

INTERNATIONAL COURT OF JUSTICE

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*Legal Consequences arising from the Policies and Practices of Israel  
in the Occupied Palestinian Territory, including East Jerusalem*

(Request for advisory opinion)

**WRITTEN STATEMENT**

**BY THE RUSSIAN FEDERATION**

24 July 2023

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## I. Introduction

1. Twenty years after the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court is again seized of a question related to the Palestinian-Israeli conflict, one of the most complex and politically sensitive issues on the international agenda for decades. These proceedings coincide with a number of other politically-loaded cases on the Court's docket. Some applications have been brought before the Court in the middle of acute political crises, such as those between Armenia and Azerbaijan and between Ukraine and the Russian Federation. Others relate to more medium- and long-term problems on which there are serious political disagreements between States, such as the several proceedings involving Iran or the request for an advisory opinion on climate change.

2. One may argue that involving the Court in such matters is a positive trend, reflecting the will of States to resolve disagreements on the basis of international law. Unfortunately, this logic is not always correct. We are witnessing attempts to instrumentalize the Court, essentially to abuse its procedures in order to reach short-term political goals.

3. The task of the Court in such cases is an extremely delicate one. It has to remain faithful to its functions and at the same time not to encourage a further spread of 'lawfare' strategies. Moreover, the Court should be mindful of the fact that, as practice shows, formal justice is not always conducive to efficient settlement of conflicts. The erosion of authority of the International Criminal Court illustrates what happens to an international judicial institution that chooses to submit to one-sided political pressure and ignores the wider conflict-settlement interests of the world community.

4. To be sure, the current case is not an example of abuse of the Court. Yet its heavy political dimensions are to be borne in mind.

5. The present request for an advisory opinion strikes at the very heart of the contradictions between Israel and Palestine. Ever since the dismantlement of the Ottoman Empire, the international community has been taking efforts in order to secure a settlement whereby the interests of the Arab and Jewish populations of the historic Palestine would be best served. A vision of two States, one Jewish and one Arab, has been guiding those efforts after the Second World War. The people of Israel have realized their right to self-determination and are happily living in their own State. The Palestinians are yet to realize this dream of several generations. To much regret, policies adopted by Israel are a major obstacle in that regard. The task of the Court is to give a legal assessment to those policies, and to do so in a way that would help, rather than further complicate, finding long-term solutions with an independent, viable and contiguous Palestine emerging as a full-fledged State living in peace with Israel. The Russian Federation is happy to contribute to this task, both within these proceedings and in its wider diplomatic efforts.

6. Russia has for a long time been a champion of Palestinian rights and Palestinian statehood, and has recognized the State of Palestine. Russia enjoys cordial relations with both Palestine and Israel. These relations are based on deep historical, cultural and people-to-people ties, not least the spiritual value of the Holy Places of Jerusalem for the Christian, Muslim and Jewish communities of Russia.

7. This ability to be on friendly terms with both sides of the protracted conflict allows Russia to play a particularly important role as a mediator of negotiations between them. In this spirit, Russia has co-sponsored, together with the United States, the 1991 Madrid Conference that paved the way for the landmark Oslo Accords, and has been, since 2002, part to the Quartet, alongside the United Nations, the United States and the European Union.

8. It is regrettable that the Quartet process has stalled in the recent years. The United States' unilateral efforts whereby issues of economy and security are

singled out and discussed without a broader strategic vision, are nothing but imitation. They essentially serve to legitimize the ‘facts on the ground’.

9. Meanwhile, the situation in Palestine continues to deteriorate. Israel is expanding its unlawful settlements in the Occupied Territory, goes on with confiscation of Palestinian land and demolition of Palestinian homes, establishes closed military areas, encourages further Judaization of East Jerusalem and a change of the status quo of the Holy Places, in particular the Al Aqsa mosque. Armed operations by Israeli security forces have resulted in 181 Palestinian deaths in 2022 and more than 150 in the first half of 2023 alone. These victims regularly include civilians, not least women and children.

10. The negative trends in Palestine are in contrast to the broader picture in the Middle East, characterized by more healthy relations between States and gradual stabilization of conflict zones. The Russian Federation is convinced that resuming direct Palestinian-Israeli negotiations on a final status settlement based on the two-State formula is long overdue. It is the only scenario that will satisfy the aspirations of Palestinians and neutralize threats to the security of Israel. It is also indispensable for stability across the Middle East.

11. The status of the Russian Federation as a mediator dictates a responsible approach to the current proceedings. This Written Contribution will therefore primarily address issues of procedure and proper administration of justice. There is no need for Russia to go into specific issues of substance that have to be considered by the Court: other participants will undoubtedly do so in detail, and more eloquently than Russia might have done. This Contribution will thus focus on the Court’s jurisdiction, discretion and, most importantly, on the Court’s role as a Principal Organ of the United Nations and its advisory opinions as a contribution to the activities of the Organization.

## II. Jurisdiction of the Court

12. It is well established in the jurisprudence of the Court that it must first satisfy itself that it has jurisdiction to give the opinion requested.<sup>1</sup> As in several previous advisory proceedings before the Court, one is to expect certain participants to challenge the Court's jurisdiction. In the past, it was challenged on account of the opinion being allegedly requested by a body not competent to do so; of the request pertaining to a question that is not a legal one; of the question raised being abstract in nature, lacking clarity, or not reflecting the real issue at stake, or else being of a political character. It is worth making several comments in this regard.

13. The present request for an advisory opinion has been made by the General Assembly, a body authorized to request such an opinion "on any legal question".<sup>2</sup> That, when it comes to the General Assembly, "*any* legal question" means precisely *any*, was confirmed by the Court on numerous occasions. Furthermore, in a number of previous advisory opinions, the Court confirmed that the limitation of powers of the General Assembly provided for in Article 12 of the Charter does not deprive the Assembly from the authority to request an advisory opinion. Importantly, this was reiterated specifically with regard to the matters relating to Israel and Palestine in the Advisory Opinion on *The Wall*.<sup>3</sup> There being no doubt that the General Assembly Resolution 77/247 was adopted in full conformity with established procedures and within the powers conferred on the Assembly by the Charter, it is clear that the opinion in the present case is being requested by a body duly authorized to do so.

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<sup>1</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion (hereinafter *Nuclear Weapons*), para. 10; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (hereinafter *The Wall*), para. 13; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion (hereinafter *Kosovo*), para. 17.

<sup>2</sup> Article 96, paragraph 1 of the UN Charter.

<sup>3</sup> *The Wall*, paras. 25-28.

14. The questions being asked of the Court are legal in nature. Indeed, the questions raised in paragraph 18 (a) and in the final passage of paragraph 18 (b) of Resolution 77/247 follow the now standard wording of requests for advisory opinions: “What are the legal consequences of … ?”. The Court has previously dealt with questions similarly framed in the *Namibia*, *The Wall* and *Chagos* Advisory Opinions and has always confirmed that the questions thus posed are “framed in terms of law”, “raise problems of international law”, and are “susceptible of a reply based on law”.

15. In the first part of paragraph 18 (b) of the Resolution, the General Assembly is asking the Court to determine how policies and practices of Israel “affect the legal status of occupation”. One has to accept that this question is open to criticism as being “abstract” or “unclear”. The Court has dealt with similar doubts notably in *The Wall*, stating that “lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation”.<sup>4</sup> There is every reason for the Court to follow this logic in the present case and to interpret the words “the legal status” taking into account the positions of all participants to the proceedings.

16. By the same token, the Court will have every reason to follow its established practice when assessing whether the political aspects of the questions posed deprive it of jurisdiction to give an advisory opinion. Indeed, the political dimension of the *Namibia*, *Kosovo*, *Chagos*, *The Wall* or *Nuclear Weapons* cases is hard to over-estimate. Yet the Court has invariably rejected the assertion that this political dimension deprives the questions of their legal character. After all, the General Assembly (and, for that matter, the Security Council) is a political organ by its very nature, and seeking an advisory opinion of the Court is inevitably an element of its political activities. To limit the Assembly’s power to request an advisory opinion to purely legal matters free from political elements (if any such matters exist in the real world) would render meaningless the logic of the Charter

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<sup>4</sup> *The Wall*, para. 38.

whereby the two principal political organs, the Assembly and the Security Council, are supported in their proceedings by the principal judicial organ, the Court. In view of the Russian Federation, for those political proceedings to be informed, where necessary, by legal input from the Court, corresponds to the purposes of the Charter and to the idea of international relations to be governed by international law.

17. The Russian Federation therefore submits that the Court undoubtedly has jurisdiction to give an advisory opinion in the present case.

### III. Discretion. Fairness of proceedings.

18. The next question that the Court is likely to consider is whether there are compelling reasons for it to decline to exercise its jurisdiction. Indeed, the Court was requested to do so on numerous occasions, and one is to expect that this will be the case in the present proceedings.

19. The Court has previously been asked to decline to exercise jurisdiction for the reason that the request for advisory opinion was essentially a contentious matter between two States; that an opinion would not assist the General Assembly in the performance of its functions or else would not serve any useful purpose; that an opinion would circumvent the principle of ‘clean hands’; that the Court did not have at its disposal the requisite facts and evidence or that the factual issues were so complex that were not suitable for determination in advisory proceedings; that the Court would be going beyond its judicial role and would be taking upon itself a law-making capacity; or that an advisory opinion would negatively impact political negotiations related to the matter raised.

20. The Court has invariably rejected these arguments. Most importantly for the present case, nearly all of these reasons were invoked by participants to *The Wall* proceedings. The Court, having examined each of these arguments, found that they did not constitute “compelling reasons” to decline to exercise jurisdiction. In

the current proceedings some of those arguments possibly have more weight than they had in previous advisory proceedings before the Court. Yet the Russian Federation does not find that they reach the threshold of becoming “compelling reasons” that would lead the Court to exercise its discretion not to give an advisory opinion.

21. That the occupation of Palestine by Israel is not purely a bilateral matter has been convincingly explained by the Court in *The Wall* Advisory Opinion. The Russian Federation fully supports the Court in giving legal weight to the position of the General Assembly on its “permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy”.<sup>5</sup>

22. The Court has never questioned the reasoning that had led the General Assembly to request an advisory opinion. “It is not for the Court itself to determine the usefulness of its response to the requesting organ”.<sup>6</sup> In the present case, one is to note that the General Assembly resolution seeking an advisory opinion, Resolution 77/247, was the latest in a series of resolutions adopted by the Assembly on a yearly basis since at least 1996.<sup>7</sup> That the Assembly, after considering an issue for nearly thirty years, has come to a conclusion that an advisory opinion from the Court would be useful for its further deliberations, is compelling evidence to the effect that the Assembly did not request the opinion by chance, by mistake or out of curiosity, but did so in full recognition that an opinion would indeed be a useful contribution to its work.

23. In *The Wall*, the Court squarely rejected the ‘clean hands’ argument, explaining that it is not relevant when it comes to an advisory opinion requested by the General Assembly. There is no reason to depart from this conclusion in the

<sup>5</sup> *The Wall*, para. 49

<sup>6</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion (hereinafter *Chagos*), para. 76.

<sup>7</sup> See General Assembly Resolutions 51/134, 52/67, 53/56, 54/79, 55/133, 56/62, 57/127, 58/99, 59/124, 60/107, 61/119, 62/109, 63/98, 64/94, 65/105, 66/79, 67/121, 68/83, 69/93, 70/90, 71/98, 72/87, 73/99, 74/89, 75/98.

present case. However, as will be explained below, the rationale behind this argument is not entirely without bearing on the advisory opinion to be delivered.

24. An alleged lack of requisite facts and evidence is clearly not a valid argument in the present case. If anything, the work of the Court will be complicated not by an alleged lack of facts but by their abundance, not least thanks to the dossier submitted to the Court by the Secretary-General. On the other hand, the question of suitability of advisory proceedings for determining complex and disputed factual issues might have a bearing on the current case.

25. The risk of the Court going beyond its judicial role is much less obvious in this case than it was in the *Nuclear Weapons* or than it will be in the forthcoming *Climate Change* proceedings. Indeed, here, the Court is primarily being called to establish “legal consequences” of (alleged) violations of international law. By definition, this means a law-applying rather than a law-making exercise. Therefore, if this argument is raised, it should be rejected by the Court, as it duly was in the *Nuclear Weapons* Advisory Opinion.<sup>8</sup>

26. Finally, and most importantly for the present proceedings, the Court will have to determine whether it should decline to exercise its jurisdiction because an advisory opinion could impede political negotiations on the Palestinian-Israeli conflict. For the moment, it is suffice to say that the Court will have good reasons to follow its decisions in the *Nuclear Weapons* and *The Wall* cases – namely, to reject the notion that this aspect should serve as a deciding factor in exercising discretion not to give an advisory opinion, but to take it into account when giving an opinion.<sup>9</sup>

27. Having thus outlined the various possible grounds for challenging the appropriateness of the Court’s complying with a request for an advisory opinion, the Russian Federation submits that the Court should not decline to exercise its jurisdiction in the present case.

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<sup>8</sup> *Nuclear Weapons*, para. 18.

<sup>9</sup> *Nuclear Weapons*, para. 17; *The Wall*, paras. 51-53.

28. Having said that, those possible grounds, and the reasons advanced to support them, form an important background against which the Court will be giving its advisory opinion. It is worth focusing on those reasons in more detail in order to ensure that the advisory opinion that will ultimately be given by the Court will correspond to the advisory nature of the exercise and will indeed serve the purposes of the General Assembly and the United Nations as a whole.

29. Thus, even if the matters raised in the current request for an advisory opinion are not purely bilateral and the proceedings are not contentious, the Court is directly being asked to ascertain violations of international law committed by one State, without that State having consented to being brought before the Court. Moreover, due to the advisory nature of the proceedings, limited in scope to the questions asked by the General Assembly, that one State is not only precluded from relying on the ‘clean hands’ argument, but is left entirely without options to bring a counterclaim or to otherwise challenge the lawfulness of behaviour of other States and non-State actors. In Russia’s opinion, this circumstance dictates extra care from the Court. The advisory opinion that it will deliver, as well as the way the proceedings will be organized, must be, and must be seen to be, fair, balanced and based indeed on law rather than other considerations. This means, for example, that:

- Israel, whose supporters will likely be outnumbered by its critics, must be given a fair amount of time during oral proceedings to defend its positions;
- The depth of investigation of facts by the Court must be commensurate to the needs of an advisory opinion, as opposed to a contentious case;
- When dealing with facts, the Court is not to be limited to those facts (and their interpretation) that are included in the reports by the United Nations Secretary-General and other United Nations bodies, but should allow Israel, and indeed all participants, to present facts in support of their views;

- The Court should address the issues of Israel's responsibility for its wrongful acts, and particularly implementation of that responsibility, only inasmuch as this is required in advisory proceedings.

#### IV. Scope of the questions put before the Court. Applicable law.

30. Although the questions asked by the General Assembly correspond to the criteria established by the Court so as to enable it to give an advisory opinion, they require further analysis in order to determine the precise scope of the opinion to be given. It is worth recalling the respective language of paragraph 18 of Resolution 77/247, including its grammatical and semantic structure:

- (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?"

31. It will be for the Court to determine whether this language should be read as a whole or whether the questions are susceptible of being dissected and considered one by one; whether it presupposes, for example, a separate analysis of legal consequences of occupation, of settlement and of annexation, and whether these are to be addressed separately from violations of the right to self-determination. Russia is interested in learning other participants' views on this matter.

32. More importantly, the wording of paragraph 18, complex as it is and raising a broad range of issues, is further complicated by the overall content of Resolution 77/247, which, apart from the right of the Palestinian people to self-determination, or occupation, settlement and annexation of the Occupied Palestinian Territories, or measures with regard to Jerusalem, speaks of a wide range of more specific Israeli laws and practices. These include: systematic violation of the human rights of the Palestinian people, excessive use of force and military operations, arbitrary imprisonment and detention, use of collective punishment, closure of areas, confiscation of land, destruction of property and infrastructure, forced displacement of civilians, demolition of homes, blockade of the Gaza Strip, obstruction of humanitarian assistance, etc.<sup>10</sup>

33. It will be for the Court to decide whether these manifestations should be included into the notion of "related discriminatory legislation and measures" for the purposes of paragraph 18 (a) of the Resolution, and therefore, whether the advisory opinion should address them.

34. A careful approach is called for in this regard. On the one hand, these specific violations may be seen as creating an important context, or having an important cumulative value, for determining the more broad issues raised before the Court. On the other hand, the Court cannot possibly engage in detailed scrutiny of each and every one of these violations (which may consist of thousands of individual episodes). This would not only mean a disproportionate workload but

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<sup>10</sup> A/RES/77/247, 28<sup>th</sup>, 31<sup>st</sup> and 38<sup>th</sup> preambular paragraphs.

may run counter to the advisory nature of these proceedings, which by definition are not, strictly speaking, about bringing Israel to responsibility for one violation or another, nor about imposing specific forms and scope of that responsibility. The Russian Federation would at this stage refrain from taking a particular stance on this matter and is looking forward to learning the approach of other participants.

35. A related question arises from the fact that, in the Resolution, as well as in numerous other resolutions, the General Assembly has already declared much of Israeli legislation and practices as being contrary to international law. The Court will therefore face the same problem as the one that arose in *The Wall* proceedings, namely whether the Court is to *assume* that those practices are against international law, and limit itself to establishing the legal consequences of such violations, or whether it should first *find* that they are unlawful (or, as the case may be, lawful).<sup>11</sup> On this particular aspect, the Russian Federation invites the Court to follow its conclusion in *The Wall* to the effect that the question “What are the legal consequences of ... ?” “necessarily encompasses an assessment of whether [the practice in question] is or is not in breach of certain rules and principles of international law”.<sup>12</sup>

36. To be sure, the Russian Federation supported the Resolution. It is, however, important, for the sake of proper administration of justice and out of more general considerations on the nature of Principal Organs of the United Nations and the distribution of competences between them, that the Court is not bound by legal pronouncements of the General Assembly as such.

37. After all, as mentioned above, the General Assembly is primarily a political body. Member States vote for its resolutions mostly for political reasons rather than out of purely legal considerations. Of course, there exist resolutions adopted by consensus or nearly so, which therefore reflect the almost unanimous opinion of the international community, including on legal matters. Other

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<sup>11</sup> *The Wall*, para. 36.

<sup>12</sup> *The Wall*, para. 39.

resolutions may reflect well established rules of international law. Yet in many cases, legal opinions reflected in a General Assembly resolution, even if adopted by a considerable majority, reflect primarily political interests of States voting in favour. There is nothing wrong if those political interests include legal positions (to be) taken on a particular matter, but the Court should treat them as such: legal positions of a number of States voting in the General Assembly and open to judicial reappraisal.

38. On the other hand, if the Court independently studies the matters raised before it and, not being bound by legal determinations made by the General Assembly, comes to similar conclusions, this will significantly strengthen the respective positions, signalling a virtual consensus in the international community as regards unlawfulness of many of the Israeli practices and the need to bring them to an end.

39. One further element worth discussing is the “chapeau” of paragraph 18 of Resolution 77/247 that requests the Court to deliver an advisory opinion “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”. This wording essentially enumerates elements of applicable law on which the Court should base its advisory opinion.

40. The Russian Federation supports the General Assembly in its choice of law applicable to the present case. However, a couple of comments are in order.

41. First, it is to be assumed that the formula “rules and principles of international law, including ... relevant resolutions of ... the General Assembly and the Human Rights Council” does not purport to put those resolutions on the level of proper sources of international law. As described above, General Assembly resolutions can only serve as qualifications of certain situations, to the extent that they reflect consensus or near consensus between States. This is all the

more so when it comes to resolutions of the Human Rights Council, a body of limited membership, restricted mandate and controversial track record.

42. Second, Russia trusts that the Court, when applying “international humanitarian law” and “international human rights law” for the purposes of giving a legal assessment to various Israeli laws and practices, will see to it that it is actually applying rules that are binding for Israel. These include rules of treaties to which Israel is party and binding customary rules. They do not include, however, ‘emerging customs’ and other ‘rules’ that may be invoked by enthusiasts of a ‘rules-based international order’ but that have not found their way into international law through proper procedures.

43. Third, it is Russia’s assumption that, when mentioning Security Council resolutions, paragraph 18 (read together with paragraph 6) refers to Resolution 2334 which, in its turn, reaffirms Resolutions 242, 338, 446, 452, 465, 476, 478, 1397, 1515, and 1850. Some of these Resolutions address specifically the problem of Israeli settlements in the Occupied Territory, while others (together with documents, decisions and processes endorsed by them) constitute the universally recognized international legal framework of the Middle East Peace Process. This framework was summarized in paragraph 9 of Resolution 2334 as follows:

“[The Security Council] *Urges* in this regard the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967; and *underscores* in this regard the importance of the ongoing efforts to advance the Arab Peace Initiative, the initiative of France for the convening of an international peace conference, the recent efforts of the Quartet, as well as the efforts of Egypt and the Russian Federation”.

Any advisory opinion that the Court will deliver will have to be in line with this framework and contribute to its implementation.

## V. Role of the Court as a Principal Organ of the United Nations

44. In previous advisory opinions given to the General Assembly, the Court has emphasized that its answer to a request for an advisory opinion “represents its participation in the activities of the Organization”.<sup>13</sup> The effect that the Court has given to this crucial finding is that an advisory opinion “in principle, should not be refused”.<sup>14</sup> On the other hand, “the discretion whether *or not* to respond to a request for an advisory opinion exists in order to protect the integrity of the Court’s judicial function as the principal judicial organ of the United Nations”.<sup>15</sup>

45. In other words, both giving an advisory opinion and refusing to give one are manifestations of the role of the Court in the United Nations system, and rightly so.

46. The Russian Federation believes, however, that the Court’s status as one of the Principal Organs of the United Nations imposes on the Court responsibilities of a wider and more nuanced nature.

47. There have been a number of attempts to persuade the Court to decline to give an opinion citing an alleged lack of understanding of whether, and how, the opinion would assist the General Assembly in the performance of its functions. The Court has invariably rejected those attempts; it has always affirmed that “it is not for the Court itself to determine the usefulness of its response to the requesting organ”<sup>16</sup> and that “the General Assembly has the right to decide for itself on the usefulness of an opinion in light of its own needs”.<sup>17</sup> In *The Wall*, the Court further established that “the Court’s task would be to determine in a comprehensive manner the legal consequences of the construction of the wall, while the General

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<sup>13</sup> *Chagos*, para. 65

<sup>14</sup> *Ibid.*

<sup>15</sup> *Chagos*, para. 64.

<sup>16</sup> *Chagos*, para. 77.

<sup>17</sup> *Nuclear Weapons*, para. 16.

Assembly – and the Security Council – may then draw conclusions from the Court’s findings”.<sup>18</sup>

48. Thus, the Court does not question the usefulness of its opinion for the General Assembly, leaving it to the Assembly alone to decide on the matter. However, the Court does not do so blindly.

49. On a number of occasions, the Court has specifically explained that the questions asked of it are indeed relevant for the Assembly’s activities. Thus, in the *Western Sahara* Advisory Opinion the Court spoke of the “legitimate interest of the General Assembly in obtaining an opinion from the Court in respect of its own future action”, namely “for the proper exercise of its functions concerning the decolonization of the territory”.<sup>19</sup> In *Nuclear Weapons*, the Court was “aware that ... its conclusions ... would have relevance for the continuing debate on the matter in the General Assembly”.<sup>20</sup> In *Kosovo*, the Court noted that “the General Assembly ha[d] taken action with regard to the situation in Kosovo” and therefore “ha[d] a legitimate interest in the answer to a question”.<sup>21</sup> In *Chagos*, the Court said that “the purpose of the request [was] for the General Assembly to receive the Court’s assistance so that it [might] be guided in the discharge of its functions relating to the decolonization of Mauritius”, as “the General Assembly [had] a long and consistent record in seeking to bring colonialism to an end”.<sup>22</sup> Crucially, in *The Wall*, the Court agreed with the General Assembly’s own description of its “permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy” and stressed that “the construction of the wall must be deemed to be directly of concern to the United Nations”.<sup>23</sup>

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<sup>18</sup> *The Wall*, para. 62.

<sup>19</sup> *Western Sahara*, Advisory Opinion, paras. 39-41.

<sup>20</sup> *Nuclear Weapons*, para.17.

<sup>21</sup> *Kosovo*, paras. 45-47.

<sup>22</sup> *Chagos*, paras. 86-87.

<sup>23</sup> *The Wall*, para. 49.

50. In brief, the Court pays attention to the motives of the General Assembly and its own role as a Principal Organ of the United Nations, and is committed to contributing to the work of the Organization.

51. This stance of the Court must be reflected not only when deciding *whether to give* an opinion, but also *when giving* an opinion. Otherwise, the Court's own reasoning on "participation in the activities of the Organization" and its readiness to follow the General Assembly's determination of its own needs would lose much of its meaning. The Court should not only give an opinion *because* it presumes it to be useful for the General Assembly, but also should give an opinion *that would indeed* be useful for it.

52. The reason why the Russian Federation is discussing this aspect in such detail lies in the special nature and the wide scope of United Nations activities with regard to Israel and Palestine. Ever since General Assembly Resolution 181, the United Nations has spared no effort to ensure the realisation of the right of the Israeli and the Palestinian peoples to self-determination and to achieve a lasting two-State solution with an independent, viable and contiguous Palestinian State peacefully co-existing with Israel. It is within the United Nations, or at least under its auspices, that the universally recognized legal basis for a Palestinian-Israeli settlement has been established. It includes Security Council Resolutions 242, 338, 1397, 1515, 1850, and has been most recently spelled out in Resolution 2334.

53. Resolution 2334 reaffirms the aim of the international community to "achiev[e], without delay, a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967".<sup>24</sup>

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<sup>24</sup> S/RES/2334 (2016), para. 9.

54. In Resolution 77/247, the General Assembly “call[ed] for the full respect of all relevant General Assembly and Security Council resolutions in this regard, including Security Council Resolution 2334”.<sup>25</sup>

55. The principles set in the Security Council Resolution 2334, and indeed in the earlier Security Council and General Assembly resolutions with regard to Israel and Palestine, thus form the universal vision of the Middle East Peace Process. They are to be shared by all organs of the United Nations, which should contribute, within their respective mandates, to their implementation.

56. For these reasons, the Russian Federation submits that the Court, while giving an advisory opinion in the present case, should be guided by the above-mentioned principles and should seek to give an opinion that would contribute to their implementation.

## VI. The advisory opinion and final status negotiations

57. A crucial element of the principles of the Middle East Peace Process is the idea of a lasting settlement to be achieved through negotiations between the parties. Thus, the preamble to the Quartet Roadmap (endorsed by Security Council Resolution 1515) speaks of a “settlement, negotiated between the parties”. In Resolution 1850, the Security Council declared “its commitment to the irreversibility of the bilateral negotiations” and, among other things, “call[ed] on all States and international organizations to contribute to an atmosphere conducive to negotiations”.<sup>26</sup> In Resolution 2334, the Security Council stressed an urgent need for significant steps “to create the conditions for successful final status negotiations and for advancing the two State solution through those negotiations and on the ground” and “call[ed] upon all parties to continue, in the interest of the

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<sup>25</sup> A/RES/77/247, para. 6

<sup>26</sup> S/RES/1850 (2004), paras. 1 and 4.

promotion of peace and security, to exert collective efforts to launch credible negotiations on all final status issues".<sup>27</sup>

58. Whether the Court should be counted among the "international organizations" and "all parties" mentioned in the Security Council Resolutions is rather an academic question that does not necessarily require a legal answer. What is clear, however, is that the Court, being a Principal Organ of the United Nations whose advisory opinion "represents its participation in the activities of the Organization", should at the very least take account of the above-mentioned decisions of the Security Council and the corresponding vision of the General Assembly.

59. It follows that the Court, whatever advisory opinion it might give, should strive to ensure that the opinion contributes to the task of creating conditions for successful final status negotiations, or, at a minimum, that the opinion does not create new obstacles to those negotiations.

60. In previous advisory proceedings, the Court was sometimes invited to use its discretion and to refuse to give an advisory opinion because it might impede the prospects of negotiations. This was notably the case in *Nuclear Weapons* and *The Wall*. In both of these cases, the Court acknowledged the existence of negotiations and their value for the international community, but did not go much further in establishing whether, and how, that universal interest in the success of negotiations affects the Court when it is giving an advisory opinion.

61. Thus, in the *Nuclear Weapons* Advisory Opinion, one may read:

"The Court is aware that, no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter. Beyond that, the effect of the opinion is a matter of appreciation. The Court has heard contrary

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<sup>27</sup> S/RES/2334 (2016), final preambular paragraph and para. 8.

positions advanced and there are no evident criteria by which it can prefer one assessment to another".<sup>28</sup>

In *The Wall*, the Court addressed the same argument in somewhat greater detail. It was "conscious that the "Roadmap", which was endorsed by the Security Council in resolution 1515 (2003) ... constitute[d] a negotiating framework for the resolution of the Israeli-Palestinian conflict". It was also "aware that the question of the wall [was] part of a greater whole, and it would take this circumstance carefully into account in any opinion it might give".<sup>29</sup>

62. It has, however, remained unclear how exactly the Court took this circumstance into account in the Advisory Opinion given. Moreover, for the Court, "[it was] not clear ... what influence the Court's opinion might have on those negotiations: participants in the present proceedings ha[d] expressed differing views in this regard".<sup>30</sup> This, with all due respect, cannot be regarded satisfactory.

63. There is every reason to expect that participants to the current proceedings will also express differing views on the potential influence of the Court's opinion on the negotiations. Some participants will likely argue that a legal pronouncement by the Court on the unlawfulness of the various Israeli practices, or indeed the occupation itself, will give a fresh impetus to the negotiations. The parties will have a stronger legal framework within which to search for a solution, whereas continued reluctance (if any) to reach agreement will now defy not only the Security Council and the General Assembly, but also the Court. Others will note that the Court's findings on the unlawfulness of certain practices may limit (legally or politically) the freedom of the parties to search for solutions on their way to a final settlement. Yet others may point to the fact that, as practice shows, parties to a conflict are sometimes less willing to negotiate if concessions are required of them as a matter of law rather than as matter of free will.

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<sup>28</sup> *Nuclear Weapons*, para. 17.

<sup>29</sup> *The Wall*, paras. 53-54.

<sup>30</sup> *The Wall*, para. 53.

64. In Russia's view, the Court should carefully take those views into account rather than dismiss them – the impression that the above-quoted passage from *The Wall* unfortunately creates.

65. Furthermore, in light of the mentioned Security Council resolutions, the Russian Federation invites the Court to be actively seeking to contribute to creating conditions for successful final status negotiations. This way, the Court would indeed live up to its responsibilities not only as the most authoritative judicial body of the international community, but also as a Principal Organ of the United Nations.

## VII. Qualification of Israel's conduct with regard to international law

66. The foregoing should not be interpreted in any way as an attempt by the Russian Federation to question Israel's responsibility for breaches of international law. Considerations of judicial propriety in particular proceedings must be distinguished from the position on substance. Russia's position on Israeli laws and practices with regard to Palestine is crystal clear and well known.

67. In particular, Israel has been persistently denying the Palestinian people its right to self-determination.

68. The right of Palestinians to self-determination through the establishment of their own State has been at the heart of efforts of the international community. That right has been recognized by the General Assembly, the Security Council and the Court.<sup>31</sup> Importantly, the international community is virtually unanimous in insisting that that right is to be exercised through independence. No issue of "internal" self-determination may arise in the case of Palestine, as the country has never been a legal part of Israel and is not seeking to secede from it. Rather, it is seeking to obtain the status to which it has been duly entitled since the

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<sup>31</sup> *The Wall*, para. 118.

discontinuation of the Mandate and the adoption of United Nations decisions on the creation of two States, one Arab and one Jewish.

69. “An end to the Israeli occupation” has been identified as a goal of the international community by legally binding resolutions of the Security Council, including Resolution 2334.

70. Israel is accordingly under an obligation to cease its violations of international law and to allow the Palestinian people to establish an independent State.

71. Another qualification of Israel’s conduct with regard to international law concerns the establishment and the expansion of settlements in the Occupied Territory.

72. The fact that those settlements have been established in breach of international law has been directly confirmed by the Court in *The Wall*.<sup>32</sup> As explained in that Advisory Opinion, the settlements are contrary to the principle of inadmissibility of acquisition of territory by force; to the provisions of the Fourth Geneva Convention prohibiting deportation of population from an occupied territory as well as transfer thereto of population of the occupying power; to the resolutions of the Security Council that have characterized that policy as changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem. That policy is aggravated by numerous accompanying violations of other rules of international humanitarian law and international human rights law, such as the right to life, to respect for private and family life, to property, to freedom of movement, to freedom of religion, to work, to health, to education, to an adequate standard of living.

73. In the years that have passed since *The Wall*, nothing has changed these legal qualifications. On the contrary, the policy of settlements has continued, with

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<sup>32</sup> *The Wall*, para. 120.

the number, the area and the population figures of those settlements constantly growing. This is happening in defiance of Security Council resolutions and the Quartet Roadmap under which Israel was at least to freeze all settlement activity. Importantly, as stressed in Resolution 2334, the settlements not only violate international humanitarian law and human rights of Palestinians, but also are “a major obstacle to the achievement of the two State solution and a just, lasting and comprehensive peace”, “dangerously imperilling the viability of the two State solution based on the 1967 lines”. They are thus also violating the right of the Palestinian people to self-determination.

74. Israeli policies in Palestine, to Russia’s deep regret, include other international law violations. Several examples have been provided in the Introduction. Many others will, no doubt, be presented to the Court by other participants to these proceedings. The Russian Federation expects that the Court will give them due consideration without prejudice to the nature of an advisory opinion.

### VIII. Legal consequences of violations

75. The starting point for the consideration of legal consequences of violations of international law by Israel is the well-established rule whereby “every internationally wrongful act of a State entails the international responsibility of that State”.<sup>33</sup> On the basis of customary international law of State responsibility and the Advisory Opinion on *The Wall*, in the present proceedings the Court will be right to conclude that Israel’s violations result in Israel’s duty to comply with the obligations it has breached, to put an end to its ongoing violations and to provide reparation for the damage caused.

76. This means, first and foremost, that Israel is under an international legal obligation to respect the right of the Palestinian people to self-determination and to

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<sup>33</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 1.

stop all settlement activity in the Occupied Territory. Israel is also under obligation to cease all other violations of international law with regard to Palestinian people.

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

78. In line with the reasoning in *The Wall*, the Court will also be right to conclude that all States and international organizations are under an obligation not to recognize the illegal situation resulting from Israeli violations, not to render aid or assistance in maintaining that situation, and to see to it that any impediment to the exercise by the Palestinian people of its right to self-determination is brought to an end.

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

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

81. Secondly, the international community has established a solid framework for the Middle East Peace Process, in which bringing an end to Israeli violations, creating guarantees of their non-repetition as well as issues of reparations are an unalienable element. The Process, of course, is not legally framed as a responsibility exercise, but its aims necessarily include aims of such an exercise. The advantage of the Peace Process is the idea of direct negotiations between Israel and Palestine that are to reach an agreement on the basis of their free will, something that, in Russia's opinion, significantly strengthens the chances that an

agreement will actually be achieved, will indeed satisfy the interests of both parties, and will be implemented in practice.

82. It follows from these considerations, as well as from the legally binding nature of the principles of the Peace Process, that the Court, through its advisory opinion, is not to create ground for a parallel process of bringing Israel to legal responsibility for its violations, but should be guided by the need to contribute to creating conditions for successful final status negotiations. The best contribution would be a confirmation by the Court that Israel and Palestine are under an obligation to resume such negotiations, while all States and international organizations are under an obligation to cooperate in order to make those negotiations possible and successful.

## IX. Conclusion

On the basis of the foregoing, the Russian Federation respectfully submits:

- 1) The Court has jurisdiction to give the advisory opinion requested by the General Assembly.
- 2) There are no compelling reasons for the Court to exercise its discretion not to accede to the request to give an advisory opinion.
- 3) The Court has to bear in mind that it is entertaining a request for a legal assessment of behaviour of a State without that State's consent. It is therefore important to create fair procedural conditions and to ensure that the advisory opinion corresponds to the advisory nature of the proceedings.
- 4) In determining the legal consequences of certain Israeli laws and practices, the Court may wish to re-interpret the questions formulated by the General Assembly. The Court is not bound by legal opinions of the General Assembly and has to independently establish whether the respective Israeli laws and practices are or are not against international law.

5) When dealing with facts, the Court is not to be limited to those facts (and their interpretation) that are included in the reports by the United Nations Secretary-General and other United Nations bodies, but should allow all interested parties to present facts in support of their views.

6) International law applicable for the purposes of the advisory opinion includes the sources of law mentioned in paragraph 18 of Resolution 77/247, it being understood that (i) General Assembly and Human Rights Council resolutions are not *per se* sources of international law, and (ii) Security Council resolutions should be read to include the universally recognized legal framework of the Middle East Peace Process endorsed by those resolutions.

7) When giving an advisory opinion, the Court should be guided by its role as a Principal Organ of the United Nations. Notably, the Court should ensure that its advisory opinion contributes to creating conditions for successful final status negotiations.

8) The continued Israeli occupation of Palestine impedes the realisation by the Palestinian people of its right to self-determination through the establishment of an independent, viable and contiguous State.

9) Position of the Court on the unlawfulness of the Israeli settlements in Palestine has been directly confirmed in the Advisory Opinion of the Court on the Wall. As explained by the Court, settlements are contrary to the principle of inadmissibility of acquisition of territory by force; to the provisions of the Fourth Geneva Convention prohibiting deportation of population from an occupied territory as well as transfer thereto of population of the occupying power; to the resolutions of the Security Council that have characterized that policy as changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem.

10) The policy of establishing Israeli settlements in Palestine is aggravated by numerous accompanying violations of other rules of international humanitarian law and international human rights law, such as the right to life, to respect for private and family life, to property, to freedom of movement, to freedom of religion, to work, to health, to education, to an adequate standard of living.

11) Israel is under obligation to terminate its breaches of international law. It must in particular cease all settlement activity and all other activities that impede reaching a final status agreement based on the right of the Palestinian people to self-determination in an independent, viable and contiguous Palestinian State with East Jerusalem as its capital.

12) Establishing a precise scope and forms of Israel's responsibility for its breaches may run counter to the advisory nature of the proceedings and to the need to create conditions for successful final status negotiations.

13) Israel and Palestine are under an obligation to conduct, in good faith and without delay, negotiations aimed at reaching a final status settlement that will result in the implementation by the Palestinian people of its right to self-determination, emergence of an independent, viable and contiguous Palestinian State, and thus bring to an end most of the ongoing violations of human rights of Palestinians.

14) All States are under obligation not to recognize the illegal situation resulting from Israel's laws and practices in violation of the right of the Palestinian people to self-determination and human rights of Palestinians.

15) All States and international organizations are under obligation to cooperate so as to contribute to creating conditions for successful final status negotiations on the basis of relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap, and an end to the Israeli occupation.



Alexander V.SHULGIN

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To the Kingdom of the Netherlands