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Analysis of the advisory opinion of the International Court of Justice (ICJ) of 19 July 2024 on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East-Jerusalem

Summary:
On 19 July 2024, the ICJ issued its advisory opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East-Jerusalem,[1] which was based on a request from the UN General Assembly. Advisory opinions of the ICJ are not legally binding, but they are highly authoritative when it comes to interpreting and applying international law that is binding on states and reflect applicable international law. Switzerland and all states are thus not directly bound by the advisory opinion, but by the international law it interprets.

In its advisory opinion, the ICJ concludes that Israel's presence is unlawful throughout the entirety of the Occupied Palestinian Territory. Israel's policies and practices violate international humanitarian law, human rights and general international law. The ICJ finds a violation of the prohibition of the acquisition of territory, as well as of the right of the Palestinian people to self-determination, which render Israel's presence in the occupied territory unlawful.

As a legal consequence, Israel is obliged to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible and to make reparation for the resulting damage to natural and legal persons. The ICJ also establishes obligations for third states and the UN: they may not recognise as legal the situation arising from Israel's unlawful presence in the Occupied Palestinian Territory and may not render aid or assistance in maintaining that situation. The determination of the modalities for ending Israel's unlawful presence in the Occupied Palestinian Territory and for the exercise of the Palestinian people's right to self-determination is the responsibility of the UN General Assembly and the UN Security Council, with UN member states obliged to cooperate.

In its written and oral submissions, Switzerland has emphasised Israel's right to security, the right of the Palestinian people to self-determination and the need for a negotiated two-state solution that ensures the security and well-being of both states. In particular, it addressed the aspects of the distinction between jus ad bellum (is the occupation legal) and jus in bello (does Israel's conduct in exercising the occupation violate international law), the relationship between international humanitarian law and human rights, and the effects of the long duration of the occupation. The line of argument of the ICJ corresponds to the points raised by Switzerland, but goes beyond that by coming to the clear conclusion that Israel's presence in the occupied territory is illegal.

The advisory opinion is conclusive and convincing and reflects the current state of international law. In areas where there had been some uncertainty in international legal doctrine and practice, the advisory opinion clarifies the situation under international law: The ICJ clearly states that the Israeli occupation is unlawful and is equally clear in its statements on Israel's obligation to make reparation for the damage and the international legal obligations of third states. Switzerland is now bound by

[1] See https://www.icj-cij.org/case/186.

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these rules of international law in its bilateral relations with Israel, as a member of the UN General Assembly and in other multilateral forums.

In its practice, Switzerland already complies with the obligation established by the ICJ for all states not to recognise as legal the unlawful presence of Israel in the Occupied Palestinian Territory.

With regard to the obligation of states, now clarified by the ICJ, not to render aid or assistance in maintaining the situation created by Israel's continued presence in the occupied territory, the advisory opinion contains further guidance on how to interpret this obligation. The ICJ specifically mentions the obligation to take steps to prevent trade and investment relations that assist in the maintenance of the illegal situation. The ICJ also addresses aspects of consular matters and interactions with Israeli authorities in matters relating to the occupied territory. For Switzerland, the question arises as to whether it is already sufficiently complying with the international legal obligation of 'non-assistance of the occupation' as defined by the ICJ advisory opinion, or whether further steps are required. This question arises in particular in the following areas:

- Trade in goods and investments;
- Export control, security services and armaments cooperation;
- Taxation agreements and administrative assistance in tax matters;
- Financial market;
- Legal and administrative assistance;
- Consular services for Swiss settlers in the occupied territory.

The analysis presents a legal perspective on whether there is a tension between the Swiss practice and the international legal obligation in these individual areas, and if so, how this can be bridged. When assessing the existing legal options, it should be borne in mind that the content of the international legal obligation will also be further defined by the practice of other states and possible clarifications and rulings of the ICJ. On the other hand, there is a risk that Switzerland would be criticised for failing to implement its international legal obligations if it adopts a purely wait-and-see approach. In this context, political considerations will ultimately also be called for on how best to take account of the international legal situation.

In the following, the Directorate of International Law (DIL) analyses the advisory opinion of the ICJ of 19 July 2024 on the topic '*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East-Jerusalem*' and presents the interpretation of international law contained therein regarding the situation in the territory occupied by Israel (sections 1-7). This is followed by an initial assessment of whether there is a tension between current Swiss practice and the international legal obligation, and if so, what steps can be taken from a legal point of view to resolve this (section 8).

1. What are advisory opinions of the ICJ and their significance

The UN General Assembly, the UN Security Council and other UN bodies and specialised agencies may request an advisory opinion from the ICJ on unresolved legal issues. The ICJ clarifies the application and interpretation of international law with regard to specific international legal issues by means of an advisory opinion. Although the ICJ's advisory opinions are not legally binding, they have a high degree of legal authority and play a central role in clarifying, interpreting and further developing international law that is binding on states. In principle, the ICJ's advisory opinions reflect the applicable international law by which states are bound. Switzerland and all states are thus not directly bound by the advisory opinion, but by the international law it interprets. They thus have a significant influence on international relations and state practice.[2]

During the advisory opinion procedure, interested states and international organisations can participate by submitting their views on the legal question at hand to the ICJ. In this way, the ICJ obtains an overview of their *opiniones iuris*.

[2] On the significance of an advisory opinion of the ICJ, see also https://www.eda.admin.ch/eda/en/fdfa/fdfa/organisation-fdfa/directorates-divisions/directorate-international-law.html.

2. Background of the advisory opinion (request UNGA)

The advisory opinion was requested by a resolution of the UN General Assembly, which was adopted on 30 December 2022 by 87 votes in favour, 26 votes against and 53 abstentions (UNGA Res. 77/247)[3]. The questions submitted to the Court are the following:

> *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?*
>
> *How do the policies and practices of Israel referred to question (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?*

As legal sources to be considered when answering the questions, rules and principles of international law are mentioned, in particular the UN Charter, international humanitarian law, international human rights law, relevant resolutions of the UN Security Council, the UN General Assembly and the Human Rights Council, as well as the ICJ *Wall* advisory opinion from 2004. The ICJ explicitly limits its analysis to events prior to 7 October 2023.

Switzerland participates in advisory proceedings when the advisory opinion affects its interests, when it can make a particular contribution from a legal perspective and when its submission can support decision-making in its interest. Switzerland's position on the Middle East conflict has always been based on international law and the internationally agreed parameters, including the resolutions of the UN Security Council. Switzerland has a strong interest in the correct interpretation of and compliance with the UN Charter and international humanitarian law. Accordingly, Switzerland actively participated in the present advisory procedure and submitted a written submission[4] on 17 July 2023 and an oral submission[5] on 23 February 2024. It pointed out Israel's right to security, the right of the Palestinian people to self-determination and the need for a negotiated peaceful two-state solution that ensures the security of both states. In its legal remarks, it emphasised that the legality of the occupation must be judged according to general international law (*jus ad bellum*) and not on the basis of international humanitarian law (*jus in bello*) or the duration of the occupation. It emphasised that international humanitarian law and human rights apply in parallel, complement and support each other, and that when an occupation has lasted a long time, human rights must not only be protected but also actively promoted. To this end, it is also necessary to implement measures that change the *status quo* in the interest of the population. The line of argument of the ICJ corresponds almost entirely with the points raised by Switzerland but goes further in that it clearly concludes that Israel's presence in the occupied territory is unlawful, establishes Israel's obligation to make reparation for the damage and comments on the third-party effect for other countries.

3. Competence of the ICJ to give the advisory opinion

The ICJ considers itself competent to render the advisory opinion (paras. 23-29). It also rejects several arguments put forward by states that the Court should exercise its discretion and decline to give the advisory opinion. Particularly noteworthy in this regard are its arguments that this is not a bilateral dispute (paras. 33-35), that the advisory opinion would not prevent a possible negotiated solution (paras. 38-40), and that the ICJ has sufficient information on the matter (paras. 44-47).

4. General assessment

The arguments in the submitted advisory opinion are convincing and conclusive. The ICJ carefully analyses the questions put to it, addresses the issues submitted to it and bases its answers on a range

[3] Switzerland abstained from voting on the resolution due to insufficient unity on the subject of the resolution.

[4] See: https://www.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-04-00-fr.pdf.

[5] See: https://www.icj-cij.org/sites/default/files/case-related/186/186-20240223-ora-02-00-bi.pdf.

of sources. It assesses the probative value of the sources with regard to their credibility and independence (para. 76).

The ICJ begins by providing an overview of the general historical context (para. 51-71), categorises the questions put to it (para. 72-83) and then interprets all relevant legal sources. The conclusions that the ICJ draws from its analysis of the questions put to it are well-founded from the perspective of international law.

In addition to the advisory opinion, the ICJ judges have issued fifteen separate opinions (7 declarations, 5 separate opinions, 1 dissenting opinion, 1 joint opinion, 1 joint declaration; all judges except judge Bhandari have written a separate opinion). The possibility of submitting separate opinions is provided for in the ICJ Rules of Court[6] and is actively utilised. In fact, advisory opinions adopted unanimously are the exception. Separate opinions can be used, among other things, to present one's own views, to explain voting behaviour and to present dissenting or supporting opinions. In the present advisory opinion, for example, the judges comment on the distinction between *jus ad bellum* and *jus in bello*, regret that the Court did not take greater account of Israel's legitimate security concerns when formulating the legal consequences, comment on the illegality of the occupation, the recognition of the statehood of Palestine, and issues of racial discrimination and genocide. It is interesting to note that both the US and German judges support all the conclusions. The fact that the conclusions were adopted by such a clear majority underlines their weight and authority.

The DIL is of the opinion that the advisory opinion reflects the current state of international law and that Switzerland must fulfil the international legal obligations described in it.

5. Applicable law

The ICJ first clarifies the applicable law. This includes international humanitarian law, human rights and provisions of general international law, as explained in detail below.

- **International humanitarian law (IHL)**

The ICJ confirms the applicability of IHL, in particular the Fourth Geneva Convention, customary IHL, and sections II and III of the Hague Regulations (hereinafter 'HR'), which are also customary in nature. It confirms the applicability of the law of occupation to the whole of the Occupied Palestinian Territory (OPT), i.e., Gaza, the West Bank and East Jerusalem, since all three are under Israeli occupation. With regard to Gaza in particular, despite the fact that Israel ended its military presence there in 2005, the ICJ considers that Israel has retained the ability to exercise certain essential prerogatives there, and that this has been even truer since 7 October 2023 (para. 93). It states that Israel's obligations under the law of occupation are proportionate to the degree of effective control over Gaza (para. 94).

The Court also reiterates that certain rules of the Fourth Geneva Convention (hereinafter 'GC IV') are *erga omnes*[7] (para. 96), a point of particular importance in terms of legal consequences for third States (see para. 7.2).

- **International human rights law**

The ICJ finds that both IHL and human rights apply in situations of armed conflict, including occupation, and that the obligations under each are complementary (para. 99). In doing so, the ICJ clarifies the ambiguous jurisprudence introduced by its *Wall* advisory opinion, which confirmed the concurrent applicability of both IHL and human rights law but considered the former as a *lex specialis* (para. 106 of the Wall advisory opinion). This clarification supports Switzerland's argument in its oral submission that the ICJ's classification of IHL as a *lex specialis* should not be understood to mean that IHL takes precedence over human rights, but rather that IHL and human rights apply simultaneously and mutually complement, support and strengthen each other. The Court therefore considers the two UN Covenants,

[6] Art. 107 para. 3 Rules of Court.

[7] These are rules concerning obligations whose observance concerns all States: given the importance of the rights in question, all States are considered to have a legal interest in the protection of those rights.

the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), as well as the Convention on the Elimination of All Forms of Racial Discrimination, to be binding on Israel in the Occupied Palestinian Territory.

- **General international law**

With regard to general international law, the ICJ cites two applicable norms enshrined in the UN Charter that also reflect customary international law. These are the prohibition of the acquisition of territory by threat or use of force and the right of peoples to self-determination (para. 95).

- **Oslo Accords**

With regard to the Oslo Accords, the Court emphasised that they cannot be interpreted as weakening Israel's obligations under international law (para. 102). By mentioning the Oslo Accords, the ICJ also confirmed the continued validity and binding nature of the Accords.

6. Overview of the violations of international law established by the ICJ

In its advisory opinion, the ICJ finds that Israel has violated various provisions of international law in the Occupied Palestinian Territory. These will be addressed individually below, divided into international humanitarian law, human rights and general international law.

- **Examination of Israel’s policies and practices in the OPT with regard to IHL**

The ICJ affirms that the examination of the relationship between Israel, as occupying power, and the protected population of the occupied territory is governed by IHL, and more particularly the law of occupation (para. 104). In this context, the ICJ recalls some fundamental elements of the law of occupation, which are particularly relevant to a situation of prolonged occupation: (1) the powers and responsibilities held by the occupying power in respect of the occupied territory derive from its effective power over that territory (para. 105); (2) the occupying power has a fundamental duty to administer the territory it occupies in the interests of the local population (para. 105); (3) occupation is a temporary situation responding to military necessity and cannot give rise to a transfer of title of sovereignty to the occupying power (paras 105, 108); (4) the law of occupation is based on the principle that the occupying power must preserve the *status quo ante* in the occupied territory (para. 159); (5) Israel cannot invoke the establishment of settlements to justify taking measures that are in themselves contrary to international law (e.g., the application of national legislation in OPT or the restriction of Palestinian rights for security reasons) (paras. 139 and 205).

The ICJ then examines Israel's settlement policy in the OPT in the light of the various acts that constitute it, while qualifying them in relation to IHL: (1) transfer of the civilian population (contrary to art. 49 (6) GC IV); (2) confiscation or requisition of land (contrary to arts. 46, 52 and 55 HR); (3) exploitation of natural resources (contrary to arts. 55 HR and 55 GC IV); (4) extension of Israeli legislation (contrary to arts. 43 HR and 64 GC IV); (5) forced displacement of the Palestinian population (contrary to art. 49 (1) GC IV); (6) violence against Palestinians (contrary to art. 46 HR, art. 27 GC IV and arts. 6 and 7 ICCPR). Referring to its 2004 *Wall* advisory opinion, the ICJ concludes that the settlements and their associated regime are established and maintained in breach of international law (para. 155).

- **Review of Israel’s policies and practices in the OPT in terms of human rights**

Regarding human rights, the ICJ first notes that Israel is a party to several instruments that contain human rights obligations, notably the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the two UN Covenants (ICESCR and ICCPR) (para. 97).

The Court has confirmed that the protection afforded by human rights conventions does not cease in the event of an armed conflict or occupation (ICJ *Wall* advisory opinion, 2004, para. 106).

The ICJ also recalls that international human rights treaties apply to acts performed by a State in the exercise of its jurisdiction *outside its own territory*, in particular in occupied territory. It expressly states

that Israel remains bound by the two UN Covenants and the CERD with respect to its conduct in the Occupied Palestinian Territory (para. 100).

Regarding the question of the adoption of discriminatory laws and measures by Israel and the resulting consequences, the ICJ, in application of the applicable relevant human rights guarantees (in particular art. 2 para. 1 and art. 26 ICCPR, art. 2 para. 2 and art. 10 ICESCR and art. 1 para. 1 and 3 CERD), that a wide range of laws and measures adopted by Israel in its capacity as occupying power treat Palestinian and Jewish persons differently. This discrimination cannot be justified by reasonable and objective criteria or a legitimate public objective (see paras. 196 [regarding East Jerusalem residence policy], 205 [regarding restrictions on freedom of movement in the occupied territory], 213 [regarding the punitive demolition of homes/property] and 222 [regarding zoning and non-issuance of building permits]). Accordingly, the ICJ finds that the regime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory amounts to systematic discrimination on, inter alia, grounds of race, religion or ethnic origin (para. 223).

Furthermore, the ICJ finds that Israel's legislation and measures impose and serve to maintain almost complete segregation between the settler communities and the Palestinian communities in the West Bank and East Jerusalem. For this reason, the ICJ considers that the Israeli law and measures constitute a *violation of article 3 of the CERD* (para. 229). In doing so, the ICJ condemns the discrimination against the Palestinian population as a violation of human rights, but does not explicitly classify it as 'apartheid'. Rather, it leaves open whether it refers to the prohibition of racial segregation or to apartheid.

- **Examination of Israel's policies and practices in the OPT under general international law**

Recalling the temporary nature of occupation and starting from the premise that "conduct by the occupying Power that displays an intent to exercise permanent control over the occupied territory may indicate an act of annexation", the ICJ then examines "whether, through its conduct, Israel establishes its permanent control over the Occupied Palestinian Territory, in a manner that would amount to annexation" (para. 161). The acts identified by the ICJ as leading to such a conclusion are: (1) policies and practices in relation to East Jerusalem (paras. 163-165); (2) establishment and expansion of settlements in Area C, and construction of related infrastructure (including the wall) (paras. 166-172); (3) application of Israeli domestic law to the OPT (paras. 163, 170); (4) establishment of a coercive environment (denial of permits, demolitions, forcible transfers, etc.) (paras. 145, 147, 154, 169); and (5) exploitation of natural resources for the benefit of the settlements and to the detriment of the Palestinian population (para. 169).

The ICJ concludes that these measures reinforce Israel's control over the OPT and that "[t]hese policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground" (para. 173). It finds that Israeli policies and practices have brought about changes in the physical character, legal status, demographic composition and territorial integrity of the OPT which "manifest an intention to create a permanent and irreversible Israeli presence in the Occupied Palestinian Territory" (para. 252), while describing these practices as "Israel's assertion of sovereignty" over the OPT (para. 254).

On this basis, the ICJ then analyses whether the policies and practices examined affect the legal status of the occupation. In this context, the ICJ repeatedly refers to the need to distinguish between IHL (*jus in bello*) and, in particular, the law of the Charter of the United Nations (*jus ad bellum*). It then affirms that IHL applies regardless of the reasons that led to the occupation, the duration of the occupation, or the status or lawfulness of the occupation (paras. 105, 109 and 251). In addition, the ICJ recalls that IHL does not set a time limit that can change the legal status of an occupation and that the lawfulness of the presence of the occupying power in the occupied territory is assessed according to other rules. Switzerland has taken the same position.

In application of general international law, the ICJ finds a violation of two *erga omnes* norms, the violation of which may be invoked by all States. These are the prohibition on the acquisition of territory by force and the right to self-determination.

The ICJ concludes that Israeli policies, practices and other measures amount to the annexation of large parts of the Occupied Palestinian Territory (paras. 173, 179). This constitutes a violation of the prohibition on the acquisition of territory by force, which the ICJ deduces from the prohibition on the threat or use of force (art. 2(4) of the UN Charter).

With regard to the right to self-determination, the ICJ has once again recognised that the Palestinian people dispose of this right (para. 230). It considers that, in the case of foreign occupation, this is a peremptory norm of international law and concludes that Israeli policies and practices in the OPT impede the Palestinian people's right to self-determination, and that the prolonged nature of the unlawful policies and practices aggravates the violation of that right (paras. 233, 242-243). The Palestinian people must, throughout the OPT, be free to determine their political status and freely pursue their economic, social and cultural development (paras. 237, 242-243).

The violation of the prohibition on the acquisition of territory by force and of the right of the Palestinian people to self-determination renders, according to the ICJ, Israel's presence in the Occupied Palestinian Territory unlawful (para. 261). This conclusion of the ICJ on the illegality of Israel's continued presence throughout the Occupied Palestinian Territory is new and has important consequences in international law (see Chapter 7 Legal consequences).

7. Legal consequences

The ICJ has established the following legal consequences for Israel, all third-party states such as Switzerland and the UN:

7.1 For Israel

With regard to Israel, the ICJ states that the unlawful presence in the Occupied Palestinian Territory, caused by the violation of the prohibition of the acquisition of territory by force and of the right to self-determination, constitutes a continuing international law violation that results in Israel's international responsibility (para. 267). Consequently, Israel has the duty to put an end to its unlawful presence in the Occupied Palestinian Territory as soon as possible (para. 267). The policies and practices identified by the Court as unlawful in the advisory opinion must be brought to an end. Specifically, the ICJ mentions Israel's obligation to cease all settlement activities, to repeal all legislation and measures creating or maintaining the unlawful situation, including discriminatory ones, and to rescind all measures that change the demographic composition of any parts of the Occupied Palestinian Territory (para. 268).

The ICJ further states that Israel is obliged to provide full reparation for the damage incurred. The reparation includes restitution, compensation or satisfaction and must be provided to all natural or legal persons concerned (para. 269). Thus, land, immovable property and assets seized from natural or legal persons must be returned, as must cultural property and assets, including archives and documents, taken from Palestinians and their institutions. Furthermore, all settlers must be evacuated from the existing colonies and the wall in the Occupied Palestinian Territory must be dismantled. Moreover, Israel is obliged to allow all Palestinians who have been displaced since 1967 as a result of the occupation to return (para. 270). If these restitution measures prove materially impossible, Israel must instead provide comprehensive compensation in accordance with the applicable rules of international law (para. 271).

Notwithstanding the above, Israel remains bound by its international legal obligations and must end the violations of these obligations. In particular, Israel must continue to fulfil its obligations under international humanitarian and human rights law, as well as respect the right of self-determination of the Palestinian people (para. 272).

The obligation to make reparation as set out by the ICJ is a logical consequence of the finding that an act has been committed in violation of international law and of the responsibility under international law that arises from this. It is set out in the draft articles of the International Law Commission, which essentially constitute customary international law and stipulate that the responsible state is obliged to make full reparation for the damage caused by the act contrary to international law.

7.2 For Switzerland

The ICJ finds that Israel's violations of international law affect several *erga omnes* obligations, including the right to self-determination of the Palestinian people, the prohibition of the acquisition of territory by force, as well as certain obligations under international humanitarian law and human rights (para. 274). Violations of these obligations also have consequences for third states, including Switzerland. These consequences arise in its bilateral relations with Israel and in the context of its UN membership.

i. Switzerland in the UNGA and other multilateral forums

The consequences for third states at the multilateral level, as set out by the ICJ, include an obligation to cooperate with the UN, which is now tasked with determining the modalities for ending Israel's illegal presence in the Occupied Palestinian Territory and realising the exercise of the right of self-determination of the Palestinian people (para. 275).

For Switzerland, this means that it must advocate for the implementation of the advisory opinion in the UN General Assembly and in other multilateral forums. In the opinion of the DIL, Switzerland should work in these bodies towards an implementation that is based on the advisory opinion and thus on applicable international law, and towards a two-state solution. In particular, this means that Switzerland should support resolutions that confirm the conclusions of the ICJ advisory opinion. Switzerland should also participate in the development of modalities for ending Israel's unlawful presence in the Occupied Palestinian Territory. However, the advisory opinion does not prescribe what these modalities should specifically look like. UN General Assembly resolution A/RES/ES-10/24 of 18 September 2024 confirms and enshrines the international legal obligations as set out in the advisory opinion. It correctly reflects the contents of the advisory opinion and provides further details within the permissible framework. However, the resolution goes beyond a narrow interpretation of the advisory opinion on two points. It demands the termination of Israel's unlawful presence in the Occupied Palestinian Territory within 12 months and calls on third countries to introduce sanctions against natural and legal persons involved in maintaining the unlawful presence, including in connection with settler violence. Switzerland therefore abstained during the vote on the resolution.

The extent to which full Palestinian membership of the UN would constitute a modality for realising the exercise of the right to self-determination of the Palestinian people remains to be further examined.

ii. Bilateral relations

The consequences for third states in their bilateral relations with Israel, as set out by the ICJ, include two obligations in particular: firstly, the obligation not to recognise as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. Second, the obligation not to render aid or assistance in maintaining the situation created by the continued presence Israel in the Occupied Palestinian Territory (para. 285(7)). The legal consequences do not include an obligation to recognise Palestine as a state on a bilateral basis.

(a) Obligation not to recognise Israel's illegal presence in the occupied territory

In connection with the obligation not to recognise Israel's illegal presence in the occupied territory, third countries may not, according to the ICJ, recognise any changes in the physical character, demographic composition, institutional structure or status of the territory occupied by Israel in 1967, unless these have been agreed by the parties through negotiations. All states must distinguish between Israeli sovereign territory and the territory occupied since 1967 when dealing with Israel. In particular, they must not enter into any contractual relationship with Israel in which Israel acts on behalf of the occupied territory in the areas concerned. Finally, when establishing and maintaining diplomatic missions in Israel, they must refrain from recognising Israel's illegal presence in the Occupied Palestinian Territory in any way (para. 278).

The above commitments are largely in line with Switzerland's previous position vis-à-vis Israel. In particular, Switzerland recognises Israel only within its 1967 borders. This means that Switzerland does not recognise any changes to the 1967 borders unless they are the result of negotiations between the parties. No treaties concerning territory outside the 1967 Israeli borders are concluded with Israel, nor are existing bilateral agreements applied outside these borders. At the diplomatic level, Switzerland does not maintain relations with Israel outside the 1967 borders, in particular with regard to the establishment of diplomatic representations, but also with regard to visits to occupied territory accompanied by Israeli authorities. Furthermore, Switzerland recognises the right of self-determination of the Palestinian people, including the right to establish a state within the 1967 borders, with East Jerusalem as its capital.

(b) Obligation not to provide aid or assistance to maintain the situation created by Israel's continued presence in the occupied territory

Regarding the obligation not to provide aid or assistance in maintaining the situation created by Israel's continued presence in the occupied territory, the ICJ explicitly states that countries must not enter into economic or trade relations with Israel in respect of the Occupied Palestinian Territory or any part of it, if such relations could reinforce the illegal presence of Israel in that territory. They must also take measures to prevent trade or investment that would serve to maintain the situation in the Occupied Palestinian Territory created by Israel's continued presence (para. 278).

Switzerland has not signed any treaties with Israel concerning territories outside Israel's 1967 borders and thus maintains no economic or trade relations with Israel in relation to the Occupied Palestinian Territory. Furthermore, Switzerland actively does not support any economic and financial activities related to the Israeli illegal settlements in the occupied territory. It also discourages natural and legal persons from supporting Israeli settlement activities in any form. And already today, the Federal Council expects all companies based in Switzerland to act responsibly and with integrity in terms of respecting human rights and environmental and social standards. The question of whether Switzerland is sufficiently fulfilling its obligation not to provide assistance to the maintenance of the situation created by Israel's presence in the occupied territory will be examined in more detail in Chapter 8.

(c) Obligation to put an end to obstacles to the Palestinian people's right to self-determination

In its deliberations, the ICJ finally requires all states to ensure that any obstacle to the exercise of the right to self-determination of the Palestinian people created by Israel's illegal presence in the Occupied Palestinian Territory is brought to an end (para. 279). This obligation ('ensure' in English, 'doivent veiller' in French) cannot be understood as an obligation to achieve a result, but only as an obligation to work towards ending Israeli policies and practices in the Occupied Palestinian Territory that violate the right to self-determination. As this obligation relates to obstacles to Palestinian self-determination arising from Israel's illegal presence in the occupied territory, and not to the relationship with Palestine, it cannot be inferred from it that there is an obligation to recognise Palestine as a state.

Switzerland recognises the right of the Palestinian people to self-determination and opposes measures that obstruct this, both bilaterally and within the framework of international bodies. In particular, it regularly demarches Israel and tries, within the scope of its possibilities, to persuade Israel not to create conditions that impede the Palestinian people's right to self-determination. The fact that this obligation has not been included in the conclusions of the advisory opinion contained in para. 285 is an indication that the ICJ is not calling for a change in current state practice here.

(d) Obligation to ensure compliance with the Fourth Geneva Convention

Finally, all States Parties to the Fourth Geneva Convention must ensure Israel's compliance with the Convention (para. 279). The ICJ uses slightly different wording than the common article 1 of the Geneva Conventions (ICJ: 'ensure compliance'; common article 1 of the Geneva Conventions: 'ensure respect'). However, this obligation cannot be understood as an obligation to achieve a result, but as an obligation to enforce compliance with the Fourth Geneva Convention.

Switzerland regularly calls on Israel to comply with its obligations under international humanitarian law in multilateral forums or through bilateral demarches. Furthermore, the Geneva Conventions provide for the exercise of universal jurisdiction for violations of these conventions that are categorised as 'serious offences'. Switzerland recognises and applies this principle, especially for particularly serious crimes that are proscribed by the international community (art. 7 para. 2 lit. b and art. 264m Swiss Criminal Code). Since the obligation to work for compliance with the Fourth Geneva Convention was not included in the conclusions of the ICJ advisory opinion contained in paragraph 285, it can be assumed that the ICJ does not see any need for action beyond that required by the Geneva Conventions. The question of whether Switzerland can and should do more to ensure compliance with IHL would have to be examined separately and in more detail.

8. Legal assessment of Swiss practice to date

In its advisory opinion, the ICJ explicitly emphasises trade and investment with regard to the international legal obligation to refrain from assisting in the maintenance of Israel's presence in the occupied territory. Other areas are also particularly relevant to the general obligation, as described below:

- **Trade in goods and investments**

Trade with the illegal settlements, namely the sale of products manufactured in Israeli settlements in the occupied territory, supports the economic situation of the settlements and their illegal presence in the occupied territory. Investments in Israeli settlements also support their illegal presence in the occupied territory.

Current situation: As stated above, Switzerland actively does not support any economic activities related to the illegal Israeli settlements in the occupied territory and advises natural and legal persons not to support Israeli settlement activities.

The EFTA States' Free Trade Agreement (FTA) with Israel applies to Israeli territory within the 1967 borders. This is in line with applicable international law. Goods originating from outside these borders cannot benefit from the preferential tariff treatment under the FTA. According to an administrative arrangement concluded in 2005 between the EFTA States and Israel, the preferential proofs of origin from Israel must also include a location indicating where the goods acquired the originating status. This allows the customs authorities to refuse the preferential assessment if the location indicates that the goods originated in the Occupied Palestinian Territory. There is no way to definitively determine the origin of products imported without tariff preferences.

Regardless of the customs treatment, the question of labelling arises for products from Israel. For certain products, such as fruit or vegetables, that originate from Israel within the 1967 borders, the labelling indicates 'Israel'. Corresponding products from the occupied territory are labelled with 'West Bank', 'East Jerusalem' or 'Gaza Strip'. However, these designations do not indicate whether the products were produced in settlements or by Palestinians. It is, however, possible to voluntarily highlight the special characteristics of a product. For example, it can be indicated that an olive oil from the West Bank was produced by Palestinian producers. In its communication 'Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967' (2015/C 375/05) of 12 November 2015[8], the European Commission stated that the labelling in the EU should contain more precise information: e.g., "Product from the West Bank (Israeli settlement)" or "Product from the West Bank (Palestinian product)". The 2015 communication did not create any new legislation, but explained how the Commission understands the relevant EU law on the designation of origin of goods. In a judgment of 12 November 2019 related to the question of the designation of origin of foodstuffs, the European Court of Justice, in application of the relevant EU legal bases, stated that "foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those

[8] See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015XC1112(01).

foodstuffs come from a locality or a group of localities constituting an Israeli settlement within that territory, the indication of that provenance".[9]
Inspections by the Federal Food Safety and Veterinary Office (FSVO) and feedback from consumers show that Swiss wholesalers do not import food from these settlements or voluntarily add a corresponding disclaimer.

Evaluation:
The ICJ states in its advisory opinion that states should take steps to prevent trade that assists in the maintenance of the illegal situation in the occupied territory. From a legal point of view, the following options are available for complying with this obligation and taking steps to prevent trade with the illegal settlements:
- A ban on the import of goods from Israeli settlements in the occupied territory: This measure would be the clearest way to fully meet the international legal obligation. Ireland, for example, has indicated that it considers such a step desirable. However, based on the information available to date, it is unlikely that a majority of states – and presumably not the EU either – will impose such a ban.
- Labelling requirement for imported goods from illegal settlements: With a regulation analogous to that of the European Union, consumers would be informed transparently about the origin of the goods, whether they come from Israeli settlements in the occupied territory. Non-EU countries such as Norway also have such a labelling practice. The introduction of a clearer regulation would contribute to transparent consumer information.
- Contacting and informing retailers: In principle, retailers are aware of the issue. According to the current state of knowledge, the major distributors in Switzerland either do not import goods from the settlements or they declare the origin of the goods in line with EU regulations. Retailers could be made aware of the situation under international law as clarified by the ICJ, and the possibility of voluntarily declaring the origin of the products could be publicised. Switzerland would also be taking a first step towards implementing the international legal obligation.

The ICJ does not directly require a prohibition of trade that supports the maintenance of the unlawful situation created by Israel in the occupied territory, but rather steps to prevent such trade. However, these steps must be sufficiently robust to effectively contribute to the prevention of the problematic trade (in the French version, the somewhat stronger 'prendre mesures' is used). At the same time, they must also be feasible. It is also a political judgement as to which measures are appropriate to fulfil this obligation. In addition to the bilateral trade in goods concerned (quantity structure), the legal and practical issues of an isolated Swiss approach to trade restrictions must also be examined in more detail. However, if it is too hesitant in its approach, there is a risk that Switzerland will be accused of failing to implement its international legal obligations as clarified by the ICJ advisory opinion.[10] Whether this ultimately constitutes a violation of international law also depends on the practice of other states and possible further clarifications and rulings by the ICJ.

With regard to investments in settlements, the ICJ explicitly states, by analogy with the situation regarding the trade in goods, that third states have the obligation to take steps to prevent investments that assist in the maintenance of the illegal situation created by Israel in the occupied territory. Again, the most comprehensive measure to implement this obligation would be a corresponding ban. Based on the current state of information, other states and in particular the EU are not likely to issue such measures. As with the trade in goods, it should therefore be examined whether limited steps, including raising awareness among the relevant private actors, would be useful in order to take appropriate account of the situation under international law, including the relevant state practice.

[9] See: Judgment of the Grand Chamber of the Court of the European Union of 12 November 2019 in *Case C-363/18*, para. 58.
[10] Switzerland too may face the risk of legal action before the ICJ in this context. In the opinion of the DIL, this risk is rather small in the present case. The jurisdiction of the ICJ for Switzerland arises from the general declaration under art. 36 para. 2 of the ICJ Statute of 1948. This declaration applies to the 73 other states that have made an analogous declaration. The jurisdiction of the ICJ for complaints against Switzerland can also arise in relation to the other 120 or so states from a specific bilateral or multilateral treaty clause.

- **Export control, security services and armaments cooperation**

In particular, the delivery of weapons and dual-use goods used by Israel or Israeli settlers in the occupied territory can – depending on the relevance of the goods – support the maintenance of the situation created by the continued presence of Israel in the Occupied Palestinian Territory.

Current situation: Based on the War Materiel Act (WMA), no war materiel is exported to Israel. Exceptions are temporary exports, i.e., for example goods that originally come from Israel, are used in Switzerland and are temporarily exported to Israel for repair. Goods under the Goods Control Act (GCA), i.e., dual-use goods and special military goods, are approved for Israel according to current practice in accordance with the criteria of the goods control legislation, provided that the legally prescribed refusal criteria are not considered to be met. The goods control legislation is based on internationally harmonised criteria and goods control lists. In certain cases, a refusal under the Goods Control Ordinance could be issued if the item for which an export licence has been applied for contributes to the conventional armament of a state to an extent that leads to increased regional tension or instability or intensifies an armed conflict, or if other states have already rejected such an application or if the export would violate an international agreement. In exceptional cases, the Federal Council may invoke article 184, paragraph 3 of the Federal Constitution if this is necessary to safeguard the country's interests. In the last five years, dual-use goods worth around CHF 55 million and specific military goods worth around CHF 1 million have been exported to Israel.

The Federal Act on Private Security Services Provided Abroad (PSSA) stipulates, that applications for such services are to be rejected if they are contrary to compliance with international law, in particular human rights and international humanitarian law.

In the area of armaments cooperation, armasuisse only works with suppliers within the 1967 borders.

Evaluation: The ICJ also emphasised the importance of domestic procedures in its decision of 30 April 2024 regarding Germany when deciding on export applications to Israel.[11] Switzerland has such procedures for the export of both war materiel and special military goods and dual-use goods. In the area of war materiel, Switzerland's current practice is in line with international law, as, unlike other countries, it generally prohibits the export of war materiel to Israel if the materiel is to remain in Israel permanently. There may be risks under international law in the area of dual-use goods and specific military goods. The authorisation process under the Goods Control Act allows for considerations regarding international legal obligations in connection with the ICJ advisory opinion. Accordingly, it is ensured that international legal obligations and risks are included in the examination of individual cases when dual-use goods and specific military goods are exported to Israel, within the framework of the existing procedures. Depending on the relevance of the goods, these are covered by the obligation not to support the maintenance of Israel's presence in the occupied territory, e.g., by Israeli security forces using goods exported from Switzerland to maintain their presence in the occupied territory. In this context, it will also be important to take into account the practice of other states and possible clarifications and rulings of the ICJ. Taking account of the international legal situation in this way is crucial to Switzerland's compliance with its international legal obligations. There is no further need for action.

- **Taxation agreements and administrative assistance in tax matters**

Current situation: The intergovernmental agreements in the area of taxation, in particular the bilateral double taxation agreement (DTA) and the multilateral administrative assistance convention, are based on the borders of 1967, with the domicile or tax residency of a person or legal entity being the determining factor for the applicability of the agreements. In the case of the automatic exchange of financial account information, the information on tax residency is based on the self-certification of customers. This is subject to a plausibility check by the reporting financial institutions, including banks. There is no apparent connection with Israel's unlawful presence in the occupied territory.

[11] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory* (Nicaragua v. Germany), Order of 30 April 2024, para. 17.

The provision of tax administrative assistance is based on these two applicable agreements. The double taxation agreement (clear territorial scope within the 1967 borders) and the multilateral administrative assistance convention (scope of application according to Israel's declaration: only Israeli state territory). Israel regularly sends requests for information on natural or legal persons who are taxable in Israel. So far, there have been no cases in which a person was resident in the occupied territory; most requests relate to people domiciled in the greater Tel Aviv area. In any case, the competent Swiss authorities would also apply the multilateral administrative assistance convention in accordance with Switzerland's position under international law regarding Israel's territorial borders.

Evaluation: There is no need for action with regard to taxation agreements and administrative assistance in tax matters. The situation under international law can be taken into account in the framework of the existing procedures.

- **Financial market**

Current situation: In the financial market sector, there are no intergovernmental agreements with Israel, but there are declarations of intent (known as MoUs) between the finance ministries and the supervisory authorities of the two countries that are not binding under international law. The MoUs do not contain any provisions on territorial application, but by their nature and content they have no connection with Israel's unlawful presence in the occupied territory.

The financial sector is subject to strict regulation and ongoing supervision. Swiss financial institutions are obliged to identify, limit and monitor the risks to which they are exposed (e.g., market, credit, default, settlement, liquidity and reputational risks, as well as operational and legal risks) in the course of their business activities (e.g., opening a business relationship, providing a service or executing a transaction). When providing services across borders, they must also conduct an in-depth analysis of the legal framework and the associated risks (in particular legal and reputational risks). On the basis of the legal principles and their risk analysis, the financial institutions define their risk and business policy for each country and activity. In doing so, they usually base their decisions on their own experience in a business area or a country/region, as well as on publicly available information, such as the ICJ advisory opinion.

Due to the obligation to identify, limit and monitor the risks arising from their (cross-border) business activities, and the well-publicised high legal and reputational risks that could arise from business activities with actors in the occupied territory, the business activities of Swiss financial institutions in this territory can be almost entirely ruled out. The risks for Swiss financial institutions would be simply too great, including in financial terms.

Evaluation: With regard to the financial sector, there is no need for additional action due to the already comprehensive financial market regulation and supervision. The situation under international law is taken into account in the context of existing regulation and supervision by obliging financial institutions to have a comprehensive risk management system in place, the implementation of which is reviewed as part of ongoing supervision. Any international discussions and reactions of other countries to the ICJ advisory opinion with regard to the financial sector will be closely monitored.

- **Security policy**

Military cooperation with Israel could assist the maintenance of the situation created by Israel in the occupied territory. This would not be the case if the cooperation concerned withdrawal from the occupied territory.

Current situation: There is no military cooperation agreement with Israel. Switzerland is currently limiting military contacts with Israel to an exchange of information, particularly in the context of ongoing procurement projects for the Swiss Armed Forces. Beyond this, Switzerland and Israel are not currently engaged in any military cooperation. Since October 2023, there have been no further security policy consultations, but occasional contacts in connection with ongoing procurements by armasuisse and the responsible army offices. There are contacts in the area of intelligence cooperation. The cooperation is based on the legislation framework.

Evaluation: The relevant services will include international legal obligations resulting from the ICJ advisory opinion in their risk analysis. There is no further need for action.

- **Legal and administrative assistance**

Providing legal and administrative assistance to Israeli authorities in relation to persons and situations in the occupied territory may constitute assistance for Israeli control and thus for the maintenance of the situation created by Israel's continued presence in the occupied territory.

Current situation: In the area of mutual assistance in criminal matters, Israel is a party to all the main Council of Europe conventions. The question arises as to how the legal position established by the ICJ can be taken into account when interpreting the grounds for including and excluding the provision of mutual assistance to Israel. Ninety-five per cent of mutual assistance is provided by the cantons, the Federal Office of Justice (FOJ) has an overview of this.

Evaluation: The situation under international law can, in principle, be taken into account in the context of existing procedures. It should be examined how a common position can be established in the competent international bodies regarding the inclusion and exclusion of mutual assistance on the basis of international treaties, and whether domestic measures will subsequently be required. There is no further need for action at present.

- **Consular services and migration**

Providing consular services (notably the payment of social benefits or the issuing of legalisations and confirmations) to settlers could assist in the maintenance of the situation created by Israel in the occupied territory.

Current situation: There is a large Swiss community abroad living in Israel (approximately 23,000), although the majority have multiple citizenships (including Israeli). Many Swiss nationals living abroad also live with family members who may not have Swiss citizenship (e.g. spouses and their children from previous relationships). The consular services are governed by the Swiss Abroad Act (SAA). According to the SAA, all Swiss nationals living abroad are obliged to register with the relevant consulate in order to be entered in the register of Swiss nationals living abroad. Registered Swiss nationals living abroad are entitled, under certain conditions, to consular services in the areas of *administrative support* (e.g. legalisations and confirmations), *marital status, citizenship* and *identification documents* (e.g. registration of births, marriages). There is also a general *right to social assistance* (subsidiary to self-help or to support by third parties) under certain conditions. In addition, the Swiss government can provide consular protection to Swiss nationals living abroad, although there is no legal entitlement to this. The chancery of the embassy in Tel Aviv is responsible for all Swiss nationals living abroad in Israel and in the occupied territory. No distinction is made according to residential area.

In the area of migration, there is a mutual exchange of notes from 1967 with Israel regarding the mutual visa exemption for all passport categories. Since Switzerland joined the Schengen Area, the visa exemption for Israeli citizens has been based on Regulation (EU) 2018/1806 (no visa requirement for stays of up to 90 days within a 180-day period in the Schengen Area). The State Secretariat for Migration (SEM) has no knowledge whether the applicant resides in the occupied territory, as there is no legal basis for Switzerland to demand further information. With the introduction of the European Travel Authorisation Information System (ETIAS), the home address will become visible. The 1967 exchange of notes also contains a readmission clause. So far, there have been no cases of Israeli returnees to the occupied territory. Return assistance has, so far, only been provided to Palestinian individuals. However, no returns to the occupied territory are currently being carried out. Since 2016, Switzerland and Israel have been in discussions on a modern visa exemption agreement for diplomatic passports, as Israeli citizens are not yet exempt from visa requirements for entering Switzerland to take up a diplomatic function. However, the official (re)commencement of negotiations is on hold due to the current situation.

Evaluation: Due to the discretionary provision, there is no regulatory need for action in the area of consular protection. Switzerland decides on a case-by-case basis whether to grant consular protection or to restrict it in accordance with the provisions of the Swiss Abroad Act. In no case will protection be used to assist in the maintenance of an illegal situation. Consular activities concerning civil status, citizenship and identity documents are also carried out in Switzerland's interest in order to be able to register Swiss nationals as such. This too does not support the presence of the illegal settlements. In view of the situation under international law, certain consular services (including legalisations and social assistance) are already not provided or are not provided in full to settlers with Swiss citizenship in the occupied territory. In order to ensure the observance of the situation under international law, the responsible services could also be instructed in practical matters of consular protection and consular services not to provide services that support the presence of settlers in the occupied territory.

There is no need for action in the area of migration.

- **Research**

Research cooperation, particularly with the Israeli Ariel University, which is located in the occupied territory, could, depending on the situation and the subject of the research, assist in the presence of this university in the occupied territory and thus the maintenance of the situation created by Israel in the occupied territory.

Current situation: The scientific relations between Switzerland and Israel are well established. They mainly take place in the context of direct cooperation between research institutions, supported by competitive funding instruments. The Swiss National Science Foundation (SNSF) has signed a Lead Agency Agreement with the Israeli partner agency, Israel Science Foundation (ISF). Under the Lead Agency Agreement with Israel, researchers from Ariel University (located in the occupied territory) are not eligible for funding. This also applies to project funding, where researchers from this university are not eligible as project partners either. The Lead Agency agreement between the SNSF and the ISF uses the same territorial clause as the agreement between Israel and the European Union regarding participation in the 9th EU Framework Programme for Research and Innovation, Horizon Europe.

At present, a research group at ETH Zurich is working with German and French institutes and a partner from Ariel University on basic research into a new battery design. The cooperation is based on bilateral contact with the cooperation partner at the level of researchers and began when the partner was still working at a different university. ETH Zurich has no projects with Ariel University that take place under an institutional agreement. There are no indications that the research group’s cooperation with Ariel University constitutes a violation of the international legal obligation.

Evaluation: There is no immediate need for action. Further possibilities include holding talks with ETH Zurich or with Swiss universities about the legal situation under international law regarding the occupied territory in order to further raise awareness of the risks.

- **Other areas: health, sport, culture and transport**

Current situation: There is no bilateral agreement with Israel in the **health sector**. Occasional exchanges on specific topics between the health ministries do occur (e.g., in the area of mental health). In the multilateral context, Switzerland works with Israel when it is relevant and generally on topics that are not related to the Occupied Palestinian Territory.

An agreement is currently in place between the Swiss Federal Institute of **Sport** Magglingen (SFISM), which is part of the Federal Office for Sport (FOSPO), and the Israeli Wingate Institute, which provides for cooperation primarily in the form of knowledge transfer. As there has been no contact between the two sides for months, the agreement, which expires in 2024, will not be renewed. According to the assessment of the FOSPO, there are no points of contact with the Occupied Palestinian Territory.

There is no public cooperation with Israel in the areas of **cultural relations** and **transportation**. Close cooperation does exist between the private cultural scenes. However, this does not fall within the scope

of the duty stipulated in the advisory opinion not to assist in the maintenance of the situation created by Israel in the occupied territory. The Swiss representation in Tel Aviv ensures that its cultural projects only take place within the 1967 borders.

Evaluation: There is currently no need for action.

9. Conclusions

Switzerland already complies with most of the international legal obligations regarding the occupied territory as established by the ICJ. Regarding the obligation of states not to provide aid or assistance in maintaining the situation created by Israel's continued presence in the occupied territory, there is a need for monitoring and, if necessary, clarification in certain areas where tensions persist between Swiss practice and the international legal obligation. When assessing the legal options for overcoming such tensions, it must be borne in mind, on the one hand, that the content of the international legal obligation will also be further defined by the practice of other states and possible clarifications and rulings of the ICJ. On the other hand, there is a risk that Switzerland, by adopting a purely wait-and-see attitude, could be accused of failing to fulfil its international legal obligations. In this context, political considerations are also needed to determine how best to address the situation under international law.

Annex

In para. 285, the Court reaches nine conclusions. It:

1. *Finds* that it has jurisdiction to give the advisory opinion requested;

2. *Decides* to comply with the request for an advisory opinion*;* (14:1 votes (AGAINST: Mme. Sebutinde, *Vice-President*));

3. *Is of the opinion* that the State of Israel's continued presence in the Occupied Palestinian Territory is unlawful; (11:4 votes (AGAINST: Mme. Sebutinde, *Vice-President* ; Mr. Tomka, Abraham, Aurescu, *Judges*));

4. *Is of the opinion* that the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible; (11:4 votes (AGAINST: Mme. Sebutinde, *Vice-President* ; Mr. Tomka, Abraham, Aurescu, *Judges*));

5. *Is of the opinion* that the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory; (14:1 votes (AGAINST: Mme. Sebutinde, *Vice-President*));

6. *Is of the opinion* that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory; (14:1 votes (AGAINST: Mme. Sebutinde, *Vice-President*));

7. *Is of the opinion* that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory; (12:3 votes (AGAINST: Mme. Sebutinde, *Vice-President*; Mr. Abraham, Aurescu, *Judges*));

8. *Is of the opinion* that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory; (12:3 votes (AGAINST: Mme. Sebutinde, *Vice-President* ; Mr. Abraham, Aurescu, *Judges*));

9. *Is of the opinion* that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory. (12:3 votes (AGAINST: Mme. Sebutinde, *Vice-President* ; Mr. Abraham, Aurescu, *Judges*)).

The 15 Judges are:

- Mr. Nawaf SALAM, President (Libanon)
- Mme. Julia SEBUTINDE, Vice-President (Uganda)
- Mr. Peter TOMKA (Slovakia)
- Mr. Ronny ABRAHAM (France)
- Mr. Abdulqawi Ahmed YUSUF (Somalia)
- Mme. XUE Hanqin (China)
- Mr. Dalveer BHANDARI (India)
- Mr. IWASAWA Yuji (Japan)
- Mr. Georg NOLTE (Germany)
- Mme. Hilary CHARLESWORTH (Australia)
- Mr. Leonardo Nemer Caldeira BRANT (Brazil)
- Mr. Juan Manuel GÓMEZ ROBLEDO (Mexico)
- Mme. Sarah H. CLEVELAND (United States of America)
- Mr. Bogdan-Lucian AURESCU (Romania)
- Mr. Dire TLADI (South Africa)