

Ms FUENTES TORRIJO:

1. Mr President, Members of the Court, it is an honour for me to appear before you as the Representative of Chile in these advisory proceedings.

2. The two questions submitted by the General Assembly to the Court are of the utmost importance to assist the organs of the United Nations in fulfilling their responsibility under Article 1, paragraphs 1 and 2, of the Charter of the United Nations, namely “to take effective collective measures for the prevention and removal of threats to the peace”; to bring about “adjustment or settlement of international disputes or situations which might lead to a breach of peace”; and “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace”.

3. The situation that affects the Occupied Palestinian Territory may only find a satisfactory solution on the basis of compliance with the Charter of the United Nations, international human rights law and international humanitarian law. The right to self-determination, to which the Palestinian people living in the Occupied Palestinian Territory are entitled, plays a central role in the resolution of this long-standing conflict. It is our position that the Court should provide a substantive advisory opinion that may contribute to the strengthening of peaceful relations between Israel and Palestine, by clarifying the applicable international law and the legal consequences arising from the violation of those rules.

4. Chile appears today before the Court in response to the invitation extended to all Member States of the United Nations, to furnish information on the questions submitted by the General Assembly. Two main considerations have prompted Chile to participate in these advisory proceedings. First, Chile, as a Member of the United Nations, has the responsibility to contribute to strengthening the rule of law in the international community. The questions submitted by the General Assembly touch upon the basic principles of the rule of law, that is to say the principle of the supremacy of law above the exercise of power and the principle of accountability.

5. Second, Chile has continuously supported the self-determination of the Palestinian people and the two-State solution. Through decades of participation in the multilateral fora, Chile has consistently called all parties to comply with their obligations under international law, and to put an

end to policies and practices that endanger the peace process<sup>109</sup>. All this, in a domestic setting where Chile is home to a large Palestinian community — the largest outside the Middle East — and to an important Jewish community — the third in South America. In 2011, the Chilean Government led by former President Sebastián Piñera recognized the State of Palestine, and in 2012 Chile co-sponsored General Assembly resolution 67/19, which accorded Palestine non-member observer State status in the United Nations.

6. Chile would like to see the implementation of the two-State solution, within internationally recognized and secure boundaries, and it is convinced that these advisory proceedings will assist in that process. Why? Because under the current status quo there is no solution in sight. An advisory opinion may contribute to the process of changing the status quo, putting an end to the 56-year occupation of Palestinian territory, and to the realization of the Palestinian people's self-determination.

7. In this presentation Chile will develop three points:

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<sup>109</sup> Indeed, Chile has systematically co-sponsored and/or voted in favour of relevant resolutions of the UN General Assembly and the Human Rights Council. This includes UNGA resolutions 78/78 (2023); 78/192 (2023); 77/208 (2022); 77/247 (2022); 77/126 (2022); 76/82 (2021); 76/150 (2021); 75/98 (2020); 75/97 (2020); 75/172 (2020) and HRC resolutions 52/35 (2023); 52/34 (2023); 52/3 (2023); 49/29 (2022); 49/28 (2022); 49/4 (2022); 46/26 (2021); 46/25 (2021); 46/3 (2021); 43/33 (2020); 43/32 (2020); 43/31 (2020); 43/3 (2020); S-28/1 (2018); S-21/1 (2014); S-12/1 (2009); S-9/1 (2009), among many others. Chile has also issued several statements calling for all parties to comply with international law. See: Ministerio de Relaciones Exteriores, 'Comunicado de Prensa' (13 Feb. 2024) <https://minrel.gob.cl/noticias-antiores/comunicado-de-prensa-13-02-2024>; 'Comunicado sobre situación en Medio Oriente' (13 Oct. 2023) <https://minrel.gob.cl/noticias-antiores/comunicado-sobre-situacion-en-medio-oriente>; 'Comunicado de Prensa' (7 Oct. 2023) <https://minrel.gob.cl/noticias-antiores/comunicado-de-prensa-22>; 'Comunicado de Prensa' (12 May 2023) <https://minrel.gob.cl/noticias-antiores/comunicado-de-prensa-14>; 'Chile manifiesta su preocupación por el recrudecimiento de la violencia en el Medio Oriente' (24 Feb. 2023) <https://minrel.gob.cl/noticias-antiores/chile-manifiesta-su-preocupacion-por-el-recrudecimiento-de-la-violencia>; 'Comunicado Conjunto de los Gobiernos de Argentina, Brasil, Chile y México' (17 Feb. 2023) <https://minrel.gob.cl/noticias-antiores/comunicado-conjunto-de-los-gobiernos-de-argentina-brasil-chile-y-mexico>; 'Gobierno de Chile condena atentado terrorista en Sinagoga de Neve Yaakov, Jerusalén Este' (28 Jan. 2023) <https://minrel.gob.cl/noticias-antiores/gobierno-de-chile-condena-atentado-terrorista-en-sinagoga-del-barrio>; 'Gobierno de Chile celebra acuerdo de alto el fuego alcanzado por Palestina e Israel' (26 May 2021) <https://minrel.gob.cl/noticias-antiores/gobierno-de-chile-celebra-acuerdo-de-alto-el-fuego-alcanzado-por>; 'Comunicado de prensa' (29 Jan. 2020) <https://minrel.gob.cl/minrel/noticias/comunicado-de-prensa-10>; 'Chile manifiesta preocupación por los hechos violencia ocurridos en la zona de frontera entre Israel y la Franja de Gaza' (13 Nov. 2018) <https://minrel.gob.cl/minrel/noticias-antiores/chile-manifiesta-preocupacion-por-los-hechos-violencia-ocurridos-en-la>; 'Comunicado sobre situación en la Franja de Gaza' (14 May 2018) <https://minrel.gob.cl/minrel/noticias-antiores/comunicado-sobre-situacion-en-la-franja-de-gaza>; 'Chile lamenta los hechos de violencia acaecidos en la franja de Gaza' (3 Apr. 2018), <https://minrel.gob.cl/minrel/noticias-antiores/chile-lamenta-los-hechos-de-violencia-acaecidos-en-la-franja-de-gaza>; 'Chile manifiesta preocupación por decisión de Estados Unidos de reconocer a Jerusalén como capital de Israel' (6 Dec. 2017) [https://www.minrel.gob.cl/comunicado-de-prensa/minrel\\_old/2017-12-06/195229.html](https://www.minrel.gob.cl/comunicado-de-prensa/minrel_old/2017-12-06/195229.html); 'Comunicado de Prensa' (9 Jan. 2017) [https://www.minrel.gob.cl/comunicado-de-prensa/minrel\\_old/2017-01-09/120915.html](https://www.minrel.gob.cl/comunicado-de-prensa/minrel_old/2017-01-09/120915.html); 'Comunicado de prensa sobre la situación en Gaza' (21 July 2014), [https://www.minrel.gob.cl/comunicado-de-prensa-sobre-la-situacion-en-gaza/minrel\\_old/2014-07-21/100756.html](https://www.minrel.gob.cl/comunicado-de-prensa-sobre-la-situacion-en-gaza/minrel_old/2014-07-21/100756.html); 'Chile condena ataques aéreos a la Franja de Gaza y el lanzamiento de misiles hacia Israel' (15 Mar. 2012) [https://www.minrel.gob.cl/chile-condena-ataques-aereos-a-la-franja-de-gaza-y-el-lanzamiento-de/minrel\\_old/2012-08-31/102247.html](https://www.minrel.gob.cl/chile-condena-ataques-aereos-a-la-franja-de-gaza-y-el-lanzamiento-de/minrel_old/2012-08-31/102247.html), all hyperlinks accessed 18 February 2024.

- (i) First, the absence of compelling reasons to decline rendering the advisory opinion. It is a false dilemma that such opinion may impede negotiations between Israel and Palestine.
- (ii) Second, Chile's views on question (a), regarding Israel's violation of the inalienable right of the Palestinian people to self-determination and other rules of international law, and the responsibility that arises thereof.
- (iii) Third, Chile's views on question (b), regarding the illegal status of the occupation, and the consequence that necessarily follows, namely, the obligation to put an end to the occupation.

**I. JURISDICTION AND THE ABSENCE OF COMPELLING REASONS FOR THE  
INTERNATIONAL COURT OF JUSTICE TO DECLINE GIVING  
THE ADVISORY OPINION**

8. Moving to the first point, it is Chile's position that the Court has jurisdiction to give the requested advisory opinion and that there are no compelling reasons for the Court to refuse to do so.

9. As already stated in its written statements, Chile considers that the fact that a legal question may also involve certain political aspects<sup>110</sup> or the fact that the parties concerned should pursue negotiations<sup>111</sup>, does not bar the Court from its jurisdiction. Indeed, complex situations, such as the Israeli-Palestinian conflict, are precisely the ones that can benefit the most from a clarification of the applicable law by this Court<sup>112</sup>.

10. With regard to the principle of judicial propriety, which has been a matter of some debate in these proceedings, Chile underscores the fact that, by their very nature, advisory opinions do not resolve contentious disputes, and does not share the view of a few other States that rendering an advisory opinion in this case would be at odds with the agreed negotiation framework dealing with the ultimate status of the Occupied Palestinian Territory.

11. While it is true that the Security Council has endorsed a political process based on a negotiation framework for the resolution of the Israeli-Palestinian conflict, it is also true that the Security Council itself has condemned

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<sup>110</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 13; *Wall Advisory Opinion*, para. 41; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, I.C.J. Reports 1980*, para. 37.

<sup>111</sup> *Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978*, para. 29.

<sup>112</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, para. 33.

“all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”<sup>113</sup>.

12. Chile recalls that this Court, in the *Namibia* Advisory Opinion, was clear in stating that an international instrument, such as a Security Council resolution, “has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation”<sup>114</sup>. The Court has also noted that resolutions of the United Nations organs need to be analysed “having regard to the terms of the resolution to be interpreted, the discussions leading to it . . . and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council”<sup>115</sup>.

13. Thus, to argue that Security Council resolutions supporting the need for a negotiated two-State solution impede the exercise of the Court’s advisory jurisdiction is simply untenable. Indeed, it is quite clear from the language used by those resolutions and the discussions leading to their adoption, that any such negotiated solution precisely requires the cessation and non-recognition of Israel’s illegal activities in the Occupied Palestinian Territory. It is difficult to understand how a legal opinion rendered by this Court, the purpose of which is precisely to determine the legal consequences of Israel’s behaviour in the Occupied Palestinian Territory, might be an obstacle for a prospective negotiated solution.

14. In addition, one should not lose sight of the fact that ongoing or prospective negotiations do not imply a suspension of the functions and powers of the Security Council or the General Assembly. Indeed, the purpose of the request for an advisory opinion in this case is precisely to assist the General Assembly in the exercise of its functions with regard to the situation in the Occupied Palestinian Territory. It is important to bear in mind that the General Assembly, in exercising its powers, can issue recommendations, the content of which is not restricted to calling the parties to agree on a negotiated solution.

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<sup>113</sup> UNSC resolution 2334 (2016) of 23 December 2016. See also UNSC resolutions 446 (1979) of 22 Mar. 1979; 452 (1979) of 20 July 1979; 465 (1980) of 1 Mar. 1980; 478 (1980) of 20 Aug. 1980.

<sup>114</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 53.*

<sup>115</sup> *Ibid.*, p. 53, para. 114.

15. In conclusion, Chile strongly supports the view that, by giving the requested advisory opinion, the Court will be acting within the scope of its advisory function, fulfilling its duty to provide the legal assistance that the General Assembly requires to exercise its power in the context of a long-standing conflict.

16. Mr President, Members of the Court, I will now address Chile's views on question (a).

## II. CHILE'S VIEWS ON QUESTION (A)

17. In its first written submissions, Chile referred to some of the evidence before the Court which demonstrates that Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem and Gaza, amount to serious and reiterated violations of international law, *inter alia*, of the right of the Palestinian people to self-determination, of the rules and basic principles of international humanitarian law and of international human rights law, including the prohibition of racial discrimination.

18. Examining these violations is especially relevant in the present context of escalating hostilities. The upsurge of violence in the Occupied Palestinian Territory and in Israel is partly explained by decades of systematic disregard of international law. Less than four months before the Hamas terrorist attacks, former United Nations Secretary-General Ban Ki-moon and former United Nations High Commissioner for Human Rights Mary Robinson noted that Israel's policies, including its attempts to exercise sovereignty over the Occupied Palestinian Territory "risks an uncontrollable explosion of violence on both sides"<sup>116</sup>. The statement proved premonitory.

19. Noting that the current escalation of hostilities is partly explained by the status quo does not entail condoning the attacks of Hamas. Chile unequivocally condemns terrorist actions and has called for the immediate and unconditional release of all hostages since day one. However, as noted by the United Nations Secretary-General, the escalation "does not come in a vacuum", but grows out "of a long-standing conflict, with a 56-year long occupation, and no political end in sight"<sup>117</sup>. This

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<sup>116</sup> The Elders, "Elders warn of consequences of 'one-state reality' in Israel and Palestine", 22 June 2023 <https://theelders.org/news/elders-warn-consequences-one-state-reality-israel-and-palestine>, accessed 8 Feb. 2024.

<sup>117</sup> UN Secretary-General, "Secretary-General's remarks to the press on the situation in the Middle East", 9 Oct. 2023, <https://www.un.org/sg/en/content/sg/speeches/2023-10-09/secretary-generals-remarks-the-press-the-situation-the-middle-east>, accessed 8 Feb. 2024.

further confirms the importance of determining the legal consequences arising from the ongoing violations of international law.

20. As Chile explained in its first written submission, there is vast evidence demonstrating the existence of serious violations of international law by Israel. Although Chile agrees with other States in noting that the Court does not need to make detailed findings on every incident mentioned throughout the submissions and in the more than 1,800 documents contained in the dossier filed by the Secretary-General, I would like to point to certain particularly serious violations which the Court should address in its advisory opinion.

21. First, Israel has violated and continues to violate human rights law, including the denial of the Palestinian people's self-determination, a norm of *jus cogens* nature<sup>118</sup>. The evidence is clear including the establishment and expansion of settlements, the confiscation of Palestinian land and arbitrary demolition of Palestinian houses, and the unwillingness and inability of Israeli authorities and officials to protect the Palestinian population from violence in breach of Israel's obligations as an occupying Power. The Human Rights Committee — the views of which have been given significant weight by the Court in the past<sup>119</sup> — regretted that “Palestinians have been systematically deprived of their land and housing rights for decades”, expressed concern for the “systematic practice of demolitions and forced evictions based on discriminatory policies” and noted that such practices “led to the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which amounts to racial segregation”<sup>120</sup>.

22. These violations have worsened after the October 7 attacks. Israeli human rights nongovernmental organization (NGO) Yesh Din has noted that “2023 was the most violent year in settler violence against Palestinians in the West Bank in both the number of incidents and their severity”, and that the first two months after 7 October 2023 “were particularly violent”<sup>121</sup>. Similar

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<sup>118</sup> Report of the International Law Commission, Seventy-third session (18 April–3 June and 4 July–5 August 2022) A/77/10, para. 43, Conclusion 23.

<sup>119</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 639, para. 66.

<sup>120</sup> HRC, Concluding observations on the fifth periodic report of Israel (5 May 2022), CCPR/C/ISR/CO/5, para. 42.

<sup>121</sup> *The Times of Israel*, “2023 «most violent» year for West Bank settler attacks, watchdog says” (1 Jan. 2024) <https://www.timesofisrael.com/2023-most-violent-year-for-west-bank-settler-attacks-watchdog-says/>, accessed 8 Feb. 2024.

findings were made by Israeli NGO B'Tselem<sup>122</sup>, Human Rights Watch<sup>123</sup> and the UN Office for the Coordination of Humanitarian Affairs<sup>124</sup>. The Office of the United Nations High Commissioner for Human Rights has also noted the rapid deterioration of the human rights situation in the West Bank and East Jerusalem after 7 October, including unnecessary and disproportionate use of force resulting in unlawful killing, mass arbitrary arrests, detentions and ill-treatment, and a further rise in settler violence, already at record-high levels<sup>125</sup>. In parallel, high-ranking Israeli authorities have expressed that they have no intent to guarantee the Palestinian people's right to self-determination in Gaza, by stating that "[t]he State of Israel will no longer be able to accept the existence of an independent entity in Gaza"<sup>126</sup> and by calling for the re-settlement of the Strip<sup>127</sup>.

23. Israel has not only violated the Palestinian people's right to self-determination but also other rules of international law, including the *jus ad bellum*, by its *de jure* and *de facto* annexation of Palestinian territory. As developed in more detail in Chile's written submissions, and as eloquently put by former Special Rapporteur Lynk, "the inexorable Israeli occupation has become indistinguishable from annexation"<sup>128</sup>. Chile agrees with the views of most participants in these proceedings, in noting that Israel neither regards itself nor behaves as a temporary occupant of the Occupied Palestinian Territory, and that its practices and policies are inconsistent with a temporary administration of occupied territory.

24. Israel's policies and practices in the Occupied Palestinian Territory also amount to serious violations of Israel's obligations under international humanitarian law (including the prohibition of

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<sup>122</sup> X (formerly Twitter), B'Tselem Tweet (12:32 pm 19 Nov. 2023) <https://twitter.com/btselem/status/1726201658106163514>, accessed 15 Feb. 2024. See also BBC, 'Palestinians under attack as Israeli settler violence surges in the West Bank' (21 Oct. 2023) <https://www.bbc.com/news/world-middle-east-67173344>, accessed 15 Feb. 2024.

<sup>123</sup> Human Rights Watch, "While a Fire Rages in Gaza, the West Bank Smolders" (22 Nov. 2023) <https://www.hrw.org/news/2023/11/22/while-fire-rages-gaza-west-bank-smolders>, accessed 15 Feb. 2024.

<sup>124</sup> United Nations Palestine "Rise in intimidation, settler violence in the West Bank, warns OCHA" (2 Nov. 2023), <https://palestine.un.org/en/251552-rise-intimidation-settler-violence-west-bank-warns-ocha>, accessed 15 Feb. 2024.

<sup>125</sup> OHCHR, Flash Report "The human rights situation in the occupied West Bank including East Jerusalem 7 October-20 November 2023" (28 Dec. 2023) <https://www.ohchr.org/en/press-releases/2023/12/un-report-turk-warns-rapidly-deteriorating-human-rights-situation-west-bank>, accessed 15 Feb. 2024.

<sup>126</sup> Reuters, "Israeli minister calls for voluntary emigration of Gazans" (14 Nov. 2023) <https://www.reuters.com/world/middle-east/israeli-minister-calls-voluntary-emigration-gazans-2023-11-14/>, accessed 8 Feb. 2024.

<sup>127</sup> Reuters, "Israeli ministers join ultranationalist conference urging Gaza resettlement" (29 Jan. 2024) <https://www.reuters.com/world/middle-east/israeli-ministers-join-ultranationalist-conference-urging-gaza-resettlement-2024-01-29/>, accessed 8 Feb. 2024.

<sup>128</sup> HCR, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (12 Aug. 2022), UN doc. A/HRC/49/87, para. 51.

transferring civilian population into the occupied territory, which also amounts to a war crime), and under the rules of international human rights law, that forbid racial discrimination. This latter point has been repeatedly noted by authorities including the Secretary-General<sup>129</sup>, the United Nations High Commissioner for Human Rights<sup>130</sup>, Special Rapporteurs<sup>131</sup>, among others. In his 2023 Report to the Human Rights Council, the High Commissioner documented “patterns of systematic discrimination in law, policy and practice, encompassing almost every sphere of life . . . in particular, housing, land and property rights and the right to life, security of person and access to justice”<sup>132</sup>. Already in 2019, the words of Prime Minister Netanyahu were crystal clear on this point: “Israel is not a State of all its citizens . . . Israel is the nation State of the Jewish people and only it”<sup>133</sup>.

25. Before moving to question (b), I want to note one additional feature of the above-mentioned violations: Israel has incurred them in blatant disregard of repeated admonitions by the Security Council<sup>134</sup>, the General Assembly<sup>135</sup>, the Human Rights Council<sup>136</sup> and the Court itself<sup>137</sup>. Furthermore, as noted in February 2023 by the President of the Security Council, it is clear that

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<sup>129</sup> UNGA, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan”, Report of the Secretary-General (16 Sept. 2011), UN doc. A/66/364, paras. 7-33.

<sup>130</sup> HCR, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, Report of the United Nations High Commissioner for Human Rights (13 Apr. 2017), UN doc. A/HRC/34/39, para. 9; HRC, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, Report of the UN High Commissioner for Human Rights (30 Jan. 2020), UN doc. A/HRC/43/67, paras. 26-29.

<sup>131</sup> HCR, “Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled ‘Human Rights Council’”, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard (29 Jan. 2007), UN doc. A/HRC/4/17, paras. 49-50; HRC, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (12 Aug. 2022), UN doc. A/HRC/49/87, paras. 38-45; HRC, “Arbitrary deprivation of liberty in the occupied Palestinian territory: the Palestinian experience behind and beyond bars”, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese (28 Aug. 2023), UN doc. A/HRC/53/59, paras. 15, 31, 43, 57, 60.

<sup>132</sup> HCR, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, Report of the UN High Commissioner for Human Rights (15 Mar. 2023), UN doc. A/HRC/52/76, para. 2.

<sup>133</sup> *The Guardian*, “Benjamin Netanyahu says Israel is ‘not a state of all its citizens’” (10 Mar. 2019) <https://www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens>, accessed 8 Feb. 2024.

<sup>134</sup> UNSC resolutions 446 (1979), 22 Mar. 1979; 452 (1979) 20 July 1979; 465 (1980), 1 Mar. 1980; 476 (1980), f 30 June 1980; 478 (1980), 20 Aug. 1980; 2334 (2016), 23 Dec. 2016.

<sup>135</sup> UNGA resolutions 78/78, 7 Dec. 2023; 77/247, 30 Dec. 2022; 77/126, 12 Dec. 2022; 76/82, 9 Dec. 2021; 75/97, 10 Dec. 2020; 75/98, 10 Dec. 2020.

<sup>136</sup> HRC resolutions 52/35, 4 Apr. 2023; 52/34, 4 Apr. 2023; 52/3, 3 Apr. 2023; 49/29, 1 Apr. 2022; 49/28, 1 Apr. 2022; 49/4, 31 Mar. 2022; 46/26, 24 Mar. 2021; 46/25, 24 Mar. 2021; 46/3 23. Mar. 2021; 43/33, 22 June 2020; 43/32, 22 June 2020; 43/31, 22 June 2020; 43/3, 19 June 2020.

<sup>137</sup> *Wall Advisory Opinion*, p. 136.



Israel's practices actually run contrary to the possibility of reaching a two-State solution and a sustainable peace in the region<sup>138</sup>.

26. These violations, among others, detailed in Chile's written statements, trigger Israel's international responsibility. Thus, Israel is under the obligation to cease these violations, make full reparation and offer appropriate assurances and guarantees of non-repetition. These violations also impose on other States various related obligations, including the obligation to co-operate to bring this situation to an end through lawful means. Chile is precisely co-operating to bring this situation to an end by participating in these advisory proceedings, and by its joint submission with Mexico of a referral to the International Criminal Court on the situation in Palestine<sup>139</sup>.

27. Mr President, I will move to the second question posed to the Court.

### **III. CHILE'S VIEWS ON QUESTION (b)**

28. In addressing question (b), it is important to distinguish it clearly from question (a). As previously explained, question (a) is concerned with the legal consequences arising from the violation by Israel of various international law obligations in the Occupied Palestinian Territory.

29. The second question is of a different nature. Question (b), focuses on the legal status of the occupation, that is to say, on the illegality of the occupation itself. In this regard, if the Court finds that the occupation is unlawful, it necessarily follows that the occupation must come to an end.

30. The conclusion that Israel's occupation of Palestinian territory is illegal, lies on two grounds. First, there is ample evidence, as we have heard from States' oral presentations during these two days, that the occupation has become an annexation. Second, the cumulative effect of the above-mentioned systematic violations also requires the end of the occupation as the measure needed to effectively protect the rights of the Palestinians.

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<sup>138</sup> UNSC, Statement by the President of the Security Council (20 Feb. 2023), UN doc. S/PRST/2023/1.

<sup>139</sup> Ministerio de Relaciones Exteriores, "Chile y México presentan remisión de la situación de Palestina ante la Corte Penal Internacional" (18 Jan. 2024), <https://minrel.gob.cl/noticias-antiores/chile-y-mexico-presentan-remision-de-la-situacion-de-palestina-ante-la>, accessed 18 Feb. 2024.

31. With regard to the legality of an occupation, the test put forward by former Special Rapporteur Lynk is particularly useful<sup>140</sup>. According to this test, the occupier cannot annex any of the occupied territory, the occupation must be temporary, and the occupant must seek to end the occupation and return the territory as soon as reasonably possible.

32. The *de jure and de facto* annexation of the Occupied Palestinian Territory by Israel contradicts the basic principle of no acquisition of territory by force. In this regard, General Assembly resolution 2625 (XXV) establishes that “[t]he territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force”; and that “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal”.

33. The principle of no acquisition of territory by force has been applied by this Court in relation to States, with regard to mandated territories<sup>141</sup>, and in relation to peoples and their right to sovereignty and integrity of their national territory<sup>142</sup>.

34. This Court has recognized that the territorial integrity is a key element for the exercise of the right of self-determination through which peoples freely determine their political status and pursue their economic, social and cultural development<sup>143</sup>. In fact, the Court in the *Chagos* Advisory Opinion has considered there is an intrinsic link between territorial integrity and self-determination, such that “any detachment, [or annexation like in this case,] by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination”<sup>144</sup>.

35. Occupation is often the result of armed conflict and, in so far as one of the main purposes of humanitarian law is to protect the civilian population that lives in areas affected by war, humanitarian law imposes various obligations upon the occupying Power, precisely to prevent the violation of their basic rights and the conquest of their territory.

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<sup>140</sup> UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 Oct. 2017, UN doc. A/72/556, paras. 27-38. A similar test was put forward by Special Rapporteur Albanese: UNGA, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 21 Sept. 2022), UN doc. A/77/356, para. 10 (b).

<sup>141</sup> *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*.

<sup>142</sup> *Chagos* Advisory Opinion, p. 95, para. 160.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

36. In this context, Article 47 of the Fourth Geneva Convention contains an absolute prohibition of the annexation of occupied territories. In this case, the intention to annex the territory of the Palestinian people is demonstrated by the fact that the Israeli occupation has already expanded for a period of 56 years with no intention to put an end to it and with no satisfactory explanation as to the relation between occupation and the protection of its citizens. The policy and practice of settlements pursued by Israel since 1967 indicate its intention to claim that its own population has a right to stay permanently on these territories. Similarly, its exploitation of Palestinian natural resources also demonstrates Israel's attempt to exercise sovereign powers over the Occupied Palestinian Territory. As an occupying Power, Israel is obligated to act as a temporary administrator on behalf of the protected population and as such it cannot destroy or appropriate these resources. However, the fact that it has completely sequestered them<sup>145</sup> clearly shows that Israel does not conduct itself as a provisional occupying Power.

37. Indeed, by virtue of its actions, including the exploitation of natural resources, the policies of settlements, the erection of the Wall, the legalization of outposts, among others, Israel has demonstrated its intention to control indefinitely the Occupied Palestinian Territory, hence, Israel's occupation has become an annexation.

38. Mr President, Members of the Court, turning now to the cumulative effects of the violation of self-determination, humanitarian law, human rights law and international criminal law in the Occupied Palestinian Territory, Chile contends that these systematic breaches are also a basis to declare that the occupation is illegal. Again, Special Rapporteur Lynk's test is useful in this regard. According to this test<sup>146</sup>, the legality of an occupation requires the occupier to act in the best interests of the people under occupation and to administer the occupied territory in good faith, including acting in full compliance with the duties and obligations under international law.

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<sup>145</sup> HRC, "Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation", Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, 30 May 2019, A/HRC/40/73, para. 27.

<sup>146</sup> UNGA, "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967", 23 Oct. 2017, A/72/556, paras. 27-38. A similar test was put forward by Special Rapporteur Albanese: UNGA "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese", 21 Sept. 2022, A/77/356, para. 10 (b).

The PRESIDENT: May I interrupt you? You have exceeded the time allocated to Chile. May I invite you to kindly conclude in a minute or two?

Ms FUENTES TORRIJO: Mr President, if you could, the Court, give me one more minute, I can finish it.

The PRESIDENT: Indeed.

Ms FUENTES TORRIJO: Thank you.

39. It is important to clarify that not any violation of international law by an occupying Power leads to the conclusion that the occupation must come to an end. As was previously stated, occupation might be the result of an armed conflict and, in that context, it is the responsibility of the occupying Power to prevent and punish any act in breach of international law undertaken by its armed forces and persons under its control. In so far as the occupying State fulfils its duty to prevent and punish the individual perpetrators, the violations will not by themselves raise the question of the illegality of the occupation.

40. But in this case, the systematic violation of international law is part of a State policy, and then we think that the occupation has become illegal.

41. Therefore, during this illegal occupation, the obligations of the occupying Power obviously persist, despite the fact that this occupation must come to an end.

42. Mr President, Members of the Court, with this I conclude Chile's presentation. Thank you very much.

The PRESIDENT: I thank the delegation of Chile 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 Colombia, Cuba, Egypt, the United Arab Emirates and the United States of America. The sitting is adjourned.

*The Court rose at 5 p.m.*

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