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International Court
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THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2024

Public sitting

held on Monday 26 February 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

**on the Legal Consequences arising from the Policies and Practices of Israel
in the Occupied Palestinian Territory, including East Jerusalem**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 26 février 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

**sur les Conséquences juridiques découlant des politiques et pratiques d'Israël
dans le Territoire palestinien occupé, y compris Jérusalem-Est**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present: President Salam
 Vice-President Sebutinde
 Judges Tomka
 Abraham
 Yusuf
 Xue
 Bhandari
 Iwasawa
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi

 Registrar Gautier

Présents : M. Salam, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^{me} Xue
MM. Bhandari
Iwasawa
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aureescu
Tladi, juges

M. Gautier, greffier

The Government of the Republic of Türkiye is represented by:

HE Mr Ahmet Yıldız, Deputy Minister for Foreign Affairs of the Republic of Türkiye,

as Head of Delegation and National Authority;

HE Mr Selçuk Ünal, Ambassador of the Republic of Türkiye to the Kingdom of the Netherlands,

as Agent and Deputy Head of Delegation;

Ms Pınar Gülün Kayseri, Minister-Counsellor, Embassy of the Republic of Türkiye in the Kingdom of the Netherlands,

Mr Recep Köşker, Counsellor, Embassy of the Republic of Türkiye in the Kingdom of the Netherlands,

as Counsellors;

Mr Abdullah Ömeroğlu, Legal Counsellor, Embassy of the Republic of Türkiye in the Kingdom of the Netherlands,

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Mr Derviş Fikret Ünal, Head of Department, Ministry of Foreign Affairs of the Republic of Türkiye,

as Counsellor;

Mr Ozan Can Gümüş, Second Secretary, Embassy of the Republic of Türkiye in the Kingdom of the Netherlands,

Mr Baran Volkan Ateş, Second Secretary, Embassy of the Republic of Türkiye in the Kingdom of the Netherlands,

as Advisers.

The Government of the Republic of Zambia is represented by:

Mr Marshal Mubambe Muchende, State Counsel and Solicitor-General of the Republic of Zambia,

Mr Sylvester Mundanda, Ambassador of the Republic of Zambia to the Benelux countries,

Ms Mutinta Stella Mushabati, Legal Counsel,

Ms Sambwa Simbyakula, Acting Assistant Director,

Mr Mwenda Hamanyati, First Secretary for Legal,

Mr Simulyamana Niphegie Choonga, First Secretary for Legal,

Ms Mulima Lisimba, First Secretary for Legal,

Mr Lawrence Mulangu, Counsellor.

Le Gouvernement de la République de Türkiye est représenté par :

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M^{me} Sambwa Simbyakula, directrice adjointe par intérim,

M. Mwenda Hamanyati, premier secrétaire aux affaires juridiques,

M. Simulyamana Niphegie Choonga, premier secrétaire aux affaires juridiques,

M^{me} Mulima Lisimba, première secrétaire aux affaires juridiques,

M. Lawrence Mulangu, conseiller.

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Mr Mutassembelah Alshawwa, Palestine Desk Officer at the League of Arab States,

as Representative;

Mr Ralph Wilde,

as Senior Counsel and Advocate;

Ms Salma Waheedi,

as Adviser.

The Organisation of Islamic Cooperation is represented by:

HE Mr Hissein Brahim Taha, Secretary-General of the Organisation of Islamic Cooperation,

HE Mr Samir Bakr Diab, Assistant Secretary-General for Palestine and Al-Quds Affairs,

HE Ms Ismat Jahan, Permanent Observer of the Organisation of Islamic Cooperation to the European Union,

HE Mr Ali Goutali, Director of the Department of Palestine and Al-Quds Affairs,

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Ms Juliette Chemillier, Assistant to Counsel.

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as Agent, Counsel and Advocate;

HE Mr Mohamed Salem Khalil, Senior Legal Officer, African Union,

Mr Makane Moïse Mbengue, Professor of International Law and Director of the Department of International Law and International Organization, University of Geneva, associate member of the Institut de droit international,

Mr Mohamed Helal, Professor of Law, Moritz College of Law, The Ohio State University, member of the Permanent Court of Arbitration, member of the African Union Commission on International Law (AUCIL),

Ms Tafadzwa Pasipanodya, Partner, Foley Hoag LLP,

Ms Meseret Fassil, Associate Legal Officer, African Union,

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comme chef de délégation ;

M. Mutassembeh Alshawwa, spécialiste de la Palestine à la Ligue des États arabes,

comme représentant ;

M. Ralph Wilde,

comme conseil principal et avocat ;

M^{me} Salma Waheedi,

comme conseillère.

L'Organisation de la coopération islamique est représentée par :

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S. Exc. M. Samir Bakr Diab, secrétaire général adjoint pour les affaires de la Palestine et d'Al-Qods,

S. Exc. M^{me} Ismat Jahan, observatrice permanente de l'Organisation de la coopération islamique auprès de l'Union européenne,

S. Exc. M. Ali Goutali, directeur du département des affaires de la Palestine et d'Al-Qods,

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M^{me} Tafadzwa Pasipanodya, associée, cabinet Foley Hoag LLP,

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Mr Damien Charlotin, Research Fellow, HEC Paris,

Mr Karim M'ziani, Associate, Foley Hoag LLP,

as Counsel and Advocates.

M. Damien Charlotin, chargé de recherche à HEC Paris,

M. Karim M'ziani, collaborateur, cabinet Foley Hoag LLP,

comme conseils et avocats.

The PRESIDENT: Please be seated. The sitting is open.

La Cour se réunit ce matin pour entendre la Türkiye, la Zambie, la Ligue des États arabes, l'Organisation de la coopération islamique et l'Union africaine sur les questions soumises à elle par l'Assemblée générale des Nations Unies relatives aux *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est*. Comme je l'ai déjà mentionné, chaque délégation est priée de respecter la durée de 30 minutes allouée pour sa présentation. Ce matin, la Cour observera une brève pause après la présentation de la Ligue des États arabes.

I shall now give the floor to the representative of Türkiye, His Excellency Mr Ahmet Yıldız. You have the floor, Excellency.

Mr YILDIZ:

1. Mr President, distinguished Members of the Court, good morning to all. We are here today to deliver our oral submission on an issue the solution of which is long overdue.

2. The Israeli-Palestinian conflict could have been settled by now if the international law, especially humanitarian law and human rights law had been upheld and the inalienable rights of the Palestinian people had been recognized.

3. The rules-based international system has come to a point of collapse because of injustices that are being inflicted on the Palestinian people for decades.

4. Now, the International Court of Justice has also a case before it against Israel concerning violations of its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

5. This is a clear indication of the current consequences of violations of the inalienable rights of the Palestinian people and intolerable oppression in the occupied Palestinian territories, including East Jerusalem.

6. Türkiye calls for the full implementation of the provisional measures indicated by the Court and we hope that the Security Council will uphold its responsibility to enforce it at least in these critical conditions in respect of the Court.

7. The Court's advisory opinion on the current file will remind the international community, once again, of the legal consequences arising from the Israeli occupation of the Palestinian territories, including East Jerusalem, and the gravity of the situation in whole Palestine.

8. Palestinians seek recognition of their inalienable rights in their own land. They only want justice, equality, dignity and their long-deserved independence.

9. The Republic of Türkiye has strong and profound bonds with the region, not only with the Arabs but also with the Jews.

10. Jews who were oppressed centuries ago in Europe found shelter in Türkiye where they were welcomed. The same happened during the Second World War. We have never hesitated to stand with the oppressed regardless of their identity.

11. As such, Türkiye cannot remain indifferent to Israeli attempts to alter the character and status of the occupied Palestinian territories, including East Jerusalem. And we cannot remain indifferent to the ongoing attacks by Israel against the Palestinian people.

12. In our Written Statement, we have shared our views on certain aspects of the question at hand. The points made in the written statement are as relevant following 7 October 2023 as before, if not more.

13. Besides, the unfolding situation after 7 October proves once again that without addressing the root cause of the Israeli-Palestinian conflict, there can be no peace in the region.

14. Israeli-Palestinian conflict did not start on 7 October 2023. The conflict is not about a certain Palestinian faction or group. The conflict dates back to an earlier century.

15. But the real obstacle to peace is obvious. The deepening occupation by Israel of the Palestinian territories, including East Jerusalem and failure to implement the two-State vision, Israel and Palestine living side by side.

16. Palestinian people live in extremely difficult conditions under Israel's suffocating occupation. Israel's decades-long occupation has not only led to deprivation of Palestinian people of their fundamental rights, but also made them dependent on Israel's mercy. Their properties are demolished, their land is usurped, their livelihoods are confiscated. Although they are living in the twenty-first century, the practices they have been subjected to are from the Middle Ages and sometimes even worse. Today, the Palestinian people only need emancipation and dignity.

17. Israel's ongoing occupation and Israel's ongoing and deliberately prolonged occupation and intransigent policies failing all initiatives have also left the Palestinians, who were expelled from homeland to neighbouring countries, in limbo, in despair and hopelessness — generation after generation.

18. We believe that all the unilateral acts and measures by Israel aimed at changing the character and status of the occupied Palestinian territories, including East Jerusalem, constitute a breach of international law and must be unconditionally rescinded.

19. Mr President, distinguished Members of the Court, Türkiye has submitted a written statement pursuant to the Court's Order of 6 February 2023 in accordance with Article 66 paragraph 2 of the Statute of the Court.

20. The scope of the questions put by the Court is undoubtedly wider, but the Written Statement of Türkiye has focused on the historical status quo in the holy places within the broader context of the status of Jerusalem.

21. Republic of Türkiye wishes to reaffirm that this statement does not affect its legal position on any other issues not related to the current request of the General Assembly for an advisory opinion of the Court. Please allow me to touch upon a few select points to re-emphasize where we stand.

22. Lack of political will or interest among the international community to address the root causes of the conflict created a strong sense of injustice among the Palestinians and in general in the international community.

23. Regrettably, the United Nations Security Council, which has a primary responsibility for maintenance of international peace and security, has clearly failed to discharge its duties.

24. The overwhelming majority of the Member States of the United Nations have asked for an immediate, unconditional ceasefire in Gaza and delivery of unhindered, sufficient and sustained humanitarian assistance. So far, regrettably, the United Nations Security Council has fallen short of establishing such righteous demands, due to its inherent flaws.

25. By the same token, the situation in the occupied territories has not improved, despite numerous resolutions that the United Nations General Assembly and Security Council resolutions adopted over decades. Israel's unlawful unilateral actions, that are considered null and void in many of the United Nations resolutions, are continuously putting the two-State vision in jeopardy.

26. Unlawful settlement activity has intensified to the extent that it is now extremely difficult to mention contiguity of the occupied Palestinian territories, including East Jerusalem, which is a key to a lasting peace.

27. Transfer of Israeli population in the form of settlements has been changing the demographic composition of the occupied territories. Demolition of houses of the Palestinians as well as forcible evacuations continue under the protection of the Israeli security forces. Also, settler violence is increasing day by day against native Palestinians.

28. One of the main aspects of the Israeli–Palestinian conflict is about observing the sanctity of and the historical status quo at the holy places.

29. Located in East Jerusalem, the Al Aqsa Mosque compound, or Haram Al-Sharif, is among the holiest sites for Muslims around the world. Therefore, its sanctity as a Muslim shrine must be upheld as sacrosanct at all times.

30. The historical status quo at the holy places in Jerusalem, including in Haram Al-Sharif was established during the Ottoman era and has remained in place ever since.

31. On 4 April 2023, Israeli security forces stormed the Al Aqsa Mosque, beat up worshippers and detained hundreds of them altogether during the holy month of Ramadan. This kind of brutal practice is becoming commonplace.

32. While Muslim worshippers face the treatment above, Israeli security forces continue storming the Haram Al-Sharif to provide shelter for the Jews who enter the compound in breach of the historical status quo.

33. In addition to the holy places, the status of Jerusalem itself is also a main issue. As a result of well-known developments, the State of Israel was proclaimed on 14 May 1948 and the ensuing conflict resulted in Israel controlling more land than envisaged under the United Nations General Assembly resolution 181 of 29 November 1947. An armistice line known also as the Green Line came into being.

34. On 5 June 1967, Israel launched a military offensive and occupied the Gaza Strip, the West Bank and East Jerusalem illegally. In the following period, several United Nations Security Council¹

¹ UNSC resolutions 242 (1967), 252 (1968), 267 (1969), 298 (1971).

and General Assembly resolutions affirmed that acquisition of territory by military conquest is inadmissible under international law and “confirmed that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of lands and properties thereon, are invalid and cannot change that status”.

35. Furthermore, the United Nations Security Council “censured in the strongest terms all measures taken to change the status of the City of Jerusalem”. The United Nations General Assembly in its resolution² of 4 July 1967 also considered measures taken by Israel to change the status of the City of Jerusalem totally invalid. It called upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem. The United Nations General Assembly resolution³ of 14 July 1967 also reiterated this call.

36. On 30 July 1980 Israeli parliament adopted “Basic-Law: Jerusalem the Capital of Israel” proclaiming that “[t]he complete and united Jerusalem is the capital of Israel”, which asserted a clear change into the character and status of the city of Jerusalem.

37. In response to this, the United Nations Security Council resolution 478 (1980) affirmed that “the enactment of the ‘basic law’ by Israel constitutes a violation of international law” and

“determine[d] that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith”.

38. The United Nations Security Council also “censured [condemned] in the strongest terms the enactment by Israel of the ‘basic law’ on Jerusalem and the refusal to comply with relevant Security Council resolutions”. Furthermore, the Council “decided not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter character and status of Jerusalem”.

39. In the same vein, the General Assembly in several resolutions regarding the adoption of the basic law expressed its strong rejection of any changes to the status of Jerusalem. Also, the

² UNGA resolution 2253 (ES-V) of 4 July 1967, UN doc. S/RES/2253 (ES-V).

³ UNGA resolution 2254 (ES-V).

resolution adopted by the General Assembly on 30 November 2022⁴ called upon all States, consistent with their obligations under the United Nations Charter and relevant Security Council resolutions:

“(a) Not to recognize any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties through negotiations, including by ensuring that agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967;

(b) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.

Although some States deviated from these commitments, the resolutions are there and still valid and must be upheld. The United Nations Security Council and United Nations General Assembly resolutions cited above illuminate how the United Nations bodies and international community see the Israeli unilateral actions in the occupied Palestinian territories.

40. Mr President, distinguished Members of the Court, basically, Israel is the occupying Power in the occupied Palestinian territories and under the obligation to abide by international law. Therefore, any Israeli acts and/or measures executed in the occupied Palestinian territories in breach of international law should be considered null and void. The practices as well as acts and measures violating human rights must be held to account.

41. The same especially goes for the policies and practices of Israel in Jerusalem and the holy places. Any Israeli act and measure aimed at altering the character and status of the City of Jerusalem, and of the holy places, including Haram Al-Sharif, should be considered null and void and must be ended and rescinded immediately.

42. I focus on these points because Türkiye is deeply concerned by the unilateral policies and practices of Israel which violate the historical status quo in Haram Al-Sharif, and attempt or set a precedent to divide it temporally and spatially.

43. Türkiye also rejects unlawful, illegitimate and provocative measures that *de facto* restrict free access of Muslims into Haram Al-Sharif. This is not only a breach of the historical status of Haram Al-Sharif but is also violation of basic human rights of Muslims in the occupied territories.

44. Following provocations by certain members of the Israeli Government, at the meeting of the Security Council held on 20 February 2023⁵, the President of the Security Council reiterated the

⁴ UNGA resolution 77/25.

⁵ Security Council, 9263rd meeting.

call for, *inter alia*, preserving the status quo at the holy sites in Jerusalem. “The Security Council calls for upholding unchanged the historic status quo at the holy sites in Jerusalem in word and in practice, and emphasizes in this regard the special role of the Hashemite Kingdom of Jordan.”

45. But, in total disregard of the international calls for upholding the historical status quo at the holy sites in Jerusalem, certain Israeli ministers continue violating the sanctity of and the historical status quo at the holy sites.

46. In 2023, just before 7 October, thousands of Israeli extremists and settlers stormed into Al Aqsa Mosque complex during the Jewish holiday of Sukkot, mainly in response to the heinous calls by the Israeli politicians.

47. Several resolutions of the United Nations Human Rights Council also expressed grave concern at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the occupied territories.

48. Human Rights Council resolutions demanded Israel, as the occupying Power, cease all illegal actions in the occupied Palestinian territories. This included excavations in and around religious and historic sites and all other unilateral measures aimed at altering the character, status and demographic composition of the territory as a whole, all of which have, *inter alia*, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a just and peaceful settlement.

49. Access to and protection of places of worship and holy sites as well as excavations beneath and around Al Aqsa Mosque have also long been subject of concern and recommendations of several human rights treaty bodies.

50. The protection of the status of Jerusalem and the holy sites is important not only for the maintenance of the peaceful coexistence tradition among communities there from different faiths since the Ottoman era, but also for observing the sensitivities of billions of people around the world.

51. Mr President, distinguished Members, the scope of the Israeli-Palestinian conflict and the status of Jerusalem is surely wider, ranging from settlements, to transfer of Israeli settlers to the occupied territories, confiscations of land, demolition of homes, and displacement of Palestinian civilians, in violation of international law.

52. Today, the unfolding situation in the Gaza Strip and the West Bank is extraordinary, extremely dangerous and, if left unchecked, runs the risk of threatening not only regional but also global peace and security.

53. I would like to emphasize once again that Türkiye strongly and clearly rejects and condemns all attacks against civilians. Civilians must be protected at all times and under any circumstances.

54. Since 7 October, more than 30,000 Palestinians have been killed so far in Israel's indiscriminate attacks on Gaza. Most of them are women and children. 2.3 million civilians have been placed under full blockade by Israel, depriving them of their basic needs to survive, such as water, food, medicine, fuel and electricity. Hospitals, refugee camps, schools, places of worship, churches and mosques have been targeted unsparingly. Around two million Palestinians have been forcibly displaced.

55. Israel's attacks have turned into collective punishment. In the West Bank, 400 Palestinians have been killed by either Israeli settlers or security forces in the past four months. As a matter of fact, 2023 has been the most violent year in illegal settlers' terrorism and violence against the native Palestinians in the West Bank.

56. Representatives of relevant United Nations agencies as well as United Nations Human Rights Council Special Rapporteurs and mandate holders have published various reports so far on violations of inalienable rights of the Palestinian people by Israel.

57. The current trajectory risks a broader regional conflagration as well as intercommunal polarization. Furthermore, rising threats of islamophobia, antisemitism and extremism all around the world must also be taken into consideration.

58. As the injustices and the double standards that the Palestinians have been subjected to for decades continue, the reaction from the peoples of the region and beyond will only multiply.

59. In other words, we must hold accountable before the law those responsible for their attacks on civilians. Otherwise such outrageous behaviour might be emulated elsewhere in the future. Therefore, reinstating the rule-based international system is a must.

60. In view of the foregoing arguments and recalling the relevant resolutions of the United Nations General Assembly and Security Council, the Republic of Türkiye respectfully calls upon the

International Court of Justice to declare the policies and practices of Israel in the occupied Palestinian territories, including East Jerusalem, illegal under international law. Israel must also respect the historical status quo in the holy places in Jerusalem.

61. Again, it is ever more important as we approach the holy month of Ramadan this year while the Israeli attacks in Gaza and the West Bank continue. It is alarming to see reports regarding plans by the Israeli Government to limit the prayers of Muslims on Haram Al Sharif during Ramadan. The provocative rhetoric by certain Israeli ministers is also worrisome.

62. Therefore, those who have a conscience and morality must step in without delay.

63. The Republic of Türkiye will continue its efforts to contribute to the permanent peace between Israel and Palestine, more urgently for a lasting ceasefire in Gaza and immediate, unhindered flow of humanitarian assistance into Gaza.

64. Drawing lessons from past experiences, Türkiye has also been developing the idea of a guarantee mechanism so that future negotiations could be held in a sound environment and, once achieved, a final settlement would hold for decades to come.

65. The Israeli-Palestinian conflict has been at the top of the agenda of both the United Nations General Assembly and the Security Council, almost since the foundation of the United Nations.

66. The United Nations, within its organs, following its primary responsibility of international peace and security, has adopted dozens of resolutions in relation to this conflict.

67. It is crucial that the Court issues an advisory opinion in response to the questions in the resolution⁶ adopted by the United Nations General Assembly.

68. The Republic of Türkiye reiterates its firm support to a negotiated two-State solution based on the United Nations resolutions, thus the establishment of an independent, sovereign and contiguous State of Palestine on the pre-5 June 1967 lines, with East Jerusalem as its capital.

69. Mr President, distinguished Members, not to repeat the previous speakers, we focused on specific subjects here. But after listening to the previous speakers in previous days, we are of the

⁶ UNGA resolution A/RES/77/247.

opinion that there is a solid and efficient legal framework to declare the Israeli practices illegal and to contribute to this peace. Thank you very much.

The PRESIDENT: I thank the delegation of Türkiye for its presentation. I invite the next participating delegation, Zambia, to address the Court and I call upon Mr Marshal Mubambe Muchende to take the floor.

Mr MUCHENDE:

1. Mr President, Justice Nawaf Salam, distinguished Members of the Court, as you have mentioned correctly, Your Lordship, my names are Marshal Mubambe Muchende, State Counsel, and I am the Solicitor-General for the Republic of Zambia. I have come with my team, which includes His Excellency Mr Sylvester Mundanda, who is the Ambassador of Zambia to the Benelux countries which include Belgium, the Netherlands, and Luxembourg. I also have with me the team that is on record with you. Allow me to proceed.

2. Your Lordship, I have the honour and privilege to make a submission on behalf of the Republic of Zambia on the request for an advisory opinion of this Court concerning 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 alleged adoption of related discriminatory legislation and measures.

3. My delegation appears before this Court as Zambia's unwavering commitment to peace and the principles of international law which underpin the international system. We recognize the humanity and dignity of all individuals affected by the conflict, irrespective of their nationality or ethnicity.

4. Mr President, the Republic of Zambia did submit its Written Statement to the Court in July 2023 and we shall rely on the same. With leave of Court, however, allow me to augment with oral submissions which are in support of the written submissions alluded to.

5. Mr President, we have carefully looked at the question that has been posed to the Court and we submit at the very outset that the Republic of Zambia recognizes the Court's jurisdiction to render

advisory opinions in accordance with Article 65 of the Statute, as it did in the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in 2004.

6. We, however, make the case that the question posed to the Court this time around is more complex and requires “Solomonic wisdom” to obviate rendering an opinion that may exacerbate rather than resolve the complex and nuanced situation which both Palestine and Israel find themselves in.

7. The Republic of Zambia has been consistent and continues to advocate for relentless efforts aimed at achieving peace in the Middle East based on the principles of the two-State solution and we shall refer to this issue later.

8. Mr President, Zambia will rely on the following legal framework in making its arguments.

That is to say

- (1) the United Nations Charter;
- (2) the Statute of the International Court of Justice;
- (3) let me just say, the Oslo I Accord, instead of regurgitating the full citation;
- (4) the Oslo II Accord;
- (5) We rely on the Advisory Opinion which this Court rendered with regards to the consequences of the construction of a wall in the Occupied Palestinian Territory, in 2004;
- (6) We also rely on the United Nations Security Council resolutions 242 (1967) and 338 (1973).

9. Mr President, we recognize the inalienable right of the Palestinian people to self-determination. We also recognize the legitimate security needs of the Israeli people. Both Israel and Palestine have a duty to respect international human rights law and international humanitarian law, therefore, any recourse to the conflict should not be one that puts the blame squarely on one party but rather one that advances a negotiated solution that culminates in a two-State solution.

10. May it be on record, My Lord, that our support for the Palestinian people’s right to self-determination remains steadfast, echoing our consistent position within the United Nations. However, it is imperative to approach this issue with a comprehensive and balanced perspective. Zambia believes that any declaration addressing the Israeli–Palestinian conflict must acknowledge the complexities and nuances inherent in the circumstances and the need to take serious consideration

of the difficult situation that both parties find themselves as they strive to defend the respective rights of their people.

11. Mr President, Sir, the Republic of Zambia is cognizant of the fact that at the centre of the conflict is the territorial dispute and rejection of the partition plan since the creation of the State of Israel in 1948. The United Nations has historically attempted to resolve this conflict through political processes which culminated in various peace treaties and Security Council resolutions — such as the Oslo Accords and the Security Council resolutions 242 (1967) and 338 (1973).

12. There is also the historic exchange of letters between the late former Prime Minister of Israel, may he so rest in peace, Yitzhak Rabin and the former Palestinian Liberation Organization's Chairman, may he so rest in peace, the late Yasser Arafat, dated 9 September 1993. This exchange, your Lordship, and Members of the Court, which carries *no time limit* on its validity, contains mutual declarations of recognition, reciprocal commitments to negotiate peace. To this end, the parties — and I mean *both* Israel and Palestine — are expected to refrain from undermining or prejudicing the Accords through unilateral or third-party initiatives or actions, and from any other initiatives and attempts to impose a solution that seeks to circumvent the agreed-upon negotiations.

13. Mr President, Members of the Court, there is an argument that negotiations have proved to be ineffective in the past and, therefore, the resort to advisory opinions. The Republic of Zambia respectfully submits that the Israelis, the Palestinians, regional States and the broader international community, and indeed the United Nations Security Council should consider the reasons why the negotiations failed in the first place, and address that issue before resorting to a solution that seeks to bypass the agreed-upon negotiations.

14. In the case of the Israel–Palestinian conflict, if it is established that negotiations have been ineffective, it may call then for an addendum to the Oslo I Accord to amend Article XV which provides for negotiations and replace that clause with another mode of dispute settlement.

15. Mr President, in any event one may also argue that the Advisory Opinion by this Court on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in 2004 was also ineffective. Should it then be argued, also, that the international community must abandon advisory opinions of this Court? We submit that postmortems are important in evaluating the

challenges and limitations of the dispute settlement mechanisms that are applied to resolve the problem before resorting to another mode.

16. Mr President and Members of the Court, it is our firm submission that the Oslo Accords remain the only valid, agreed legal source of authority for the division of control, powers and responsibilities between Palestine and Israel over the various parts of the territories. Article XV of the Oslo I Accord prescribes negotiations as the mode of resolving disputes. No other legal or normative framework, whether through international conventions, declarations or United Nations resolutions has substituted the agreed-upon, still-valid legal framework of the Oslo Accords, unless and until the same are amended.

17. Zambia proposes that the final determination of this matter would be for the parties to resolve their dispute through a settlement means of their choice, which is negotiations. The just and sustainable two-State solution cannot be imposed from the outside through an advisory opinion.

18. The Republic of Zambia fully supports this recognized and established framework for the resolution of the Israeli–Palestinian conflict. The Court needs to safeguard the established legal framework as endorsed by the parties’ bilateral agreements and reflected in repeated United Nations resolutions, both with respect to the administration of the territory pending a negotiated outcome and with respect to reaching a permanent status solution or resolution that addresses legitimate needs and aspirations of both sides.

19. The parties have an obligation under Article XXXI (7) of the 1995 Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II Accord) not to “initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations”.

20. Mr President, Members of the Court, this Court did pronounce itself on the importance of continued negotiations in its Advisory Opinion of 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Court encouraged efforts to achieve a negotiated solution to the conflict and the establishment of a Palestinian State, existing side by side with Israel for peace and security for all in the region. This Court, while noting that illegal actions and unilateral decisions were taken on both sides, confirmed the continued validity of the

legal framework by stipulating that this situation can be ended only through implementation of the agreements in good faith.

21. Mr President, Members of the Court, as we conclude we wish to submit that the Court is neither the only dispute resolution mechanism available, nor is it the best in all circumstances. The best dispute resolution mechanism is one that delivers optimal and sustainable solutions depending on the peculiar circumstances of each case and there is certainly no “one size fits all”.

22. Where, for instance, the objective of the dispute resolution mechanism is to blame one party or the other, or to solely determine a winner or a loser, then we have no doubt that the Court is the best forum.

23. Mr President, those of us that have practised law for many years know how, in determining a winner and a loser, the Court’s decisions have, in almost all cases, left permanently ruined relationships between neighbours on a difference which could have been resolved in a better way by adopting alternative dispute mechanisms such as a negotiated settlement, conciliation or mediation.

24. In conclusion, therefore, the Republic of Zambia reiterates the call for relentless efforts aimed at achieving peace in the Middle East based on the principles of a two-State solution. Both Israel and Palestine have a duty to respect international human rights law and international humanitarian law. Therefore, any recourse to the conflict should not be one that puts the blame squarely on one party but rather one that advances a negotiated solution which culminates in a two-State solution. The Republic of Zambia surmises that the Court should not exercise its jurisdiction under Article 65 of the Statute, but rather give deference and sanctity to the bilateral agreements existing between the two States and indeed give deference to the doctrine of party autonomy and *pacta sunt servanda*.

25. We conclude in the alternative, that should the Court decide to exercise its jurisdiction to render the sought advisory opinion — which, as we said, it has the jurisdiction — then the opinion should encourage and assist the parties to respect the legal commitments, including conducting credible negotiations and not make it more difficult for them to do so. This is also anchored on the fundamental international legal principle of *pacta sunt servanda*. In this way, Your Lordship, the Court would essentially be upholding the sovereign rights of the two parties.

Mr President, I thank you for your attention.

The PRESIDENT: I thank the delegation of Zambia for its presentation. I invite the next participating delegation, the League of Arab States, to address the Court and I call Mr Abdel Hakim El Rifai to the podium.

Mr EL RIFAI:

1. Thank you, Mr President, honourable Members of the Court, it is a great honour and privilege to appear before you today, on behalf of the League of Arab States.

2. I would like to read a statement by His Excellency Mr Ahmed Aboul Gheit, Secretary-General of the League of Arab States.

3. The League of Arab States attaches high importance to the present proceedings, hoping that they contribute to safeguarding the principles of international law, to uphold the inalienable right of the Palestinian people to self-determination, and end the last oppressive, expansionist, apartheid, settler-colonial occupation, still standing in the twenty-first century.

4. The persistence of this occupation, acts of genocide, ethnic cleansing, war crimes, crimes against humanity, displacement of populations, imprisonment of Palestinians behind illegal segregation walls, expansion of illegal settlements, creating new political realities on the ground aiming at complicating the dismantling of the occupation — all — will never discourage Palestinians from claiming their legitimate inalienable rights.

5. The insistence on placing Israel above the law, through the politicization of accountability and adopting double standards in the application of justice is a direct threat to international peace and stability.

6. Ending Israel's total impunity, and subjecting it — like any other State — to the universal rules of international law, will help annul its pretexts to systematically reject peace initiatives, the most serious of which is the Arab Peace Initiative of 2002, which offered full normalization of relations with all Arab States, in exchange of Israel *only* respecting its already established obligations, under the bodies of international law, human rights law, and the United Nations Security Council and General Assembly resolutions.

7. This prolonged occupation is an affront to international justice. The failure to bring it to an end has led to the current horrors perpetrated against the Palestinian people, amounting to genocide.

There can be no moral or juridical justification for occupying lands, killing, terrorizing and displacing their populations.

8. The League of Arab States trusts the esteemed Court will confirm the illegality of this occupation and unambiguously rule on the legal consequences for all parties, especially those who turn a blind eye, facilitate, assist or participate in any way in perpetuating this illegal situation.

9. Only the rule of law — not the prevailing “law of the jungle” — will pave the way to peace in the whole region. Ending the occupation is the gateway to peaceful coexistence.

10. Thank you very much for your kind attention. I now respectfully request, Mr President, that you call on Dr Ralph Wilde, Senior Counsel and Advocate, to address the legal questions before the Court.

The PRESIDENT: I thank Mr El Rifai. I now give the floor to Mr Ralph Wilde. You have the floor, Sir.

Mr WILDE:

1. Mr President, distinguished Members of the Court, it is a great honour and privilege to appear before you, and to represent the League of Arab States⁷.

1. MORE THAN CENTURY-LONG DENIAL OF SELF-DETERMINATION OF, AND WAR AGAINST, THE PALESTINIAN PEOPLE, ON THE BASIS OF RACISM

2. The Palestinian people have been denied the exercise of their legal right to self-determination through the more than century-long violent, colonial, racist effort to establish a nation State exclusively for the Jewish people in the land of Mandatory Palestine.

3. When this began after the First World War, the Jewish population of that land was 11 per cent⁸. Forcibly implementing Zionism in this demographic context has necessarily involved the extermination, or forced displacement of, some of the non-Jewish Palestinian population; the exercise of domination over, and subjugation, dispossession and immiseration of, remaining

⁷ This statement draws on the following two documents submitted in the present case: Written Statement by the League of Arab States, 20 July 2023, and Written Comments on the written statements made by States and organizations by the League of Arab States, 25 Oct. 2023, both obtainable from <https://www.icj-cij.org/case/186/written-proceedings>.

⁸ 11.06 per cent to be exact. Government of the United Kingdom, Report of J. B. Barron, Superintendent of Census, *Palestine: Report and General Abstracts of the Census of 1922*, 10 Feb. 1923, p. 5, table I, available at https://content.ecf.org.il/files/M00785_1922PalestineCensusEnglish.pdf.

non-Jewish Palestinians; the emigration to that land of Jewish people, regardless of any direct personal link; and the denial of Palestinian refugees the right to return. All operating through a racist distinction privileging Jewish people over non-Jewish Palestinian people.

4. This has necessitated serious violations of all the fundamental, *jus cogens* and *erga omnes* norms of international law — the right of self-determination, the prohibitions on aggression, genocide, crimes against humanity, racial discrimination, apartheid and torture — and the core protections of international humanitarian law⁹.

5. Today I will address, first, violations of international law arising out of the régime of racial domination — apartheid — perpetrated against the Palestinian people across the entire land of historic Palestine, and then, second, the existential illegality of Israel’s occupation of the Palestinian Gaza Strip and West Bank, including East Jerusalem, since 1967.

6. As a necessary prerequisite, I must begin with the special right granted to the Palestinian people in the League Covenant.

2. PALESTINIAN SELF-DETERMINATION UNDER ARTICLE 22 OF THE LEAGUE OF NATIONS COVENANT¹⁰

7. The legal right of self-determination of the Palestinian people originates in the “sacred trust” obligations of Article 22 of the League Covenant, part of the Versailles Treaty. Palestine — an “A” class Mandate under British colonial rule — was, after the First World War, supposed to have its existence as an independent State “provisionally recognized”: a *sui generis* right of self-determination¹¹. The United Kingdom and other members of the League Council attempted to bypass this, incorporating the 1917 Balfour Declaration commitment to establishing a national home

⁹ See Written Statement of the League of Arab States, Sec. 8, pp. 16-19, Part 3 generally, pp. 19-38, especially Sec. 16 therein, pp. 37-38.

¹⁰ See generally Written Statement of the League of Arab States, p. 8, para. 13 (1); Written Comments of the League of Arab States, Sec. 6c, pp. 27-32; and Ralph Wilde, “Tears of the Olive Trees: Mandatory Palestine, the UK, and accountability for colonialism in international law”, *Journal of the History of International Law* (2022), available at <https://brill.com/view/journals/jhil/aop/article-10.1163-15718050-12340216/article-10.1163-15718050-12340216.xml?language=en> (hereinafter “Wilde, Tears of Olive Trees”).

¹¹ Treaty of Peace Between the Allied and Associated Powers and Germany, signed in Versailles, 28 June 1919, entry into force 10 January 1920, (1919) UKTS 4 (Cmd. 153), Part I, League Covenant 1919: Covenant of the League of Nations, 28 Apr. 1919, available at: <https://www.un Geneva.org/en/about/league-of-nations/covenant>.

for the Jewish people in Palestine into the instrument stipulating how the Mandate would operate¹². However, the Council had no legal power to bypass the Covenant in this way. It acted *ultra vires*, and the relevant provisions were, legally, void¹³. There was and is no legal basis in that Mandate instrument for either a specifically Jewish State in Palestine, or the United Kingdom's failure to discharge the "sacred trust" obligation to implement Palestinian self-determination.

3. SELF-DETERMINATION IN INTERNATIONAL LAW AFTER THE SECOND-WORLD WAR — AN ADDITIONAL RIGHT

8. After the Second World War, a self-determination right applicable to colonial peoples generally crystallized in international law.

9. For the Palestinian people, this essentially corresponded to, and supplemented, the pre-existing Covenant right, regarding the same, single territory. The 1947 proposal to partition Palestine was contrary to this; the Arab rejection an affirmation of the legal status quo.

10. In 1948, then, Palestine was, legally, a single territory with a single population enjoying a right of self-determination on a unitary basis.

4. NAKBA IN 1948 — VIOLATION OF SELF-DETERMINATION AND CREATION OF A RÉGIME INVOLVING AN ONGOING VIOLATION OF THIS RIGHT, AS WELL AS RACIAL DISCRIMINATION AND APARTHEID AND A DENIAL OF THE RIGHT TO RETURN

11. Despite this, a State of Israel, specifically for Jewish people, was proclaimed in 1948 by those controlling 78 per cent — more than three quarters — of Palestine, accompanied by the forced displacement of a significant number of the non-Jewish Palestinian population — the Nakba, catastrophe¹⁴. This illegal secession was an egregious violation of Palestinian self-determination. Israel's statehood was recognized, and Israel admitted as a United Nations Member, despite this illegality. Israel is not the legal continuation or successor of the Mandate.

¹² Mandate for Palestine, text approved by the League of Nations Council 19th Session, 13th Meeting, 24 July 1922, UN Library reference C.529. M.314. 1922. VI., available at: <https://www.un.org/unispal/document/auto-insert-201057/>, entry into force on 29 Sept. 1923, Minutes of the Meeting of the League of Nations Council held at Geneva on 29 September 1923, UN Library reference C.L.101.1923.VI., available at <https://www.un.org/unispal/document/auto-insert-204395/>.

¹³ Wilde, *Tears of Olive Trees*, pp. 402-403.

¹⁴ State of Palestine, Palestinian Liberation Organization Negotiation Affairs Department, *Borders*, <https://www.nad.ps/en/our-position/borders#:~:text=During%20the%20June%201967%20war,Palestinian%20half%20of%20the%20city,> and United Nations, *The Question of Palestine, History*, <https://www.un.org/unispal/history/>.

12. This violation of Palestinian self-determination is ongoing, and unresolved. Two key elements are:

13. First, Palestinian people not displaced from the land proclaimed to be of Israel in 1948, and their descendants, have been forced to live as citizens — presently they constitute 17.2 per cent — of a State conceived to be of and for another racial group, under the domination of that group, necessarily treated as second class, because of their race¹⁵.

14. Second, Palestinian people displaced from that land, and their descendants, cannot return.

15. These are serious breaches of the right of self-determination, the prohibitions of racial discrimination and apartheid, and the right of return. They must end, immediately.

5. 1967 ISRAELI CAPTURE OF THE PALESTINIAN GAZA STRIP AND WEST BANK (INCLUDING EAST JERUSALEM)

16. As if this ongoing Nakba was not catastrophic enough, in 1967 Israel captured the remaining 22 per cent of historic Palestine — the Gaza Strip and West Bank, including East Jerusalem — the Naksa¹⁶. It has maintained that use of force to remain in control for the 57-year period since.

6. ILLEGAL RACIAL DOMINATION — APARTHEID — FROM THE JORDAN RIVER TO THE MEDITERRANEAN SEA

17. For more than half a century, then, a State defined to be of and for Jewish people exclusively has governed the entire land of historic Palestine and the Palestinian people there. And the régime of racial domination — apartheid — and denying return, has been extended throughout. In the case of Palestinians living in the occupied territory, this has involved the same serious violations of international law, supplemented by serious violations of norms applicable in occupied territory¹⁷.

¹⁵ Nasreen Haddad Haj-Yahya, Muhammed Khalaily, Arik Rudnitzky and Ben Fargeon, *Statistical Report on Arab Society in Israel 2021*, The Israel Democracy Institute, 17 Mar. 2022, available at <https://en.idi.org.il/articles/38540>.

¹⁶ State of Palestine, Palestinian Liberation Organization Negotiation Affairs Department, Borders, <https://www.nad.ps/en/our-position/borders#:~:text=During%20the%20June%201967%20war,Palestinian%20half%20of%20the%20city>. See also Statement of HE Mr Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority before the United Nations General Assembly's Sixty-Sixth Session, New York, 23 Sept. 2011, https://gadebate.un.org/sites/default/files/gastatements/66/ps_en_25.pdf.

¹⁷ Written Statement of the League of Arab States, Sec. 13, pp. 26-33.

18. Indeed, these people are subject to an even more extreme form of racist domination, as they are not even citizens of the State exercising authority over them. Even in East Jerusalem, which Israel has purported to annex, the majority non-Jewish Palestinian residents do not have citizenship, whereas Jewish residents, including illegal settlers, are citizens.

19. Just as in territorial Israel, in occupied territory, these serious violations concerning how Israel exercises authority over the Palestinian people must end immediately.

20. However, here, a more fundamental matter must also be addressed. The illegality of the exercise of authority *itself*.

**7. THE GAZA STRIP AND WEST BANK AS PALESTINIAN TERRITORY, WITH THE
CONSEQUENCE THAT ISRAEL'S PURPORTED ANNEXATION, AND ATTEMPTED
COLONIZATION, ARE ILLEGAL**

21. The enduring Palestinian right of self-determination means that the Palestinian people, and the State of Palestine, not Israel, are sovereign over the territory Israel captured in 1967¹⁸. For Israel, the land is extraterritorial, and, given what I said about the Mandate, territory over which it has no legal sovereign entitlement¹⁹.

22. Despite this, Israel has purported to annex East Jerusalem and taken various actions there and in the rest of the West Bank constituting *de jure* and *de facto* purported annexation, including implanting settlements. It is Israeli policy that Israel should be not only the exclusive *authority* over the entire land between the river and the sea, but also the exclusive *sovereign authority* there.

23. This constitutes a complete repudiation of Palestinian self-determination as a legal right, since it empties the right entirely of any territorial content²⁰.

24. Actualizing this through *de facto* and *de jure* purported annexation is, first, a serious violation of Palestinian self-determination and, second, because it is enabled through the use of force, a violation of the prohibition on the purported acquisition of territory through the use of force in the law on the use of force, and so an aggression²¹. Serious violations of further areas of law regulating

¹⁸ Ralph Wilde, "Using the master's tools to dismantle the master's house: international law and Palestinian liberation", *Palestine Yearbook of International Law*, Vol. 22 3 (2021) (hereinafter "Wilde, Master's Tools"), pp. 35-39.

¹⁹ Written Comments of the League of Arab States, Sec. 6, pp. 23-32; Wilde, Master's Tools, pp. 40-41.

²⁰ Written Comments of the League of Arab States, Sec. 6, pp. 23-32, esp. Secs. 6a and 6b, pp. 23-26.

²¹ *Ibid.*, Sec. 11 (p. 21-3); Wilde, Master's Tools, p. 40.

the conduct of the occupation are also being perpetrated, notably the prohibitions on implanting settlements and altering, unless absolutely prevented, the legal, political, social and religious status quo²².

25. The occupation is, therefore, existentially illegal because of its use to actualize purported annexation. To end this serious illegality, it must be terminated: Israel must renounce all sovereignty claims and all settlements must be removed. Immediately.

26. However, this is not the only basis on which the occupation's existential legality must be addressed.

27. We need to delve deeper into both the law of self-determination and the law on the use of force.

8. SELF-DETERMINATION AS A RIGHT TO BE SELF-GOVERNING, REQUIRING THE OCCUPATION TO END IMMEDIATELY²³

28. Beginning with self-determination: this right, when applied to the Palestinian people in the territory Israel captured in 1967, is a right to be entirely self-governing, free from Israeli domination.

29. Consequently, the Palestinian people have a legal right to the immediate end of the occupation. And Israel has a co-relative legal duty to immediately terminate the occupation.

30. This right exists and operates simply and exclusively because the Palestinian people are entitled to it. It does not depend on others agreeing to its realization. It is a right.

31. It is a repudiation of "trusteeship", whereby colonial peoples were ostensibly to be granted freedom only if and when they were deemed "ready" because of their stage of "development" determined by the racist standard of civilization²⁴. The anti-colonial self-determination rule replaced this with a right based on the automatic, immediate entitlement of all people to freedom, without preconditions. In the words of General Assembly resolution 1514, "inadequacy of . . . preparedness should never serve as a pretext for delaying independence"²⁵.

²² Written Statement of the League of Arab States, Sec. 13, pp. 26-33.

²³ See generally Written Statement of the League of Arab States, Sec. 4.c., pp. 9-10, Sec. 10, pp. 20-21, Sec. 11.d., pp. 22-23; Wilde, *Master's Tools*, Secs. IV-VIII, pp. 35-73).

²⁴ See Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (OUP 2008), Chap. 8.

²⁵ UNGA res. 1514 (XV), 14 Dec. 1960, UN doc. A/RES/1514 (XV), para. 3.

32. Some suggest that the Palestinian people were offered, and rejected, deals that could have ended the occupation. And, therefore, Israel can maintain it pending a settlement. Even assuming, *arguendo*, the veracity of this account, the “deals” involved a further loss of the sovereign territory of the Palestinian people.

33. Israel cannot lawfully demand concessions on Palestinian rights as the price for ending its impediment to Palestinian freedom. This would mean Israel using force to coerce the Palestinian people to give up some of their peremptory legal rights: illegal in the law on the use of force and, necessarily, voiding the relevant terms of any agreement reached. The Palestinian people are legally entitled to reject a further loss of land over which they have an exclusive, legal, peremptory right. Any such rejection makes no difference to Israel’s immediate legal obligation to end the occupation.

9. THE OCCUPATION AS AN ILLEGAL USE OF FORCE IN THE *JUS AD BELLUM* AS A GENERAL MATTER (BEYOND THE LINK TO PURPORTED ANNEXATION)²⁶

34. Turning to the law on the use of force: Israel’s control over the Palestinian territory since 1967, as a military occupation, is an ongoing use of force. As such, its existential legality is determined by the law on the use of force, as a general matter, beyond the specific issue of annexation.

35. Israel captured the Gaza Strip and West Bank from Egypt and Jordan in the war it launched against them and Syria. It claimed to be acting in self-defence, anticipating a non-immediately imminent attack. The war was over after six days. Peace treaties between Israel and Egypt and Jordan were subsequently adopted²⁷.

36. Despite this, Israel maintained control of the territory — continuing the use of force enabling its capture.

37. Israel’s 1967 war was illegal in the *jus ad bellum* — even assuming, *arguendo*, its claim of a feared attack, States cannot lawfully use force in non-immediately imminent anticipatory self-defence.

²⁶ See Written Statement of the League of Arab States, Sec. 12, pp. 23-26; Written Comments of the League of Arab States, Sec. 7, pp. 32-33; and Wilde, *Master’s Tools*, Section III, pp. 21-35.

²⁷ Treaty of Peace between Egypt and Israel, 26 March 1979, *UNTS*, Vol. 1136, p. 100; Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, 26 October 1994, *UNTS*, Vol. 2042, p. 351.

38. Alternatively, assuming — again *arguendo* — that the war was lawful, the justification ended after six days. However, the *jus ad bellum* requirements continued to apply to the occupation as itself a continuing use of force. In 1967, with self-determination well established in international law, States could not lawfully use force to retain control over a self-determination unit captured in war, unless the legal test justifying the initial use of force also justified, on the same basis, the use of force in retaining control. Moreover, this justification would need to continue, not only in the immediate aftermath, but for more than half a century. Manifestly, this legal test has not been met²⁸.

39. Israel’s exercise of control over the Gaza Strip and West Bank through the use of force has been illegal in the *jus ad bellum* since the capture of the territory, or, at least, very soon afterwards.

40. The occupation is, therefore, again existentially illegal in the law on the use of force — an aggression — this time, as a general matter, beyond illegality specific to annexation. To terminate this serious violation, the occupation must, likewise, end immediately.

10. ILLEGAL FORCE DOES NOT BECOME LAWFUL IN RESPONSE TO RESISTANCE TO IT²⁹

41. What of Israel’s current military action in Gaza? This is not a war that began in October 2023. It is a drastic scaling-up of the force exercised there, and in the West Bank, on a continual basis, since 1967. A justification for a new phase in an ongoing illegal use of force cannot be constructed solely out of the consequences of violent resistance to that illegal use of force. Otherwise, an illegal use of force would be rendered lawful because those subject to it violently resisted — circular logic, with a perverse outcome.

11. ISRAEL CANNOT LAWFULLY USE FORCE TO CONTROL THE PALESTINIAN TERRITORY FOR SECURITY PURPOSES/PENDING A PEACE AGREEMENT³⁰

42. More generally, Israel cannot lawfully use force to control the Palestinian territory for security purposes pending an agreement providing security guarantees. States can only lawfully use

²⁸ Written Statement of the League of Arab States, p. 25, paras. 70-71; Wilde, *Master’s Tools*, pp. 25-26.

²⁹ Ralph Wilde, “Israel’s War in Gaza is Not a Valid Act of Self-defence in International Law”, *Opinio Juris*, 9 Nov. 2023, <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/>.

³⁰ See Written Statement of the League of Arab States, p. 24, paras. 63-66, p. 25, paras. 72-73; Written Comments of the League of Arab States, Sec. 3, pp. 5-17; Wilde, *Master’s Tools*, pp. 27-31.

force outside their borders in extremely narrow circumstances. Beyond that, they must address security concerns non-forcibly.

43. The United States of America, the United Kingdom and Zambia suggested here that there is a *sui generis* applicable legal framework, an Israeli-Palestinian *lex specialis*. This somehow supersedes the rules of international law determining whether the occupation is existentially lawful. Instead, we have a new rule, justifying the occupation until there is a peace agreement meeting Israeli security needs. This is the law as these States would like it to be, not the law as it is. It has no basis in resolution 242, Oslo or any other resolutions or agreements³¹. Actually, you are being invited to do away with the very operation of some of the fundamental, peremptory rules of international law itself. As a result, the matters these rules conceive as rights vested in the Palestinian people would be realized only if agreement is reached, and only on the basis of such agreement. At best, if there is an agreement, this means one that need not be compatible with Palestinian peremptory legal rights, determined only by the acute power imbalance in Israel's favour³². At worst, if there is no agreement, this means that the indefinite continuation of Israeli rule over the Palestinian people in the occupied Palestinian territories, on the basis of racist supremacy and a claim to sovereignty, would be lawful³³. This is an affront to the international rule of law, to the United Nations Charter imperative to settle disputes in conformity with international law, and to your judicial function as guardians of the international legal system³⁴.

44. A final potential basis sometimes invoked to justify continuing the occupation should be addressed. Occupation and human rights law — applicable to illegal and lawful occupations alike — oblige Israel to address security threats in occupied territory. However, they only regulate the conduct of an occupation when it exists. They do not also provide a legal basis for that existence itself. Existential legality is determined by the law of self-determination and the *jus ad bellum* only. There

³¹ See Written Statement of the League of Arab States, Sec. 12.b, p. 24; and also Written Comments of the League of Arab States, Sec. 3, pp. 5-17.

³² See also Written Comments of the League of Arab States, p. 16, para. 54.

³³ *Ibid.*

³⁴ *Ibid.*, Sec. 3.b, pp. 6-8, paras. 54-55, p. 17 and pp. 19-20, paras. 62-63.

is no “back door” legal basis for Israel to maintain the occupation through the imperatives of occupation and human rights law³⁵.

12. EXISTENTIAL ILLEGALITY OF ISRAEL’S OCCUPATION OF THE PALESTINIAN GAZA STRIP AND WEST BANK, INCLUDING EAST JERUSALEM

45. In sum: the occupation of the Palestinian Gaza Strip and West Bank, including East Jerusalem, is existentially illegal on two mutually reinforcing bases.

46. First, the law on the use of force. Here, the occupation is illegal both as a use of force without valid justification, and because it is enabling an illegal purported annexation. As such, it is an aggression.

47. Second, the law of self-determination. Here, it is illegal again because of the association with illegal purported annexation, and also, more generally, because it is, quite simply, an exercise of authority over the Palestinian people that, by its very nature, violates their right to freedom.

48. This multifaceted existential illegality — involving serious violations of peremptory norms — has two key consequences.

49. First: the occupation must end: Israel must renounce its claim to sovereignty over the Palestinian territory; all settlers must be removed. Immediately. This is required to end the illegality, to discharge the positive obligation to enable immediate Palestinian self-administration, and because Israel lacks any legal entitlement to exercise authority.

50. Second, in the absence of the occupation ending, necessarily, *everything* Israel does in the Palestinian territory lacks a valid international legal basis and is, therefore (subject to the *Namibia* exception), invalid, not only those things violating the law regulating the conduct of the occupation³⁶. Those norms entitle and require Israel to do certain things. But this does not alter the more fundamental position, from the law on the use of force and self-determination, that Israel lacks any valid authority to do anything, and whatever it does is illegal, even if compliant with or pursuant to the conduct-regulatory rules.

³⁵ Written Statement of the League of Arab States, Sec. 15.b, pp. 34-36.

³⁶ *Ibid.*, Sec. 15, pp. 34-37, and Sec. 17, pp. 38-41.

13. THE WORDS OF REFAAT ALAREER

51. I will close by quoting Palestinian academic and poet Refaat Alareer, from his final poem posted 36 days before he was killed by Israel in Gaza on 6 December 2023:

If I must die,
you must live
to tell my story
[...]
If I must die
let it bring hope,
let it be a story.³⁷

Thank you for your attention.

The PRESIDENT: I thank the delegation of the League of Arab States for its presentation. Before I invite the next delegation to make its oral statement, the Court will observe a break for 10 minutes. The sitting is suspended.

The Court adjourned from 11.25 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. J'invite maintenant la délégation participante suivante, celle de l'Organisation de la coopération islamique, à prendre la parole devant la Cour et appelle S. Exc. M. Hissein Brahim Taha à la barre. Vous avez la parole, Monsieur.

M. TAHA : Thank you.

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, j'ai l'honneur de me présenter devant vous au nom de l'Organisation de la coopération islamique pour vous exprimer la confiance que nous plaçons en votre haute juridiction afin que, par l'avis consultatif demandé, vous éclairiez davantage l'Assemblée générale des Nations Unies dans sa tâche.

2. L'Organisation de la coopération islamique regroupe cinquante-sept États membres et elle est la voix collective du monde islamique. Cette organisation intergouvernementale a été créée suite à l'incendie criminel en 1969 de la mosquée Al-Aqsa de Jérusalem. C'est ainsi que la Charte de notre organisation mentionne parmi ses objectifs notre soutien au droit du peuple palestinien à créer son État souverain, avec pour capitale Al-Qods Al-Charif.

³⁷ Refaat Alareer [@itranslate123]. "If I must die, let it be a tale." X, 1 Nov. 2023, <https://twitter.com/itranslate123/status/1719701312990830934>.

3. C'est dire que notre organisation est particulièrement attentive au juste combat de ce peuple et se trouve profondément préoccupée par l'agression en cours qu'Israël, la puissance occupante, mène contre le peuple palestinien à Gaza et le risque vital que les opérations d'Israël lui font courir. Aussi notre organisation a-t-elle tenu un sommet extraordinaire à Ryad le 11 novembre dernier consacré à cette question. Je voudrais vous informer ici des positions prises à cette occasion par l'organisation que je représente.

4. Devant la gravité de la situation, nous avons mis en garde contre les conséquences de la guerre menée par l'occupant israélien, dans la bande de Gaza. Nous condamnons cette agression qui dure depuis bientôt cinq mois, faisant des milliers de victimes, et qui est l'occasion de crimes de guerre massifs et d'un risque de génocide, comme vous l'avez reconnu dans votre ordonnance du 26 janvier dernier.

5. Nous condamnons avec la même force les crimes commis par Israël, la puissance occupante, et les colons en Cisjordanie et dans la ville d'Al-Qods Al-Charif. Nous dénonçons le refus par Israël, la puissance occupante, de mettre fin à son occupation illégale du territoire palestinien et aux violations multiples des normes du droit international que la poursuite de cette occupation entraîne. Et nous déplorons l'incapacité du Conseil de sécurité à mettre en œuvre le droit international pour enrayer cette spirale de violence et rendre justice au peuple palestinien.

6. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est dans ce contexte que nous avons rappelé qu'une paix juste, durable et globale sur la base de la solution à deux États est le seul moyen d'assurer la sécurité et la stabilité de tous les peuples de la région et de les protéger des cycles de violence et de guerre. Dans le même esprit, nous avons demandé que tous les pays cessent d'exporter des armes et des munitions aux autorités d'occupation, sachant que l'armée et les colons les utilisent contre le peuple palestinien.

7. À cette occasion, nous avons pris soin de dénoncer « toutes les formes de haine et de discrimination, et toutes les thèses qui consacrent la culture de la haine et de l'extrémisme ». Et nous avons proclamé l'impératif pour la communauté internationale de prendre des mesures immédiates et rapides pour mettre fin au massacre et à la prise pour cible des civils palestiniens, de façon à confirmer qu'il n'y a aucune différence entre une vie et une autre, ni de discrimination sur la base de

la nationalité, de la race ou de la religion. Telles sont les conditions sans lesquelles aucune paix durable n'est possible.

8. Nous attendons aussi de votre Cour que soient condamnées la colonisation accélérée de Jérusalem-Est ainsi que les attaques israéliennes menées contre les lieux saints islamiques et chrétiens à Al-Qods.

9. Aussi espérons-nous que l'avis consultatif que vous allez rendre soit l'occasion de rappeler, sous votre autorité, le devoir impératif qui incombe à Israël, la puissance occupante, de mettre fin à son occupation du territoire palestinien prolongée depuis trop longtemps et d'en réparer toutes les conséquences.

10. Maintenant notre conseil, M^{me} Chemillier-Gendreau, à qui je vous prie, Monsieur le président, de bien vouloir donner la parole, vous exposera les aspects juridiques sur lesquels l'Organisation de la coopération islamique pense pouvoir apporter encore quelques éclaircissements. Je vous remercie.

Le PRÉSIDENT : Je remercie Son Excellence Monsieur Taha. Je donne à présent la parole à M^{me} Monique Chemillier-Gendreau. Madame, vous avez la parole.

M^{me} CHEMILLIER-GENDREAU : Merci, Monsieur le président.

1. C'est au nom de l'Organisation de la coopération islamique que j'ai l'honneur de me présenter devant vous ce matin. Et je reviendrai ici sur trois éléments de la situation sur laquelle vous aurez à rendre votre avis.

LES NÉGOCIATIONS EN COURS COMME OBSTACLE SUPPOSÉ À LA COMPÉTENCE DE LA COUR

2. Quelques-uns des États participant à la présente procédure ont demandé à votre juridiction de décliner sa compétence. Ils estiment que l'avis demandé perturberait des négociations prétendument en cours entre les protagonistes, alors que ces négociations seraient le seul chemin vers la paix³⁸.

³⁸ Voir les observations écrites des Fidji, p. 3-5 ; de la Hongrie, par. 2, 11-30, 39, 41 ; d'Israël, p. 3-5 ; du Togo, par. 7-9 ; de la Zambie, p. 2.

3. Mais il faut préalablement établir les faits. Les établir dans toute leur vérité est une condition indispensable à l'établissement de la justice. Y a-t-il des négociations en cours entre Israël et la Palestine ? La vérité sur cette question, c'est qu'il n'y en a plus. Il s'agit d'un mythe qui a été entretenu artificiellement longtemps, mais qui, à la lumière des événements, s'est effondré de l'aveu même des intéressés.

4. La Cour est-elle en mesure d'établir la vérité sur ce point ? Certains participants à cette procédure ont soutenu que vous devriez décliner votre compétence en raison d'une supposée difficulté à accéder aux faits. Mais le dossier qui vous a été fourni par les services des Nations Unies eux-mêmes comporte tous les éléments sur lesquels vous pouvez fonder l'avis qui vous est demandé.

5. Il est ainsi avéré que les accords d'Oslo remontent à 1993 et 1995, que leurs objectifs devaient être atteints au plus tard en 1999, que cette échéance n'a pas été tenue, que par la suite des réunions ont eu lieu à Charm el-Cheikh en 1999, à Camp David en 2000, et sont restées infructueuses. À partir de là, ni le redéploiement d'Israël ni le renforcement de l'autonomie de l'Autorité palestinienne ne se sont concrétisés.

6. L'horizon des accords d'Oslo était lié au respect des résolutions 242 et 338 du Conseil de sécurité qui y sont explicitement mentionnées. Ce respect impliquait le retrait par Israël du Territoire palestinien occupé en 1967. L'article 18 de la convention de Vienne sur le droit des traités dispose que les États parties à un accord doivent s'abstenir d'actes qui priveraient ce traité de son objet et de son but. Or Israël, en implantant à marche forcée des colonies juives sur le territoire palestinien, a privé les accords d'Oslo de leur objet et de leur but.

7. Et les responsables politiques d'Israël ont confirmé la mort des négociations en dénonçant les accords d'Oslo dès les années 2000, c'est-à-dire il y a plus de vingt ans. Ariel Sharon avait alors déclaré au journal *Haaretz* : « On ne continue pas Oslo. Il n'y aura plus d'Oslo. Oslo, c'est fini. »³⁹ Plus récemment, le 12 décembre 2023, le premier ministre Benjamin Nétanyahou affirmait : « Je ne permettrai pas à Israël de répéter l'erreur des accords d'Oslo. »⁴⁰

8. Votre Cour reconnaîtra que nous sommes ici devant un cas particulièrement remarquable de manquement à la bonne foi. Israël, Membre des Nations Unies, est lié par les résolutions de cette

³⁹ *Haaretz*, 18 octobre 2000.

⁴⁰ *Le Monde diplomatique*, janvier 2024.

Organisation ainsi que par les engagements particuliers qu'il a pris. Au mépris de tout ce *corpus*, cet État s'approprie le territoire de la Palestine, expulse son peuple et lui refuse par tous les moyens le droit à l'autodétermination. Vous avez eu l'occasion de rappeler dans votre arrêt de 2018 que, dès lors que des États s'engagent dans une négociation, « [i]ls sont alors tenus ... de les mener de bonne foi »⁴¹. Or il apparaît que, dès son engagement dans les négociations d'Oslo, Israël a manqué à la bonne foi.

9. Aussi n'y a-t-il aucun horizon de négociation qu'il faudrait protéger, mais seulement une guerre en cours et le refus des autorités israéliennes d'ouvrir toute perspective politique fondée sur le droit international. Voilà pourquoi l'argument selon lequel votre compétence pour rendre l'avis demandé ferait obstacle à une paix négociée est un argument sans fondement.

DES VIOLATIONS MASSIVES DU DROIT INTERNATIONAL NE PEUVENT PAS ÊTRE UN OBJET DE NÉGOCIATIONS

10. Je voudrais maintenant, et ce sera mon second point, rester encore un moment sur la question des négociations pour faire à ce propos une remarque de fond. Les Palestiniens ne recouvreront pas leurs droits légitimes à travers une négociation bilatérale directe avec Israël. Il y a à cela deux écueils. Le premier tient à l'inégalité écrasante entre les deux parties. La Palestine est sous la domination militaire d'Israël et ses représentants sont dans une position de faiblesse structurelle. Dès lors, toute négociation est biaisée et le traité qui en résultera sera nécessairement un traité inégal.

11. Le second écueil tient au fait que, dans les négociations qui ont eu lieu jusqu'ici, Israël a tenté de faire admettre par les Palestiniens des entailles aux droits fondamentaux qu'ils détiennent du droit international. La violation principale, source elle-même des autres violations, consiste dans le refus persistant qu'oppose Israël au droit du peuple palestinien à disposer de lui-même. À aucun moment depuis la fin du mandat britannique en 1947, les dirigeants d'Israël n'ont sincèrement admis qu'un État palestinien pouvait coexister auprès d'eux sur la terre de Palestine. Le premier ministre d'Israël a confirmé le 20 janvier dernier son opposition à une souveraineté palestinienne⁴².

⁴¹ *Obligation de négocier un accès à l'océan Pacifique (Bolivie c. Chili)*, arrêt, C.I.J. Recueil 2018 (II), p. 538, par. 86.

⁴² *Le Monde*, 24 janvier 2024.

12. Lorsque Israël a feint de négocier le droit des Palestiniens à devenir un État, c'était pour n'en concéder qu'une caricature : un pouvoir démilitarisé, enclavé, éclaté sur un territoire morcelé, avec un accès réduit à ses ressources naturelles. Et pourtant le droit des peuples à disposer d'eux-mêmes a la valeur d'une norme de *jus cogens*. Il n'est pas un droit constitutif qui ne pourrait naître que de sa reconnaissance par Israël. Il est un droit déclaratif inhérent à la situation de peuple colonisé des Palestiniens. Il existe dès le moment où ce peuple a décidé de le revendiquer. De ce fait, et dans toute sa plénitude, ce n'est pas un droit négociable.

13. Israël a occupé à partir de 1967 le territoire palestinien suite à une action militaire qui a été menée en violation de la règle centrale d'interdiction du recours à la force. Il occupe donc un territoire sur lequel il n'a aucun droit. Il doit s'en retirer. Cela non plus n'est pas négociable.

14. En colonisant ce territoire, Israël viole l'interdiction du transfert de la population de la puissance occupante dans le territoire occupé⁴³. Et le projet israélien est officiellement de persister dans cette illégalité. De 700 000 qu'ils sont actuellement en Cisjordanie et à Jérusalem, les colons doivent dépasser le million aussi rapidement que possible, annonçait le ministre Smotrich le 12 juillet 2023⁴⁴. Israël a officialisé cette violation en inscrivant dans sa loi fondamentale de 2018 le développement des colonies juives comme une valeur de base de la société israélienne. Pourtant, le droit international exige le démantèlement de toutes ces colonies. Nous sommes là encore devant une obligation qui n'est pas négociable.

15. La sécurité des Palestiniens est gravement menacée. C'est par milliers qu'ils meurent sous les bombes israéliennes à Gaza depuis le 7 octobre. Et en Cisjordanie, selon les sources israéliennes, 367 Palestiniens ont été tués depuis le 7 octobre, dont 94 enfants. Et 2 960 Palestiniens ont été arrêtés. Les sources palestiniennes estiment que ces chiffres sont fortement sous-évalués⁴⁵.

16. Les colons implantés en Cisjordanie et à Jérusalem-Est exercent librement leur violence contre les Palestiniens. Ils y sont encouragés et des armes leur sont distribuées par l'État d'Israël lui-même⁴⁶. La dépossession de leurs terres et la répression dont sont l'objet les Palestiniens se sont

⁴³ Quatrième convention de Genève du 12 août 1949, art. 49, dernier alinéa.

⁴⁴ *Magazine*, 12 juillet 2023 (accessible à l'adresse suivante : <https://tinyurl.com/26b24uz6>).

⁴⁵ « Cisjordanie : l'autre guerre menée par Israël », *Le Monde*, 31 janvier 2023.

⁴⁶ « Ben-Gvir annonce la distribution prochaine de 10 000 armes aux volontaires israéliens dans les villes frontalières », *Nouvelle Aube*, <https://www.yenisafak.com/fr/international/ben-gvir-annonce-la-distribution-prochaine-de-10-000-armes-aux-volontaires-israeliens-dans-les-villes-frontalieres-14005>.

ainsi intensifiées depuis quelques mois. Et se développe une politique de discrimination constitutive d'apartheid. Toutes ces violations de droits fondamentaux doivent cesser. Une fois de plus, cela n'est pas négociable.

17. Pour rendre l'avis attendu, votre Cour aura à se pencher sur la question de Jérusalem. Cette ville n'a pas été incluse dans le territoire destiné à Israël par la résolution 181 de l'Assemblée générale des Nations Unies proposant un plan de partage de la Palestine. Lors de son admission aux Nations Unies en 1949, Israël a solennellement accepté les principes de la Charte des Nations Unies et des résolutions votées par ses organes. Il y avait donc là reconnaissance du fait que Jérusalem ne lui était pas attribuée.

18. Cependant, s'emparant de la ville par la force en 1948 pour la partie ouest et en 1967 pour la partie est, Israël en a fait sa capitale réunifiée en 1980. Depuis, Jérusalem-Est est soumise à une israélisation forcée par une intense colonisation. Celle-ci est considérée comme irréversible par les responsables israéliens.

19. Toutefois, Jérusalem-Est n'a pas d'autre statut que celui d'être un territoire occupé militairement par une puissance étrangère, comme l'ensemble du Territoire palestinien occupé depuis 1967. Israël doit s'en retirer au profit du peuple palestinien comme l'ont exigé constamment les résolutions pertinentes du Conseil de sécurité et de l'Assemblée générale⁴⁷. Et les Lieux saints doivent être préservés et ouverts à la liberté de tous ceux qui souhaitent s'y rendre. Cela non plus n'est pas négociable.

20. Ignorant ces impératifs du droit commun, Israël voudrait légaliser les actions illicites que je viens de mentionner en les inscrivant dans un accord. Or ce qui apparaît de l'analyse juridique de la situation, c'est que, sur la Palestine, Israël n'a aucun droit. Il n'a que des devoirs. Et de leur respect dépend la préservation de l'ordre public international fondé sur des normes communes et non dérogeables. La responsabilité de leur respect incombe aux Nations Unies, en charge du maintien de la paix. Elles ont été investies du dossier de la décolonisation de la Palestine par l'échec du mandat confié au Royaume-Uni. Elles sont la seule autorité à même de résoudre sur des bases conformes au droit la situation créée par cet échec depuis des décennies. Et s'il faudra bien que la paix découle

⁴⁷ Voir celles qui sont citées dans les observations écrites de l'Organisation de la coopération islamique, par. 357-404.

d'un accord entre les parties, celui-ci devra être conclu sous les auspices des Nations Unies, garantes du respect du droit, et non sous le parrainage arbitraire d'États tiers manquant d'objectivité.

21. Ainsi la manière dont les choses seront menées à partir des conclusions de votre avis devra permettre que l'accord par lequel les Palestiniens seront rétablis dans l'intégralité de leurs droits respecte les normes fondamentales jusqu'ici objet de tentatives de contournement. Et si ce n'était pas le cas, le futur traité de paix tomberait sous le coup de la convention de Vienne sur le droit des traités qui dispose : « Est nul tout traité qui, au moment de sa conclusion, est en conflit avec une norme impérative du droit international général. »⁴⁸

LA QUESTION DU STATUT DE L'OCCUPATION PAR ISRAËL DU TERRITOIRE PALESTINIEN

22. J'en viens maintenant, et c'est mon dernier point, à la seconde question qui est posée à votre Cour par l'Assemblée générale des Nations Unies. Vous êtes interrogés sur le statut juridique de l'occupation et sur les conséquences juridiques qui en découlent. Vous aurez ainsi à examiner l'occupation par Israël du territoire palestinien à la lumière de tous les champs du droit international.

23. Il s'agit d'abord du *jus ad bellum*, ce droit qui régit l'usage de la force par les États. Il comporte la norme majeure d'interdiction de recourir à la menace ou à l'emploi de la force contre l'intégrité territoriale ou l'indépendance politique de tout État⁴⁹.

24. Or c'est bien par l'usage de la force qu'Israël a occupé la Palestine en 1967, comme l'ont rappelé sans relâche le Conseil de sécurité et l'Assemblée générale. Cet emploi de la force est dirigé contre l'intégrité territoriale et l'indépendance politique de la Palestine, aujourd'hui reconnue dans sa qualité d'État par les Nations Unies. L'occupation est donc illégale à sa source même.

25. Cette illégalité se manifeste aussi depuis 1967 par la manière dont a été conduite cette occupation. Elle enfreint en effet toutes les conditions posées par le droit de La Haye et de Genève à l'occupation militaire d'un territoire étranger. Ces conditions sont recensées par le Manuel du Comité international de la Croix-Rouge :

⁴⁸ Convention de Vienne sur le droit des traités du 23 mai 1969, art. 53.

⁴⁹ Charte, art. 2, par. 4.

- La puissance occupante ne peut pas modifier la structure et les caractéristiques intrinsèques du territoire occupé sur lequel elle n'acquiert aucune souveraineté. Israël n'a cessé de modifier à son profit ces caractéristiques.
- L'occupation est et doit rester une situation temporaire. Israël occupe la Palestine depuis 66 ans et ses dirigeants affichent ouvertement leur intention de poursuivre indéfiniment cette occupation.
- Israël doit administrer le territoire dans l'intérêt de la population locale et en tenant compte de ses besoins. Les besoins des Palestiniens sont cruellement méconnus.
- Israël ne doit pas exercer son autorité pour servir ses propres intérêts et ceux de sa propre population. Toutes les politiques et pratiques d'Israël sont orientées au service des colons israéliens et au mépris des droits et intérêts des Palestiniens.

26. Ainsi les conditions dans lesquelles Israël a développé l'occupation du territoire palestinien, conditions dont toutes les preuves se trouvent dans les rapports des Nations Unies, vous amèneront à conclure que cette occupation, par sa durée et les pratiques déployées par l'occupant, est un prétexte à un projet d'annexion. Celui-ci, officialisé pour ce qui est de Jérusalem, est mis en œuvre *de facto* pour la Cisjordanie. Quant à Gaza, la guerre totale qui y est menée et les projets annoncés par le Gouvernement d'Israël confirment la volonté de cet État de garder la maîtrise de ce territoire.

27. Il résulte de ces constats, comme votre Cour ne manquera pas de le confirmer, que l'occupation par Israël du territoire palestinien est frappée d'une triple illégalité. Elle est illégale à sa source pour être en infraction à l'interdiction de l'emploi de la force. Elle est illégale par les moyens déployés, lesquels sont constitutifs de violations systématiques du droit humanitaire et des droits de l'homme. Elle est illégale enfin par son objectif, celui-ci étant de procéder à l'annexion des territoires palestiniens, privant ainsi le peuple de Palestine de son droit fondamental à disposer de lui-même.

CONCLUSION

28. Je donnerai quelques réflexions pour finir cette plaidoirie. La violence infondée et impunie qu'Israël exerce sur les Palestiniens entraîne en réponse une autre violence dans un cycle infernal, celui de la vengeance, qui est toujours à l'avantage du plus fort. C'est l'enchaînement meurtrier qui

se déroule tragiquement sous nos yeux. Pour le rompre, il faut un tiers impartial affirmant avec autorité ce que doit être l'application de la norme commune. Il revient à votre Cour, à l'occasion de l'avis que vous allez rendre, de ramener l'ensemble de ce conflit sous la lumière du droit.

29. Ce droit permet de dire quelles règles doivent être appliquées à une situation critique, mais aussi quelles mesures peuvent être prises lorsque ces règles sont violées avec persistance. Je rappellerai ici que les conclusions de l'Organisation de la coopération islamique demeurent inchangées par rapport à celles de nos observations écrites et je me permets d'y renvoyer. Je rappellerai seulement que l'organisation que je représente demande à la Cour d'enjoindre à Israël de cesser toutes les violations qui ont été relevées ici et d'exiger des Nations Unies et de leurs États Membres qu'ils utilisent toute la gamme des mesures permettant de faire cesser la situation, ce y compris des sanctions contre l'État responsable.

30. Et pour finir, je voudrais, Monsieur le président, Mesdames et Messieurs les juges, vous citer les propos du contre-amiral israélien Ami Ayalon, qui a dirigé pendant plusieurs années le service du renseignement intérieur israélien. Son chemin personnel l'a amené à s'interroger sur la notion d'ennemi et à mesurer l'impasse où se trouve Israël en ayant choisi la répression violente pour accompagner son refus de la solution politique. Et il conclut une interview donnée il y a quelques semaines à un quotidien français en disant : « La communauté internationale devrait jouer un rôle bénéfique. Nous avons besoin que quelqu'un de l'extérieur nous éclaire sur nos erreurs. »⁵⁰

Sauver les Israéliens contre eux-mêmes, voilà à quoi la communauté internationale contribuera à travers l'avis consultatif que vous allez rendre. Je vous remercie de votre attention.

Le PRÉSIDENT: Je remercie la délégation de l'Organisation de la coopération islamique pour son exposé. J'invite la prochaine délégation participante, l'Union africaine, à prendre la parole devant la Cour et appelle M^{me} la professeure Hajer Gueldich à la barre. Vous avez la parole, Madame.

⁵⁰ *Le Monde*, 25 janvier 2024.

M^{me} GUELDICH :

I. INTRODUCTION ET COMPÉTENCE

1. Monsieur le président, distingués Membres de la Cour, c'est un honneur pour moi de représenter l'Union africaine, une organisation comptant 55 États membres.

2. En ce dernier jour de plaidoiries dans le cadre de la présente procédure consultative, il importe de rappeler le contexte historique et les circonstances tragiques qui ont poussé l'Assemblée générale des Nations Unies à demander, une fois de plus — et regrettablement pour la communauté internationale —, un avis consultatif à la Cour sur la situation des territoires palestiniens occupés.

3. L'histoire de la Palestine est une histoire de dépossession, de déplacement, de déshumanisation. C'est l'histoire d'une injustice. C'est la tragédie d'un peuple qui, depuis plus de sept décennies, est systématiquement soumis et opprimé par le projet colonial israélien, dont l'objectif est d'établir un contrôle complet et exclusif sur l'ensemble du sol de la Palestine, de refuser au peuple palestinien son droit inaliénable à l'autodétermination, et de le priver de son droit à vivre librement sur sa terre natale.

4. L'agression israélienne en cours contre Gaza témoigne de cette tragédie. Une population de plus de 2 millions de civils innocents et sans défense est victime d'une campagne de mort et de destruction aveugle, conséquence de la punition collective exercée par la puissance occupante depuis des décennies. C'est pourquoi, lors de la Conférence des chefs d'État et de gouvernement des États membres de l'Union africaine, qui était tenue les 17 et 18 février 2024, les chefs d'État et de gouvernement des États membres de l'Union africaine ont exprimé leur « indignation totale face à la catastrophe humanitaire provoquée par les forces israéliennes dans la bande de Gaza » et leur « soutien total au peuple palestinien dans la lutte légitime qu'il mène contre l'occupation israélienne »⁵¹.

5. Les chefs d'État et de gouvernement des États membres de l'Union africaine ont aussi dénoncé les « mesures de punition collective contre les civils, en particulier les tentatives de transfert forcé de la population de Gaza »⁵².

⁵¹ Résolutions de l'Assemblée des chefs d'État et de gouvernement des États membres de l'Union africaine, 17-18 février 2024 (XXXVII).

⁵² *Ibid.*

6. Par conséquent, l'agression d'Israël contre Gaza n'est rien d'autre qu'une tentative honteuse de créer une nouvelle *Nakba* — une nouvelle catastrophe destinée à effacer la présence palestinienne en Palestine.

7. En effet, il y a quelques semaines à peine, cette Cour avait reconnu le grave péril auquel est confronté le peuple palestinien à Gaza, lorsqu'elle a déterminé que l'Afrique du Sud — un des États membres de l'Union africaine — avait établi la plausibilité de son allégation selon laquelle Israël commettrait un génocide. Rien ne peut justifier les souffrances et les horreurs inexprimables infligées à la population gazaouie.

8. Telle est l'essence de la tragédie palestinienne. Depuis plus d'un siècle, le peuple palestinien endure une succession de *Nakbas*. De la déclaration Balfour aux guerres de 1948, de 1956, de 1967, de 1982, en passant par l'établissement et l'expansion des colonies de peuplement israéliennes et la construction du mur de séparation. À chaque moment de l'histoire, les Palestiniens ont été victimes d'assujettissement, de déplacement, de dépossession.

9. L'escalade de la violence et l'impitoyable machine de guerre dévastent sans cesse la population palestinienne. Écoles, lieux de culte, habitations, hôpitaux sont réduits à néant, ne laissant derrière eux que la fumée des bombes qui continuent de pleuvoir sur Gaza. Par miracle, des enfants naissent sous les décombres, mais leurs vies restent en sursis, étant donnée la famine qui les afflige. Des familles endeuillées survivent sans eau, sans nourriture ni électricité, et voient, jour après jour, leurs espoirs, leurs rêves et leurs destins disparaître à jamais sous les ruines. La conscience de l'humanité ne l'oubliera jamais.

10. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, la présente procédure consultative vise à empêcher cette nouvelle injustice, résultant non seulement de la force des armes, mais aussi des pratiques israéliennes comprenant : l'annexion *de jure* et *de facto* des territoires palestiniens, l'implantation de colonies illégales, la modification du caractère démographique de Jérusalem, ensuite la confiscation et la destruction des biens des Palestiniens, l'expropriation de terres des Palestiniens, la construction de routes de contournement et l'entretien du mur de séparation.

11. Le fait que ces pratiques israéliennes dans les territoires palestiniens occupés se poursuivent et s'accroissent est le résultat de l'impunité dont profite Israël et de son mépris du droit

des gens et des normes de *jus cogens*, qui sont opposables *erga omnes*. Ce mépris s'illustre, par exemple, par la décision d'Israël d'ignorer l'avis consultatif de cette Cour concernant le mur de séparation ou les innombrables résolutions adoptées par les organes de l'ONU ayant documenté ses violations du droit international. La présente procédure consultative est l'occasion d'enfin tenir Israël responsable de ses actes, mais aussi de mettre fin *immédiatement* à son impunité, et de faire respecter le droit international général, le droit international humanitaire et le droit international des droits humains.

12. Par ailleurs, l'Union africaine participe à cette procédure parce qu'elle se sent investie d'une responsabilité particulière à l'égard du peuple palestinien. Ses États membres ont émergé du fléau colonial, ont mené la lutte contre l'apartheid et la discrimination raciale, et ont défendu la cause de l'autodétermination. Notre présence, aujourd'hui, reflète le sentiment exprimé par les chefs d'État et de gouvernement des États membres de l'Union africaine, qui avaient souligné

« l'importance majeure de la juste cause de la Palestine et la constance de notre position de soutien fondée sur nos valeurs communes contre le colonialisme, l'oppression et l'apartheid, [et] la solidarité historique de l'Afrique avec le peuple palestinien dans sa quête légitime de liberté et d'un État indépendant »⁵³.

13. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, à l'occasion de l'avis consultatif de la Cour sur *l'archipel des Chagos*, l'Union africaine a été témoin de l'autorité et de l'impact des décisions de la Cour. Cet avis a, en effet, contribué à quasiment mettre fin à l'une des dernières formes vivantes de colonialisme en Afrique. Comme dans cette affaire, la question devant vous ne porte nullement sur un contentieux opposant deux parties égales, mais une situation asymétrique dans laquelle un peuple opprimé est confronté à une puissance occupante. La Cour saura donc confirmer, de la même manière que dans l'affaire *Chagos*, le droit du peuple palestinien à l'autodétermination et à la liberté, et à faire en sorte que l'État de Palestine soit en mesure d'exercer sa pleine souveraineté et son indépendance sur ses territoires de Cisjordanie, de Gaza et sur sa capitale, Jérusalem-Est.

14. Avant de demander humblement à la Cour de donner la parole à mon collègue, le professeur Mohamed Helal, j'aborderai la question de la compétence.

⁵³ *Ibid.*

15. Nos observations à cet égard seront brèves. La grande majorité des participants avait dit, d'ailleurs, que dans la présente procédure rien ne s'oppose à l'exercice par la Cour de sa fonction consultative. C'est une position que l'Union africaine partage pleinement et entièrement.

16. En effet, la Cour a déjà confirmé sa compétence dans le cadre de la demande d'avis consultatif portant sur la même situation factuelle dans l'avis sur le *Mur*, et il n'y a aucune raison de s'écarter de son analyse. De plus, la jurisprudence de la Cour a affirmé, à de nombreuses reprises, que la nature politique d'un différend n'a aucune incidence sur le devoir de la Cour de répondre aux questions d'ordre juridique posées par l'Assemblée générale. Par ailleurs, la Cour dispose d'une abondance de preuves et d'éléments factuels qui lui permettent de rendre un avis consultatif.

17. Enfin, l'existence d'un processus de négociations ne saurait justifier l'usage, par la Cour, de sa discrétion de ne pas rendre cet avis consultatif. Et contrairement aux allégations de certains intervenants, l'avis de la Cour, loin de compliquer ce processus — par ailleurs au point mort — ne pourra que le renforcer, en clarifiant les obligations et les conséquences juridiques pour toutes les parties.

18. Pour conclure ma présentation, je voudrais rappeler les propos de Nelson Mandela, quelques années après la libération de l'Afrique du Sud. Il a lancé un avertissement qui nous concerne tous : « Having achieved our own freedom, we can fall into the trap of washing our hands of difficulties that others face. Yet we would be less than humans if we did so. »

19. Et c'est dans cet esprit qu'il avait prononcé des mots qui continuent de résonner dans les rues du monde entier aujourd'hui : « our freedom is incomplete without the freedom of the Palestinians ».

20. Monsieur le président, je vous prie maintenant de bien vouloir accorder la parole à mon collègue, le professeur Mohamed Helal. Je vous remercie pour votre aimable attention.

Le PRÉSIDENT: Je remercie Madame Gueldich. I now give the floor to Mr Mohamed Helal. You have the floor, Sir.

Mr HELAL:

**II. STATUS OF THE OCCUPATION AND THE LEGAL CONSEQUENCES
ARISING FROM THE CURRENT SITUATION IN PALESTINE**

1. Mr President, distinguished Members of the Court, it is a privilege to appear before the Court on behalf of the African Union.

2. As indicated by the Legal Counsel of the African Union, I will cover the following issues:

(a) *First*, I will identify the internationally wrongful acts that are attributable to Israel and address the question of the legal status of Israel's occupation of the Palestinian territories.

(b) *Second*, I will address the question of whether there are circumstances precluding the wrongfulness of acts that are attributable to Israel.

(c) *Third*, I will outline the legal consequences arising out of these internationally wrongful acts.

3. The point of departure for determining the legal status of Israel's occupation of the Palestinian territories is the question of title. Does Israel have title over the West Bank, Gaza and East Jerusalem? The answer is unequivocally no.

4. Given time constraints, I will only identify the main milestones of Palestine's history. Palestine was under Ottoman sovereignty and it came under British belligerent occupation during World War I, then, in 1922, Palestine was placed under a League of Nations Mandate that provisionally recognized Palestine as an "independent nation" under British administration, after which Turkey renounced sovereignty over Palestine pursuant to the 1923 Treaty of Lausanne. This was followed, in 1947, by the adoption of the Palestine partition plan which was never implemented and then, in 1948, Britain withdrew from Palestine and Israel unilaterally declared independence, which was followed by armistice agreements in 1949 and the establishment of Egyptian control over Gaza and Jordanian control over East Jerusalem and the West Bank, and finally, in 1967, Israel launched an armed attack as a result of which it occupied the West Bank, Gaza and East Jerusalem.

5. At no point in this process did Israel acquire title over these territories. Moreover, theories that support an alleged Israeli title over these territories — such as the claim that the legal status of Palestinian territories was indeterminate or that there was a sovereign vacuum that Israel was entitled to fill — are entirely unfounded.

6. Accordingly, since 1967, Israel has exercised belligerent occupation over the West Bank, Gaza and East Jerusalem. The African Union also submits that Israel's 57-year occupation of the Palestinian territories is unlawful and must be brought to an end.

7. This determination is based on three arguments:

(a) *First*, as the overwhelming majority of parties in these proceedings have argued, Israel's occupation is unlawful because it violates the prohibition on the acquisition of territory by force, which is a corollary of the prohibition on the use of force. This constitutes a violation of a peremptory rule of international law. The evidence on this point is incontrovertible. Pronouncements by Israel's political leaders and the conduct of Israel on the ground reflect an intention to perpetuate the occupation through acts that amount to the *de jure* and *de facto* annexation of Palestinian territories.

Israel's conduct in the current hostilities in Gaza also demonstrates its goal of entrenching its occupation of Gaza. Israel is reportedly planning to establish permanent buffer zones, maintain a long-term active military presence on the ground, and is striving to displace the population of Gaza to neighbouring States⁵⁴. This conduct, which has been roundly denounced by the African Union, confirms Israel's intent to acquire and annex further Palestinian territory in Gaza⁵⁵.

(b) *Second*, also as the overwhelming majority of parties have argued, Israel's occupation is unlawful because it deprives the Palestinian people of their right to self-determination. It is uncontested that the Palestinians are a people that are entitled to exercise self-determination. It is also established that self-determination is a right that is exercised in relation to a specific territory, and that it is unlawful to disrupt the unity and integrity of the territory in relation to which the right to self-determination is exercised. In the present case, the territories on which the Palestinians are entitled to exercise self-determination are the West Bank, Gaza and East Jerusalem, which constitute a single, indivisible territorial unit. Violating the right to self-determination also constitutes a violation of a peremptory rule of international law.

⁵⁴ Jacob Magid, "Netanyahu presents post-war plan to cabinet, aims for 'local officials' to govern Gaza" (*The Times of Israel*, 23 Feb. 2024); Résolutions de l'Assemblée des Chefs d'État et de gouvernement des États membres de l'Union africaine, 17-18 février 2024 (XXXVII).

⁵⁵ Résolutions de l'Assemblée des Chefs d'État et de gouvernement des États membres de l'Union africaine, 17-18 février 2024 (XXXVII).

(c) *Third*, the cumulative effect of Israeli policies and practices that are associated with the occupation provides an additional basis on which to conclude that the occupation is — *as a whole* — unlawful. This is a point that deserves to be highlighted because it has been argued that violations of the law of belligerent occupation do not affect the legal status of the occupation. Specifically, the United States claimed that “international law does not provide for an occupation itself to be rendered unlawful or void based either on its duration or on any violations of occupation law”⁵⁶. This view is incorrect.

8. The violations of international law committed by Israel in the occupied territories constitute continuing and composite breaches of international law. Specifically, Articles 14 and 15 of the ILC Articles on State Responsibility provide a basis for establishing that separate and distinct violations of the law of belligerent occupation can, when combined and viewed cumulatively, lead to the conclusion that the occupation — as a whole — is unlawful.

9. Article 14 (2) of the Articles on State Responsibility defines a continuing wrongful act as one that continues in time and remains not in conformity with an international obligation. According to the ILC, examples of a continuing wrongful act include “the maintenance by force of colonial domination, [and] unlawful occupation of part of the territory of another State”⁵⁷. This confirms the relevance and applicability of this concept to the case of Palestine. Other examples of Israeli practices amounting to continuing breaches include settlements in the West Bank and East Jerusalem, the separation wall, the network of bypass roads, legislative acts purporting to annex portions of the Palestinian territories, and the exploitation of water resources in the West Bank.

10. In addition, internationally wrongful acts that are attributable to Israel should be viewed as composite breaches of international law. As defined by Article 15 of the Articles on State Responsibility, “composite acts are made up of a series of actions or omissions defined in aggregate as wrongful, this does not exclude the possibility that every single act in the series could be wrongful in accordance with another obligation”. As the ILC explained, the concept of composite breaches is

⁵⁶ CR 2024/6, p. 55 (United States of America), para. 31.

⁵⁷ ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 60, para. 3.

intended to address situations where “the responsible entity (including a State) will have adopted a systematic policy or practice”.

11. And that is precisely why the concept of composite breaches is valuable in the present case. It captures the fact that Israel’s conduct is not composed of random or isolated wrongful acts. Israel is pursuing a systematic policy that is designed to perpetuate its control over the Palestinian territories. For example, the establishment and expansion of Israeli settlements and the transfer of over 700,000 Israeli settlers to the occupied territories is wrongful under Article 49 of the Fourth Geneva Convention. Similarly, the construction of a bypass road is wrongful under Articles 46 and 52 of the 1907 Hague Regulations and Articles 49, 52, and 53 of the Fourth Geneva Convention.

12. However, in addition to violating these specific rules of international law, the settlements, the bypass roads and the separation wall, and other practices are elements of an Israeli policy through which it is seeking to gain permanent control of the occupied territories, making it impossible to restore the *status quo ante bellum*. These Israeli practices, when viewed in their totality, make the occupation unlawful because they constitute composite wrongful acts that violate the prohibition on the use of force, the prohibition on the acquisition of territory by force, the prohibition on systematic racial discrimination, and the Palestinian people’s inalienable right to self-determination.

13. Mr President, distinguished Members of the Court, I will now address the question of whether there are circumstances that preclude the wrongfulness of Israel’s conduct. Specifically, I will argue that Israel cannot validly invoke the right to self-defence to justify its occupation of the Palestinian territories.

14. In this regard, the historical record is unequivocal. Israel’s occupation of the Palestinian territories was a result of an act of aggression that commenced on 5 June 1967. Moreover, it should be recalled that international law does not recognize a purported right of anticipatory, pre-emptive, or preventive self-defence. The terms of Article 51 of the Charter are unambiguous: the right to self-defence is triggered “if an armed attack occurs”. Indeed, the Organization of African Unity declared on numerous occasions that Israel’s use of force in 1967 amounted to an act of aggression⁵⁸.

⁵⁸ Written Statement of the African Union, para. 123.

15. It should also be recalled that in the *Wall* Opinion, the Court determined that Article 51 of the Charter has no relevance where the alleged threats invoked by Israel to justify its conduct originate from within, and not from outside, the occupied territories.

16. Even if one were to assume, *arguendo*, that Israel may invoke the right to self-defence as a circumstance precluding wrongfulness — which it cannot — it is patently clear that self-defence cannot justify Israel's practices. Self-defence is a narrowly construed exception to the prohibition on the use of force. Israel's practices that are designed to perpetuate its occupation can never satisfy the requirements of necessity and proportionality.

17. Furthermore, as several States have already affirmed in their pleadings, the exercise of self-defence can never provide a valid basis for acquiring title to territory that is occupied as a result of the exercise of the right to self-defence.

18. Moreover, given that many of the internationally wrongful acts attributable to Israel are violations of rules of *jus cogens*, it is our submission that self-defence cannot be invoked in this context. Article 26 of the ILC Articles on State Responsibility and Article 18 of the ILC Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law are clear: “[W]here the responsibility of a State for a breach of a peremptory norm is invoked, the State against which the breach is invoked cannot excuse itself from responsibility by raising any circumstance that might ordinarily preclude its wrongfulness.”

19. In short, the African Union submits that Israel cannot invoke self-defence as a circumstance precluding wrongfulness.

20. Finally, Mr President, distinguished Members of the Court, I will turn to the question of the consequences arising from these internationally wrongful acts.

21. The ILC Articles on State Responsibility affirm the customary principle that “[e]very internationally wrongful act of a State entails the international responsibility of that State”. It is on this basis that, in the *Chagos* Opinion, after the Court determined that the United Kingdom's continued administration of the Chagos Archipelago constituted a wrongful act, it was held that the United Kingdom was under an obligation to bring an end to its administration of Chagos “as rapidly

as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination”⁵⁹.

22. The same is required here. Israel must end its unlawful occupation of all the Palestinian territories *as rapidly as possible*, in order to enable the Palestinian people to exercise their fundamental right of self-determination.

23. This is the request that the majority of parties participating in this proceedings have made. The United Kingdom, however, is a notable outlier on this point. It argues that, if the Court were to address the status of the occupation and require Israel’s withdrawal, that would undermine the Security Council’s framework that is premised on reaching a two-State solution through a process of negotiations⁶⁰. The African Union does not agree. To condition the end of occupation on a negotiated settlement is to make the occupation permanent, given that the occupying Power — Israel — refuses to negotiate on the basis of the two-State solution and it has declared its will that it will never accept the establishment of a Palestinian State.

24. Those States that purport to support the two-State solution ought to endorse calls for this Court to unequivocally determine that Israel’s occupation of the Palestinian territories is unlawful. This is especially necessary given the peremptory nature of the right to self-determination and the prohibition on the acquisition of territory by force.

25. The modalities necessary to end the occupation as rapidly as possible could be decided under the supervision of the relevant organs of the United Nations.

26. Israel’s unlawful occupation of the Palestinian territories also gives rise to consequences for other States, including the customary legal obligations reflected in Article 41 of the Articles on State Responsibility, which are: (1) not to recognize any benefit accruing to Israel from the unlawful occupation; (2) not to lend aid or assistance to Israel that might further the occupation; and (3) to cooperate to end the unlawful occupation and to protect the right of self-determination of the Palestinian people.

27. It is perplexing that the United States has challenged the customary status of Article 41. This long-established principle has been recognized by the Court itself, in the *Wall* Advisory

⁵⁹ *Chagos* Advisory Opinion, p. 95, para. 178.

⁶⁰ CR 2024/12, p. 20 (United Kingdom), para. 27 (3) (a).

Opinion, and by the United Nations Security Council. It was even applied by the United States, in 1932, in the context of the Japanese aggression against China, in what was known as the Stimson Doctrine. Pursuant to this doctrine, the United States Government declared it “cannot admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement” that impairs the sovereignty, independence, or territorial integrity of China. The Court should uphold this principle.

28. In its Written Statement, the African Union offered various specific ways in which States may practically and meaningfully comply with these obligations of non-recognition, non-assistance and co-operation. The African Union simply wishes to emphasize that occupation and self-determination cannot exist at the same place and the same time. If occupation is illegal, it must be ended to permit the recognition of self-determination.

29. In closing, Mr President, Members of the Court, the African Union reiterates its call to end Israel’s occupation of the Palestinian territories. The injustice being wrought against the people of Gaza, as we convene here in the Great Hall of Justice, makes it imperative to end Israel’s impunity and hold it accountable to the rule of law. The court of history may very well judge the credibility of international law on the basis of the outcome of these proceedings. The international community has let down the Palestinian people, but the African Union has faith that, in this Court, justice will prevail. The betrayal of the sacred trust that is the self-determination of the Palestinian people is an enduring injustice that pleads to be remedied. It is the only path towards ensuring a future of security, stability, peace and prosperity for the peoples of a troubled region. Thank you for your attention.

The PRESIDENT: I thank the delegation of the African Union for its presentation. The Court will meet again this afternoon at 3 p.m., to hear Spain, Fiji and the Maldives. The sitting is adjourned.

The Court rose at 12.40 p.m.
