thereby allowing it to further grave violations in the OPT. Alleged illegal acts include breaches of the Genocide Convention and of IHL rules, particularly the Fourth Geneva Convention. Nicaragua requested provisional measures asking the Court to order Germany to suspend aid and military assistance to Israel that might be used in violation of international law, ensure weapons are not used unlawfully, and resume funding to UNRWA (the UN Relief and Works Agency for Palestine Refugees in the Near East). On 30 April 2024, the Court ruled against granting provisional measures but did not dismiss Nicaragua's case, allowing the proceedings to continue.

The Court will proceed to examine the merit of the case.

In its Advisory Opinion, the ICJ, partly reiterating its stance from the 2004 Wall Advisory Opinion, declares that all States are under an obligation, *inter alia*, not to render aid or assistance in maintaining the situation created by the continued presence of Israel in the OPT.

The Court does not make explicit what forms of support to the State of Israel may amount to aid or assistance within the meaning of Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. It is clear, however, that providing Israel with means that facilitate its actions in the Occupied Palestinian Territory, such as military assistance, financial aid, or economic resources, could potentially constitute a breach of this (and other) obligation(s).

What the Court omits in its reasoning is remarkably addressed by President Salam in its appended Declaration (§§ 44-47).

[...] as the Court points out, the obligations that Israel has violated include erga omnes obligations [...], which entail “special legal obligations” for other States in accordance with customary international law, as reflected in Article 41 of the Articles on the Responsibility of States for Internationally Wrongful Acts. Consequently, with respect to Israeli policies and practices that infringe the Palestinian people’s right to self-determination, all States are bound by the customary obligations laid down in that Article. This requires not only taking no action that might hinder the exercise of that right, but also providing the necessary lawful support for the realization of that right and co-operating actively with the United Nations to that end. [...]

These obligations are both negative and positive. The negative obligations require States to refrain from encouraging, aiding or assisting Israel in violation of the rules of international humanitarian law applicable in the Occupied Palestinian Territory. As the ICRC clarified in its 2016 commentary on the First Geneva Convention,

“financial, material or other support in the knowledge that such support will be used to commit violations of humanitarian law would therefore violate common Article 1, even though it may not amount to aiding or assisting the commission of a wrongful act by the receiving States for the purposes of State responsibility” [...]

Thus, any unconditional financial, economic, military or technological assistance to Israel would constitute a breach of this obligation.

The Advisory Opinion acknowledges that violations of peremptory norms as well as other IHL and IHRL provisions have been committed in Gaza and in the broader OPT even way before 7 October 2023. It also identifies the types of conduct that may amount to aiding and assisting or breaches of the duty to ensure respect of IHL, as outlined in Common Article 1 of the Geneva Conventions. These findings provide a solid legal foundation for Nicaragua’s case, where it is substantially just left to be determined whether Germany knew or ought to have known, given the circumstances, that its support was facilitating these violations.

(iii) ICC, Application for arrest warrants in the situation in the State of Palestine

On 20 May 2024, the ICC Prosecutor Karim A.A. Khan KC announced the filing of applications for warrants of arrest against the leaders of Hamas and other Palestinian armed groups as well as against Israel’s Prime Minister Benjamin Netanyahu and its Minister of Defence Yoav Gallant under charges of several war crimes and crimes against humanity.

The ICC's Pre-Trial Chamber I is yet to decide over the issuance of the warrants.

The Prosecutor's Office submitted that the alleged crimes were committed in the context of an international armed conflict between Israel and Palestine, and a parallel non-international conflict between Israel and Hamas.

The Advisory Opinion's conclusion that Gaza is under occupation reinforces the Prosecutor's view on the existence of an international armed conflict. Maintaining the opposite view, Israel has always claimed that no international armed conflict existed, rather only a non-international one against Hamas.

Decisions of international judicial bodies, while not binding on other courts, often significantly influence the jurisprudence of other institutions through a continuous legal dialogue. This interaction is evident in how courts cite each other's decisions as persuasive authority or precedent. This cross-referencing not only enriches the legal reasoning of their decisions but also promotes greater consistency and harmonization in international law. The ICJ's authoritative opinions can be particularly influential in informing the ICC's interpretation of complex legal principles, thereby contributing to the evolving landscape of international legal norms.

Although not strictly relevant for the determinations of the Prosecutor, it is worth reminding that the law of occupation imposes notable constraints on the Occupied Power even when it comes to the use of force. In occupied territories, IHRL applies complementing IHL. Generally, the use of lethal force can only be resorted to according to the so called "law enforcement paradigm," meaning only under strict criteria of necessity and proportionality. Under IHL of occupation, protected persons (roughly, Palestinians in Israel's hands, a.k.a. present in the occupied territory) enjoy particular legal safeguards. They shall at all times be respected, treated humanely, and protected against all acts of violence or threats thereof, insult and public curiosity. They shall not be discriminated against, made object of reprisal or collective punishment (Fourth Geneva Convention, Articles 27 to 34).

iii. The right to self-determination recognized as *Jus Cogens*

As highlighted by Judge Cleveland in its Separate Opinion (§§ 31-32), the Court has recognized, for the first time in its jurisprudence, that the right to self-determination is a peremptory norm of general international law, commonly referred to as *jus cogens*.

Jus cogens norms are universally applicable and hierarchically superior norms of international law, which reflect and protect the most fundamental values of the international community. No derogation from such rules is permitted.

The affirmation that the right to self-determination has attained the status of *jus cogens* is not a novelty. This understanding finds legal ground in the UNGA resolutions 1514 (XV) of 14 December 1960, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, and 2625 (XXV) of 24 October 1970 *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* – as recalled by Judge Xue in her appended Declaration (§ 3).

Such conclusion was also reached by the International Law Commission (ILC), which include the right of self-determination in its list of peremptory norms (ILC Draft conclusions on *jus cogens*, Conclusion 23 and Annex).

However, the Court's endorsement to this view is noteworthy and highly valuable. Recognizing self-determination as a *jus cogens* norm reinforces its role in protecting the sovereignty and dignity of peoples worldwide and strengthens its legal enforceability against actions that might undermine it.

iv. Extraterritorial applicability of IHRL, including CERD, and violations of the prohibition of racial segregation and apartheid

In its 2004 Wall Advisory Opinion, the ICJ affirmed that IHRL applies also extraterritorially; a position it reiterates in its current Advisory Opinion (§ 99). This legal assumption has been consistently opposed by Israel, which argues that human rights treaties apply solely within the territorial boundaries of the State party, outside of which the jurisdiction of the State ceases.

Nonetheless, it is widely and increasingly recognized in international law that State jurisdiction can extend beyond national borders where certain conditions are met. It is the case, primarily, when a State exercises a degree of control over a person or territory. By definition, a situation of occupation entails that a foreign State has acquired and exercises effective control over a given territory. Therefore, in the OPT, the occupying power is obliged to apply all human rights instruments to which it is a party.

The Court took a step forward in respect of its previous analysis by examining and finally declaring the extraterritorial applicability of CERD (§ 101).

In relation to CERD, the Court notes that that Convention contains no provision expressly restricting its territorial application. On the contrary, several of its provisions impose obligations on States parties that are applicable “in territories under their jurisdiction” (Article 3 of CERD) or in relation to individuals “within their jurisdiction” (Article 6 of CERD; see also Article 14, paragraphs 1 and 2, of CERD). This indicates that CERD is also applicable to conduct of a State party which has effects beyond its territory. [...] In the Court’s view, Israel must comply with its obligations under CERD in circumstances in which it exercises its jurisdiction outside its territory.

The ICJ established that CERD does not impose geographical limitations on its applicability, thus reinforcing the principle that human rights obligations extend beyond the State’s territorial boundaries.

Another noteworthy aspect of the Advisory Opinion is the finding that Israel has violated Article 3 of CERD (§§ 226-229). The Court determined that Israel’s practices and policies, as well as the legislation enacted in the OPT, create a material and legal separation between Israeli settlers and Palestinian communities. This results in Palestinians experiencing inferior treatment, particularly in terms of restrictions on freedom of movement and access to natural resources.

However, the Court does not further qualify the violations of Article 3 CERD. This aspect is addressed by Judge Brant in his appended Declaration, in which he notes that the Court missed an opportunity to refine the definition of the concepts of apartheid and racial segregation (§§ 5-7).

The concept of “racial segregation”, interpreted in accordance with the ordinary meaning of its terms in their context and in the light of the object and purpose of CERD, means separating people, de jure or de facto, according to criteria based on race, colour, descent, or national or ethnic origin.

As for “apartheid”, clarifying its constituent parts is indisputably important in my view, given the seriousness of practices of apartheid, whose prohibition is established in both treaty law and customary international law, and the fact that the crime of apartheid is recognized as a crime against humanity whose prohibition is a jus cogens norm that creates rights and obligations erga omnes.

In my opinion, the Court could have used evolutive treaty interpretation to clarify the constituent elements of this crime. The Court has previously adopted such an approach in interpreting a treaty instrument. [...]

According to Brant, the Court should have interpreted the notion of apartheid enshrined in CERD based on the text of subsequently adopted treaties: the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the ICC.

The Court could have clarified the content of the obligations under CERD by referring to the elements of apartheid common to those two instruments (§ 10):

(i) the material element constituted by the commission of inhuman acts; (ii) the contextual element of an institutionalized régime of systematic oppression and domination by one racial group over another; and (iii) the intentional element constituted by the intent to maintain the aforementioned régime.

In any case, it is particularly relevant that the established régime of racial segregation or apartheid thwarts the Palestinian people's right to self-determination (§ 12).

does not further qualify the violations of Article 3 CERD. This aspect is addressed by Judge Brant in his appended Declaration, in which he notes that the Court missed an opportunity to refine the definition of the concepts of apartheid and racial segregation (§§ 5-7).

v. The relevance of the Oslo Accords

The so called Oslo Accords are a series of agreements concluded between Israel and the Palestine Liberation Organization (PLO) aimed at settling the Israeli-Palestinian conflict. Negotiated in Oslo, Norway, the first accord, known as Oslo I, was signed in 1993, marking the first face-to-face agreement between the two parties. The agreement led to mutual recognition, with Israel acknowledging the PLO as the representative of the Palestinian people and the PLO recognizing the State of Israel.

Oslo I established a framework for the gradual transfer of governance from Israel to the Palestinians in certain areas of the West Bank and Gaza Strip, including the creation of the Palestinian Authority, which was tasked with limited self-governance in these territories. The agreement also set out a plan for Israeli military withdrawal from parts of the Gaza Strip and the West Bank over a five-year period. Key disagreements such as the status of Jerusalem, Palestinian refugees, and borders were deferred for future negotiations.

The follow-up agreement, Oslo II, signed in 1995, expanded on these arrangements by dividing the West Bank into three administrative divisions with varying degrees of Palestinian and Israeli control: Area A, under full civil and security control by the Palestinian Authority; Area B, under Palestinian civil control and shared Israeli-Palestinian security control; Area C, under full Israeli control over security, planning, and construction. Despite initial progress, the implementation of the Oslo Accords faced significant opposition from both Israeli and Palestinian factions, and ultimately failed to achieve a lasting peace.

Israel has often relied on the Oslo Accords to justify certain activities in the OPT, and just as much to assert limitations on its responsibility in those areas.

It has, at times, argued that its conduct, particular in Area C, is consistent with the Oslo framework, which grants it significant control over security and administration. This includes actions like settlement expansion, which Israel contends are permitted under its retained authority in these areas. In other occasion, it has claimed that the Oslo Accord mitigated its obligations under international law, such as those related to the Fourth Geneva Convention, by arguing that the Accords redefine its responsibility by transferring certain powers to the Palestinian Authority. Similar arguments were advanced also by some participants to the advisory proceeding.

With a powerful statement, the Court rejected such claims and finally clarified the relevance of the Oslo Accords, holding that these cannot displace the application of the pertinent rules of international law (§ 102).

[...] The parties to the Oslo Accords agreed to “exercise their powers and responsibilities pursuant to” the Accords “with due regard to internationally-accepted norms and principles of human rights and the rule of law” (Oslo II Accord, Art. XIX). The Court recalls that the “legitimate rights” of the Palestinian people recognized in the Oslo Accords includes the right to self-determination [...]. The Oslo Accords further precluded the parties from “initiat[ing] or tak[ing] any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations” (Oslo II Accord, Art. XXXI (7)). The Court observes that, in interpreting the Oslo Accords, it is necessary to take into account Article 47 of the Fourth Geneva Convention, which provides that the protected population “shall not be deprived” of the benefits of the Convention “by any agreement concluded between the authorities of the occupied territories and the Occupying Power”. For all these reasons, the Court considers that the Oslo Accords cannot be understood to detract from Israel’s obligations under the pertinent rules of international law applicable in the

Occupied Palestinian Territory. With these points in mind, the Court will take the Oslo Accords into account as appropriate.

The Court's interpretation underscores that while the Oslo Accords provide a framework for interim governance and negotiations between Israel and the Palestinian Authority, they do not override international legal obligations. The Advisory Opinion highlights that any measures taken in the OPT must align with the broader principles of international law, including the protection of human rights and the prohibition against annexation and territorial changes. Therefore, the Oslo Accords cannot be used to justify actions that violate established international norms and responsibilities.

vi. Israel's security concerns

It is reminded in several passages of the Advisory Opinion, as well as in several appended opinions (notably, President Salam's Declaration and Judge Brant Declaration) that Israel's security concerns do not justify its continued presence in the OPT.

Israel, as any State, is entitled to defend itself against armed attacks, but the right to self-defense must be exercised in compliance with the UN Charter (Articles 2 and 51) and the relevant rules of customary international law. In particular, the right to self-defense must be exercised in circumstances of necessity and in manner that is proportionate. Necessity requires that force is used as last resort where the conflict cannot be solved by peaceful means. Proportionality entails that the use of force is limited to the neutralization of the attack.

Occupying a foreign territory may, in principle, fall within the meaning of self-defense, if occupation represents the only effective and proportionate response to an armed attack or an imminent threat thereof. However, it is clear that such an extreme measure can only be temporary. The prolonged nature of Israel's occupation reveals its intent to annex the controlled land and refutes any argument based on self-defense. Israel can only defend its own territory, and must release the land it unlawfully acquired.

Moreover, as mentioned above, peremptory norms of general international law cannot be derogated unless by other peremptory norms. Accordingly, *jus cogens* rules as the right to self-determination and the prohibition of apartheid cannot be contravened even in the exercise of self-defense.

For further information: <https://www.icj-cij.org/case/192>.

Geneva International Centre *for* Justice

Independent, non-profit, non-governmental organisation

GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

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