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International Court  
of Justice

Cour internationale  
de Justice

THE HAGUE

LA HAYE

YEAR 2024

*Public sitting*

*held on Wednesday 21 February 2024, at 3 p.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)*

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VERBATIM RECORD

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ANNÉE 2024

*Audience publique*

*tenue le mercredi 21 février 2024, à 15 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)*

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COMPTE RENDU

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*Présents :* M. Salam, président  
M<sup>me</sup> Sebutinde, vice-présidente  
MM. Tomka  
Abraham  
Yusuf  
M<sup>me</sup> Xue  
MM. Bhandari  
Iwasawa  
Nolte  
M<sup>me</sup> Charlesworth  
MM. Brant  
Gómez Robledo  
M<sup>me</sup> Cleveland  
MM. Aurescu  
Tladi, juges  
  
M. Gautier, greffier

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***The Government of the Russian Federation is represented by:***

HE Mr Vladimir Tarabrin, Ambassador of the Russian Federation to the Kingdom of the Netherlands,

Mr Ivan Volodin, Deputy Director, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Mr Ruslan A. Kantur, Legal Adviser, Permanent Representation of the Russian Federation to the Organisation for the Prohibition of Chemical Weapons,

Mr Nikolai Timofeev, Expert, Department of International Organizations, Ministry of Foreign Affairs of the Russian Federation.

***The Government of the French Republic is represented by:***

Mr Diégo Colas, Legal Adviser, Director of Legal Affairs at the Ministry for Europe and Foreign Affairs,

*as Agent;*

HE Mr François Alabrune, Ambassador of the French Republic to the Kingdom of the Netherlands,

*as Co-Agent;*

Mr Hervé Ascensio, Professor at the University Paris 1 Panthéon-Sorbonne,

Mr Pierre Bodeau-Livinec, Professor at the University Paris Nanterre,

Ms Marion Esnault, Legal Consultant, Directorate of Legal Affairs, Ministry for Europe and Foreign Affairs,

Mr Jean-Marc Sorel, Professor at the University Paris 1 Panthéon-Sorbonne,

*as Counsel.*

***The Government of the Republic of The Gambia is represented by:***

Hon. Dawda A. Jallow, Attorney General and Minister of Justice,

HE Mr Pa Musa Jobarteh, Ambassador of the Republic of The Gambia to the Kingdom of Belgium, the Federal Republic of Germany, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Poland, the Czech Republic, the Slovak Republic, the European Union and the ACP (African, Caribbean, and Pacific Group of States),

Mr Mohammad Arsalan Suleman, Counsel,

Ms Fatou L. Njie, State Counsel.

***Le Gouvernement de la Fédération de Russie est représenté par :***

- S. Exc. M. Vladimir Tarabrin, ambassadeur de la Fédération de Russie auprès du Royaume des Pays-Bas,
- M. Ivan Volodin, directeur adjoint du département juridique, ministère des affaires étrangères de la Fédération de Russie,
- M. Ruslan A. Kantur, conseiller juridique à la représentation permanente de la Fédération de Russie auprès de l'Organisation pour l'interdiction des armes chimiques,
- M. Nikolai Timofeev, expert au département des organisations internationales, ministère des affaires étrangères de la Fédération de Russie.

***Le Gouvernement de la République française est représenté par :***

- M. Diégo Colas, juriste, directeur des affaires juridiques, ministère de l'Europe et des affaires étrangères,

*comme agent ;*

- S. Exc. M. François Alabrune, ambassadeur de la République française auprès du Royaume des Pays-Bas,

*comme coagent ;*

- M. Hervé Ascensio, professeur à l'Université Paris 1 Panthéon-Sorbonne,

- M. Pierre Bodeau-Livinec, professeur à l'Université Paris Nanterre,

- M<sup>me</sup> Marion Esnault, consultante juridique, direction des affaires juridiques, ministère de l'Europe et des affaires étrangères,

- M. Jean-Marc Sorel, professeur à l'Université Paris 1 Panthéon-Sorbonne,

*comme conseils.*

***Le Gouvernement de la République de Gambie est représenté par :***

- l'honorable Dawda A. Jallow, *Attorney General* et ministre de la justice,

- S. Exc. M. Pa Musa Jobarteh, ambassadeur de la République de Gambie auprès du Royaume de Belgique, de la République fédérale d'Allemagne, du Grand-Duché de Luxembourg, du Royaume des Pays-Bas, de la République de Pologne, de la République tchèque, de la République slovaque, de l'Union européenne et de l'ACP (groupe des États d'Afrique, des Caraïbes et du Pacifique),

- M. Mohammad Arsalan Suleman, conseil,

- M<sup>me</sup> Fatou L. Njie, *State Counsel*.

***The Government of the Co-operative Republic of Guyana is represented by:***

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Ms Jill Tansley, London, Ontario,

*as Assistant.*

***The Government of Hungary is represented by:***

Mr Attila Hidegh, Deputy State Secretary for International Cooperation, Ministry of Foreign Affairs and Trade of Hungary,

*as Head of Delegation;*

Mr Gergő Kocsis, Head of the United Nations Department,

Mr Örs Czenczer, Head of the Secretariat of the Deputy State Secretary for International Cooperation, Ministry of Foreign Affairs and Trade of Hungary,

Ms Krisztina Gosztonyi, Chargé d'affaires a.i., Deputy Head of Mission of the Embassy of Hungary in the Kingdom of the Netherlands,

Ms Enikő Petóházi, Second Counsellor, diplomat responsible for multilateral affairs, Embassy of Hungary in the Kingdom of the Netherlands,

Ms Eda Kaya, Political Adviser, Embassy of Hungary in the Kingdom of the Netherlands,

*as Members of the Delegation.*

***Le Gouvernement de la République coopérative du Guyana est représenté par :***

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M. Edward Craven, avocat au cabinet Matrix Chambers (Londres),

*comme conseil et avocat ;*

M<sup>me</sup> Jill Tansley (London, Ontario),

*comme assistante.*

***Le Gouvernement de la Hongrie est représenté par :***

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*comme chef de délégation ;*

M. Gergő Kocsis, chef du département des Nations Unies,

M. Örs Czenczer, chef de cabinet du secrétaire d'État adjoint à la coopération internationale, ministère des affaires étrangères et du commerce extérieur de la Hongrie,

M<sup>me</sup> Krisztina Gosztonyi, chargée d'affaires par intérim, cheffe adjointe de mission, ambassade de Hongrie au Royaume des Pays-Bas,

M<sup>me</sup> Enikő Petóházi, deuxième conseillère, diplomate responsable des affaires multilatérales, ambassade de Hongrie au Royaume des Pays-Bas,

M<sup>me</sup> Eda Kaya, conseillère politique, ambassade de Hongrie au Royaume des Pays-Bas,

*comme membres de la délégation.*

The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear the Russian Federation, France, The Gambia, Guyana and Hungary on the questions submitted to it by the United Nations General Assembly. As I have had the occasion to note, each delegation is kindly requested to keep to the maximum speaking time of 30 minutes for its presentation. This afternoon, the Court will observe a short break after the presentation of The Gambia.

I shall now give the floor to the representative of the Russian Federation, His Excellency Mr Vladimir Tarabrin. You have the floor, Excellency.

Mr TARABRIN:

1. Mr President, distinguished Members of the Court, it is an honour for me to be representing the Russian Federation at these hearings. Seizing this opportunity, I would like to congratulate you, Mr President, Madam Vice-President and all the new judges of the Court upon election to your respective positions. We trust that the Court in its new composition will continue making its immeasurable contribution to peaceful resolution of disputes and development of international law.

#### INTRODUCTION

2. Mr President, the current proceedings originate in the adoption, by the General Assembly, of resolution 77/247, back in December 2022. When adopting the resolution, the General Assembly was “gravely concerned” by “the tensions and violence in the recent period throughout the Occupied Palestinian Territory”. The Assembly noted “the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians”. The Assembly also spoke of the arbitrary imprisonment and detention of Palestinians, the use of collective punishment, the closure of areas, the confiscation of land, the establishment and expansion of settlements, the destruction of property and infrastructure, the demolition of Palestinian homes, the forced displacement of civilians and “the disastrous humanitarian situation and the critical socioeconomic and security situation in the Gaza Strip”<sup>1</sup>.

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<sup>1</sup> A/RES/77/247: 25th, 29th, 30th and 32nd preambular paragraphs.



3. As has been stressed by numerous delegations speaking at these hearings, the situation on the ground has since deteriorated in a dramatic fashion.

4. The Gaza Strip, since October 2023, has been an arena of intense hostilities. This time, violence has taken an unprecedented and indeed a catastrophic scale. The overall number of victims during the current wave of violence, almost 30,000, has already surpassed the figures from any of the previous Arab-Israeli wars.

5. Images from Gaza are terrifying. Indiscriminate air strikes are killing civilians and erasing whole residential districts. More than half of all buildings in the Gaza Strip have been destroyed. Up to 90 per cent of Gazans have been forced to leave their homes and are living in inhuman conditions.

6. Against the backdrop of the tough Israeli blockade, the Gaza Strip is experiencing a genuine humanitarian catastrophe. Its inhabitants are suffering from an acute shortage of food, medication and fuel. Access to sources of clean water has been limited, resulting in a spread of infectious diseases. Over 20 per cent of agricultural lands have been damaged and will never be recultivated.

7. Mr President, Russia, of all countries, understands the dangers of terrorism. We have faced this evil time and again. Let me use this opportunity to reiterate our heartfelt condolences to the Israelis who lost their loved ones in the attack on 7 October. Brutal massacres of innocent people, taking of hostages and other terrorist violence do not have, and cannot have, any justification. We have repeatedly condemned such acts. Let me also stress that Russia highly values the stable relations that we enjoy with Israel. We are united by shared history of combating Nazism, as well as by a myriad of present-day human ties. Our co-operation is resilient in the face of geopolitical turbulence, and we are committed to its further development.

8. Having said this, we are convinced that the tragic events of 7 October cannot justify the collective punishment of more than 2 million Gazans. We cannot accept the logic of those officials in Israel and some Western countries who try to defend the indiscriminate violence against civilians by referring to Israel's duty to protect its nationals. Violence can only lead to more violence. Hatred brings hatred. This vicious circle must be broken.

9. In Russia's view, security both for Israel and the Palestinians can only be ensured if the root cause of the current crisis is addressed. Outbreaks of violence will inevitably occur again until the Palestinian people, having suffered for decades from injustice, exercises its right to establish an

independent State. That State, in accordance with Security Council and General Assembly resolutions, is to emerge within the 1967 borders with East Jerusalem as its capital. Only this approach, based on international law, can bring a lasting peace for the region and security for Palestinians and Israelis alike. This is the spirit that has been guiding Russia in fulfilling its responsibilities as a mediator between Palestine and Israel, notably as a member of the so-called Quartet, alongside the United Nations, the United States and the European Union.

10. The history of the conflict shows what happens when Security Council resolutions are ignored and influential global actors are incapable or unwilling to help the parties find consensual solutions. Attempts to put the conflict into a low-intensity mode instead of a comprehensive settlement have time and again provoked eruptions in the occupied territories.

11. The current wave of violence is no exception. It was preceded by a persistent policy of the United States and its allies aimed at freezing the status quo, watering down the political processes and promoting a one-sided vision of a settlement. Among the victims of such short-sighted and irresponsible approach was the Quartet of mediators, whose work has been effectively blocked by the United States. This flawed policy of Washington has, predictably, led to a failure that has cost thousands of innocent lives.

12. Today, all responsible members of the international community are facing a difficult task of creating conditions to lead the situation out of the current impasse. After the violent phase has been overcome, the parties will need help in establishing a full-fledged political dialogue, allowing them to settle all disputes on the universally recognized international legal basis. Russia hopes that the advisory opinion of the Court will contribute to achieving this goal.

#### **VIOLATIONS OF INTERNATIONAL LAW BY ISRAEL**

13. Mr President, a lot has already been said in this hall on the numerous violations of international law by Israel. Russia supports the assessments given in the General Assembly resolution 77/247 and the respective reports of the Secretary-General. We also support relevant resolutions of the Human Rights Council based on the reports of its Special Rapporteurs. In today's statement, let me focus on two of the most important aspects.

14. The first one is the persistent denial by Israel of the right of Palestinians to self-determination. The right to self-determination through the establishment of an independent Palestinian State has been at the heart of efforts of the international community. This right has been recognized by the General Assembly, the Security Council and by this Court<sup>2</sup>.

15. It is worth recalling that the principle of self-determination of peoples is one of the foundations of the United Nations, mentioned in the very first Article of its Charter. Every State has the duty to refrain from any forcible action which deprives peoples of their right to self-determination<sup>3</sup>. Meanwhile, as recognized by the General Assembly, the protracted Israeli occupation prevents the Palestinians from implementing that right<sup>4</sup>. “An end to the Israeli occupation” has been identified as a goal for the international community by legally binding resolutions of the Security Council, including resolution 2334<sup>5</sup>. Israel is accordingly under an obligation to cease its violations of international law and to allow the Palestinian people to establish an independent State. This necessarily means that the occupation must come to an end.

16. The other key problem that leads to continuous violations of human rights of Palestinians are the Israeli settlement activities. This policy, sometimes referred to as creation of “facts on the ground”, was launched back in 1967 and has led to progressive shrinking of Palestinian lands. This has effectively undermined prospects of a negotiated solution of the one element of the final status, namely the issues of territory and borders. The overall number of Israeli settlers in the West Bank, including East Jerusalem, is over 700,000. The situation is exacerbated by other arbitrary moves by the Israeli authorities, such as confiscation of lands, demolition of homes and prohibition of new construction. Most recently, this has been accompanied by violence emanating from Israeli settlers.

17. In 2023, that is, after the present request for an advisory opinion was made, the settlement activities of Israel have gained a record-breaking speed. Thus, according to the latest report of the United Nations Secretary-General, in 2023, plans for more than 24,700 housing units were advanced,

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<sup>2</sup> *Wall Advisory Opinion*, pp. 182-183, para. 118.

<sup>3</sup> UNGA res. 2625 (XXV), Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Annex, The principle of equal rights and self-determination of peoples.

<sup>4</sup> UNGA res. 77/247, paras. 6 and 16.

<sup>5</sup> UNSC res. 2334 (2016), para. 9.

approved or tendered. This is more than double the 11,700 units in 2022, which in itself was a remarkable figure<sup>6</sup>.

18. During the current wave of violence, we have witnessed public statements by Israeli cabinet members announcing plans to resume settlement activities in the Gaza Strip. Thus, on 28 January 2024, at a conference in West Jerusalem, cabinet ministers openly called for deportation of Palestinians from Gaza and presented a map with 21 settlement blocs<sup>7</sup>. One cannot help noting that the event was held two days after this Court indicated provisional measures in the *South Africa v. Israel* case<sup>8</sup>. The Court agreed that the situation in Gaza poses risks of irreparable harm to the rights of Palestinians guaranteed by the Genocide Convention. This fact alone underscores the gravity of the situation.

19. In this connection, it is worth recalling that this Court, in its Advisory Opinion on the *Wall*, recognized that “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) ha[d] been established in breach of international law”<sup>9</sup>. As explained in that Advisory Opinion, the settlements are contrary to the principle of inadmissibility of acquisition of territory by force. They also contradict the provisions of the Fourth Geneva Convention prohibiting transfers of population and deportations from an occupied territory. Resolutions of the Security Council have characterized that policy as changing the legal status and geographical nature of the occupied territories, and materially affecting their demographic composition<sup>10</sup>.

20. In its resolution 2334, the Security Council reaffirmed that the settlements “have no legal validity and constitute a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”<sup>11</sup>.

21. This policy is aggravated by numerous violations of other rules of international humanitarian law and human rights law. These include the right to life, to respect for private and

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<sup>6</sup> United Nations, Report of the Secretary-General, S/2023/988, 14 Dec. 2023, para. 66.

<sup>7</sup> “Cabinet members call to resettle Gaza, encourage Gazans to leave, at jubilant conference”, *The Times of Israel*, 29 Jan. 2024. Available at <https://www.timesofisrael.com/12-ministers-call-to-resettle-gaza-encourage-gazans-to-leave-at-jubilant-conference/>.

<sup>8</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024.

<sup>9</sup> *Wall* Advisory Opinion, p. 184, para. 120.

<sup>10</sup> UNSC res. 446 (1979), para. 3.

<sup>11</sup> UNSC res. 2334 (2016), para. 1.

family life, to property, to freedom of movement, to freedom of religion, to work, to health, to education, and to an adequate standard of living.

22. As mentioned earlier, this policy continues unabated, in defiance of Security Council resolutions and the Quartet Roadmap<sup>12</sup>. Importantly, as stressed in resolution 2334, the settlements are “dangerously imperilling the viability of the two-State solution based on the 1967 lines”<sup>13</sup>. They are thus also violating the right of the Palestinian people to self-determination.

23. Israeli policies in Palestine, to Russia’s deep regret, include other international law violations. Many examples have been provided by other delegations here. The Russian Federation expects the Court to give them due consideration.

#### LEGAL CONSEQUENCES

24. Mr President, Members of the Court, the question before us, therefore: the legal consequences of those violations. The starting-point here is the well-established rule whereby “every internationally wrongful act of a State entails the international responsibility of that State”<sup>14</sup>. In the present proceedings, the Court will be right to conclude that Israel’s violations result in Israel’s duty to comply with the obligations it has breached, to put an end to its ongoing violations and to provide reparation for the damage caused.

25. This means, first and foremost, that Israel is under an international legal obligation to respect the right of the Palestinian people to self-determination and to stop all settlement activities in the occupied territory.

26. Given the particular legal framework in the Middle East peace process, Israel is also under an obligation to cease all activities that impede reaching a final status agreement based on the right of the Palestinian people to self-determination in an independent, viable and contiguous Palestinian State with East Jerusalem as its capital.

27. Having said that, the Court will be wise not to engage in a detailed discussion on a precise scope and forms of implementation of Israel’s responsibility. This is important for two reasons.

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<sup>12</sup> UNSC, S/2003/529, Annex, A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict.

<sup>13</sup> UNSC res. 2334 (2016), sixth preambular paragraph.

<sup>14</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 1.

28. First, advisory proceedings before the Court are not an exercise in implementation of responsibility. No State is invoking Israel's responsibility in these proceedings, as indeed Israel is precluded from invoking responsibility of others.

29. A State may only be brought before this Court on the basis of its own consent. Full respect for the principle of consent is a crucial importance for the integrity of international judicial procedures.

30. Secondly, the international community has established a solid legal framework for the Middle East peace process. This legal framework is a universally recognized and a legally binding one. It contains crucial elements that effectively coincide with the aims of international responsibility. A negotiated two-State solution with an independent, viable and contiguous Palestinian State peacefully co-existing with Israel will be the best recipe for bringing an end to Israeli violations, creating guarantees of their non-repetition and redressing the damage.

31. The advantage of the peace process is an idea of direct negotiations between Israel and Palestine. They are to reach an agreement on the basis of their free will. In Russia's opinion, that significantly strengthens the chances that an agreement will actually be achieved, will indeed satisfy the interests of both parties and will be implemented in practice.

32. The Russian Federation invites the Court to be guided by the need to contribute to creating conditions for successful final status negotiations. The best contribution would be a confirmation by the Court that Israel and Palestine are under an obligation to resume such negotiations, while all States and international organizations shall co-operate in order to make that possible.

33. In its Written Statement, the Russian Federation has discussed the status of the Court as one of the principal organs of the United Nations<sup>15</sup>. The Court has on many occasions recognized that its advisory opinions "represent its participation in the activities of the Organization". When asked by the General Assembly to provide an advisory opinion, the Court should give an opinion that would indeed be useful for the Assembly. For these reasons, we respectfully submit that the Court, when giving an advisory opinion in this case, should be guided by the principles of the peace process and should actively seek to give an opinion that would contribute to their implementation.

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<sup>15</sup> Written Statement by the Russian Federation, paras. 44-56.

## CONCLUSION

34. Mr President, today I will not dwell upon issues of jurisdiction, admissibility, applicable law or interpretation of questions put by the General Assembly. The respective chapters of the written contribution of the Russian Federation retain their full relevance. Let me now summarize our submissions.

35. The continued Israeli occupation of Palestine impedes the realization of the Palestinian people of its right to self-determination. Israeli settlements are contrary to the principle of inadmissibility of acquisition of territory by force. They also run counter to the prohibition of transfer and deportation of population of an occupied territory. The settlement activities are aggravated by numerous other violations of international humanitarian law and human rights law. All States are under an obligation not to recognize the illegal situation resulting from Israel's violations.

36. Israel shall terminate its breaches of international law. It must in particular cease all settlement activities and all other activities that impede reaching a final status agreement. At the same time, discussion on Israel's responsibility must remain within the limits imposed by the advisory nature of these proceedings and to the need to create conditions for successful final status negotiations.

37. Israel and Palestine are under an obligation to conduct, in good faith and without delay, negotiations aimed at reaching a final status agreement. All States and international organizations are under an obligation to contribute to creating conditions for such negotiations. The agreement thus reached shall result in the implementation by the Palestinian people of its right to self-determination and emergence of an independent, viable and contiguous Palestinian State with East Jerusalem as its capital. This will bring an end to the ongoing violations of human rights of Palestinians and to the Israeli occupation.

Thank you, Mr President.

The PRESIDENT: I thank the delegation of the Russian Federation for its presentation. J'invite maintenant la délégation de l'État participant suivant, la France, à prendre la parole devant la Cour et appelle M. Diégo Colas à la barre. Monsieur Colas, vous avez la parole.

M. COLAS :

1. Merci, Monsieur le président. Monsieur le président, Mesdames et Messieurs les juges, c'est un grand honneur pour moi de représenter mon pays devant la Cour.

2. Permettez-moi, en introduction, de revenir à mon tour sur le très lourd contexte dans lequel s'inscrivent ces audiences.

3. Le 7 octobre 2023, Israël a connu une attaque terroriste d'une ampleur sans précédent. La France a condamné dans les termes les plus forts l'attaque perpétrée par le Hamas et les autres groupes terroristes et a exprimé sa pleine solidarité avec Israël et les victimes de cette attaque.

4. Comme l'a fait la Cour dans son ordonnance en indication de mesures conservatoires rendue le 26 janvier 2024, la France appelle à la libération immédiate et inconditionnelle des otages enlevés par le Hamas et les autres groupes terroristes lors de l'attaque en Israël du 7 octobre.

5. La France rappelle également le droit d'Israël à se défendre et à défendre sa population, dans le but d'éviter que des attaques comme celle-ci ne se reproduisent.

6. Ce droit doit s'exercer dans le strict respect du droit international et, en particulier, du droit international humanitaire. Alors que les opérations et bombardements israéliens font des milliers de victimes civiles à Gaza, la France a affirmé — avec clarté, constance et de manière répétée — cette exigence.

7. La protection des civils et des personnels humanitaires est un impératif moral et une obligation internationale. Israël doit se conformer au droit international humanitaire, qui impose en tout temps et en tous lieux des principes clairs de distinction, de nécessité, de proportionnalité et de précaution. J'ajoute que le respect du droit international, en particulier du droit international humanitaire, *par toutes les parties prenantes*, est le seul horizon de paix possible.

8. La France a pris note des inquiétudes exprimées par la Cour, dans son ordonnance du 26 janvier dernier, quant aux conséquences des opérations militaires qui se déroulent dans la bande de Gaza. Les préoccupations de la Cour sur « l'ampleur de la tragédie humaine qui se joue dans la région » et sur les « souffrances humaines que l'on continue d'y déplorer » ne peuvent qu'être partagées par mon pays.

9. Comme l'a rappelé le ministre français de l'Europe et des affaires étrangères lors de son intervention au Conseil de sécurité des Nations Unies le 23 janvier 2024, il nous faut œuvrer



immédiatement à un cessez-le-feu durable, qui seul permettra de mettre fin aux souffrances de la population civile de Gaza.

10. En rendant un avis consultatif dans le cadre de la présente procédure, la Cour peut apporter une contribution précieuse au règlement juste et durable du conflit israélo-palestinien. En effet, un avis de sa part pourrait utilement contribuer à la clarification du cadre et des paramètres juridiques applicables à cette situation. Ce sera ensuite aux parties prenantes, appuyées par la communauté internationale, qu'il incombera de rechercher par la négociation une solution de paix durable, en conformité avec le droit international.

11. À cet égard, la France réitère son soutien constant à une solution négociée à deux États, vivant côte à côte au sein de frontières sûres et reconnues, fondées sur les lignes du 4 juin 1967, et ayant l'un et l'autre Jérusalem pour capitale.

12. En effet, pour la France, seule une solution politique à deux États permettra de répondre à la fois au droit des Israéliens à la sécurité et aux aspirations légitimes des Palestiniens à un État indépendant, viable et contigu, vivant dans la paix et la sécurité aux côtés d'Israël. Pour y parvenir, la France appelle à une relance décisive et crédible du processus de paix.

13. La situation actuelle en Israël et en Palestine soulève un nombre important de questions de droit international. Seules certaines d'entre elles sont abordées par les questions posées par l'Assemblée générale et il importe, de l'avis de la France, que le champ de la présente procédure y soit *précisément circonscrit*. Il appartiendra dès lors à la Cour de fournir à l'Assemblée un avis l'éclairant sur les questions juridiques posées, sans aller au-delà de ce qui est nécessaire à cette fin.

14. Monsieur le président, Mesdames et Messieurs les juges, au regard de l'ensemble de ces éléments, et suivant l'ordre des questions posées à la Cour, mon propos abordera les cinq points suivants :

- Le droit à l'autodétermination (I) ;
- L'« occupation, [la] colonisation et [l']annexion » (II) ;
- Les « lois et mesures discriminatoires » (III) ;
- « [L]e statut de ... Jérusalem » (IV) ; et
- Les conséquences juridiques (V).

15. Avant d'aborder ces cinq points, je ferai une remarque sur le droit applicable. Pour avoir une vision complète du cadre juridique pertinent pour la présente demande d'avis, il convient de souligner que la Palestine est, depuis l'avis de 2004, devenue partie à plusieurs traités multilatéraux dont une liste non exhaustive figure dans les observations écrites de la France.

### **I. LE DROIT DU PEUPLE PALESTINIEN À L'AUTODÉTERMINATION**

16. Le droit du peuple palestinien à l'autodétermination a été rappelé par la Cour dans son avis rendu en 2004. Le Conseil de sécurité l'a également affirmé à plusieurs reprises : l'existence d'un peuple palestinien, au sens du droit international, ne saurait plus faire débat. À ce titre, comme tous les peuples, il bénéficie d'un droit à l'autodétermination. En vertu de ce droit, et pour reprendre les termes de l'article premier commun aux pactes de 1966, un peuple « détermine[] librement [son] statut politique et assure[] librement [son] développement économique, social et culturel ».

17. Ainsi, en ce qui concerne le peuple palestinien, ce droit a d'abord une dimension politique. Cette dimension a été largement consacrée par diverses résolutions de l'Assemblée générale. Elle se caractérise par « le droit ... à un État de Palestine indépendant » (A/RES/77/208, par. 1), son droit « d'exercer sa souveraineté sur son territoire », « d'accéder à l'indépendance dans son État, la Palestine » (A/RES/58/292, par. 1). Cette perspective s'inscrit pleinement dans « la vision d'une région dans laquelle deux États, Israël et la Palestine, vivent côte à côte, à l'intérieur de frontières reconnues et sûres » (S/RES/1397 (2002), préambule).

18. Une solution de paix passera nécessairement par la conclusion d'arrangements de sécurité entre Israéliens et Palestiniens, prévoyant des garanties concrètes et efficaces. En même temps, ces garanties de sécurité ne pourront exister que s'il existe à l'avenir un véritable État palestinien à même de conclure de tels arrangements et de les faire respecter, c'est-à-dire un État capable d'exercer sa souveraineté pleine et entière dans ses frontières internationalement reconnues.

19. Dans ce contexte, la France estime que toute action allant à l'encontre de la nécessité de « préserver l'unité, la continuité et l'intégrité de l'ensemble du Territoire palestinien occupé, y compris Jérusalem-Est » (A/RES/77/208, préambule) constitue une violation du droit du peuple palestinien à l'autodétermination.

20. De ce point de vue, la poursuite de l'occupation — mais aussi le développement de colonies de peuplement et le morcellement qui en découle — entrave l'édification d'un État de Palestine viable. La perspective d'un tel État s'éloigne au fur et à mesure que les atteintes à l'intégrité des territoires palestiniens occupés perdurent et s'amplifient.

21. Plus fondamentalement, la persistance des manquements imputables à Israël menace la possibilité pour le peuple palestinien d'exercer effectivement son droit à l'autodétermination. À cet égard, le constat dressé par la Cour en 2004 perdure mais le passage du temps n'est pas neutre : il obère les perspectives d'une concrétisation du droit à l'autodétermination du peuple palestinien.

22. Près de vingt ans après l'avis consultatif rendu par la Cour sur les *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé*, le maintien de la situation d'occupation, la multiplication des mesures qui l'accompagnent et le développement des colonies de peuplement forment autant d'obstacles à la réalisation effective du droit à l'autodétermination du peuple palestinien.

## **II. LA QUESTION DE « [L']OCCUPATION, [L]A COLONISATION ET [L']ANNEXION PROLONGÉES DU TERRITOIRE PALESTINIEN OCCUPÉ DEPUIS 1967 » PAR ISRAËL**

23. J'en viens maintenant à la question de « [l']occupation, [la] colonisation et [l']annexion prolongées du territoire palestinien occupé depuis 1967 » par Israël.

24. J'aborderai à cet égard deux points : les conséquences juridiques du caractère prolongé de l'occupation israélienne *d'abord*, puis le lien entre cette occupation prolongée et la question de la colonisation.

### **La question du caractère prolongé de l'occupation des territoires palestiniens occupés**

25. L'occupation est une notion de fait objective qui se caractérise par le contrôle effectif exercé par un État sur un territoire déterminé.

26. Depuis la fin de la guerre des Six Jours en 1967, Israël peut être considéré comme puissance occupante de la Cisjordanie, de Jérusalem-Est et de la bande de Gaza, au sens de l'article 42 du règlement de La Haye de 1907 concernant les lois et coutumes de la guerre. Cette

situation de fait, constatée par la Cour ainsi que par le Conseil de sécurité des Nations Unies, suppose l'application des normes internationales prévues en cas d'occupation militaire.

27. Ces normes internationales établissent des droits pour la puissance occupante, notamment pour préserver sa sécurité et ne pas compromettre les nécessités militaires. Mais elles lui imposent surtout des obligations positives, dont la principale est la protection des populations soumises à l'occupation. À ce titre, le Conseil de sécurité et l'Assemblée générale ont rappelé, à maintes reprises, les obligations d'Israël au titre de la quatrième convention de Genève relative à la protection des personnes civiles en temps de guerre du 12 août 1949.

28. Ces normes internationales s'appliquent indépendamment de la licéité de l'opération ayant permis à l'État d'exercer son contrôle effectif sur le territoire occupé. Elles s'appliquent aussi indifféremment de la durée de l'occupation ; et ce, bien que celle-ci doive être envisagée dans son essence comme temporaire.

29. Ces obligations de protection s'appliquent, pour reprendre les termes de l'article 6 de la quatrième convention de Genève, pendant « la durée de l'occupation ».

30. Avec une occupation des territoires palestiniens qui dure depuis 1967, ce caractère prolongé paraît difficilement pouvoir être justifié par les « nécessités de la guerre », au sens de l'article 23 g) du règlement de La Haye de 1907. En effet, les circonstances justifiant l'occupation dans la période suivant immédiatement les opérations militaires ne peuvent plus être invoquées plusieurs décennies après la fin de ces opérations. C'est ce qui a conduit le Conseil de sécurité et l'Assemblée générale à demander aux forces armées israéliennes de se retirer des territoires « occupés » à plusieurs reprises depuis la résolution 242 (par exemple 681 (1990) du 20 décembre 1990).

31. De l'avis de la France, le caractère indéfiniment prolongé d'une occupation est contraire au fait que celle-ci devrait être provisoire par nature. Pour autant, l'occupation est une question de fait dont découle un régime juridique spécifique. Son caractère prolongé ne suffit pas, *à lui seul*, à la qualifier d'illicite. Le danger serait qu'un tel constat d'illicéité conduise à soutenir l'inapplicabilité du régime. Cela aboutirait à un résultat manifestement absurde ou déraisonnable où les populations civiles se verraient privées de la protection offerte par ce régime, protection pourtant d'autant plus nécessaire que ladite occupation perdure dans le temps.

32. Une incertitude sur le cadre juridique applicable serait d'autant plus préjudiciable dans le contexte actuel des opérations militaires dans la bande de Gaza — territoire sur lequel Israël exerce maintenant un contrôle renforcé. Dans ce territoire, aujourd'hui, les populations civiles touchées doivent absolument et nécessairement pouvoir bénéficier des règles de protection minimales prévues par le droit de l'occupation.

J'en viens au deuxième point, sur le lien entre l'occupation prolongée et la politique de colonisation des territoires palestiniens occupés.

### **La politique de colonisation des territoires palestiniens occupés**

33. La colonisation de territoires occupés est contraire aux conventions de Genève. En ce sens, l'article 49 de la quatrième convention de Genève dispose que « [l]a Puissance occupante ne pourra procéder à la déportation ou au transfert d'une partie de sa propre population civile dans le territoire occupé par elle ». Le Conseil de sécurité a eu, à plusieurs reprises, l'occasion de dénoncer cette situation.

34. Dans son avis de 2004, la Cour avait aussi conclu que « les colonies de peuplement installées par Israël dans le territoire palestinien occupé (y compris Jérusalem-Est) l'ont été en méconnaissance du droit international »<sup>16</sup>.

35. Ce constat d'illicéité demeure aujourd'hui d'autant plus fondé que, depuis 2004, Israël a poursuivi et accéléré sa politique de création ou d'extension de colonies dans les territoires palestiniens occupés.

36. Sur cette question, la France réitère sa ferme condamnation de la politique illégale de colonisation mise en œuvre par Israël, en particulier dans le contexte actuel. Cette politique, dont relèvent également les évictions de familles palestiniennes et la destruction de structures palestiniennes, doit cesser.

37. La guerre à Gaza ne doit en aucun cas constituer un prétexte pour continuer à imposer sur le terrain des mesures unilatérales qui sapent les perspectives d'une solution à deux États, seule à même de garantir une paix juste et durable.

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<sup>16</sup> *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I), p. 184, par. 120.*

38. Dans un communiqué conjoint du 15 décembre 2023, la France a réitéré sa « position relative à la politique de colonisation, qui est illégale en vertu du droit international » et rappelé « à Israël les obligations qui lui incombent en vertu du droit international, en particulier l'article 49 de la quatrième Convention de Genève ». La France a également fermement condamné « les violences commises par les colons extrémistes, qui terrorisent les communautés palestiniennes ».

Le PRÉSIDENT : C'est difficile à suivre, est-ce que vous pourriez un peu ralentir ? Merci.

M. COLAS :

39. Sur ce dernier point, la France a pris des mesures à titre national contre certains colons israéliens violents et s'est déclarée favorable à l'adoption, au niveau européen, de sanctions à leur encontre.

40. Par ailleurs, il doit être rappelé que le statut de puissance occupante ne confère rigoureusement aucun titre juridique justifiant une annexion. À cet égard, le fait que l'occupation soit d'une durée particulièrement longue ne saurait, en tout état de cause, permettre de légitimer des prétentions d'annexion.

41. Bien au contraire, l'un des principes cardinaux du droit international est celui prohibant ce type d'annexion. Comme cela ressort notamment de la résolution 2625 (XXV), « [n]ulle acquisition territoriale obtenue par la menace ou l'emploi de la force ne sera reconnue comme légale ». Dans ce contexte, une annexion d'un territoire qui tenterait de se fonder sur le caractère prolongé d'une occupation ne pourrait être considérée que comme nulle et non avenue au regard du droit international.

### **III. LA QUESTION DES « LOIS ET MESURES DISCRIMINATOIRES » ET DES MESURES « VISANT À MODIFIER LA COMPOSITION DÉMOGRAPHIQUE » DU TERRITOIRE CONSIDÉRÉ**

42. Troisièmement, la question posée par l'Assemblée générale vise également les conséquences juridiques des « lois et mesures discriminatoires connexes » adoptées par Israël. De l'avis de la France, cette question vise les lois et mesures appliquées aux territoires palestiniens occupés, mais en contradiction avec le régime international prévu pour les territoires occupés. Les lois et mesures qui présentent un caractère discriminatoire contreviennent non seulement aux

dispositions des conventions précitées de La Haye et de Genève, mais également aux principaux textes internationaux en matière de droits de l'homme, qui lient Israël et qui sont applicables aux territoires palestiniens occupés.

43. La France relève que le droit international humanitaire n'exclut pas nécessairement qu'un statut différencié puisse s'appliquer à la population d'un territoire occupé. Ce statut ne peut cependant justifier l'adoption de lois et mesures qui présenteraient un caractère discriminatoire.

44. Comme la Cour l'a précisé dans son avis de 2004, « la protection offerte par les conventions régissant les droits de l'homme ne cesse pas en cas de conflit armé »<sup>17</sup>. Le droit de l'occupation doit donc être mis en œuvre en tenant compte du droit international des droits de l'homme applicable. La puissance occupante est, en particulier, tenue d'exercer ses droits et devoirs en tenant compte de l'obligation de non-discrimination, laquelle découle notamment de l'article 2 du Pacte sur les droits civils et politiques.

45. La question posée à la Cour porte également sur les mesures « visant à modifier la composition démographique » du territoire considéré. De l'avis de la France, le droit international interdit clairement la mise en œuvre, par la puissance occupante, de mesures qui seraient de nature à modifier la composition démographique du territoire considéré.

46. À ce sujet, la France réitère sa condamnation des propos promouvant l'installation de colonies à Gaza et le transfert de la population palestinienne de Gaza hors de ce territoire. La France rappelle que la Cour a énoncé l'obligation pour Israël de prendre toutes les mesures en son pouvoir pour prévenir et punir ce type de propos.

47. Comme en Cisjordanie ou ailleurs, une telle modification de la composition démographique de la bande de Gaza constituerait en effet une très grave violation du droit international, tant conventionnel que coutumier.

#### **IV. LA QUESTION DES « MESURES VISANT À MODIFIER ... LE CARACTÈRE ET LE STATUT DE ... JÉRUSALEM »**

48. Quatrièmement, Monsieur le président, Mesdames et Messieurs les juges, j'en viens maintenant à la question du statut de Jérusalem.

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<sup>17</sup> *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I), p. 178, par. 106.*

49. Par plusieurs de ses résolutions, notamment la résolution 478 de 1980, le Conseil de sécurité a affirmé le caractère internationalement illicite des mesures prises par Israël pour modifier le statut de Jérusalem, y compris la « loi fondamentale » du 30 juillet 1980 qui proclame Jérusalem « une et indivisible » comme capitale de l'État d'Israël. La résolution 478 de 1980 rappelle que l'adoption de cette « loi fondamentale » ne remet pas en cause l'application de la quatrième convention de Genève.

50. Il ne fait donc aucun doute que le statut unilatéral imposé par Israël à Jérusalem est nul et non avenu au regard du droit international. En outre, les mesures protectrices prévues par la quatrième convention de Genève doivent s'appliquer à Jérusalem, comme dans le reste des territoires palestiniens occupés.

51. Dès lors, l'expropriation des terres palestiniennes à Jérusalem-Est, mais aussi les statuts dédiés aux habitants palestiniens de Jérusalem-Est, constitue autant de manquements à l'obligation pour la puissance occupante de prendre de telles mesures protectrices.

52. En effet, ce ne sont pas seulement les mesures militaires qui contreviennent aux obligations d'Israël en tant que puissance occupante, mais aussi les mesures du droit civil israélien, appliquées aux Palestiniens de Jérusalem-Est.

53. Israël est, au regard du droit international, plus largement tenu de ne pas adopter de mesures législatives ou autres tendant à modifier le statut de Jérusalem. Comme le rappelle la déclaration présidentielle du Conseil de sécurité du 20 février 2023, la France considère qu'il convient de maintenir inchangé le *statu quo* historique sur les lieux saints à Jérusalem.

## **V. LES CONSÉQUENCES JURIDIQUES POUR TOUS LES ÉTATS ET POUR L'ORGANISATION DES NATIONS UNIES**

54. Cinquièmement et dernièrement, la demande d'avis consultatif de l'Assemblée générale porte, enfin, sur les conséquences juridiques découlant des violations du droit international susceptibles d'être constatées par la Cour.

55. À cet égard, il est utile de rappeler que, dans son avis de 2004, la Cour avait répondu en distinguant les conséquences juridiques pour Israël et celles pour les autres États, ainsi que, le cas échéant, pour l'Organisation des Nations Unies elle-même. Il en sera de même dans les présentes observations orales.



56. *En ce qui concerne Israël*, la première conséquence juridique est l'obligation de cessation de l'illicite. Selon les termes de l'article 30 a) des articles de 2001 de la Commission du droit international sur la responsabilité de l'État pour fait internationalement illicite, l'État responsable d'un fait illicite a l'obligation « [d]'y mettre fin si ce fait continue ».

57. L'examen de la situation dans les territoires palestiniens occupés fait apparaître des violations continues du droit international auxquelles Israël doit mettre un terme. Ces violations portent, on l'a vu, sur le droit des peuples à disposer d'eux-mêmes et sur les règles du droit international humanitaire et du droit international des droits de l'homme applicables à la situation dans les territoires palestiniens occupés.

58. Sont notamment concernés les transferts de population israélienne dans le cadre de la politique illégale de colonisation menée par Israël et les mesures discriminatoires ou restreignant certains droits et libertés de la population palestinienne dans les territoires occupés. Cette obligation doit être rappelée avec d'autant plus de force que, dans le contexte des tensions actuelles, la politique de colonisation se double d'un accroissement des violences commises contre les Palestiniens de Cisjordanie.

59. L'obligation de cessation a des implications tant juridiques que matérielles. Dans le cadre de la présente procédure, l'obligation de cessation implique que les politiques et pratiques identifiées comme violant le droit international prennent fin. Elle implique aussi que soient abrogés les actes juridiques internes sur lesquels elles sont fondées, ainsi que des actions positives pour garantir le respect du droit international.

60. La deuxième conséquence juridique résultant d'une violation du droit international est la réparation.

61. Dans le cadre de la présente demande d'avis consultatif, la France considère que cette obligation de réparation s'étend à l'ensemble des dommages causés à la population palestinienne du fait de la politique et des pratiques d'Israël ne respectant pas le droit international. En règle générale, l'obligation de réparation doit, autant que faire se peut, prendre la forme de la restitution et, à défaut, celle de l'indemnisation si la restitution n'est plus ou pas possible.

62. S'agissant de violations concernant le peuple palestinien dans son ensemble, des formes de réparation collectives ou symboliques seraient envisageables.

63. Enfin, au titre de la satisfaction, il conviendrait qu'Israël mène des enquêtes et poursuive, le cas échéant, les personnes responsables de violations graves du droit international humanitaire et du droit international des droits de l'homme commises dans les territoires palestiniens occupés.

64. *En ce qui concerne les autres États*, la Cour avait déjà constaté, dans son avis de 2004, le caractère *erga omnes* des obligations internationales violées par Israël à l'occasion de la construction du mur dans les territoires palestiniens occupés.

65. Dans le cadre de la présente demande d'avis consultatif, le même constat s'impose à propos des atteintes au droit des peuples à l'autodétermination découlant de l'occupation prolongée par Israël de territoires palestiniens, ainsi que de la politique et des pratiques menées dans les territoires palestiniens occupés.

66. Il en résulte, pour tous les États, une obligation de non-reconnaissance de toute situation créée en violation grave du droit international. Toute forme d'annexion, y compris partielle, ne saurait ainsi être reconnue au regard du droit international. À cet égard, dans les territoires palestiniens occupés, comme partout ailleurs, la France ne reconnaîtra jamais l'annexion illégale de territoires.

67. Le respect du statut international des territoires palestiniens occupés emporte également des effets sur le plan économique. On rappellera à ce propos que, dans sa résolution 2334 (2016), le Conseil de sécurité des Nations Unies a demandé à tous les États « de faire une distinction, dans leurs échanges en la matière, entre le territoire de l'État d'Israël et les territoires occupés depuis 1967 ». Cela se traduit notamment, dans le droit de l'Union européenne, par la prise en compte du droit international et de l'avis de la Cour de 2004 afin de traiter différemment les produits en fonction de leur origine.

68. *En ce qui concerne l'Organisation des Nations Unies*, celle-ci pourra, comme cela fut le cas en 2004, préciser le cas échéant les suites à donner à l'avis de la Cour à propos du droit du peuple palestinien à l'autodétermination et des risques d'atteinte au statut international des territoires palestiniens occupés, notamment s'agissant des garanties offertes par ce statut à la population palestinienne.

69. Enfin, il faut rappeler que la Cour avait demandé, en 2004, à l'Organisation des Nations Unies dans son ensemble de redoubler d'efforts pour « mettre rapidement un terme au conflit

israélo-palestinien », afin d'« établir ... une paix juste et durable dans la région ». Cette demande de s'engager dans la voie de négociations de paix entre les parties prenantes, appuyées par la communauté internationale, reste plus que jamais pertinente. La France est prête à apporter son soutien à tous les efforts qui seront fournis dans ce sens.

70. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie pour votre attention.

The PRESIDENT: Je remercie la délégation de la France pour son exposé. I invite now the next participating delegation, The Gambia, to make its oral statement before the Court. I thus call upon His Excellency Mr Dawda Jallow to take the floor.

Mr JALLOW:

1. Mr President, honourable Members of the Court, it is an honour for me to appear before you to represent the Republic of The Gambia in these essential advisory opinion proceedings.

2. As was the case with The Gambia's Written Statement, my oral submission today focuses on the second question presented to the Court regarding the legal status of the occupation and the legal consequences that arise therefrom.

3. The preamble of the United Nations Charter reminds us of the fundamental goals of our international system: "to save succeeding generations from the scourge of war"; "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small"; "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained"; and "to promote social progress and better standards of life in larger freedom".

4. Mr President, Members of the Court, notwithstanding the great resources invested by the international community at large, none of these goals has been achieved for the Palestinian people. None of them. And none of these goals can be achieved for the Palestinian people until Israel's illegal occupation of the Palestinian territories is brought to an end.

5. My remarks today will focus on three points. First, I will discuss the fact that a belligerent occupation can be illegal per se under certain circumstances. Second, I will set forth three reasons why Israel's prolonged occupation of the Palestinian territories is illegal — a view shared by a

substantial majority of the States participating in these proceedings. Third, I will conclude by emphasizing the essential role of this Court in declaring that Israel's occupation is illegal and must be brought to an end immediately.

### I. ILLEGALITY OF A BELLIGERENT OCCUPATION

6. As the Court knows quite well, the international system is based on certain fundamental principles of law, which include peremptory norms of international law, or *jus cogens* norms. Adherence to these norms is not subject to derogation and compliance with them is owed *erga omnes* — to the international community as a whole. Some of the recognized *jus cogens* norms include the prohibition of aggression, the prohibition of genocide, the prohibition of apartheid and the right to self-determination<sup>18</sup>.

7. If a particular action of a State violates one or more *jus cogens* norms, that action is illegal under international law. Any State may invoke the responsibility of that State for such a violation and seek an immediate end to it.

8. This is, fundamentally, the situation regarding Israel's occupation in the Palestinian territories. The international community, collectively over many years, has found Israel's occupation of the Palestinian territories to be illegal, among other reasons, on account of its violation of multiple *jus cogens* norms. And collectively we have invoked Israel's responsibility in that regard to end the occupation.

9. Mr President, at least one State in the course of these proceedings has suggested that an occupation under international law cannot be illegal under any circumstances. This argument posits that "an occupation exists, therefore it is legal". The proposition is unfounded in international law and fails for several reasons.

10. First, this argument confuses *jus in bello*, and completely ignores the *jus ad bellum*. As the Court is well aware, international humanitarian law, and the *jus in bello*, is the body of law that governs the ways in which warfare can be conducted. It includes within it the law of occupation, a

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<sup>18</sup> See ILC, Peremptory norms of general international law (*jus cogens*): Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading, UN doc. A/CN.4/L.967 (11 May 2022), Conclusion 23 (Annex).

body of rules regulating the conduct of an occupying Power<sup>19</sup>. It is, indeed, true that the obligations under *jus in bello* as they relate to an occupation persist throughout the pendency of that occupation.

11. But separate from *jus in bello* is the *jus ad bellum*, or the conditions under which States may resort to armed force<sup>20</sup>. It is the *jus ad bellum* that addresses the legality of a use of force, including an occupation, which is maintained by the ongoing use of force<sup>21</sup>. Article 2 (4) of the United Nations Charter prohibits the threat or use of force in any “manner inconsistent with the Purposes of the United Nations”. The only exceptions to this prohibition are the very narrow circumstances of the force authorized by the United Nations Security Council or self-defence under Article 51 of the Charter. Any use of force outside of these narrow exceptions — i.e. any annexation or occupation of territory arising from an act of aggression or otherwise unlawful use of force — is illegal<sup>22</sup>. Any use of force that is unnecessary or disproportionate to the threat against which it is exercised is also illegal under *jus ad bellum*<sup>23</sup>.

12. Second, the proposition that “an occupation exists, therefore it is legal” also ignores the existence and implications of *jus cogens* norms going beyond the *jus ad bellum*. If an occupation inherently violates one or more *jus cogens* norms, then it is illegal as a whole and the occupying Power’s responsibility for that violation can be invoked in order to bring the violation to an end. The occupying Power’s ongoing obligations under international humanitarian law do not, and cannot, preclude the wrongfulness of *jus cogens* violations inherent in the occupation itself<sup>24</sup>.

13. For example, the argument that occupations are inherently legal, if adopted, would directly conflict with and undermine the prohibition on the annexation of territory. Any State that wanted to *de facto* annex a territory could do so by indefinitely occupying that territory but not formally incorporating it within its borders. It is the same with the *jus cogens* norms of the rights of

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<sup>19</sup> See Written Statement from the Swiss Confederation, paras. 40, 43-44.

<sup>20</sup> *Ibid.*, para. 51.

<sup>21</sup> UNGA res. 3314 (XXIX), Definition of aggression, UN doc. A/RES/3314(XXIX) (14 Dec. 1974), para. 3 (a).

<sup>22</sup> See UNGA res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN doc. A/RES/25/2625 (1970); UNGA res. 42/22, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, UN doc. A/RES/42/22 (18 Nov. 1987).

<sup>23</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 223, para. 147.

<sup>24</sup> ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, UN doc. A/77/10 (2022), Conclusion 18.

self-determination. Simply put, flagrant violations of international law cannot be brushed aside by the fig leaf of occupation.

14. Finally, the thesis that “an occupation exists, therefore it is legal” also ignores the fact that the Court has determined occupations to be unlawful in the past. As discussed in The Gambia’s Written Statement, this was the case regarding South Africa’s occupation of Namibia without title<sup>25</sup> and regarding Uganda’s occupation of the Congolese province of Ituri<sup>26</sup>. The United Nations Security Council<sup>27</sup> and the General Assembly<sup>28</sup> have characterized occupations resulting from unlawful uses of force to be illegal as well.

15. In sum, a belligerent occupation can be illegal per se if it violates the *jus ad bellum* and other *jus cogens* norms.

## **II. ISRAEL’S PROLONGED OCCUPATION OF THE PALESTINIAN TERRITORIES IS ILLEGAL**

16. Mr President, Members of the Court, The Gambia will highlight three reasons why Israel’s prolonged occupation of the Palestinian territories is illegal. All three of these reasons — the right of self-determination (A), the prohibition on apartheid (B) and the *jus ad bellum* (C) — reflect obligations rooted in *jus cogens* norms. This conclusion of illegality is shared by a substantial majority of the Participants in these proceedings, many for the same reasons as The Gambia.

### **A. The right to self-determination**

17. First, Israel’s occupation violates the right of the Palestinian people to self-determination and is therefore illegal. The *erga omnes* right of self-determination is “one of the essential principles of contemporary international law”<sup>29</sup>, a *jus cogens* norm enshrined in the United Nations Charter<sup>30</sup>.

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<sup>25</sup> *Namibia* Advisory Opinion, p. 54, para. 118.

<sup>26</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, pp. 279-280, para. 345.

<sup>27</sup> See UNSC res. 674 (1990), UN doc. S/RES/674, 29 Oct. 1990; UNSC res. 545 (1983), UN doc. S/RES/545, 20 Dec. 1983.

<sup>28</sup> UNGA res. 3061 (XXVIII), *Illegal occupation by Portuguese military forces of certain sectors of the Republic of Guinea-Bissau and acts of aggression committed by them against the people of the Republic*, UN doc. A/RES/3061(XXVIII), 2 Nov. 1973.

<sup>29</sup> *East Timor (Portugal v. Australia)*, Judgment, *I.C.J. Reports 1995*, p. 102, para. 29.

<sup>30</sup> UN Charter, Art. 1 (2). ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, UN doc. A/77/10 (2022), Conclusion 23 (Annex (h)).

18. The Court has before it extensive and uncontested fact-finding by multiple United Nations mandate holders, including the Independent International Commission of Inquiry on the Occupied Palestinian Territory and the many reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. These reports have been produced by independent United Nations mandate holders who engaged in extensive fact-finding utilizing multiple sources of evidence. The Court should accept these reports as conclusive and convincing evidence of Israel's long-standing, ongoing and indefinite infringement on the right of self-determination for the Palestinian people.

19. Indeed, there is no end in sight to Israel's occupation. Already extending over 56 years, Israel's current leadership boasts with pride its long-standing efforts to prevent the creation of an independent Palestinian State<sup>31</sup>. As reported by the United Nations Special Rapporteur, Israel's "occupation violates Palestinians' ability to organize themselves as a people, free from alien domination and control"<sup>32</sup>.

20. No derogation is permitted from respecting the right of the Palestinian people to self-determination. There is no escaping the conclusion that Israel's occupation is illegal for violating the right of the Palestinian people to self-determination and that it must expeditiously be brought to an end.

## **B. The prohibition on apartheid**

21. Second, Israel's ongoing occupation of the Palestinian territories is also illegal because it amounts to a régime of apartheid, the prohibition of which is a peremptory norm of international law<sup>33</sup>. This Court has described apartheid as a "flagrant violation of the purposes and principles of the Charter"<sup>34</sup>.

22. Once again, the Court has before it extensive, credible and independent fact-finding demonstrating conclusively that Israel has imposed an apartheid reality in the Palestinian territories.

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<sup>31</sup> Tovah Lazaroff, "Netanyahu lied about backing two-state solution, former US envoy says", *The Jerusalem Post*, 17 Dec. 2023, available at <https://www.jpost.com/israel-news/article-778417>.

<sup>32</sup> UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, UN doc. A/77/356, 21 Sept. 2022, para. 73.

<sup>33</sup> ILC, Peremptory norms of general international law (*jus cogens*): Texts of the draft conclusions and Annex adopted by the Drafting Committee on second reading, UN doc. A/CN.4/L.967, 11 May 2022, Conclusion 23 (Annex (e)).

<sup>34</sup> *Namibia* Advisory Opinion, p. 57, para. 131.

This is clear in the reporting of the United Nations Special Rapporteur, who concluded that “Israel has imposed upon Palestine an apartheid reality in a post-apartheid world”<sup>35</sup>. This is also reflected in the findings of the Committee on the Elimination of Racial Discrimination<sup>36</sup>.

23. Senior international leaders, like Ban Ki-moon, Desmond Tutu and former Israeli officials, including a former Attorney General, a former director of Israel’s Intelligence Service, Shin Bet, and a former Ambassador of Israel to South Africa, have also concluded that Israel’s occupation constitutes a régime of apartheid<sup>37</sup>.

24. The most credible non-governmental human rights organizations that report on the situation in the Occupied Palestinian Territory have also concluded that the occupation is, in fact and in law, an apartheid régime<sup>38</sup>.

25. A sober review of the uncontroverted evidence convincingly shows that the occupation is a régime of apartheid. As such, Israel’s occupation of the Palestinian territories is illegal and must urgently be brought to an end.

### **C. The *jus ad bellum***

26. Third, Israel’s 56-year occupation of Palestinian territories violates the laws on the use of force — *jus ad bellum* — and is illegal for that reason as well.

27. As discussed earlier, the prohibition on the threat and use of force is a *jus cogens* norm. Even when resort to force is justified by self-defence in response to an armed attack, the particular force used may still be illegal if it is unnecessary or disproportionate to the threat against which it is exercised<sup>39</sup>.

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<sup>35</sup> HRC, Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967, UN doc. A/HRC/49/87, 12 Aug. 2022, paras. 53-56.

<sup>36</sup> CERD Committee, Concluding observations on the combined seventeenth to nineteenth reports of Israel, UN doc. CERD/C/ISR/CO/17-19, 27 Jan. 2020, para. 22.

<sup>37</sup> HRC, Report of Special Rapporteur S. M. Lynk on the situation of human rights in the Palestinian territories occupied since 1967, UN doc. A/HRC/49/87, 12 Aug. 2022, para. 13.

<sup>38</sup> See Written Statement of the Republic of The Gambia, para. 1.13, fn. 16.

<sup>39</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 223, para. 147.



28. Israel launched the June 1967 war that led to its occupation of the Palestinian Territory<sup>40</sup>. After its surprise attack initiating the war, Israel occupied all remaining Palestinian territory in the West Bank, including East Jerusalem, the Gaza Strip, as well as Syria's Golan Heights and Egypt's Sinai Peninsula, "effectively tripling the size of territory under [its] control"<sup>41</sup>. Since this use of force was not taken in response to an armed attack and was not necessary or proportionate even if it had been, the occupation was a flagrant violation of the laws of the use of force from the onset.

29. Furthermore, even if the occupation of the Palestinian territories were lawful at one time, its continuation for more than five decades means that it could not possibly still be lawful today. First, the use of force in self-defence is only justified "within the strict confines" laid down in Article 51 of the Charter and "does not allow the use of force by a State to protect perceived security interests beyond [those] parameters"<sup>42</sup>. As such, "essentially preventative" uses of force are beyond the scope of Article 51<sup>43</sup>.

30. Second, as clarified in the *Wall* Advisory Opinion, Article 51 does not apply to situations involving conduct taken in response to purported threats emanating from within occupied territory<sup>44</sup>. Israel therefore cannot justify its occupation as a response to illegal threats emanating from within the Occupied Palestinian Territory itself.

31. Israel's ongoing occupation of the Palestinian territories also violates the *jus ad bellum* because its maintenance is unnecessary and disproportionate. It is simply not possible that it has been necessary for Israel to maintain its occupation since 1967 — for over 56 years. Moreover, Israel also cannot possibly justify its settlements upon and annexation of occupied territory as a necessary response to any perceived threat — not to mention the myriad of rights violations that are intrinsic to the occupation. By settling and annexing occupied territory, Israel has acted unnecessarily in using force.

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<sup>40</sup> UNGA, Report of Special Rapporteur F. Albanese on the situation of human rights in the Palestinian territories occupied since 1967, UN doc. A/77/356, 21 Sept. 2022, para. 37.

<sup>41</sup> "Israel's borders explained in maps", BBC News, 16 Sept. 2020, available at <https://www.bbc.com/news/world-middle-east-54116567>.

<sup>42</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 223, para. 148.

<sup>43</sup> Cf. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 222, para. 143.

<sup>44</sup> *Wall* Advisory Opinion, p. 194, para. 139.

32. Israel's prolonged occupation is also wholly disproportionate to any legitimate aim. Israel's occupation of the entirety of the Palestinian territories "long after the period in which any presumed armed attack . . . could reasonably be contemplated"<sup>45</sup> makes it even more disproportionate now. And the manner in which the occupation has been conducted — including the establishment of an apartheid régime — renders the occupation disproportionate as well.

33. In sum, Israel's decades-long occupation violates the *jus ad bellum* and is therefore illegal.

### **III. THE COURT SHOULD DECLARE THAT ISRAEL'S OCCUPATION IS ILLEGAL AND MUST BE BROUGHT TO AN END**

34. Mr President, Members of the Court, in the almost twenty years since the *Wall* Advisory Opinion, Israel has only deepened the occupation. Israel has annexed more territory and expanded its illegal settlements. It has further fragmented the Palestinian territory. In Gaza, Israel has decimated the territory and the Palestinian population there. In the territories overall, Israel has entrenched an apartheid régime. The Palestinian people continue to be deprived of their right to self-determination, indefinitely. And all the while, there is no justification under international law for Israel's continued use of force to maintain the occupation — if there ever was one to begin with.

35. Mr President, Members of the Court, I remind us of the fundamental goals of the United Nations that I recited at the beginning of my remarks. If we are to ever achieve any of those goals in regard to the Palestinian people, then this Court must play its role in robustly answering the questions posed by the General Assembly.

36. As to the second question posed, The Gambia submits that the Court should find that Israel's occupation of the Palestinian territories is illegal per se for all of the reasons discussed. And The Gambia further submits that the Court should find that Israel, all other States and the United Nations are under an obligation to bring about an end to Israel's occupation immediately, or at least as rapidly as possible<sup>46</sup>.

Thank you, Mr President, Members of the Court, for your kind attention.

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<sup>45</sup> Cf. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 123, para. 237.

<sup>46</sup> *Namibia* Advisory Opinion, p. 48, para. 133 (1); *Chagos* Advisory Opinion, p. 139, para. 178.

The PRESIDENT: I thank the delegation of The Gambia 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 4.15 p.m. to 4.35 p.m.*

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Guyana, to address the Court, and call upon Mr Edward Craven to take the floor. The floor is yours, sir.

Mr CRAVEN:

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of Guyana.

2. Guyana is grateful for the opportunity to appear at this important and historic hearing. Although situated far from the Middle East, Guyana has a close interest in the legality of Israel's occupation of Palestinian territory. Israel's activities in the occupied territory — which have been brought into sharp focus by the tragic and ongoing humanitarian catastrophe in Gaza — are a matter of truly global concern, with significant implications not only for the State of Palestine and the Palestinian people, but for all States opposed to the acquisition of territory by force. Israel's continued occupation of Palestinian territory is an offence against this bedrock principle of international law, and it is a serious and a continuing threat to a peaceful, secure and stable world.

3. Guyana's participation in these proceedings and its presence here today reflect its firm conviction that an advisory opinion by the Court on the questions posed by the General Assembly will play a valuable — and indeed vital — role in enabling the United Nations, and all of its Member States, to secure full compliance with international law, and ultimately to achieve a permanent, just and peaceful settlement of the Israeli-Palestinian conflict.

**A. THE COURT SHOULD NOT BE DETERRED FROM PROVIDING AN ADVISORY OPINION  
WHICH ANSWERS IN FULL THE QUESTIONS POSED BY  
THE GENERAL ASSEMBLY**

4. Mr President, that belief is one that is shared by the overwhelming majority of States and international organizations which have chosen to participate in these advisory proceedings. However,

a small number of States — just five in total<sup>47</sup> — contend that the Court should decline to provide an advisory opinion because, they say, an opinion would prejudice negotiations between the State of Palestine and Israel. A further handful of States — which include the United States, from whom you heard earlier today — do not go quite so far, but they instead urge the Court to exercise caution to avoid undermining the existing negotiating “framework”.

5. Both the advocates of abstention and the advocates of timidity are wrong. There are several reasons why the possible effect of an advisory opinion on negotiations between Israel and the State of Palestine does not constitute a good — still less a “compelling” — basis for either declining to issue an opinion or for restricting its scope. I highlight two in particular.

6. First, the arguments all rest on a fundamentally flawed factual premise. They assume the existence of ongoing negotiations between Israel and the State of Palestine which could be prejudiced by an advisory opinion. But such negotiations do not exist. There have been no negotiations between the two States for a decade. There are no live negotiations.

7. And this is not a contentious proposition. Indeed, one of the most prominent and vocal advocates of judicial caution, the United States, expressly concedes in its Written Statement that negotiations between the two States “are not currently occurring”<sup>48</sup>. This is the unfortunate but very real actuality.

8. Nor, if the words of Israel’s leaders are anything to go by, is there any realistic prospect of Israel’s willing participation in such negotiations in the near future. Recent public statements by Israel’s Prime Minister make this abundantly clear. In November of last year, for example, Prime Minister Netanyahu proclaimed that Israel would prevent a Palestinian State in Gaza and the West Bank<sup>49</sup>. That was a position he reiterated emphatically in January of this year<sup>50</sup>.

9. The second — and more fundamental — reason why the Court should not be deterred from issuing an advisory opinion which answers in full the questions posed by the General Assembly, is

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<sup>47</sup> Fiji, Hungary, Israel, Togo and Zambia.

<sup>48</sup> Written Statement of the United States of America, para. 5.2.

<sup>49</sup> *The Times of Israel*, “PM lobbying Likud MKs, saying only he can prevent a Palestinian state in Gaza, West Bank — report”, 27 Nov. 2023 ([https://www.timesofisrael.com/liveblog\\_entry/pm-lobbying-likud-mks-saying-only-he-can-prevent-a-palestinian-state-in-gaza-west-bank-report/](https://www.timesofisrael.com/liveblog_entry/pm-lobbying-likud-mks-saying-only-he-can-prevent-a-palestinian-state-in-gaza-west-bank-report/)).

<sup>50</sup> *The Guardian*, “Netanyahu defies Biden, insisting there’s ‘no space’ for Palestinian state”, 20 Jan. 2024, <https://www.theguardian.com/world/2024/jan/20/netanyahu-defies-biden-insisting-theres-no-space-for-palestinian-state>.

that the General Assembly, the Security Council and this very Court have all made clear that the Israel-Palestine conflict must be — and can only be — resolved *in accordance with international law*.

10. In November 2022, for example, the General Assembly adopted resolution 77/25 which “[s]tress[ed] that compliance with and respect for the Charter of the United Nations and international law . . . is a cornerstone of peace and security in the region”. The General Assembly called upon Israel “to comply strictly with its obligations under international law and to cease all of its measures that are contrary to international law” including measures which seek to “prejudg[e] the final outcome of peace negotiations”. The resolution went on to refer to “the illegality of the annexation of any part of the Occupied Palestinian Territory . . . which constitutes a breach of international law . . . and challenges the prospects for the achievement of a just, lasting and comprehensive peace”<sup>51</sup>.

11. In other words, a just, lasting and comprehensive peace necessarily requires compliance with international law.

12. In a similar vein, in February of last year, the President of the Security Council issued a statement which emphasized that

“[t]he Security Council reaffirms its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, *consistent with international law and relevant UN resolutions*.

.....

The Security Council strongly underscores *the need for all parties to meet their international obligations*”<sup>52</sup>.

13. In the *Wall* Opinion, the Court likewise stressed the importance of “achieving as soon as possible, *on the basis of international law*, a negotiated solution” in order to achieve “peace and security for all in the region”<sup>53</sup>. In his concurring opinion in that case, Judge Al-Khasawneh stressed

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<sup>51</sup> *Ibid.*, para. 6.

<sup>52</sup> Statement by the President of the Security Council, 20 Feb. 2023, UN doc. S/PRST/2023/1, emphasis added.

<sup>53</sup> *Wall* Advisory Opinion, p. 201, para. 162 (emphasis added).

that “it is of the utmost importance if . . . negotiations are not to produce non-principled solutions, that *they be grounded in law*”<sup>54</sup>.

14. The principal judicial organs of the United Nations have spoken emphatically and with one consistent voice. They could not be clearer that any negotiations between Israel and the State of Palestine must be grounded in international law and must be aimed at ensuring a resolution of the conflict which is in accordance with international law. It is obvious and it is self-evident that an advisory opinion containing the Court’s answers to the questions of international law posed by the General Assembly will help, not hinder, the attainment of that end.

15. Indeed, the very resolution which requested these advisory proceedings confirms that this is exactly what the General Assembly considers that an advisory opinion will help to achieve. Resolution 77/247 stressed the need to

“advanc[e] and accelerat[e] meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation . . . and the resolution of all core final status issues . . . leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine”<sup>55</sup>.

16. In adopting this resolution, the General Assembly plainly considered that an advisory opinion from the International Court of Justice would facilitate, rather than frustrate, “negotiations” leading to “a peaceful, just, lasting and comprehensive solution”.

17. It follows that the Court can and should answer the questions posed by the General Assembly confident in the knowledge that its answers will help to achieve a peaceful resolution of the conflict in accordance with international law.

## **B. AN OCCUPATION CAN BE UNLAWFUL**

18. Mr President, I turn now to an important issue of substance, namely whether as a matter of international law an occupation can be unlawful. The United States, as you heard earlier, contends that an occupation cannot be unlawful or lawful. It argues that occupation is governed exclusively by international humanitarian law, which is concerned only with the acts of the occupying Power and has nothing to say about the legality of the occupation itself. For the United States, when it comes to occupation international humanitarian law is both the start and the end; it is the only game in town.

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<sup>54</sup> *Ibid.*, separate opinion of Judge Al-Khasawneh, p. 239, para. 13.

<sup>55</sup> UNGA resolution 77/247, 30 Dec. 2022, UN doc. A/RES/77/247, 11th recital.

19. Guyana, like dozens of other States and international organizations, disagrees. Put simply, there is a distinction between the law of occupation, on the one hand, and the legality of an occupation, on the other. The conduct of an occupation is governed by international humanitarian law, while the legality of an occupation as a whole is determined by the United Nations Charter and general international law.

20. The argument advanced by the United States — that occupation is governed solely by international humanitarian law — leaves no room for the application of the Charter or general international law. In particular, it leaves no room for the principle enshrined in Article 2 (4) of the Charter that acquisition of territory by force is absolutely prohibited. An argument which leaves no room for the application of that fundamental principle of international law — a peremptory norm — is not a sound one.

21. How then does one determine whether Israel's occupation of Palestinian territory is unlawful? The answer, Guyana submits, is straightforward. It is to be found in the principle that occupation is inherently and exclusively a temporary state of affairs, and in the *jus cogens* prohibition on acquisition of territory by force.

22. The inherently temporary character of occupation is reflected in the principle that an occupying Power does not acquire sovereignty — “not one atom”, as Oppenheim memorably put it<sup>56</sup> — over the occupied territory. It is also reflected in the duty of the occupying Power to preserve the *status quo ante* and to refrain from making any permanent changes to the occupied territory. Temporariness, in short, is the very core and essence of occupation. It is notable that none of the 57 States and international organizations which filed written statements in these proceedings contend otherwise.

23. It follows that permanent “occupation” is not occupation at all; it is military conquest. It is annexation. And annexation is, of course, strictly forbidden under international law. It therefore necessarily follows that an “occupation” which is intended to be permanent is unlawful under international law.

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<sup>56</sup> L. Oppenheim, “The Legal Relations Between an Occupying Power and the Inhabitants”, *Law Quarterly Review*, Vol. 33, 1917, No. 4, p. 364.

**C. ISRAEL'S OCCUPATION OF THE OCCUPIED PALESTINIAN TERRITORY  
IS UNLAWFUL AS A WHOLE**

24. Applying these principles, Guyana submits that it is indisputable that Israel's occupation of Palestinian territory is unlawful as a whole. The unlawfulness arises from the fact that Israel has annexed most of the occupied territory *de jure* and *de facto*, including by implanting almost three quarters of a million Israeli settlers in hundreds of settlements, which Israel's leaders have promised never to remove.

25. In Jerusalem, Israel has formally declared sovereignty over the occupied territory and has expressly extended the application of its domestic laws to that territory. This is a classic, quintessential example of *de jure* annexation — and it is irrefutable evidence that Israel intends its occupation to be permanent.

26. Over many years Israel's leaders have repeatedly proclaimed East Jerusalem to be an inseparable part of Israel. In the words of Israel's current Prime Minister, East Jerusalem “has been — and always will be ours” and “will remain only under Israel's sovereignty”<sup>57</sup>. This unequivocal declaration — and many others like it — have been accompanied by far-reaching actions. These include the systematic implantation of more than 230,000 Israeli settlers in East Jerusalem — an exercise in deliberate demographic manipulation that has profoundly changed the composition, the character and the status of the Holy City.

27. In the rest of the West Bank, Israel has conducted a similar, decades-long process of implanting half a million Israeli settlers in more than 270 illegal settlements. Those settlements, and the network of settler-only roads and infrastructure which connect them, form a vast interconnected constellation of illegal colonies, to which Israel has extended the application of its domestic laws. The intent — and the effect — is to establish permanent Israeli dominion throughout the West Bank. Indeed, the highest officials in successive Israeli governments have openly and brazenly declared an intention to exercise sovereignty over the entire West Bank, which they have renamed Judea and Samaria, and which they define as an integral and inseparable part of the land of Israel.

28. Israel has created, expanded and entrenched its sprawling network of settlements in the face of repeated condemnation of the illegality of those actions by the General Assembly, the Security

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<sup>57</sup> Prime Minister's Office, Address by PM Netanyahu on the occasion of Jerusalem Day State Ceremony, Ammunition Hill, Jerusalem (21 May 2009), <https://www.gov.il/en/departments/news/speechjeru210509>.



Council, the Secretary-General, a plethora of United Nations committees and rapporteurs, as well as the international community and, of course, this very Court.

29. Israel's annexation of the occupied territory and its intention for the occupation to be permanent has been widely recognized and condemned by the United Nations. I offer five examples, but I stress that these are merely illustrative, and they are very far from exhaustive.

30. *First*, literally dozens of General Assembly resolutions from the early 1970s onwards have expressly referred to and condemned Israel's "annexation" of the occupied territory. Examples of those resolutions, which span a period of more than half a century, are listed in Guyana's Written Statement<sup>58</sup>. This vast corpus of resolutions demonstrates a clear, consistent and emphatic recognition by the General Assembly that Israel has unlawfully annexed much of the occupied territory with the intention of retaining it forever.

31. *Second*, multiple resolutions of the Security Council between 1968 and 2016 expressly recalled the prohibition on acquisition of territory by force and condemned Israel's annexation and settlement of Palestinian territory on that basis. Examples of those resolutions are also listed in Guyana's Written Statement<sup>59</sup>. Those resolutions represent a clear recognition by the Security Council that Israel has annexed most of the occupied territory in contravention of fundamental principles of international law, and that it intends to exert perpetual control over that territory.

32. *Third*, successive Secretaries-General of the United Nations have also repeatedly described and condemned Israel's "annexation" of Palestinian territory in official published reports. In 2010, for instance, the Secretary General referred to "Israel's annexation of East Jerusalem" which is "a flagrant violation of international law"<sup>60</sup>. In 2015, the Secretary-General reported to the General Assembly that: "In the West Bank . . . the establishment and maintenance of the settlements amount to a slow, but steady annexation of the occupied Palestinian territory."<sup>61</sup> Similar statements are once again cited in Guyana's Written Statement<sup>62</sup>.

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<sup>58</sup> See Written Statement of Guyana, para. 20.

<sup>59</sup> *Ibid.*, para. 21.

<sup>60</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 14 Sept. 2010, A/65/365, p. 8, para. 18 (<https://undocs.org/A/65/365>).

<sup>61</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 31 Aug. 2015, A/70/35, p. 5, para. 17 (<https://undocs.org/A/70/351>).

<sup>62</sup> See Guyana's Written Statement, para. 22.

33. *Fourth*, the United Nations Independent International Commission of Inquiry has also concluded that Israel has illegally annexed much of the West Bank and intends the occupation to be permanent. In its September 2022 report, the Independent Commission concluded that: “Israel treats the occupation as a permanent fixture and has — for all intents and purposes, annexed parts of the West Bank.”<sup>63</sup> The report went on to describe Israel’s “settlement enterprise” as “the principal means” used by Israel “to create irreversible facts on the ground” to support “its permanent occupation”<sup>64</sup>. The Commission added that “[s]tatements made by Israeli officials provide further evidence that Israel intends the occupation to be permanent”<sup>65</sup>.

34. *Fifth*, successive United Nations Special Rapporteurs have similarly concluded that Israel has annexed the occupied territory. In 2021, for instance, the Special Rapporteur reported that Israel’s occupation “has become indistinguishable from annexation”<sup>66</sup>. He highlighted “the de jure annexation plans made by Israel”<sup>67</sup> and he cited the “plentiful . . . evidence” that “Israeli policies and practices” are designed to pursue “a strategy of de facto annexation and permanent control over the Palestinian territory”<sup>68</sup>.

35. In a report published the following year, the Special Rapporteur observed that the implantation of hundreds of thousands of settlers in the occupied territory was intended to “demographically engineer an unlawful sovereignty claim through the annexation of the occupied territory”<sup>69</sup>. He concluded that Israel’s occupation had “burst through the restraints of temporariness long ago” and that “Israel has progressively engaged in the de jure and de facto annexation of occupied territory”<sup>70</sup>.

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<sup>63</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 Sept. 2022, A/77/328, p. 24, para. 76 (<https://undocs.org/A/77/328>).

<sup>64</sup> *Ibid.*, para. 75.

<sup>65</sup> *Ibid.*

<sup>66</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 Oct. 2021, A/76/433, p. 21, para. 57 (<https://undocs.org/A/76/433>).

<sup>67</sup> *Ibid.*, p. 17, para. 43.

<sup>68</sup> *Ibid.*, p. 19, para. 48.

<sup>69</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, 12 Aug. 2022, A/HRC/49/87, para. 35 (<https://undocs.org/A/HRC/49/87>).

<sup>70</sup> *Ibid.*, p. 3, para. 11.

36. Mr President, Israel's annexation of Palestinian territory, and its clear intention for the occupation to be permanent, render the occupation unlawful as a whole. This has already been recognized by the United Nations. In 2022, the Independent Commission of Inquiry concluded that:

“[T]here are reasonable grounds to believe that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land *de facto* and *de jure*”<sup>71</sup>.

37. In January this year, the Secretary-General, citing international law and the resolutions of the Security Council and General Assembly, concluded bluntly that: “Israel’s occupation must end.”<sup>72</sup> When the United States read aloud from the Secretary-General’s statement earlier today, it regrettably excised these crucial words. However, the State of Palestine read them to you on Monday. As the State of Palestine pointed out, the Secretary-General stated one month ago that:

“Palestinians must see their legitimate aspirations for a fully independent, viable and sovereign State realized, in line with United Nations resolutions, international law and previous agreements. Israel’s occupation must end.”

Guyana emphatically agrees, both with the Independent Commission of Inquiry and the Secretary-General. The occupation is unlawful. The occupation must therefore end — immediately, comprehensively, irreversibly.

#### **D. CONCLUDING REMARKS**

38. Mr President, this Court needs no reminding of the importance of international law or of the grave consequences which ensue when it is systematically disregarded. The Court also needs no reminding of the profound contributions that its past advisory opinions have made to the plight of peoples and States afflicted by the scourge of colonization.

39. For many, many years, Israel has chosen to place its own expansionist interests above the duty to respect international law, including *jus cogens* norms and the United Nations Charter. The result of that deliberate defiance of international law has been decades of dispossession, oppression and injustice for the State of Palestine and the Palestinian people, who have been systematically deprived of their fundamental right of self-determination.

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<sup>71</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 Sept. 2022, A/77/328, p. 24, para. 75 (<https://undocs.org/A/77/328>).

<sup>72</sup> United Nations, “Secretary-General’s remarks to the Security Council - on the Middle East”, 23 Jan. 2024, <https://www.un.org/sg/en/content/sg/speeches/2024-01-23/secretary-generals-remarks-the-security-council-the-middle-east>.

40. These advisory proceedings are a vital opportunity for the World Court to address, and to begin to redress, the immense harm wrought by Israel's unlawful occupation. With international law as its bedrock, and justice as its guide, an advisory opinion from the Court will provide a lodestar for the United Nations, and all of its Member States, to chart a course which reverses that dispossession, which relieves that oppression and which remedies that injustice.

41. In Guyana's submission, it is only through the rule of international law that a permanent and peaceful resolution of this decades-long conflict may be achieved. An authoritative exposition of international law — including a determination by the Court that the occupation is illegal as a whole and must be brought to an immediate end — will serve the ends of justice, will vindicate the rule of international law, and will provide the basis for a just, comprehensive and lasting peace.

42. Mr President, Members of the Court, I thank you very much for your kind attention.

The PRESIDENT: I thank the delegation of Guyana for its presentation. I invite the next participating delegation, Hungary, to address the Court, and call upon Mr Attila Hidegh to take the floor. You have the floor, Sir.

Mr HIDEGH:

#### INTRODUCTION

1. Mr President, distinguished Members of the Court. It is an honour to appear before you today on behalf of Hungary concerning the case *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.

2. We take this opportunity to reaffirm the importance that Hungary attaches to the respect for international law and the role played by the principal judicial organ of the United Nations. The Government of Hungary recognizes the significance of this case and the potential impact it has on the prospects for peace and stability in the Middle East and beyond.

#### **Broader political context of the Israeli-Palestinian conflict**

3. In discussing the Israeli-Palestinian conflict, one must reflect on the broader political context.

4. Hungary recalls that in 2004 this esteemed Court clearly stated in its Advisory Opinion concerning the *Construction of a Wall* case that the resolution of the Israeli-Palestinian conflict can only be achieved through direct negotiations between the parties, on the basis of international law and through the implementation of the relevant Security Council resolutions. Since 2004, this fundamental approach has not changed, although numerous aspects of the political context have shifted. As Hamas came to power in 2007, it rejected fundamental pillars of the existing political framework, in particular the Quartet principles, including Israel's right to exist, as well as renouncing violence as a means of achieving goals, and adherence to previous agreements between the parties. This has significantly affected the existing peace initiatives and has induced intra-Palestinian divisions that have proven difficult to resolve over the years.

5. We must also note more recent developments that have yielded significant change in the broader political dynamics of the conflict. The Abraham Accords established in 2020 provided a novel approach that has allowed for the normalization of relations between Israel and a number of Arab countries. We believe that in a political sense the Abraham Accords represented an effort to create a more conducive environment for the negotiated settlement of the conflict. Moreover, it aimed to provide a solid foundation for enhancing regional peace, prosperity and stability.

6. Unfortunately, the progress of these promising developments were imperilled by the horrendous terrorist attacks conducted against Israel by Hamas on 7 October 2023. What happened on 7 October was the one of the worst terrorist attacks and sexual barbarism the world has seen in a hundred years. On that Saturday morning, innocent Israeli civilians were awakened by an unprecedented brutal terrorist attack, the launching of thousands of rockets, the torturing and killing of hundreds, among them babies, and Hamas taking more than 200 hostages. Hungary strongly condemns these horrific terrorist attacks and calls for the immediate and unconditional release of all hostages. These actions are not just an attack on a democratic country — they represent an assault on all democracies around the world. These actions are not just a clear violation of international law, they are also crimes against humanity. Israel has since been fighting the terrorist organization Hamas, with the aim to eradicate terrorists and to prevent such horrific terrorist attacks ever happening again. The evil of terrorists is well shown by the fact that they use innocent civilians, education and healthcare facilities as shields. Sparing the lives of both Israeli and Palestinian civilians is of the

utmost importance — now, as well as in the future, in the interest of a sustainable peace, free of terror.

7. We welcome that the esteemed Court has recently called for immediate and unconditional release of the hostages held by Hamas and underlined that all parties to the conflict must abide by international humanitarian law and international human rights law. Upholding the rules is non-negotiable. Nonetheless, we must also note that the proceedings brought before this esteemed Court may directly contribute to the escalation of the conflict. We are of the view that both the present proceedings, as well as the proceedings against the State of Israel in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, may be considered as provocations in the ongoing conflict, not contributing to the de-escalation and an eventual settlement of the conflict. A potential utilization of the Court in the communication war could create newer dividing lines and could continue to fuel tensions in one of the most severe conflicts of recent history.

8. Bearing in mind this aforementioned broader context, let me now turn to addressing three main issues that Hungary considers important to highlight.

9. Members of the Court, I thank you for your kind attention and would now kindly ask you, Mr President, to call upon Mr Kocsis to take the floor to continue with the remainder of the arguments of Hungary in this case.

The PRESIDENT: I thank Mr Hidegh. I now give the floor to Mr Kocsis. You have the floor, Sir.

Mr KOCSIS:

#### CONSIDERATIONS

10. Mr President, it is my pleasure to continue the presentation of Hungary's considerations in the present advisory proceedings.

#### **I. The Court has jurisdiction in this case**

11. Hungary duly submits that the United Nations General Assembly's request for an advisory opinion contained in resolution 77/247 of 2022 satisfies the conditions set out in Article 65 of the

Statute of the Court and in Article 96 of the United Nations Charter — both regarding the competence of the requesting organ and the substance of the request. Accordingly, the Court has jurisdiction in this case. However, we also duly submit that, based on Article 96 of the United Nations Charter, it is at the discretion of this Court to decide whether it exercises its jurisdiction.

12. We put to the Court that there are compelling reasons to deny the request for an advisory opinion. All these reasons pertain to the issue of judicial propriety. The reasons include the specifics of the questions, the essentially bilateral nature of the dispute and the lack of consent of one of the parties, as well as the already existing legal framework for the resolution of pending issues and disputes between the parties.

13. Consequently, the Hungarian Government is of the view that the Court should decline to exercise its jurisdiction.

## **II. There are three compelling reasons for the Court not to exercise its jurisdiction**

14. Mr President, we now turn to the second issue: the compelling reasons why the Court should reject to give an opinion on the request made by the General Assembly.

15. We recall the existing precedent for rejecting a request for an advisory opinion based on compelling reasons. The predecessor of the Court, the Permanent Court of International Justice, declined to issue an advisory opinion on the status of Eastern Carelia. *This decision has never been overruled.* We note that the Court, in its subsequent decisions, has always taken due care to demonstrate the factual differences from the *Eastern Carelia* case when considering the exercise of its jurisdiction. This must lead us to the conclusion that the legal criteria set out in that decision remain authoritative.

16. As to compelling reasons, we would like to bring the Court's kind attention to the following three considerations that individually, as well as cumulatively, may compel the Court to refrain from issuing an advisory opinion to the present questions.

17. *First*, we express sincere doubt that the nature of the question would allow for an appropriate advisory opinion. While the title of the General Assembly resolution 77/247 speaks of "Israeli practices affecting the human rights of the Palestinian people", the question posed in operative paragraph 18 of the resolution says: "legal consequences arising from the ongoing violation

by Israel of the right of the Palestinian people to self-determination” and “related discriminatory legislation and measures”. The questions encompass a wide range of subject-matters, touching upon the legal status of the occupied Palestinian territories, the unspecified Israeli practices and the legal consequences of both the status of the occupied Palestinian territories as well as those practices. While the questions do not specify the actual practices and legislation, they already provide a distinct qualification stating their illegality and unlawful nature. Replying to these questions would inherently entail an affirmation of the statements incorporated in the question. Advisory proceedings were designed as an instrument to contribute to, and facilitate the work of, the requesting organs. These proceedings are not an appropriate forum for making the kinds of determinations that are implied in the question. As the Court put it in the *Kosovo* Advisory Opinion: Article 65 of the Statute of the Court has not created “a form of judicial recourse for States”. In our view, should the Court decide to reply to these questions in the form of an advisory opinion, that would be “tantamount to adjudication on the very subject-matter of the underlying concrete bilateral dispute that undoubtedly exists between Israel and Palestine”.

18. This leads us to our *second consideration* concerning the essentially bilateral nature of the dispute. At the outset, we duly take note of the *Wall* Advisory Opinion, in which the Court concluded that the conflict between Israeli and Palestinian parties is “located in a much broader frame of reference than a bilateral dispute”. However, it must be pointed out that this “broader frame of reference” has fundamentally changed due to the shifting political dynamics within the conflict. The *Wall* Advisory Opinion was issued during ongoing peace negotiations between the parties that, alas, have not yielded the desired outcome. Unfortunately, in recent years, despite repeated calls for relaunching good faith negotiations between the parties by the international community, including this very Court, the process has stalled. Deadlock continues to ensue and the conflict thus remains an acute bilateral dispute between the parties.

19. On this basis, we argue that providing an advisory opinion would inevitably raise the question of circumventing consent of Israel as a party to this bilateral dispute. We refer to the fact that Israel voted against resolution 77/247 in the General Assembly in 2022. Israel’s attitude in the previous decades has demonstrated its readiness to participate in different negotiations and peace processes. This is the very way the esteemed Court itself suggested solving this dispute.



20. For these reasons, we recall our request for the Court to exercise its right to decline rendering an advisory opinion.

### **III. Avoiding undue politicization and maintaining the existing negotiating frameworks are necessary to uphold the judicial character of the Court**

21. As for our third and final query, we refer to the already existing and accepted institutional architecture for maintaining international peace and security. In this institutional fabric, each actor has its own distinct role and responsibilities, as institutional guarantors of peace and security. Within this intricate system, it is the United Nations Security Council that has the primary responsibility for the maintenance of international peace and security according to the United Nations Charter. Should the Court decide to render an advisory opinion on this matter, this would — in our opinion — inevitably result in the undue politicization of the esteemed institution of an otherwise strictly judicial character. This could threaten to undermine its ability to contribute to the maintenance of global peace and security. Additionally, such an opinion, irrespective of its content, would inevitably become part of an already heated political debate, particularly in the aftermath of the barbaric Hamas terrorist attacks conducted on 7 October 2023.

22. Furthermore, when discussing the institutional backdrop to this conflict, it must be pointed out, that there is, in fact, an established framework for negotiations aimed at the political settlement of the conflict, emanating from the various United Nations Security Council resolutions, such as resolutions 242 and 338. Moreover, to this day, this established negotiation framework, built around the Oslo Accords, remains the recognized framework by both parties to the conflict.

23. It is crucial to also mention the involvement of other international mechanisms and actors in the resolution of the Israeli-Palestinian conflict, including the United Nations Special Coordinator for the Middle East Peace Process (UNSCO). The role of the Special Coordinator is important in facilitating dialogue and negotiations, promoting peace and co-ordinating international efforts towards a just, lasting and comprehensive resolution.

24. Therefore, one must come to the conclusion that if we are to stay true to this very Court's ruling issued in the *Wall* Advisory Opinion, what is needed today is not a new legal interpretation, but a renewed effort to restart peace negotiations, implementing in good faith all relevant existing United Nations Security Council resolutions.

### **Conclusion**

25. In conclusion, we reiterate that there is no alternative to the political resolution of the conflict. A political resolution that is based on direct negotiations between the parties, which allows the State of Israel to live side by side in peace, security and mutual recognition with an independent, democratic, contiguous, sovereign and viable State of Palestine, with Jerusalem as the future capital of both States.

26. Therefore, Hungary respectfully requests the Court to decline providing an advisory opinion.

27. Mr President, Members of the Court, this concludes our presentation today. I thank you for your kind attention.

The PRESIDENT: I thank the delegation of Hungary for its presentation, which brings to a close this afternoon's hearing. The Court will meet again tomorrow morning, at 10 a.m. to hear China, Iran, Iraq, Ireland, Japan and Jordan. The sitting is adjourned.

*The Court rose at 5.20 p.m.*

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