



The ICJ Advisory Opinion on the Legal Consequences of Israel's Occupation of Palestinian Territory

Questions and Answers

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About the Diakonia International Humanitarian Law Centre

The Diakonia International Humanitarian Law Centre promotes respect for the laws of war through independent research, advice, and advocacy. Since its establishment in 2004, the Centre's Jerusalem Desk has been a source of legal expertise supporting humanitarian and human rights action in the Israeli-Palestinian context.

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The below Questions and Answers provide a brief overview of the legal basis, mandate, and scope of activities of the International Court of Justice (ICJ) in relation to its advisory proceedings, with a specific emphasis on the recent bid to request an advisory opinion on the right to self-determination of the Palestinian people and the legality of Israel's occupation of Palestinian territory.

1. What is the ICJ and what is its mandate?

The ICJ, which is established under Chapter XIV of the [United Nations \(UN\) Charter](#), constitutes one of the [six principal organs](#) of the UN. The legal bases for the functioning of the Court are the UN Charter, the [ICJ Statute](#), which forms an integral part of the Charter, and the [Rules of Court](#). The seat of the Court is the Peace Palace in The Hague, Netherlands.

Member States of the UN are *ipso facto* parties to the ICJ Statute (Art. 93(1) of the Charter), and non-members can become parties to the Statute upon recommendation by the Security Council (SC) and authorization by the General Assembly (GA; Art. 93(2) of the Charter).

The ICJ consists of fifteen independent judges of different nationalities who are elected by the SC and the GA in separate voting procedures for a period of nine years (Arts. 8-15 of the ICJ Statute). Judges are selected from candidates of "high moral character" who "possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law" (Art. 2 of the ICJ Statute). In addition, the body of judges should represent "the main forms of civilization and ... the principal legal systems of the world" (Art. 9 of the ICJ Statute).

The ICJ's mandate is twofold: on the one hand, the Court may decide inter-State claims in proceedings where only States can be parties to the dispute (so-called *contentious cases*; Art. 36 of the ICJ Statute), and on the other hand, it may give advisory opinions on "any legal question" submitted to it by "whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request" (*advisory procedures*; Art. 65(1) of the ICJ Statute; see Question 2). In contentious cases, the judgments of the Court are binding on all parties to the dispute, while advisory opinions are essentially non-binding and intended to facilitate the work of the organ or agency which requested its delivery. Nevertheless, the Court's advisory opinions are considered an authoritative source of the law, and they have played a vital part in the interpretation and evolution of international law (see Question 3). The present Q&A document focuses only on the Court's advisory procedure.

The ICJ is distinct from the International Criminal Court (ICC), which is a treaty-based body that was established pursuant to the [Rome Statute](#) and is not formally part of the UN system. The ICC's [mandate](#) extends to the prosecution of the most serious crimes of concern to the international community (genocide, crimes against humanity, war crimes, and the crime of aggression) in cases where States are unwilling or unable genuinely to investigate and prosecute these crimes. The ICC deals only with individual criminal responsibility, and States are consequently not party to the proceedings before it (see Question 7).

2. What is an advisory opinion?

An advisory opinion is a judicial statement on legal questions submitted to the Court by UN organs and other legal bodies that are so authorized. The GA or the SC may request the ICJ to give an advisory opinion on “any legal question”, while other UN organs and specialized agencies may only request advisory opinions of the Court on “legal questions arising within the scope of their activities”, and only once authorized to do so by the GA (Arts. 96(1) and (2) of the Charter).

Questions in respect of which the Court's advice is sought must be submitted “by means of a written request containing an exact statement of the question ... and accompanied by all documents likely to throw light upon the question” (Art. 65(2) of the ICJ Statute).

The requested advisory opinion must relate to a “legal question”. The Court has nevertheless clarified that the fact that the question before it also has political aspects does not suffice to deprive it of its character as a “legal question” ([Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict](#), para. 16).

It should also be noted that the Court's advisory function is discretionary in nature: once approached with a request for an advisory opinion, the Court may follow the request, but it does not have an obligation to do so. In practice, the ICJ has never exercised its discretion to decline a request for an advisory opinion. The power of the Court regarding the giving of an advisory opinion is only limited by the functions and competencies of the international bodies requesting such an opinion. Where an opinion is requested by the SC or the GA, the subject matter jurisdiction of the Court is practically unconstrained in light of the very broad mandates of these organs.

3. What is the legal status of advisory opinions, and what practical implications can they have?

Advisory opinions, in principle, do not have binding force. The requesting body is free to comply with the findings of the advisory opinion or not. As an internal matter, however, some treaties, such as the Convention on the Privileges and Immunities of the United Nations, [may stipulate](#) that the Court's advisory opinions “[shall be accepted as decisive](#)” for particular disputes.

The purpose of the Court's advisory function is “not to settle – at least directly – disputes between States, but to offer legal advice to the organs and institutions requesting the opinion”, so States are not formally party to the proceedings ([Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons](#), para. 15). At the same time, in recognition of the fact that States' interests may be directly or indirectly affected by the legal questions before the Court, States are usually given an opportunity to submit their observations in writing and/or orally (see Question 8).

Despite their non-binding nature, UN organs and specialized agencies have generally complied well with the Court's advisory opinions, while the track record of States is rather mixed in this regard. Nevertheless, the recent example of [the UK agreeing to negotiations with Mauritius](#) over the future of the Chagos

Archipelago following the ICJ's rendering of an [advisory opinion](#) on the matter (*Chagos Archipelago Advisory Opinion*) demonstrates that some States view advisory opinions as an articulation of international law which needs to be taken into account. Another important factor militating in favour of State compliance may be the political pressure that is generated at the international level once a certain legal question reaches the Court (see Question 13).

Furthermore, advisory opinions may serve as a means for the interpretation of international treaties, the development of international law, as well as the shaping or articulation of customary international law, and may to a certain extent constitute a "subsidiary means for the determination of rules of law" (Art. 38(1)(d) of the ICJ Statute).

4. What is the legal basis for this advisory opinion, and what are the driving factors of the initiative?

The legal basis for the advisory opinion is a draft [resolution](#) adopted by the GA's Special Political and Decolonization Committee (also known as the Fourth Committee) on 11 November 2022. The draft resolution was tabled by the delegation of [Nicaragua](#) on behalf of the State of Palestine and co-sponsored by the delegations of Algeria, Brunei Darussalam, Cuba, Egypt, Iraq, Jordan, Lebanon, Mauritania, Namibia, Qatar, Saudi Arabia, Senegal, Tunisia, and the State of Palestine (Palestine is not a full UN member but a [non-member observer State](#) with certain circumscribed "[rights and privileges of participation](#)"). Bahrain, Bangladesh, Bolivia, Djibouti, Indonesia, Kuwait, Malaysia, the Maldives, Morocco, Niger, Oman, Pakistan, Somalia, South Africa, Sudan, the United Arab Emirates, Venezuela, and Yemen joined as additional co-sponsors prior to voting. 98 States [voted](#) in favour, 52 abstained, and 17 voted against.¹ The draft resolution will be put to a [final vote](#) in the plenary session of the GA in December 2022. Previous voting patterns suggest that the resolution can be expected to pass.

¹ *In favour*: Afghanistan, Algeria, Angola, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Belgium, Belize, Benin, Botswana, Brazil, Brunei Darussalam, Cabo Verde, Cambodia, Chad, Chile, China, Cuba, Democratic People's Republic of Korea, Djibouti, Dominican Republic, Egypt, El Salvador, Gabon, Gambia, Guinea, Guinea-Bissau, Guyana, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libya, Luxembourg, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Namibia, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Russian Federation, Saint Kitts-Nevis, Saint Lucia, Saudi Arabia, Senegal, Sierra Leone, Singapore, Slovenia, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Timor-Leste, Tunisia, Turkmenistan, Türkiye, Uganda, United Arab Emirates, Uzbekistan, Viet Nam, Yemen, Zimbabwe.

Against: Australia, Austria, Canada, Czechia, Estonia, Germany, Guatemala, Hungary, Israel, Italy, Liberia, Lithuania, Marshall Islands, Federated States of Micronesia, Nauru, Palau, United States.

Abstention: Albania, Andorra, Belarus, Bosnia-Herzegovina, Bulgaria, Burundi, Cameroon, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Denmark, Ecuador, Eritrea, Ethiopia, Finland, France, Georgia, Ghana, Greece, Haiti, Honduras, Iceland, India, Japan, Latvia, Liechtenstein, Monaco, Montenegro, Myanmar, Netherlands, New Zealand, North Macedonia, Norway, Philippines, Republic of Korea, Republic of Moldova, Romania, Rwanda, San Marino, Serbia, Slovakia, Solomon Islands, South Sudan, Spain, Sweden, Switzerland, Thailand, Togo, United Kingdom, Uruguay.

A/C.4/77/L.12/Rev.1 Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

AFGHANISTAN	CAMEROON	FINLAND	KUWAIT	NEPAL	SAUDI ARABIA	UKRAINE
ALBANIA	CANADA	FRANCE	KYRGYZSTAN	NETHERLANDS	SENEGAL	UNITED ARAB EMIR...
ALGERIA	CENTRAL AFR REP....	GABON	LAO PDR	NEW ZEALAND	SERBIA	UNITED KINGDOM
ANDORRA	CHAD	GAMBIA	LATVIA	NICARAGUA	SEYCHELLES	UNITED REP TANZA...
ANGOLA	CHILE	GEORGIA	LEBANON	NIGER	SIERRA LEONE	UNITED STATES
ANTIGUA-BARBUDA	CHINA	GERMANY	LESOTHO	NIGERIA	SINGAPORE	URUGUAY
ARGENTINA	COLOMBIA	GHANA	LIBERIA	NORTH MACEDONIA	SLOVAKIA	UZBEKISTAN
ARMENIA	COMOROS	GREECE	LIBYA	NORWAY	SLOVENIA	VANUATU
AUSTRALIA	CONGO	GRENADA	LIECHTENSTEIN	OMAN	SOLOMON ISLANDS	VENEZUELA
AUSTRIA	COSTA RICA	GUATEMALA	LITHUANIA	PAKISTAN	SOMALIA	VIET NAM
AZERBAIJAN	COTE D'IVOIRE	GUINEA	LUXEMBOURG	PALAU	SOUTH AFRICA	YEMEN
BAHAMAS	CROATIA	GUINEA-BISSAU	MADAGASCAR	PANAMA	SOUTH SUDAN	ZAMBIA
BAHRAIN	CUBA	GUYANA	MALAWI	PAPUA NEW GUINEA	SPAIN	ZIMBABWE
BANGLADESH	CYPRUS	HAITI	MALAYSIA	PARAGUAY	SRI LANKA	
BARBADOS	CZECHIA	HONDURAS	MALDIVES	PERU	SUDAN	
BELARUS	DEM PR OF KOREA	HUNGARY	MALI	PHILIPPINES	SURINAME	
BELGIUM	DEM REP OF THE C...	ICELAND	MALTA	POLAND	SWEDEN	
BELIZE	DENMARK	INDIA	MARSHALL ISLANDS	PORTUGAL	SWITZERLAND	
BENIN	DJIBOUTI	INDONESIA	MAURITANIA	QATAR	SYRIAN ARAB REP...	
BHUTAN	DOMINICA	IRAN (ISLAMIC REP...)	MAURITIUS	REP OF KOREA	TAJIKISTAN	
BOLIVIA	DOMINICAN REP...	IRAQ	MAURITIUS	REP OF MOLDOVA	THAILAND	
BOSNIA-HERZEGOVI...	ECUADOR	IRELAND	MICRONESIA (FS)	ROMANIA	TIMOR-LESTE	
BOTSWANA	EGYPT	ISRAEL	MONACO	RUSSIAN FED...	TOGO	
BRAZIL	EL SALVADOR	ITALY	MONGOLIA	RWANDA	TONGA	
BRUNEI DARUSSAL...	EQUATORIAL GUINEA	JAMAICA	MONTENEGRO	SAINT KITTS-NEVIS	TRINIDAD-TOBAGO	
BULGARIA	ERITREA	JAPAN	MOROCCO	SAINT LUCIA	TUNISIA	
BURKINA FASO	ESTONIA	JORDAN	MOZAMBIQUE	SAINT VINCENT-GR...	TURKMENISTAN	
BURUNDI	ESWATINI	KAZAKHSTAN	MYANMAR	SAMOA	TUVALU	
CABO VERDE	ETHIOPIA	KENYA	NAMIBIA	SAN MARINO	TÜRKIYE	
CAMBODIA	FIJI	KIRIBATI	NAURU	SAO TOME-PRINCIPE	UGANDA	

+ IN FAVOUR: 98 **-** AGAINST: 17 **X** ABSTENTION: 52

Screenshot taken from [UN Web TV](https://www.un.org/News/Press/docs/2018/1809/S1809013.docx).

The preambular paragraphs of the draft resolution allude to the political drivers and policy considerations that motivated the drafters, which include the prolonged nature of Israel's occupation of Palestinian territory, now in its 56th year; recurrent "tensions and violence" that "security measures alone cannot remedy"; lack of full compliance with agreements concluded as part of the Middle East peace process and limited prospects for the resumption of "meaningful negotiations"; as well as ongoing systematic violations of international law and Palestinians' human rights which include excessive use of force; forcible transfers; land confiscation and property destruction; the construction of Israeli civilian settlements in the West Bank, including East Jerusalem; access and movement restrictions; and arbitrary deprivations of liberty.

Furthermore, the draft resolution makes specific reference to two recent UN reports, amongst others. First, a report by the then-Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, to the Human Rights Council [determined](#) that Israeli policies and practices in the occupied Palestinian territory (oPt) have "imposed upon Palestine an apartheid reality in a post-apartheid world". Second, a report by the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel to the GA [expressed concern](#) over the "permanence" of Israel's occupation as well as actions in furtherance of *de facto* or *de jure* annexation, and specifically recommended that the GA "[u]rgently request" an advisory opinion from the ICJ concerning the legal consequences of Israel's "continued refusal ... to end its occupation".² It is also worth

² ¶ 92. The Commission recommends that the General Assembly:

(a) Urgently request an advisory opinion from the International Court of Justice on the legal consequences of the continued refusal on the part of Israel to end its occupation of the Occupied Palestinian Territory, including East Jerusalem, amounting to *de facto* annexation, of policies employed to achieve this, and of the refusal on the part of

noting that a 2007 report by a previous UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, already contained a similar recommendation to the effect that the GA should request an advisory opinion from the ICJ on "[the legal consequences for the occupied people, the occupying Power and third States of prolonged occupation](#)".

The draft resolution thus fits a pattern indicating a larger discursive shift according to which the legality of the occupation as a whole is under scrutiny, not just individual violations committed by Israel as the occupying power, and an increasing reliance on alternative frameworks of analysis that are distinct in scope and substance from international humanitarian law (IHL) and international human rights law (IHRL), such as [the law on the use of force \(*jus ad bellum*\)](#), the principle of self-determination, [apartheid](#), and [settler colonialism](#).

5. What is the scope of the proposed advisory opinion?

The scope of the proposed advisory opinion encompasses two legal questions articulated in operative paragraph 18 of the draft resolution, which reads as follows:

18. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

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

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

Israel to respect the right of the Palestinian people to self-determination, and on the obligations of third States and the United Nations to ensure respect for international law.

In short, the first question concerns the legal consequences of actions undertaken by Israel in the context of its prolonged occupation that, individually and cumulatively, undermine the Palestinian people's right to self-determination. Noteworthy in this regard is not just the focus on self-determination – which has been described as “[the collective right par excellence](#)” – but also the [specific mentioning of discriminatory laws and policies](#), which at least implicitly hints at the argument raised by some [civil society organizations](#) and [UN bodies](#) that Israel is committing the internationally wrongful act of apartheid in the oPt. The second question pertains to the legality, and legal consequences, of the occupation as a whole in light of these practices.

6. How does this advisory opinion differ from the ICJ's 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory?

In 2003, the ICJ was asked by the GA to render an advisory opinion on the legal consequences arising from Israel's construction of a wall (also known as the [separation barrier](#)), most of which is located beyond Israel's internationally recognized pre-1967 borders in the oPt, including East Jerusalem.³

In its advisory opinion rendered on 9 July 2004 (*Wall Advisory Opinion*), the Court [concluded](#) that:

- The construction of the wall and its associated régime are contrary to international law;
- Israel is under an obligation to terminate its breaches of international law;
- Israel is under an obligation to make reparation for all damage caused by the construction of the wall;
- All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; and
- The UN, and especially the GA and the SC, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime.

The ICJ reached the above conclusions by reviewing the legality of Israel's actions in light of the applicable IHL, IHRL, and *jus ad bellum*.

As regards the substance of the opinion, the ICJ examined the Palestinian people's right to self-determination and concluded that the “construction [of the wall], along with measures taken previously ... severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right” (*Wall Advisory Opinion*, para. 122). The Court also discussed the lawfulness of Israel's claim of self-defence and invocation of a state of necessity, the

³ The [precise terms](#) of the question were as follows: “What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the Report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

impact of the wall on various civil, political, and socio-economic rights of Palestinians, as well as the (il)legality of Israel's settlement policy in the oPt. Given the limited scope of the question before it, the Court was confined to an assessment of these matters only in relation to the construction of the wall.

The current request for an advisory opinion is much wider in scope in the sense that it would allow the Court to address a broader set of Israeli policies and practices in the oPt and their impact on Palestinians' right to self-determination in the context of Israel's "prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures" (see Question 5). Furthermore, the second question before the Court implies a review of the legality of the occupation itself in view of these policies and practices. The Court's conclusion in this regard will be a new milestone for the legal qualification of Israel's occupation of Palestinian territory because so far, no international judicial body has explicitly pronounced on this issue.

7. What is the difference between the advisory proceedings before the ICJ and the ICC investigation into the Situation in the State of Palestine?

There are significant differences between the ICC investigation into the [Situation in the State of Palestine](#) and the advisory proceedings before the ICJ.

The [ICC investigation into the Situation in Palestine](#) focuses on prosecuting individual perpetrators who have (allegedly) committed international crimes within the Court's jurisdiction in the oPt since 13 June 2014. As such, the ICC investigation has a limited temporal scope (only events which took place after 13 June 2014); material scope (only crimes under the Rome Statute); and personal scope (only individuals, as opposed to States). Decisions and judgments of the ICC are binding on all State parties to the Rome Statute. The ICC does not have the mandate to examine Israeli policies and practices in the oPt more broadly resulting in an (alleged) violation of the Palestinian people's right to self-determination, or the legality of Israel's prolonged occupation.

By contrast, the ICJ's advisory jurisdiction in respect of the two legal questions before it is not limited to a specific timeframe or episodes of alleged violations. It rather extends to a broad set of Israeli policies and practices in the oPt implemented over the entire duration of the occupation – now in its 56th year – and possibly even the pre-occupation period as regards the legality of the occupation itself. Moreover, the ICJ is requested to opine on the "legal consequences" emanating from the legal status of the occupation "for all States and the United Nations" (see Question 5). More generally, the ICJ focuses on State responsibility and does not address the responsibility of individual perpetrators.

Notwithstanding the completely distinct nature of the two proceedings, they may overlap with regards to certain subject matters, for example in assessing the (un)lawfulness of Israel's settlement enterprise. Furthermore, each Court may apply the findings of the respective other in its reasoning.

8. What procedure does the ICJ follow in delivering advisory opinions?

The process commences with the filing of a “written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question” (Art. 65(2) of the ICJ Statute).

After receiving the written request, the Court may decide to hold written and oral proceedings. It is not required to do so as a matter of principle but will likely hold such proceedings in practice. For this purpose, the Court [prepares](#) a list of the States and international organizations that are “likely ... able to furnish information on the question” before the Court, fixes a time limit for the submission of written statements, and sets a date for the hearing(s), if any (Art. 66(2) of the ICJ Statute). Generally, the Court will invite the requesting UN organ or specialized agency as well as its member States to participate in the proceedings. States not formally invited by the Court may request to be included (Art. 66(3) of the ICJ Statute).

Exceptionally, the Court has also authorized other international organizations or non-governmental organizations to participate in the proceedings; private parties are generally not permitted to do so. Furthermore, the Court has discretion to allow the participating States or organizations to comment on the statements of others (Art. 66(4) of the ICJ Statute).

At the end of the proceedings, the advisory opinion is delivered “in open court” (Art. 67 of the ICJ Statute). This sitting is usually broadcast live. There is no formal deadline for the ICJ to render an advisory opinion, but the practice of the Court shows that the time between the filing of a request and delivery of the advisory opinion can vary from one to two years.

9. What is the role of Israel and Palestine in the process?

As noted, the rendering of an advisory opinion is a non-contentious procedure, meaning that there is no formal legal dispute to which Israel and Palestine are party. At the same time, States or international organizations may be authorized to submit written or oral statements to the Court (see Question 8). In the context of the *Wall Advisory Opinion*, for instance, the Court [determined](#) that the “United Nations and its Member States” as well as Palestine – which is not a full UN member State but then, like now, co-sponsored the draft GA resolution requesting the advisory opinion – shall be so entitled. It can be anticipated that the Court will adopt an order of a similar nature should the proposed request for an advisory opinion come before it.

Palestine has been one of the driving forces behind this initiative and, as mentioned, co-sponsored the draft Fourth Committee resolution requesting the advisory opinion; as such, it will likely remain supportive throughout the process. For the *Wall Advisory Opinion*, Palestine submitted a [written statement](#) of more than 300 pages in length addressing the Court’s jurisdiction to give the requested opinion, as well as pertinent issues of law and fact. If indeed so authorized, Palestine can be expected to once again furnish the Court with an exposition of its views in support of jurisdiction and delineating Israeli practices in the oPt as well as their legal appraisal.

Israel, by contrast, has been highly critical of the proposed advisory opinion and even (implicitly) questioned the legitimacy of the Court, with H.E. Gilad Erdan, Permanent Representative of Israel to the UN, denouncing the Palestinians for “[exploiting the ICJ as a weapon of mass destruction in their jihad war of Israel demonization](#)”. He also warned that the initiative would have an adverse impact on negotiations at the bilateral level (“[The UN is about to hammer the final nail in the coffin closing the door to any hope for future progress](#)”). It is likely that Israel will either refuse to engage with the Court altogether – as has been its track record in respect of other accountability processes, most notably the [ICC](#) – or limit itself to [challenging the Court's competence](#) in the matter and the propriety of it rendering an advisory opinion, like [it did](#) in the *Wall* proceedings.

By means of illustration, Israel's [written statement](#) for the *Wall Advisory Opinion* was centred around objections to the Court's jurisdiction – *inter alia* on the basis that the question under consideration is “uncertain in its terms” and thus not a legal question – and, in the alternative, arguments as to why the Court should decline to give an advisory opinion in the exercise of its discretion under Art. 65(1) of the ICJ Statute. In support of the latter proposition, Israel argued amongst other points that the Court rendering an opinion would be tantamount to settling a contentious bilateral dispute between Israel and Palestine to which Israel did not consent, and that the process before the Court would undermine ongoing political efforts (at the time, the so-called “[Roadmap for peace](#)”). The Court rejected these arguments, emphasizing that Israel's construction of the separation barrier “is of particularly acute concern to the United Nations” and “located in a much broader frame of reference than a bilateral dispute” ([Wall Advisory Opinion](#), para. 50).

Once the Court rendered its advisory opinion (see Question 6), Israel proceeded to [challenge](#) the findings of the Court on the basis that it did not have all the relevant facts before it, since Israel refused cooperation with regard to fact-finding. (Meanwhile the [separation barrier](#), most of which as mentioned is located on land beyond the 1949 Armistice Line – the so-called “Green Line” – is still standing.) Again, it is likely that Israel will adopt a similar strategy in this process.

10. Assuming that the draft resolution is adopted by the plenary of the GA, how will the Court likely proceed?

If the proposed advisory opinion does indeed reach the Court, any arguments along the lines that the Court does not have jurisdiction, or that it would be improper for the Court to render an advisory opinion as requested are likely to fail. The two legal questions before the Court are [framed](#) around the Palestinian people's right to self-determination – an issue squarely within the purview of the GA, not least considering its adoption of [Resolution 181\(II\)](#) (the “partition plan”) on 29 November 1947 – and the legal status of the occupation. Furthermore, there have not been any procedural deficiencies in the request for an advisory opinion, which would prevent the Court from proceeding.

The Court will then have the opportunity to examine the legal consequences of Israeli policies and practices in the oPt that (allegedly) violate the right to self-determination of the Palestinian people,

culminating in an assessment of the legality of the occupation as a whole (see Question 5). The legal consequences that may follow from the Court's findings could be far-reaching for Israel (see Question 11), as well as for third States and the UN (see Question 12), both due to the broad scope of the questions before the Court and the types of norms that may have been breached.

11. What are the potential legal consequences for Israel?

If indeed the Court finds that Israel has violated certain rules of international law (i.e., committed internationally wrongful acts), the legal consequences of the alleged violations for Israel, the primary duty bearer and injuring State, could be threefold.

First, Israel would have a continued duty of performance of its obligations (Art. 29 of the [UN Draft Articles on the Responsibility of States for Internationally Wrongful Acts](#) (ARSIWA), which are deemed reflective of customary international law). In other words, the fact that Israel has breached certain international norms does not mean that it is henceforth no longer bound by them. In the *Wall Advisory Opinion*, for instance, the Court determined that Israel must “comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law” as well as “ensure freedom of access to the Holy Places that came under its control” in 1967 ([Wall Advisory Opinion](#), para. 149).

Second, Israel would have an obligation to cease ongoing violations and, if required, “offer appropriate assurances and guarantees of non-repetition” (Art. 30 of the ARSIWA). Again, in the context of the *Wall Advisory Opinion*, the Court found that Israel must cease construction of the wall; dismantle existing structures in the oPt, including East Jerusalem; and repeal the legislative regime associated with it ([Wall Advisory Opinion](#), paras. 150-151).

Third, Israel would be obliged to make “full reparation for the injury” caused by the violations (Art. 31 of the ARSIWA), which may take the form of restitution, compensation, or satisfaction (Art. 34 of the ARSIWA). Restitution in this context means “re-establish[ing]”, as far as possible, “the situation which existed” before the breach (Art. 35 of the ARSIWA). Where restitution is “materially impossible” (e.g., in the case of immovable property such as land or buildings that have been destroyed and hence cannot be returned), monetary compensation for “financially assessable damage” is the next option (Art. 36 of the ARSIWA). If neither restitution nor compensation are available, Israel could have an obligation to give satisfaction (e.g., “an acknowledgement of the breach, an expression of regret, [or] a formal apology” – Art. 37 of the ARSIWA). Satisfaction may be particularly relevant in the context of the proposed advisory opinion, since in respect of the second question it seems materially impossible to restore the situation that existed before Israel's occupation of Palestinian territory 55 years ago, or to quantify the overall damage that has resulted from it.

As regards the second question specifically, it is worth emphasizing that a finding of the Court as to the illegality of Israel's occupation as a whole could go hand in hand with an obligation to end the occupation in practice (thus an obligation with a much wider scope than putting an end to specific violations arising

in the context of Israel's occupation of Palestinian territory, such as Israel's unlawful settlement policy). There is also a recent precedent in the 2019 *Chagos Archipelago Advisory Opinion* – albeit couched in the language of decolonization and under a distinct set of factual circumstances – where the Court determined that “the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible” ([Chagos Archipelago Advisory Opinion](#), para. 183(4)). Furthermore, in a 1971 advisory opinion, the Court found in respect of apartheid South Africa's continued unlawful presence in Namibia an obligation for South Africa to “withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory” ([Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia \(South West Africa\) Notwithstanding Security Council Resolution 276 \(1970\)](#), para. 133(1)). These precedents seem particularly relevant in light of the fact that the GA has long recognized the similarities of “[colonial domination, alien subjugation and foreign occupation](#)”, as well as their detrimental impact on the realization of a people's right to self-determination.

Whether or not the Israeli authorities as the primary duty bearers would be inclined to follow such findings is an altogether separate matter, which not least in light of the [newly elected government](#) – as well as Israel's longstanding record of non-compliance with the Court's findings in the *Wall Advisory Opinion* – seems to be very doubtful indeed.

12. What are the potential legal consequences for third States and the UN?

Some of the violations (allegedly) committed by Israel engage peremptory norms of international law (from which no derogation is permitted) and *erga omnes* obligations (which are owed to the international community as a whole). Examples of such norms are the right to self-determination and the inadmissibility of the acquisition of territory by force. If the Court indeed finds that such norms have been breached, there will be legal consequences for third States (i.e., for States other than the author of the breach, Israel).

It is generally accepted that third State responsibility is engaged in case of a “serious breach ... of an obligation arising under a peremptory norm of general international law”; a serious breach in this context means “a gross or systematic failure” to comply with the corresponding obligation (Art. 40 of the ARSIWA). If the Court finds that Israel has committed serious breaches of peremptory norms, the legal consequences for third States could be threefold.

First, third States would have an obligation not to “recognize as lawful a situation created by a serious breach” (Art. 41(2) of the ARSIWA). As per the [International Law Commission's Commentary on the ARSIWA](#) (Commentary), the duty of non-recognition pertains to both formal acts of recognition or “acts which would imply such recognition”. By way of illustration, the SC [decided](#) in the wake of Israel's 1980 adoption of the Basic Law: Jerusalem, Capital of Israel – which proclaimed Jerusalem “[complete and united](#)” as Israel's capital and was therefore seen as an act of *de jure* annexation – that it would not recognize the Basic Law and other measures by Israel that “seek to alter the character and status of

Jerusalem”, and called upon UN member States “to accept this decision” and to withdraw their diplomatic missions from Jerusalem.

Second, third States would have a duty not to “render aid or assistance in maintaining that situation” (Art. 41(2) of the ARSIWA). Most relevant in this regard could be, e.g., the provision of military aid or maintenance of “[trade relationships](#)”.

Third, third States may have a positive obligation to “cooperate to bring to an end through lawful means any serious breach” (Art. 41(1) of the ARSIWA). According to the Commentary, this may take the form of organized cooperation “in the framework of a competent international organization” – most notably the UN – or “non-institutionalized cooperation” (i.e., States acting bilaterally or multilaterally but on their own initiative, outside a formal organizational framework).

Under IHL specifically, State parties to the [Geneva Conventions](#) – which are universally ratified and whose provisions Israel has allegedly violated – have also undertaken “[to ensure respect for the \[Conventions\] in all circumstances](#)”.

As regards the potential legal consequences for the UN, the Court may, similar to the *Wall Advisory Opinion*, urge the organization, and in particular the GA and the SC, to take follow-up action to ensure that any illegal situation is brought to an end (*Wall Advisory Opinion*, para. 163(3)E). The type of follow-up action may be distinct for these bodies in accordance with their different mandates – while the SC is tasked specifically to “[maintain or restore international peace and security](#)” and has enforcement powers under Chapter VII of the Charter, the GA is generally regarded as the “[chief deliberative, policymaking and representative organ](#)” of the UN.

Furthermore, the UN may have a role to play in coordinating the steps that UN member States should take in compliance with Art. 41(2) of the ARSIWA – for instance, to determine precisely which acts or omissions would be required for purposes of the duty of non-recognition and the obligation not to render any aid or assistance in maintaining an illegal situation (*Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, paras. 119-120).

13. What practical impact could the advisory opinion have for different stakeholders?

As noted in Question 3, advisory opinions rendered by the ICJ are not, strictly speaking, legally binding. At the same time, they constitute an authoritative exposition and clarification of the law by the “[principal judicial organ of the United Nations](#)”.

The legal positions that the ICJ will adopt in the context of the requested advisory opinion thus stand to be taken up by other international judicial bodies (such as the ICC, which referred to the *Wall Advisory Opinion* and other ICJ judgments in its [decision](#) regarding the Court’s territorial jurisdiction in Palestine, for instance) and other UN entities beyond the GA, especially those whose mandates relate to Israeli

practices in the oPt (e.g., the [Human Rights Council](#); the [UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel](#); the [Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967](#); and other [thematic Special Procedures mandate holders](#)).

Furthermore, Israeli, Palestinian, and international civil society organizations may rely on the advisory opinion in their advocacy interventions and related publications, while third States and regional or intergovernmental organizations may be guided by the outcome of the proceedings in their relations and engagement with Israel. Palestine in particular, as well as its allies at the international stage, may seize the momentum to exert [political pressure](#) on the Israeli authorities to change their conduct in the oPt, and to resume the collapsed negotiations in the context of the Middle East peace process. Again, it seems rather unlikely that the Israeli authorities would be receptive to such pressure – even if grounded in the legal positions of the advisory opinion, and a finding that the occupation as a whole is unlawful.

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