

*Position Paper of the United Nations Independent International
Commission of Inquiry on the Occupied Palestinian Territory,
including East Jerusalem, and Israel*

Legal analysis and recommendations on implementation of the
International Court of Justice, Advisory Opinion, *Legal
Consequences arising from the Policies and Practices of Israel
in the Occupied Palestinian Territory, including East Jerusalem*

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I. INTRODUCTION

The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (“Commission”) welcomed¹ the historic advisory opinion issued by the International Court of Justice (“Court”) on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (19 July 2024).² In the advisory opinion, the Court found that Israel’s continuing presence in the Occupied Palestinian Territory was unlawful, thus entailing international legal obligations of Israel, all States, and international organizations including the United Nations. The Court stated that it was for the General Assembly and Security Council to consider the precise modalities and further actions to bring to an end as rapidly as possible the unlawful presence of Israel in the Occupied Palestinian Territory and of Israeli settlers and settlements. In this position paper, the Commission sets forth its legal analysis and recommendations to Israel, Member States, the General Assembly and the Security Council on implementation of the Court’s advice.

II. PROCEDURAL BACKGROUND

1. On 14 September 2022, the Commission issued a report to the General Assembly (A/77/328) with its conclusion that the Israeli occupation was unlawful. The Commission recommended that the General Assembly urgently request an advisory opinion from the Court on the legal consequences of the Israeli occupation and on the resulting obligations of third States and the United Nations (“UN”).³
2. On 30 December 2022, the General Assembly adopted resolution A/RES/77/247, in which it decided, in accordance with Article 96 of the Charter of the UN, to request the Court to render an advisory opinion pursuant to Article 65 of the Statute of the Court on the question of the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.
3. On 17 January 2023, the Secretary-General of the UN informed the President of the Court that, pursuant to Article 65, paragraph 2 of the Statute of the Court, the UN Secretariat would prepare a dossier containing all relevant documents pertaining to the request for an advisory opinion and the dossier would be transmitted to the Court.
4. On 3 February 2023, the Court issued an order that the UN and Member States, as well as the observer State of Palestine, may provide the Court with written submissions, in accordance with Article 66, paragraph 2, of the Statute of the Court, by 25 July 2023.

¹ Commission press release (22 July 2024), <https://www.ohchr.org/en/press-releases/2024/07/un-commission-inquiry-welcomes-international-court-justice-advisory-opinion>.

² International Court of Justice, *Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion (19 July 2024), <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf> (“Legal Consequences Advisory Opinion”).

³ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (14 September 2022), A/77/328, para. 92.

5. On 7 August 2023, fifty-seven written statements were filed by States and organizations.⁴ By 14 November 2023, the Court received fifteen written comments from States and organizations responding to written statements filed on 7 August 2023.⁵
6. Public hearings were held from 19 to 16 February 2024, with forty-nine States and three international organizations presenting oral statements.⁶
7. On 19 July 2024, the Court delivered its advisory opinion.
8. On 13 September 2024, the General Assembly passed a resolution on the “*Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presences in the Occupied Palestinian Territory*” (A/RES/ES-10/24) during the tenth emergency special session.⁷ The resolution set forth specific steps and actions that Israel and all States should take following the advisory opinion.
9. This position paper provides the views of the Commission in relation to state responsibility and how the General Assembly and the Security Council can identify and implement the precise modalities and actions required to bring to an end, as rapidly as possible, the unlawful presence of Israel in the Occupied Palestinian Territory.

III. SUMMARY OF ADVISORY OPINION

10. The Court was authoritative and unambiguous in its advisory opinion that Israel’s continued presence in the Occupied Palestinian Territory was unlawful under international law.⁸ The Court stated that Israel was under an obligation to: (i) bring to an end, as rapidly as possible, the unlawful occupation; (ii) cease immediately all new settlement activities and evacuate settlers from the Occupied Palestinian Territory; (iii) make reparation for damages caused to

⁴ States and organizations that filed written statements include: Türkiye, Namibia, Luxembourg, Canada, Bangladesh, Jordan, Chile, Liechtenstein, Lebanon, Norway, Israel, Algeria, League of Arab States, Syrian Arab Republic, Palestine, Organisation of Islamic Cooperation, Egypt, Guyana, Japan, Saudi Arabia, Qatar, Switzerland, Spain, Russian Federation, Italy, Yemen, Maldives, United Arab Emirates, Oman, African Union, Pakistan, South Africa, United Kingdom of Great Britain and Northern Ireland, Hungary, Brazil, France, Kuwait, United States of America, China, The Gambia, Ireland, Belize, Bolivia, Cuba, Mauritius, Morocco, Czechia, Malaysia, Colombia, Indonesia, Guatemala, Nauru, Djibouti, Togo, Fiji, Senegal, Zambia. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230807-pre-01-00-en.pdf>

⁵ States and organizations that filed written comments include: Jordan, the Organisation of Islamic Cooperation, Qatar, Belize, Bangladesh, the observer State of Palestine, the United States of America, Indonesia, Chile, the League of Arab States, Egypt, Algeria, Guatemala, Namibia, and Pakistan. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20231114-pre-01-00-en.pdf>

⁶ States and organizations that presented oral statements include: Palestine, South Africa, Algeria, Saudi Arabia, the Netherlands, Bangladesh, Belgium, Belize, Bolivia, Brazil, Chile, Colombia, Cuba, Egypt, United Arab Emirates, United States of America, Russian Federation, France, The Gambia, Guyana, Hungary, China, Iran, Iraq, Ireland, Japan, Jordan, Kuwait, Lebanon, Libya, Luxembourg, Malaysia, Mauritius, Namibia, Norway, Oman, Pakistan, Indonesia, Qatar, United Kingdom, Slovenia, Sudan, Switzerland, Syria, Tunisia, Türkiye, Zambia, League of Arab States, Organisation of Islamic Cooperation, African Union, Spain, Fiji and the Maldives. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240226-pre-01-00-en.pdf>

⁷ Resolution was adopted by the General Assembly on 18 September 2024. It passed by a vote of 124 in favour; 14 against; and 43 abstentions. A/RES/ES-10/24 (19 September 2024).

⁸ Legal Consequences Advisory Opinion, para. 285(3).

all natural or legal persons concerned in the Occupied Palestinian Territory.⁹ The Court found that Israel's internationally wrongful acts gave rise to obligations of other States, the United Nations and international organizations.

11. In coming to this conclusion, the Court examined the international legal framework of international humanitarian law, international human rights law, and two *jus cogens* principles - the right of a people to self-determination and the prohibition of the acquisition of territory by threat or use of force.¹⁰ The Court clearly stated that it considered the Occupied Palestinian Territory to constitute a "single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected", encompassing the West Bank, including East Jerusalem, and the Gaza Strip.¹¹ The Court ended any debate on the legal status of the Gaza Strip by stating that it remained occupied by Israel and that the decisive criterion is not solely based on physical military presence but rather on whether the occupying Power has established authority over the territory and is able to exercise that authority.¹² The Court noted that Israel remained capable of exercising authority and continued to exercise authority over the Gaza Strip.¹³
12. The Court examined Israel's policies and practices in the Occupied Palestinian Territory, including Israel's prolonged occupation, settlement policy, annexation of Palestinian territory, and discriminatory legislation. The Court stated that in law occupation is a temporary situation in response to military necessity and cannot be used to transfer title of sovereignty to the occupying Power. The Court noted that Israel's settlement policy has expanded continuously since 1967 resulting in: confiscation of property, exploitation of natural resources, transferring Israelis into occupied land resulting in the forcible displacement of Palestinians, expanding Israeli civilian law applicable to Israeli settlers while subjecting Palestinians to military law, and increased violence against Palestinians. The Court concluded, as it had done in the 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, that the settlements and associated regimes were established and maintained in violation of international law.¹⁴ The Court also concluded that these policies and practices were designed to remain in place indefinitely and amounted to annexation of large parts of the Occupied Palestinian Territory by Israel.¹⁵ This is a direct violation of the "prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force".¹⁶
13. The Court analyzed Israel's discriminatory legislation and measures including the residence permit policy, restrictions on movement and demolition of Palestinian properties. The Court found Israel had breached its obligations under the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), and the Convention on the Elimination of All Forms of Racial

⁹ Legal Consequences Advisory Opinion, para. 285(4)-(6).

¹⁰ See Legal Consequences Advisory Opinion, paras. 261.

¹¹ Legal Consequences Advisory Opinion, para. 78.

¹² Legal Consequences Advisory Opinion, paras. 92-93.

¹³ Legal Consequences Advisory Opinion, para. 93.

¹⁴ Legal Consequences Advisory Opinion, para. 154, citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, (2004), para. 120.

¹⁵ Legal Consequences Advisory Opinion, para. 173.

¹⁶ Legal Consequences Advisory Opinion, para. 179.

Discrimination (“CERD”).¹⁷ Notably, the Court found Israel’s legislation and measures also violated article 3 of CERD, which prohibits segregation and apartheid, while not specifying whether the situation amounted to segregation or apartheid or both.

14. The Court found that Israel’s policies and practices violated the right of the Palestinian people to self-determination by fragmenting the West Bank and severing East Jerusalem from it, annexing large parts of the Occupied Palestinian Territory, displacing the Palestinian population, depriving Palestinians from controlling their natural resources, preventing Palestinians from determining their political status and pursuing economic, social and cultural development, and violating other human rights. The Court concluded that the “prolonged character of Israel’s unlawful policies and practices aggravates their violation of the right of the Palestinian people to self-determination”.¹⁸

IV. OBLIGATIONS FOR ISRAEL

15. The obligation of a State for committing an internationally wrongful act is to bring that unlawful act to an end.¹⁹ The Court stated that Israel was under an obligation to: (i) bring the unlawful occupation to an end, as rapidly as possible; (ii) cease immediately all new settlement activities and evacuate settlers from the Occupied Palestinian Territory; (iii) make reparation for damages caused to all natural or legal persons concerned in the Occupied Palestinian Territory.²⁰ Reparations include restitution, compensation, satisfaction and guarantees of non-repetition.
16. Restitution includes Israel’s obligations to return land and other immovable property, all assets and cultural property seized since 1967, dismantling the sections of the wall in the Occupied Palestinian Territory, evacuating settlers from all existing settlements and allowing Palestinians who have been displaced in or from the Occupied Palestinian Territory during the occupation to return to their original place of residence.²¹ The Court noted that, if such restitution was not possible, then compensation should be given.²²
17. The Commission finds that Israel is under an international legal obligation to cease all new settlement activity and dismantle existing settlements “as rapidly as possible”, which the General Assembly demanded that Israel should “do so no later than 12 months from the adoption” of the resolution.²³ Further, Israel must physically evacuate all settlers from the Occupied Palestinian Territory “immediately” and allow all displaced Palestinians to return to their lands and property. The Commission interprets the plain meaning of the word “immediately” as at once and without delay. Israel must immediately put into place a comprehensive plan of action that will physically evacuate all settlers from occupied territory. The Commission considers that, in order to comply with its international legal

¹⁷ Legal Consequences Advisory Opinion, para. 223. Specific violations included articles 2 (1), (26) of the ICCPR, article 2(2) of the ICESCR, and article 2 of CERD.

¹⁸ Legal Consequences Advisory Opinion, para. 243.

¹⁹ Noting this is a general principle of international law, Legal Consequences Advisory Opinion, para. 267; *see also* Responsibility of States for Internationally Wrongful Acts, UN Doc. A/RES/56/83 (2001), article 30.

²⁰ Legal Consequences Advisory Opinion, para. 285(4)-(6).

²¹ Legal Consequences Advisory Opinion, para. 270.

²² Legal Consequences Advisory Opinion, para. 271.

²³ GA resolution A/ES-10/L.31/Rev.1, para. 2.

obligations, Israel must return land, title and natural resources to the Palestinians who have been displaced since 1967. Additionally, Israel must repeal all restrictive laws, policies and measures that discriminate against Palestinians or restrict the fulfillment of their right to self-determination.

18. Israel should be required to report, on a periodic basis, to the General Assembly and Security Council on the measures it has taken to end the unlawful occupation and all of the steps it has taken to fulfill its obligations under international law in compliance with the advisory opinion.

V. OBLIGATIONS FOR THIRD STATES

Legal overview

19. Israel's internationally wrongful acts give rise to international legal responsibility for the State of Israel, all States,²⁴ and international organizations including the United Nations. The Court concluded that all States were under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation. Further, all States have a duty to cooperate with the General Assembly and the Security Council on implementing modalities and measures to bring the internationally wrongful acts identified in the advisory opinion to an end.
20. On the issue of non-recognition, the Commission finds that States are obligated not to recognize any territorial or sovereignty claims made by Israel over occupied lands.²⁵ States must modify their relations with Israel, as the Court stated in order to distinguish in their dealings between Israel and the occupied Palestinian Territory.
21. As the Court found serious breaches of peremptory norms of international law, all States are under an obligation not to render aid or assistance in maintaining the unlawful occupation.²⁶ The Commission is of the view that the duty of States not to recognize the unlawful occupation functions in conjunction with the duty of States not to render aid or assistance. Each State is obliged to undertake a thorough due diligence review of its aid and assistance to Israel and determine whether it is being used by Israel to support and maintain the unlawful occupation. Aid and assistance include financial, military and political aid or support.
22. The Commission is of the view that all States are also under an obligation to act, individually and collectively, to bring the unlawful occupation to an end, including by building political, economic and cultural pressure on the Israeli Government to end the unlawful occupation. States must do all that is necessary and reasonable to ensure that the Israeli Government brings its wrongful acts to an end as rapidly as possible.

²⁴ Responsibility of States for Internationally Wrongful Acts, UN Doc. A/RES/56/83 (2001), articles 16, 41.

²⁵ For more on the principle of non-recognition, see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion (1971), paras. 122-124; see also Talmon, S., "The Duty not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breach of a Jus Cogens Norm" in Tomuschat, C. and Thouvenin, J.M. (Eds), *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (2006).

²⁶ Responsibility of States for Internationally Wrongful Acts, UN Doc. A/RES/56/83 (2001), article 41(2).

23. The Commission also takes note of State responsibility through complicity, namely when a State knowingly aids or assists another State in the commission of an internationally wrongful act.²⁷ The Commission notes, for violations of international humanitarian law, it has already reported that Israel has committed war crimes in the context of the war in Gaza since 7 October 2023.²⁸ On the issue of genocide, the Commission notes the provisional measures orders issued by the Court in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.²⁹ The Commission finds that all States are on notice that Israel may be or is committing internationally wrongful acts in both its conduct in the military operations in Gaza and its unlawful occupation of the West Bank, including East Jerusalem. Thus, the Commission finds that, unless States cease their aid and assistance to Israel in the commission of these acts, those States shall be deemed to be complicit in those internationally wrongful acts.

Political and diplomatic relations

24. The Commission finds that all States have an international legal obligation not to recognize the occupation as lawful.³⁰ States must refrain from any act that recognizes the unlawful occupation, such as any change in territorial status since 1967 or de facto or de jure annexation of any territory. In practice, this means all States must distinguish in their dealings between Israel and the Occupied Palestinian Territory. States must distinguish in their diplomatic, consular and economic relations. For example, a State must not recognize Jerusalem as the capital of Israel or place its diplomatic representatives to Israel in Jerusalem, or issue travel documents to settlers living in unlawful settlements. States must also distinguish in their military aid and assistance, foreign aid and support, and business enterprises when dealing with Israel and the Occupied Palestinian Territory. As long as Israel remains the occupying power, a State may engage in limited relations with Israel in relation to the occupied territory but only to the extent that its relations are to the benefit of the occupied population.³¹ This is a high threshold to meet, and Israel has the burden of proving that it is engaging in activities solely for the benefit of the occupied population. States must ensure that their business enterprises are not engaging in activities in occupied territory and are not benefiting from the unlawful occupation.
25. With respect to the obligation to abstain from treaty relations with Israel “in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof”, individual States and regional organizations, such as the European Union, must take all reasonable steps to conduct a comprehensive review of existing treaties, agreements and arrangements with Israel in order to ensure distinction in their dealings between Israel and the Occupied Palestinian Territory and to exclude any dealing that would support the maintenance of the unlawful occupation. States must add conditionalities to these existing agreements so that it is clear they are distinguishing in their dealings. For any agreements

²⁷ Responsibility of States for Internationally Wrongful Acts, UN Doc. A/RES/56/83 (2001), article 16.

²⁸ A/HRC/56/26; A/HRC/56/CRP.4.

²⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order (24 May 2024), Order (28 March 2024), and Order (26 January 2024).

³⁰ Responsibility of States for Internationally Wrongful Acts, UN Doc. A/RES/56/83 (2001), article 41(2).

³¹ The “Namibia exception” which carves out some exceptions to the duty of non-recognition for the benefit of the population. See Milano, “The doctrine(s) of non-recognition: theoretical underpinnings and policy implications in dealing with de facto regimes”, European Society of International Law (2018), <https://esil-sedi.eu/wp-content/uploads/2018/04/Agora-3-Milano.pdf>.

that are contributing to the unlawful situation, States are under a duty to repeal or amend such agreements in line with their international legal obligations.

Military related relations

26. On the issue of arms and military transfer and trade relating to Israel's military capability, States have a duty to conduct a due diligence review of all transfer and trade agreements with Israel, including but not limited to equipment, weapons, munitions, parts, components, dual use items and technology, to determine whether the goods or technology subject to the transfer or trade contribute to maintaining the unlawful occupation or are used to commit violations of international law. This includes both preexisting agreements and future transfers to Israel. States are obliged to demonstrate that any transfer or trade relating to military capability is not being used by Israel to maintain the unlawful occupation or commit violations of international law. Israel must provide information to satisfy States that those items used for exclusively defensive purposes by Israel are distinguished from those items contributing to maintaining the unlawful occupation. If the goods or technology subject to the transfer or trade are being used to maintain the unlawful occupation or to contribute to maintaining it, States must immediately cease all such transfer or trade to Israel until such time that Israel can prove otherwise.
27. The Commission is of the view that this restriction on military related relations applies also to research and development cooperation with Israel, engaging in joint training and military exercises with Israel, and any imports from Israel that provide funding and economic support to Israel to maintain the unlawful occupation.
28. Additionally, States have positive obligations, under both the Geneva Conventions and the Genocide Convention.³² States must ensure that Israel is not committing or preparing to commit violations of international humanitarian law. States must also prevent or punish genocide. As such, the positive obligations of States engaged in any transfer or trade to Israel that contributes to Israel's military capability are even more heightened in this regard. Thus, the Commission recommends that any State engaged in such transfer or trade to Israel shall cease its transfer or trade until the State is satisfied that the goods and technology subject to the transfer or trade are not contributing to maintaining the unlawful occupation or to the commission of war crimes or genocide and thereafter throughout any period when the State is not so satisfied.

Financial and economic relations

29. In terms of financial and economic relations, the Court stated that States must "abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory".³³ The Commission interprets this to mean that States must cease all financial, trade, investment and economic relations with Israel that maintain the unlawful occupation or contribute to

³² Common article 1 of the Four Geneva Conventions of 1949 entails a duty on all High Contracting Parties to "respect and to ensure respect" for the Conventions. Thus, State parties who are not parties to the armed conflict must ensure that they are not encouraging violations of international humanitarian law and the State shall not take action that would assist in such violations. All State parties to the Genocide Convention have a common interest in preventing, suppressing and punishing genocide and all State parties commit themselves to fulfilling these obligations *erga omnes partes*.

³³ Legal Consequences Advisory Opinion, para. 278.

maintaining it. States must review their trade and economic agreements with Israel that involve products and produce of the unlawful settlements. The burden is on Israel to establish that any product or produce does not originate in the settlements.

30. The Commission is of the view that State responsibility entails due diligence on the part of the State to examine private enterprises incorporated in the State and non-profit or non-governmental organizations registered in the State and their dealings with the State of Israel and the Occupied Palestinian Territory. These entities include trading firms, manufacturing enterprises, investment funds and banks facilitating money transfers. States must require a thorough due-diligence review of these entities and ensure that they are not engaging in any business, activity or financial support that maintains the unlawful occupation or contributes to maintaining it.³⁴ If a State finds that such entities are engaging in activities that maintain the unlawful occupation, the State must take all reasonable measures to prevent the activities, such as revoking a corporation's articles of incorporation or revoking a non-profit organization's registration in that State.
31. With respect to non-profit or non-governmental organizations, States must carefully review any organization that is financially or politically supporting the unlawful occupation. States shall not give support to these organizations, for example through allowing the organization to have tax-exempt status or providing tax deductibility for donations to the organization and must ensure that financial contributions to support the unlawful occupation, including settlements and settlers, cease.

Cultural relations

32. The Commission is of the view that States shall not render aid or assistance to educational, academic, research or cultural activities that support or maintain the unlawful occupation. This applies to universities and other research or cultural institutions that support the occupation or that are physically located within the Occupied Palestinian Territory and support the occupation. Conversely, the Commission believes that there should be promotion of activities or institutions that are working towards ending the unlawful occupation.

Accountability

33. All States must fully cooperate with the International Criminal Court's investigation in the *Situation in the State of Palestine*, regardless of whether it is a State Party to the Rome Statute. As the violations identified by the Court are of a peremptory nature which give rise to obligations *erga omnes*, all States have a duty to cooperate. National authorities must also conduct their own investigations and, where appropriate, prosecutions under domestic criminal law or universal jurisdictions for criminal conduct committed in the occupied territory.
34. States must comply with their treaty obligations, such as their obligations under the Genocide Convention to prevent or punish the commission of genocide. Further, all States Parties to the Fourth Geneva Convention are under an obligation to ensure compliance by Israel with international humanitarian law.³⁵ This includes complying with all of the provisional

³⁴ For guidance on human rights due diligence, see the UN Guiding Principles on Business and Human Rights (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

³⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004), para. 159.

measures orders issued by the Court in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.³⁶ As stated above, States may be complicit in failing to prevent genocide if they do not act in compliance with the Court orders and directly aid or assist in the commission of genocide.

35. On other accountability options, States must review their domestic laws and examine all potential accountability options, such as targeted sanctions regimes, especially sanctions with respect to human rights violations. Finally, States must provide full support for all accountability processes, whether domestic, regional or international, and cooperate with these processes.

VI. OBLIGATIONS FOR THE UNITED NATIONS

36. The Court stated that international organizations, including the United Nations, were under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. The Commission is of the view that, similar to the obligation of States, the United Nations and international organizations are obliged to distinguish in their dealings between Israel and the Occupied Palestinian Territory and to refrain from any activity that will contribute to maintaining the occupation.
37. Specifically on implementation, the Court advised that the General Assembly and Security Council should consider the “precise modalities and further action” required to bring to an end the unlawful occupation. As stated above, on 13 September 2024, the General Assembly passed a resolution that adopted specific recommendations for Israel and all Member States in line with the advisory opinion.³⁷ In its resolution, the General Assembly requested the Secretary-General to submit a report to it within three months on the implementation of the resolution. The Commission awaits the report on implementation by Israel and all Member States.
38. If there is continued refusal by Israel to comply with its obligations under international law as set forth in the advisory opinion and the General Assembly resolution, the Commission recommends that the Security Council or the General Assembly establish an ad-hoc Committee to comprehensively review the non-compliance and propose mechanisms to ensure implementation. The Commission is aware that, in the Namibia situation, the Security Council acted to establish such an ad-hoc subcommittee.³⁸ However, in the current situation the Security Council has failed to act due to the veto power of one of the permanent member States. The Commission is of the view that, when peremptory norms of international law are violated, the Permanent Members of the Security Council should not be allowed to exercise their veto as this is contrary to the obligation to uphold peremptory norms of international law.
39. For full reparations, the Commission recommends that the General Assembly establishes an independent mechanism to investigate and document all claims in relation to the complex

³⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order (24 May 2024), Order (28 March 2024), and Order (26 January 2024).

³⁷ GA resolution A/ES-10/24.

³⁸ An Ad Hoc Sub-Committee was established pursuant to UN Security Council resolution 276 (1970), https://main.un.org/securitycouncil/sites/default/files/en/sc/repertoire/69-71/69-71_05.pdf#page=8

issue of reparations. This includes collecting and preserving records of Palestinian lands, assets and properties, consolidating the records from various UN agencies and other organizations in one central repository, and preserving these records for reparation and compensation claims.

VII. CONCLUSION

40. The Commission welcomed the historic advisory opinion issued by the Court on 19 July 2024. The Court was clear that Israel's continuing presence in the Occupied Palestinian Territory was unlawful owing to the policies and practices of Israel that violated fundamental principles of international law. These peremptory norms of international law include the right of a people to self-determination, the prohibition of the acquisition of territory by force, the prohibition of racial segregation and discrimination, and fundamental rules of international humanitarian law. With those conclusions, the Court set forth obligations for Israel, all States and international organizations including the United Nations. The Commission issues this legal position paper to assist the General Assembly and the Security Council in identifying and imposing the specific modalities and actions required to ensure an end to the unlawful occupation and the full realization of the right of the Palestinian people to self-determination.