

International Court of Justice

Oral Statement of the

Islamic Republic of Iran

delivered by

H.E Mr. REZA NAJAFI

In advisory proceedings concerning

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

22 February 2024



I. Introduction

Mr. President, Distinguished Members of the Court,

It is indeed an honor to appear before the International Court of Justice on behalf of the Islamic Republic of Iran.

Enjoying a longstanding principled position in support of the full realization of the inherent right of the Palestinian people to self-determination, the Islamic Republic of Iran follows this advisory proceeding of the Court with great interest.

What makes this proceeding even more prominent and focus of attention of almost every nation in the world, is its concurrence with the ongoing appalling situation in Palestine, particularly the Gaza Strip.

To indicate how severe and grave the situation in Gaza is, I merely refer to three United Nations (UN) and World Health Organizations (WHO) reports:

First) According to the UN Secretary-General, as a result of Israeli military operations, the entire population is enduring destruction at a scale and speed

without parallel in recent history and 2.2 million Palestinians there struggling to simply make it through another day without proper shelter, heating, sanitary facilities, food, and drinking water¹;

Second) According to the UN Under-Secretary-General for Humanitarian Affairs, “for children in particular, there is no food, no water, no school; nothing but the terrifying sounds of war, day in and day out, and its people are witnessing daily threats to their very existence — while the world watches on”²; and

Third) According to the WHO, the population in Gaza is facing extreme hunger, with insufficient food and high levels of malnutrition.³ Yet, the conditions in Gaza are becoming much worse every day.

We remain at a turning point in the history of mankind; the opinion of this Court can set the ground for saving lives of thousands of innocent women and children, and contribute to the legitimate demand of a people deprived of its inherent right to self-determination for decades.

It is hoped that this Court will, once more, make history, by giving a landmark advisory opinion in support of the right to self-determination of the Palestinian people which may finally help cease the illegal prolonged occupation of Palestine.

Mr. President, Members of the Court,

¹ 23 January 2024, UN Secretary-General’s remarks to the Security Council - on the Middle East.

² (OCHA, “UN relief chief: The war in Gaza must end”, Statement by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 5 Jan. 2024.)

³ See (WHO, “Lethal combination of hunger and disease to lead to more deaths in Gaza”, 21 Dec. 2023.)

In our oral statement, we submit that:

Firstly, this Court has jurisdiction to give the advisory opinion requested;

Secondly, there are legal consequences arising from the prolonged occupation of the Palestinian territories by the Israeli occupying regime in violation of the right of the Palestinian people who have never experienced the right to self-determination; and

Thirdly, having elaborated on the legal consequences that arise for all States and the United Nations from this status, I will reiterate the inclusive plan previously submitted by the Islamic Republic of Iran to the United Nations for realization of the right of Palestinians to self-determination.

II. Jurisdiction of the Court

Mr. President, Members of the Court,

First, we submit that the Court has jurisdiction to render the advisory opinion requested by the General Assembly in resolution 77/247 of 30 December 2022.

Here we believe that the elements of Article 65 (1) of the Statute of the Court namely the existence of the “legal question” and the authorized “body” i.e. the General Assembly, are fulfilled in this case. That said, the ICJ, as the principal judicial organ of the United Nations can assist the General Assembly to exercise its functions under the UN Charter by rendering the Advisory Opinion requested.

Therefore, just as the Court has established its jurisdiction in the

advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Wall)*, it has jurisdiction in the present case based on the same grounds; moreover, there is no compelling reason for declining to give an advisory opinion.⁴

⁴ As the first point of our argument regarding jurisdiction, we submit that the question raised in paragraph 18 (a) and (b) of the General Assembly resolution is qualified as “legal”. According to paragraph 3 of Article 102 of the Rules of Court, the legal question must be pending between two or more countries. Consideration of the legal issues related to the occupation of the Palestinian territory by the General Assembly and the Security Council clearly indicates that the question requested remains suspended and ongoing. Now the General Assembly requests an advisory opinion from the Court on a legal question. The advisory opinion requested can be divided into two parts. Firstly, violation of the right of the Palestinian people to self-determination by the Occupying Power reflected in part (a) of the question and secondly, the legal consequences that arise for all States and the United Nations from this status which is raised in part (b) of the aforementioned paragraph. The right of the peoples under occupation to self-determination as a core principle of international law has acquired content over time through the practice of states and international organizations, and has, as such, gained recognition as a fundamental right in international law.

Also, “occupation” has legal dimensions and the actions and decisions of the Occupying Power affect the rights and obligations of other legal entities. Hence, the question raised is clearly recognized as legal. In sum, the General Assembly's request for an advisory opinion fulfills the conditions of Article 65 of the Statute of the Court and Article 96(1) of the Charter both *ratione personae* (the General Assembly being a duly authorized organ) and *ratione materiae* (the request being on a legal question).

As for the second prong of our arguments on jurisdiction of this Court, we submit that the General Assembly has, beyond the shadow of a doubt, the authority to request an advisory opinion in the current case. In tandem with Article 96 of the UN Charter, the Court in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, opined that the General Assembly is competent to raise questions and determine the necessity of questions before the Court. Paragraph 62 of the said advisory opinion stipulated that: “[...] the Court cannot decline to answer the question posed based on the ground that its opinion would lack any useful purpose. The Court cannot substitute its assessment of the usefulness of the opinion requested for that of the organ that seeks such opinion, namely the General Assembly.” In addition, in paragraph 28 of the above opinion, the Court makes an explicit reference to the practice of the General Assembly with reference to Article 12, paragraph 1, of the Charter.

Finally, it is submitted that according to the jurisprudence of the Court the case of “compelling reasons” and “discretionary power” is moot, negative proposition because of its subject being non-existent *ab initio*. In the *Legality of the Threat or Use of Nuclear Weapons* case, a number of arguments were put forward as to why the Court should not render an advisory opinion in that circumstance. The Court established its jurisdiction for an advisory opinion requested by the General Assembly in paragraphs 10-19 of its Advisory Opinion and determined that it had the competence to deliver the advisory opinion, and that there were no compelling reasons for it not to do so. The same is true here.

Also, in the *Wall* case, the Court assessed those same arguments in paragraphs 13-35 of its Advisory Opinion and determined that it had the competence to deliver the opinion on the question posed by the General Assembly, and that there were no compelling reasons for it not to do so. Considering the relationship between the subject of the request in the *Wall* case for an advisory opinion and the new question raised by the General Assembly in the current case, there remains no doubt that the same is true here. Moreover, as the Court discussed in *Western Sahara* case, the Court has the authority to give an advisory opinion for the question raised by an authorized organ based on article 65, paragraph 1, of the statute and may only decline to do so in case of *compelling reasons*, which are absent in the current case.

III. The Legal Consequences arising from the ongoing violation of the right of the Palestinians to self-determination

Mr. President, Members of the Court,

Now I turn to the first section of our reasoning regarding the merits of the matter; here, we first argue that the Israeli occupying regime has violated, and continues to violate, on several grounds, the Palestinians' right to self-determination.

The legal status of the right to self-determination is generally understood to be attributed to "peoples" and grounded first in the Charter of the United Nations,⁵ in several UN General Assembly resolutions,⁶ and its inclusion in common Article 1 to the two International Covenants of Human Rights.⁷ As such, "all peoples have the right freely to determine, without external interference, their political status and their place in the international community and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".⁸

In line with the elements mentioned in the question raised for the request of advisory opinion in the General Assembly resolution, I briefly

⁵ Article 1(2) of the UN Charter reads: "The Purposes of the United Nations are: [...] 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

⁶ UNGA, 'Resolution 2625 (XXV): Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations' (24 October 1970) UN Doc A/RES/2625(XXV).

⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 93 (ICESCR).

⁸ UNGA UN Doc A/RES/2625(XXV); see also common Article 1 (2) of the ICCPR and ICESCR; see also UN Human Rights Committee (HRC), 'General Comment No. 12: Article 1 (Right to self-determination)' (13 April 1984) para. 6.

present my arguments on a series of measures that constitute the ongoing violation by the Israeli occupying regime; these are as follows:

- (i) Prolonged occupation;
- (ii) Altering the demographic composition in the occupied territories;
- (iii) Altering the character and status of the Holy City of Al-Quds;
- (iv) Discriminatory measures; and
- (v) Violation of the right of the Palestinian people to permanent sovereignty over their natural resources.

(i) **Prolonged occupation**

First and foremost, the prolonged occupation by the Israeli occupying regime confirms its intention to make it permanent, in violation of the principle of prohibition of the acquisition of territory by force.

The occupation of the Palestinian territories is the longest military occupation existing today. The right to self-determination of the Palestinian people continues to be violated as long as this occupation ages; this ongoing violation thwarts Palestine's ability to rely on State-based rights and obligations under international law,⁹ depriving them of their inalienable right to self-determination, including their right to live in freedom, justice and dignity.

⁹ In November 2012, the UN General Assembly decided, by 138 votes to 9 with 41 states abstaining, 'to accord to Palestine non-member observer State status in the United Nations'. 'Status of Palestine in the United Nations: Resolution adopted by the General Assembly on 29 November 2012' (4 December 2012) UN Doc A/Res/67/19, 3;

Thus, we request the Court to consider the very fact of prolongation of the occupation as an indicator of the violation of the right of the Palestinians to self-determination.

(ii) ***Altering the demographic composition in the occupied territories***

Mr. President, Members of the Court,

Apart from prolonged occupation, altering the demographic composition in the occupied territories has led to violation of the Palestinians' right to self-determination. The UN Security Council has a bulk of resolutions concerning the occupation of Palestinian territories, all condemning, among others, altering the demographic composition of these territories by the Israeli Occupying Power.¹⁰ Hence, it is a well-established fact that the Israeli occupying regime has grossly violated international law on an *ongoing* basis;

Article 49 (6) of the Fourth Geneva Convention reads:

“the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Apart from that, the Court, in its opinion in *the Wall* case declared that:

¹⁰ Including resolutions 242 (1967), 338 (1973), 446 (1979), 452 (1979), 465 (1980), 476 (1980), 478 (1980), 1397 (2002), 1515 (2003), and 1850 (2008), as cited in UN Security Council, 'Resolution 2334, Adopted by the Security Council at its 7853rd meeting, on 23 December 2016' (23 December 2016) UN Doc S/RES/2334, condemning all measures aimed at altering the demographic composition, character and status of the Palestinian territories, construction and expansion of settlements, transfer of settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant UN resolutions.

“[the] provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an Occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.”¹¹

Furthermore, the Court affirmed, in the same case, the violation of the right to self-determination based on measures taken by the Occupying Power which has led to a change in the demographic composition of Palestine.

Mr. President, Members of the Court,

Forcible deportation of civilian populations, widely known for one of its most infamous instances as “Nakba Day”, has a long history. Essentially, with the illegal formation of the Israeli occupying regime in 1948 instead of the former British Mandate of Palestine, the demographic composition changed significantly with the displacement of more than 700,000 Palestinians. In fact, the Israeli occupying regime was illegally established that year through a violent, arbitrary process that involved the deportation or forcible transfer of hundreds of thousands of native Palestinians from their land to create a Majority-Jewish colony, in line with the demands of the Zionist movement.

By denying the right to return of forcibly deported Palestinians to Palestine, the Israeli regime continues to deprive those Palestinians of their right to live in their homeland. The majority of Palestinians live outside

¹¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 120.

Palestine mainly in Jordan, Syria and Lebanon, with many of them remaining stateless living in crowded refugee camps that lack basic infrastructure.

Needless to say, forcible displacement of civilian population, is of such a high significance that has been defined as a war crime under Article 8 of the Statute of the International Criminal Court.

(iii) Altering the character and status of the Holy City of Al-Quds

Mr. President,

The next measure that has violated the right of self-determination of Palestinians, is altering the character and status of the Holy City of Al-Quds. The actions taken by the Israeli occupying regime with regard to the Holy City of Al-Quds have utterly disregarded the right to self-determination of the Palestinian people.

Altering the character and status of Al-Quds has had significant religious and cultural implications for the Palestinian people. Al-Quds Al-Sharif holds a remarkable religious and historical significance for Palestinians, as well as for Muslims, Christians and Jews worldwide. By altering the *status quo* of the City and its holy sites, the Israeli occupying regime has undermined the cultural heritage and identity of the Palestinian people, and has further violated their right to self-determination.

The construction and expansion of settlements, along with the violation of Palestinians' right to free movement and the revocation of

residency permits, have altered the demographic and cultural character of the City as well.¹²

(iv) **Discriminatory measures**

Mr. President, Members of the Court,

The next series of measures depriving the Palestinian people of their right to self-determination comprise of discriminatory measures targeting the basic rights of the people in the occupied territories. This has been underlined by the UN General Assembly and recorded extensively to include the killing and injury of civilians, the forced displacement of civilians and a systematic policy of obstruction of humanitarian assistance.¹³

The Israeli occupying regime's actions, as manifested in various laws and policies, have created a system of discrimination that has negatively affected the Palestinian population. In Palestine, the occupying regime's expansionism has consolidated into apartheid through the longest occupation in modern history.¹⁴ It is well established that apartheid is a crime against conscience and dignity of mankind,¹⁵ and is further in violation of fundamental principles of international law enshrined in the UN Charter and crystalized in international human rights law, and seriously threatens international peace and security.

¹² A/76/333, 20 September 2021, Occupying Power's practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including Quds. It covers the period from 1 June 2020 to 31 May 2021 and includes a report on the construction and expansion of settlements, along with the restriction of Palestinians' movement and the revocation of residency permits, and altering the demographic and cultural character of the City.

¹³ See A/77/356, 21 September 2022.

¹⁴ *Ibid.*

¹⁵ UNSC Res 473 (1980) of 13 June 1980, para. 3.

The Special Rapporteur on the situation of human rights in the Palestine has concluded that the political system of entrenched rule in occupied Palestine which endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind Walls and checkpoints under a permanent military rule “*sans droits, sans égalité, sans dignité et sans liberté*” satisfies the prevailing evidentiary standard for the existence of apartheid.¹⁶ Many laws, policies, and practices adopted and implemented since 1948 by the Israeli occupying regime have been aimed at fragmenting the Palestinian people and dividing them into various groups; this clearly denies the Palestinian people its right to self-determination.

In tandem with the above, construction and expansion of settlements, segregated roads, barriers, and checkpoints has created a system of apartheid, effectively isolating Palestinian communities, which manifestly violates multiple provisions of the Convention on the Elimination of All Forms of Racial Discrimination.

The Court is, therefore, requested to opine that such policies and practices must be ceased immediately as they continue to violate the right of self-determination of the Palestinian people.

(v) *Violation of the right of the Palestinian people to permanent sovereignty over their natural resources*

Mr. President, Members of the Court,

¹⁶ A/HRC/49/87, 21 March 2022, para. 52.

The right to exercise permanent sovereignty over natural resources is an inevitable component of the right to self-determination. The two International Covenants of Human Rights¹⁷ and a number of UN General Assembly resolutions recognize this right.¹⁸ The UN General Assembly has expressed grave concern over a range of practices by the Israeli occupying regime negatively impacting Palestine's natural resources.¹⁹

It has been affirmed the right of the Palestinian people to permanent sovereignty over their natural wealth and resources as an integral component of the right to self-determination.²⁰ It has been further confirmed that the right should be used in the interest of their national development, the well-being of the Palestinian people and as part of their right to self-determination.²¹

¹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art. 1; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 93 (ICESCR), Art. 1.

¹⁸ UNGA RES 1803 (XVII), 12 December 1962, para. 7; UNGA RES 3281 (XXIX), 12 December 1974, Art. 2, para. 1; UNGA RES 41/128, 4 December 1986, para. 1 (2).

¹⁹ 'Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, Including Quds, and of the Arab Population in the Occupied Syrian Golan Over Their Natural Resources: Resolution Adopted by the General Assembly on 22 December 2011' (29 March 2012) UN Doc A/RES/66/225. This includes the destruction of agricultural land and orchards, and the destruction of water pipelines and sewage networks, which negatively affects the water supply.

²⁰ The right to self-determination, well established in international law, embodies the inherent right of all people to fully utilize their natural resources for the benefit of their societies. In the same vein, the Human Rights Council has confirmed that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination, calls upon all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of international law by the occupying Power which was reflected in A/HRC/RES/49/28, 11 April 2022, Resolution adopted by the Human Rights Council on 1 April 2022.

²¹ In this context, the rampant exploitation, endangerment, and depletion of Palestinian natural resources perpetrated by the occupying Power undermines the very essence of self-determination. The occupying Power's relentless exploitation of Palestinian natural resources, particularly land and water, has resulted in severe environmental degradation and an alarming economic disparity between the two parties. For instance, water shortages continue to disrupt daily life and impede development interventions in the West Bank and Gaza Strip. About 1.8 million Palestinians are in need of humanitarian water, and sanitation and hygiene assistance. Tragically, the Palestinian people have been systematically deprived of these rights through the actions of the occupying Power particularly related to water, pollution, access to agricultural land and exploitation of mineral resources as expressed in A/73/87-E/2018/69, 25 May 2018.; The occupying Power, through the establishment of illegal settlements, has seized vast amounts of Palestinian

Yet, Palestinians do not enjoy their own natural resources which include land, fresh water and mineral resources. Imposing restrictions, by the Israeli regime, on access of Palestinians to water resources, groundwater and hydrocarbon deposits are all instances of flagrant violation of the right to self-determination.²²

IV. Legal consequences that arise for all States and the United Nations from this status

Mr. President, Members of the Court,

This Court has, in several cases, in particular in the *Wall* case, identified the obligation to respect the right to self-determination having an

land, usurping the Palestinians' right to control and utilize their own territory. This land confiscation has not only deprived Palestinians of their ancestral homes but has also severely restricted their ability to develop a sustainable economy and achieve self-sufficiency.

Moreover, the wanton endangerment of Palestinian natural resources by the occupying Power poses grave threats to the health and well-being of the Palestinian population. The military operations of the occupying Power and the construction of a separation barrier have caused irreparable damage to agricultural lands, polluting fertile soil and contaminating water sources, rendering them unfit for human consumption. Twenty-two per cent of the West Bank Palestinian population — 649,000 people — suffer from either lack of access to water or poor quality of water. Around 156,000 people are either not connected to a water network or receive water less than once a week. And also, Between January and November 2017, the occupying Power authorities demolished or seized 19 structures related to water, sanitation and hygiene in Area C of the West Bank, including cisterns, water pipes and mobile latrines, claiming that they had been installed without permits. The resulting scarcity of clean water, coupled with restrictions on access to vital resources, has forced Palestinians into dire living conditions, depriving them of their basic human rights, including the right to life, health, and adequate standards of living.

In addition to exploitation and endangerment, the occupying Power's policies have led to the depletion of Palestinian natural resources, further impeding the Palestinians' ability to exercise their right to self-determination. Official Palestinian sources have claimed that practices by the occupying Power authorities and settlers, including the illegal transfer of hazardous waste to the West Bank and the allocation of parts of the Jordan Valley to an occupying Power dumpsite devoted to industrial waste, have gravely damaged Palestinian agricultural land, health, animals and biodiversity which was reflected in several UN documents such as A/72/90-E/2017/71, para. 61

²² According to UN estimates, without occupation, the West Bank's gross domestic product (GDP) per capita 2019 would have been 44 percent higher than its actual value. Meanwhile, a network of national and international businesses operates in the Palestine. The use of agricultural land, stone mining, mineral extraction, and drilling for oil and natural gas and the allocation of resources are almost under the monopoly of the occupying Power. See A/77/356, situation of human rights in the Palestinian territories occupied. 21 sep, 2022, para 51.

erga omnes character as “one of the essential principles of contemporary international law”.²³

As a general rule, where *erga omnes* obligations of international law are breached, third states have mainly three obligations: firstly, “non-assistance” secondly, “non-recognition”, and lastly “cooperation to bring to an end such a violation”. In this context, an “interested” or “third” state in accordance with the jurisprudence of the ICJ could be defined as one which is not directly affected or injured by an internationally wrongful act, and which has yet a legal interest in the protection and compliance of the rights by the very reason “of the importance of the rights involved...and their very nature” which makes them “*the concern of all States*”.²⁴

As regards the primary obligations of third States towards prolonged occupation of the Palestine, the three obligations mentioned above remain relevant in accordance with paragraph 146 of the 2004 ICJ Advisory Opinion in the *Wall case*.²⁵

In addition to the jurisprudence of the ICJ, the primary triple obligations of third states towards serious breaches of *erga omnes* obligations finds support in the practice of other United Nations organs as well. In its resolution 2334 (2016), the UN Security Council unequivocally

²³ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, pp. 31-32, paras. 52-53; *Western Sahara*, Advisory Opinion, ICJ Reports 1975, pp. 31-33, paras. 54-59; *East Timor (Portugal v Australia)*, Judgment, ICJ Reports 1995, p. 102, para. 28; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, pp. 199-200, paras. 155-159.

²⁴ *Barcelona Traction, Light and Power Company, Limited Case*, I.C.J. Reports 1970, p. 32, paras 33-34.

²⁵ The Court held that: “[...] States are under an obligation not to recognize the illegal situation arising from the construction of the Wall, not to render aid or assistance in maintaining that situation and to cooperate with a view to putting an end to the alleged violations and to ensuring that reparation will be made therefor[...].” *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, pp. 196-197, para. 146.

reiterated the importance of States abstaining from recognizing Occupying Power's internationally wrongful acts.²⁶

The International Law Commission, in Draft Article 41(1) of its 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts, along with underlining the duty of States to not recognize as lawful a situation created by a serious breach of *erga omnes* rules, and not render aid or assistance in maintaining that situation, emphasized the duty of all States to cooperate through lawful means, in a joint and coordinated effort, to counteract the effects of these breaches.²⁷

Mr. President, Members of the Court,

In light of the above mentioned, the Court is requested to remind all States of their obligations under international law of the following:

First, not to aid or assist, directly or indirectly, the Israeli occupying regime enable it to continue its prolonged occupation of the Palestine and/or any of its continued policies and practices that violate the right to self-determination of the Palestinian people; this may include in particular avoiding any kind of political, military, economic or other cooperation with the Israeli regime enabling it to continue such violations;

²⁶ UNSC RES S/RES/2334, 23 December 2016, para. 5; See also: UNSC RES S/RES/242, 22 November 1967; UNSC RES S/RES/338, 22 October 1973; UNSC RES S/RES/446, 22 March 1979; UNSC RES S/RES/452, 20 July 1979; UNSC RES S/RES/465, 1 March 1980; UNSC RES S/RES/476, 20 August 1980; UNSC RES S/RES/478, 20 August 1980; UNSC RES S/RES/1397, 12 March 2002; UNSC RES S/RES/1515, 22 May 2003; and UNSC RES S/RES/1850, 16 December 2008.

²⁷ UNGA Document A/56/10 Supplement No 10, *Report of the International Law Commission on the Work of Its Fifty-Third Session (23 April-1 June and 2 July-10 August 2001)*, (November 2001), Chapter IV (E: 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries'), pp. 113-114.

Second, not to recognize the illegal situation resulting from prolonged occupation, by the Israeli occupying regime, of the Palestinian territory and/or any of its continued measures that violate the right to self-determination of the Palestinian people; and

Third, to cooperate effectively with one another in all relevant fields and forums to bring to an end any impediment, resulting from the ongoing violation by the Israeli occupying regime of the right of the Palestinian people to self-determination, including from its prolonged occupation, and any of its measures aimed at altering the demographic composition, character and status of the Holy City of Al-Quds;²⁸ obviously, such cooperation is of utmost urgency and importance given the ongoing situation in the Gaza Strip, where, according to one estimate, Israel's military is killing Palestinians at an average rate of 250 people a day which exceeds the daily death toll of any other major conflict of recent years.²⁹

In this context, I recall this Honorable Court's important Order of 26 January 2024, on the request by South Africa for the indication of provisional measures. The Order Concerns Application of the Convention on the Prevention and Punishment of the Crime of Genocide, and as such, all States, in particular those providing support to Israel are legally under the duty to prevent genocide, particularly, by ceasing to provide any aid to the

²⁸ Almost a similar call was made by the Court in paragraph 159 of its Wall Advisory Opinion, stating that "It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the Wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end". Additionally, the Court is requested to make a similar conclusion to that it made in paragraph 149 of its Wall Advisory Opinion, and declare that the Israeli occupying regime "is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law".

²⁹ <https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflict>oxfam#:~:text=Israel's%20military%20is%20killing%20Palestinians,hostilities%20nears%20its%20100th%20day.

genocider. They are also under a duty to punish perpetrators of the crime of genocide. Given the current extremely tragic conditions in the Gaza Strip, the Court is respectfully requested to once again call on the occupying regime to fully comply with the Order. Evidently, in practical terms, even the partial compliance of the Israeli regime with only subparagraph 1 of paragraph 86 of that Order is possible only through complete termination of all its military operations in the Gaza Strip.

Mr. President, Members of the Court,

I would like to recall the primary responsibility of the Security Council for the maintenance of international peace and security under Article 24(1) of the UN Charter. I submit that the inaction and/or the insufficient action of the Security Council, if not the main, is one of the main causes of the prolonged occupation of the Palestinian territory. All the atrocities and crimes committed by the Israeli regime in the past almost 80 years are a consequence of such inaction. Even today, the Security Council is paralyzed due to the stalemate caused by a certain permanent member. Other relevant United Nations bodies have also the responsibility to monitor and document human rights violations, and to facilitate bringing the perpetrators to justice.

This fact alone underscores how essential it is for the Court to remind the Security Council of its Charter-based obligations. It must also be made clear that such an obligation cannot be fulfilled by convening meetings or issuing certain impotent procedural resolutions; rather, it needs conclusive decisions under Chapter VII of the UN Charter and a follow-up mechanism to ensure its full and prompt implementation by the Israeli regime.

V. Conclusion

Mr. President, Members of the Court,

As our Supreme Leader said: “The calamity of Gaza is the calamity of humanity and the international community as a whole”. Therefore, each and every State and relevant international organization has its own legal and moral responsibility to act urgently and decisively to prevent the ongoing crimes of the Israeli regime in the Gaza Strip.

Definitely, as “the principal judicial organ of the United Nations”, this Court has an important role to play. Now, the world nations expect the Court to render its advisory opinion in a manner that effectively and practically consolidates the rule of law to the detriment of the rule of power, and to bring hope to Palestinians that justice will ultimately prevail. We should not leave them alone and let them down in days that they need the support and assistance of the humanity the most. This is a collective legal and moral responsibility and we must fulfill it responsibly.

Finally, **Mr. President**, I must stress that our participation in this hearing and the content of our statement here is without prejudice to the longstanding position of the Islamic Republic of Iran regarding the question of Palestine. In view of the Islamic Republic of Iran, the only legal, practical, democratic and just method to effectively realize the inherent right to self-determination of the Palestinian people is to hold a national referendum in the Palestine. The details of this plan are contained in an official document of the United Nations issued in 2019.³⁰

³⁰ Letter dated 1 November 2019 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General contained in document S/2019/862, UNSC, 4 Nov 2019.

Lastly, this statement shall, in no way, imply our recognition of Israel.

I thank you, Mr. President.

Press release

Statement of Ireland in the ICJ Advisory Opinion Hearings on Israeli Practices and Policies in the Occupied Palestinian Territory

From [Department of Foreign Affairs \(/en/organisation/department-of-foreign-affairs/\)](#)

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Statement of Ireland in the International Court of Justice Advisory Opinion Public Hearings on Israeli Practices and Policies in the Occupied Palestinian Territory

Delivered by Mr. Rossa Fanning, S.C., Attorney General of Ireland

22 February 2024

1. Mr. President, Madam Vice-President, Members of the Court, I have the honour to appear before you this morning on behalf of Ireland.
2. These proceedings engage fundamental legal obligations, owed to the international community as a whole. As a member of that community, Ireland is committed to the protection and promotion of a global order based on respect for international law.
3. The backdrop to this hearing is a matter of profound concern to the Irish Government. The attacks launched by Hamas against Israel on 7 October were reprehensible and we have condemned them unequivocally. The rape and murder of civilians, destruction of civilian property, taking of hostages, use of human shields and firing of indiscriminate rockets at urban centres constitute serious violations of international humanitarian law for which those involved must be held accountable.
4. However, international law limits the use of force in self-defence to no more than what is necessary and proportionate. Ireland's view is that these limits have been exceeded by Israel in its military response to the Hamas attack. This is manifest from the spiralling death toll, the extensive destruction of property, including homes, throughout Gaza, the displacement of two million people and the ensuing, humanitarian catastrophe. Ireland has repeatedly called for a ceasefire and we are dismayed by the implications that these latest hostilities in Gaza may have for the prospect of resolving the wider Israeli-Palestinian conflict.
5. This is a tragic conflict between two peoples, and any solution – for it to endure – requires each to respect the equal rights of the other. For that reason Ireland has been a consistent and vocal supporter of a comprehensive, two-State solution to the conflict. We lament the lack of progress made towards achieving that objective, but in the absence of any imminent prospect of a negotiated outcome, we believe that clarification now, by this Court, of the international law issues raised by the prolonged occupation of the Palestinian Territory will assist in providing a stable foundation upon which to build a just resolution.

Jurisdiction

6. On the threshold question of jurisdiction, Ireland's view is that the questions put to the Court are legal questions within the meaning of Article 96(1) of the Charter of the United Nations. Further, the request for an advisory opinion is, in our view, within the competence of the General Assembly. Finally, as the Court has itself previously acknowledged, the fact that a legal question may have a political dimension does not oust the Court's jurisdiction.
7. Moreover, while it is well established that the Court enjoys a discretionary power not to provide an advisory opinion, it should only so decline for compelling reasons, which has never happened before, and in Ireland's view, should not happen now.
8. Several States have suggested that this request for an advisory opinion is an attempt to resolve a bilateral dispute without the consent of one of the parties to that dispute. We very much regret that Israel has chosen not to engage with the subject matter of the request – in our discussions with the Israeli Government, we encouraged it to participate in these oral hearings so that the Court could have the benefit of its perspective. However, in our view the issue of the Occupied Palestinian Territory ('OPT') is directly of concern to the United Nations itself and goes much further than a mere bilateral dispute. As the Court noted in its Advisory Opinion on the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, even where a request for an advisory opinion relates to a legal question actually pending between States, its opinion is given not to States but to the organ requesting it, in this case the General Assembly.

9. It has also been suggested that the Court should not opine because the questions are one-sided in nature. However, it is well established that the Court may interpret – or even reformulate – a question if it is not adequately formulated, or where the question does not reflect the ‘legal questions really in issue’. Similarly, where a question is vague or ambiguous, the Court may clarify it before providing its opinion.

10. A further argument advanced by some is that the Court should narrow the question to a request for advice regarding the role of the General Assembly in promoting a resolution to the conflict within the established negotiating framework. However, the Court previously rejected a similar submission, holding that:

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

11. We do not agree that a ruling by this Court would undermine the established negotiating framework. On the contrary, the Court’s authoritative clarification of the important legal issues raised would provide the essential foundation upon which to build a lasting, comprehensive and just resolution of the Israeli-Palestinian conflict.

The Substantive Issues

12. Mr. President, Israel has been in occupation of the Palestinian Territory since 1967. Accordingly, in that Territory it is obliged to respect applicable international humanitarian law, including the law of military occupation, and international human rights law.

13. The defining feature of Israel’s occupation of Palestinian territory in the West Bank, including East Jerusalem, has been continuous settlement activity. In our written statement, we have drawn on the authoritative reports of the Secretary-General and the High Commissioner for Human Rights, to set out the numerous different means by which this has occurred. But in summary, we say the following:

- Israel has used different means to take and exercise control for non-military purposes over as much land in the OPT as possible;
- Once in control, Israel has undertaken permanent construction on this land, in particular developing or encouraging the development of permanent settlements, onto which it has incentivised large numbers of its own citizens to transfer;
- Through its actions, Israel has fundamentally altered the demographics of the West Bank. As of 2022, almost 700,000 Israeli citizens were living in settlements in the West Bank, including East Jerusalem;
- Israel has extended the application of domestic Israeli law to those living in settlements, blurring the distinction between Israel and the OPT; and
- Israel has transferred the exercise of authority in the OPT in certain areas from military command to civilian control, integrating administration of the Territory into that of Israel.

14. By transferring parts of its own civilian population into the OPT, Israel has violated Article 49(6) of the Fourth Geneva Convention. It has continued to do this notwithstanding this Court’s confirmation of its unlawfulness in the Wall case and despite being exhorted by both the Security Council and the General Assembly to cease the practice.

15. Israel has also continued to unlawfully destroy and appropriate property throughout the OPT as part of its policy of encouraging and facilitating the expansion of settlements. This destruction and appropriation of property cannot reasonably be justified by military necessity. Rather, it is clear that it has been done to facilitate – and indeed encourage – the expansion of settlements. Such destruction and appropriation of property clearly breaches the Fourth Geneva Convention and the laws and customs of war codified by the 1907 Hague Regulations.

16. There has also been a recent, marked increase in reports of Palestinian civilians being subjected to sustained, serious violence by Israeli settlers, with little or no protection from the Israeli security forces, contrary to International Humanitarian Law. The security forces have been reported, and recorded, not only watching this violence without intervening, but in some instances, participating in it themselves. This has escalated since 7 October and the Secretary-General has warned that tensions have now reached ‘boiling point.’

17. The Secretary-General and High Commissioner have expressed concern that this violence, particularly when considered in light of the appropriation and destruction of Palestinian property, has compelled Palestinians to leave their homes, their farms and their grazing grounds. The Secretary-General has noted that the coercive environment created by Israel could amount to forcible transfer, a grave breach of the Fourth Geneva Convention which may amount to a war crime.

Annexation

18. Let me turn now to the question of annexation.

19. The evident permanence of the settlements can only be explained, in Ireland’s assessment, by Israel’s intention of annexing the land upon which they are built. In our view, the development and expansion of settlements clearly demonstrate that Israel is – and has been – engaged in a process of annexation of that land for decades. The absence of any declaration of annexation or formal de jure act of incorporation over most of the West Bank is

immaterial. Despite references in the current Israeli Government's coalition agreements, which the Secretary-General describes as promoting a policy of 'application of sovereignty' over the West Bank, previous history suggests that no announcement or formal act of incorporation may occur in the near future.

20. Nevertheless, in Ireland's view, Israel is already engaged in the process of annexing Palestinian territory. It is doing so de facto, through its policy of encouraging demographic change in that territory by population transfer and the continuous development and maintenance of permanent settlements and infrastructure. Ireland is concerned that it may also be doing so de jure, by increasingly extending the application of domestic Israeli law and civilian administration to the settlements in the OPT, thereby integrating them into its own territory and erasing the differences in law between Israel and the settlements.

21. But whether de facto, de jure, or both, this process of annexation is in clear breach of the prohibition in international law against the acquisition of territory by threat or use of force, a fundamental principle of international law. To assert that this is not the case because Israel has not formally declared annexation would render the prohibition devoid of all meaning. That would permit States to acquire territory by force, without legal consequence, simply by declining to adopt a formal act of annexation or incorporation.

Unlawful Occupation

22. International Humanitarian Law does not classify a military occupation as either lawful or unlawful – rather it recognises that military occupation may occur during the course of an armed conflict and sets down rules to regulate the conduct of the occupying power, in particular its armed forces. Military occupation is necessarily temporary insofar as international law prohibits the acquisition of territory by force. Occupation does not confer sovereignty – rather, it is a temporary exception to sovereignty and, accordingly, it cannot be of indefinite duration.

23. Prolonged occupation over an extended period of time raises unavoidable legal questions, in particular whether it constitutes a disguised form of annexation and/or a determined effort to deny the people of an occupied territory the exercise of their right to self-determination. In either case, the legality of the occupying power's presence in the territory inevitably arises. While it is of course possible that a military occupation effected by force may be undertaken in exercise of the right in international law to the use of force in self-defence, any such occupation may involve no more – and may endure no longer – than is necessary and is proportionate to the armed attack to which it is a response.

24. In the case of the OPT, Israel's military occupation began in 1967 and has continued now, uninterrupted, for 57 years. It has also entailed, as I have said, extensive and continuous, permanent and deliberate settlement building. Neither the duration of the occupation nor the scale and extent of settlement activity is, in Ireland's view, justified or permitted by the law regulating the use of force in self-defence. Indeed, if the security of one people can only be achieved by the occupation – over so many decades – of the territory of another people, one has to wonder whether there can be any military solution to the problem it purports to address. In our view, the only effective solution to the problem can be a political one.

Self Determination

25. Mr. President, I wish to turn now to the question of self-determination. As submitted in our written statement, Ireland has concluded that – by its prolonged occupation of Palestinian lands and continuous settlement activity on those lands – Israel has prevented the exercise by the Palestinian people of their right to self-determination. The principle of self-determination is a fundamental principle of international law, enshrined in the Charter of the United Nations and the two 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. The content of that principle was elaborated in the 1970 Declaration on Friendly Relations, adopted by consensus at the General Assembly. That Declaration makes clear that:

'Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples ... bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.'

26. The Declaration solemnly proclaims that '(e)very State has the duty to refrain from any forcible action which deprives peoples ... in the elaboration of the present principle of their right to self-determination and freedom and independence.'

27. In the Wall case, the Court found that the construction of the wall and its associated regime severely impeded the exercise by the Palestinian people of their right to self-determination. It therefore breached Israel's obligation to respect that right. In Ireland's view, the combination of Israel's prolonged occupation of the OPT and its escalating settlement activity has done so on a far greater scale. That escalating activity has increasingly fragmented Palestinian presence upon – and restricted Palestinian use of – the land and natural resources of the Palestinian people. It threatens the viability of a future Palestinian State. The nature, scale and duration of settlement activity is such that its purpose can only be to permanently obstruct the exercise of the Palestinian people's right to self-determination.

Character of the Legal Obligations Concerned

28. Both the prohibition of acquisition of territory by threat or use of force and the principle of self-determination are fundamental principles of international law, as are the basic rules of international humanitarian law. It is widely recognised that these fundamental principles have the character of peremptory norms of general international law, or *jus cogens*, from which derogation is never permitted (or, as the Court described them in its Advisory Opinion on the Threat or Use of Nuclear Weapons, 'intransgressible principles of international customary law'). In turn, peremptory norms of general international law give rise to obligations owed to the international community as a whole (obligations *erga omnes*), in relation to which all States have a legal interest, a conclusion also recently reached by the International Law Commission.

Serious Breaches of Peremptory Norms of General International Law and Obligations *Erga Omnes*

29. Ireland has, with regret, concluded that by its prolonged occupation of Palestinian territory and the settlement activities it has conducted there for more than half a century, Israel has committed serious breaches of a number of peremptory norms of general international law, and the corresponding *erga omnes* obligations to which they give rise, namely:

- the basic rules of international humanitarian law;
- the right to self-determination of the Palestinian people; and
- the prohibition of acquisition of territory by force.

Legal Consequences

30. Under the customary international law of State Responsibility, where a State breaches an international obligation, it commits an internationally wrongful act. Unless its wrongfulness is otherwise precluded, that act entails the international responsibility of the State concerned and involves legal consequences. Where the act amounts to a serious breach of both a peremptory norm and a corresponding obligation *erga omnes*, this Court has concluded that it involves legal consequences for all States, namely:

- First, the 'obligation not to recognize the illegal situation resulting from' the serious breach;
- Second, the 'obligation not to render aid or assistance in maintaining the situation created by' the serious breach; and
- Third, the obligation to cooperate to bring the serious breach to an end, or as the Court put it in the specific circumstances of the Wall case, 'to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of their right to self-determination is brought to an end.'

Consequences for Israel

31. In the Wall case, the Court found that Israel was obliged to end the breaches of its legal obligations, including those under international humanitarian law, and its duty to respect the right of the Palestinian people to self-determination, and to make reparation for the damage caused by those breaches. In the present case, the law of State Responsibility likewise obliges Israel to bring to an end the serious breaches I have outlined to the Court, including by reversing its settlement activity, and making reparation for the damage arising by way of restitution and compensation, as appropriate.

Consequences for Other States

32. For all States, as members of the international community as a whole to which the relevant obligations *erga omnes* are owed, the legal consequences of these serious breaches are, in Ireland's view, straightforward. All States are obliged to cooperate to bring these breaches to an end through lawful means, not to recognise as lawful the situation created by them, and not to render aid or assistance in maintaining that situation.

33. In particular, States are obliged to cooperate to bring to an end Israel's serious breach of its obligation to respect the right of the Palestinian people to self-determination or, as the Court found in the Wall case, to see to it that any impediment to the exercise of that right is brought to an end. This includes cooperation through the United Nations and, as appropriate, other international organisations, including the European Union.

34. As regards the obligation not to recognise as lawful the situation created by these serious breaches, the Court has provided an example of how this may be achieved in its advisory opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia. There, the

Court found that the duty of non-recognition obliged States, inter alia, 'to abstain from entering into economic and other forms of relationship or dealings with South Africa ... which may entrench its authority over the [territory of Namibia]'.

35. This was also the approach taken by the EU in the case of the annexation by the Russian Federation of Crimea in 2014, when it implemented a broad range of diplomatic, economic and other measures, intended to preclude any implied recognition of the annexation. They included a ban on imports of goods originating in the annexed territory and a prohibition on investing in it.

36. In the present case, States are obliged not to render aid or assistance in maintaining the situation created by Israel's breach of its obligation to respect the right of the Palestinian people to self-determination. The General Assembly and Security Council have, in the past, called upon all States to refrain from rendering any assistance to the maintenance of situations of denial of self-determination.

37. In Ireland's view, these obligations require all States, as well as international organisations with external trade competence (in Ireland's case, the EU), to review their trading relationships with the settlements in the OPT. It requires them to take steps to prevent trade that assists in the maintenance of the situation created by the settlement activity, or that implicitly recognises or serves to entrench or legitimise Israel's settlement or annexation of that territory.

Conclusion

38. Mr. President, members of the Court, Ireland remains committed to the realisation of the two-State solution endorsed by the Security Council: a safe and secure Israel and an independent, democratic, contiguous, viable and sovereign Palestinian State, living side by side in peace, within secure and recognised borders based on those of 1967, with Jerusalem as the capital of both States. This is the established framework within which it was agreed the solution would be found, which is why recent statements by Israel's Prime Minister, in which he openly rejected the two-State solution, have caused such widespread international dismay.

39. That solution must be built on a foundation of respect for international law, but especially, the right to self-determination.

40. In the circumstances, Ireland encourages the Court to provide its authoritative clarification of these essential legal issues to the General Assembly, as requested.

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