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*To the attn. of:*

**Mr Josep Borrell Fontelles**

EU High Representative for Foreign Affairs and Security Policy / Vice-President European External Action Service (EEAS)

**Foreign Affairs Ministers of the European Union (EU) member states**

27 August 2024

Dear High Representative,

Dear Ministers of Foreign Affairs,

## **AMNESTY INTERNATIONAL'S CALLS ON THE EUROPEAN UNION AND MEMBER STATES IN VIEW OF THE INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION ON THE OCCUPIED PALESTINIAN TERRITORY**

We are writing to you sharing our assessment in view of the advisory opinion (AO) issued by the International Court of Justice (ICJ) concerning the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory (OPT), including East Jerusalem.

On 19 July 2024, the ICJ determined that Israel's continued presence in the Occupied Palestinian Territory (OPT) is unlawful. Further, the ICJ determined that Israel is under an obligation to end its unlawful presence in the OPT, cease immediately all new settlement activities, evacuate all settlers from the OPT and make reparation for the damage caused to all those concerned in the OPT. While the European Union (EU) maintains the position that the OPT, including East Jerusalem, is occupied by Israel, the EU must now recognise that this occupation has become unlawful.

The ICJ also clearly determined that Israel has violated its obligations under international law, namely through the transfer by Israel of settlers to the West Bank including East Jerusalem; maintenance of their presence; confiscation or requisitioning of land; exercising its regulatory authority as an Occupying Power in a manner that is inconsistent with international law; forcible evictions, extensive house demolitions and restrictions on residence and movement. The Court also pointed out other areas where Israel's exploitation of natural resources and severe restriction of the access of the Palestinian population to water are inconsistent with international law. While the EU has pointed to some of these violations of international law in the past in a non-consistent manner, the EU must recognize that all these practises constitute violations of international law and of Israel's obligations.

On violence against Palestinians, the ICJ determined that systematic failure to prevent or to punish attacks by settlers and Israel's excessive use of force violate Israel's obligations under international law. While the EU has rightly condemned settler violence and Israel's responsibility to address it and taken limited measures against individuals involved in settler violence, regrettably the EU and member states have been much more reserved in pointing out Israeli forces' excessive use of force in the OPT, including deadly strikes hitting children or in taking measures against officials involved in these violations.

The Court also found that Israeli policies and practices amount to annexation of large parts of the OPT. While the EU has pointed out Israeli annexation, we regret that some member states have attempted to move their diplomatic

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representation to Jerusalem, which would clearly contradict the member states' obligations of non-recognition of Israeli annexation of East Jerusalem.

Further, the Court found that differentiation of treatment between Palestinians and Israelis in the OPT cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim. Accordingly, the Court determined that the regime of comprehensive restrictions imposed by Israel on Palestinians in the OPT constitutes systemic discrimination based on, inter alia, race, religion or ethnic origin. The Court also found that Israel's legislation and measures, constitute a breach of its obligation to condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction. While we welcome the EU's 2018 statement acknowledging the reality that Israel is moving towards "entrench[ing] a one-state reality of unequal rights, perpetual occupation and conflict," we regret that the EU refuses to acknowledge the reality of Israel's regime of apartheid and racial segregation.

The Court's findings also establish the responsibilities of third states, including the EU and its member states. At this time, the EU and member states are not meeting these obligations, as certain actions are contributing to maintaining the unlawful situation that Israel has created in the OPT. For example, through supplying arms, technology and equipment that are contributing to maintaining the occupation, trading with settlements and allowing investments into the settlements.

Equally important is that the Court has made it clear that security concerns cannot override Israel's obligation to respect international law. Further, the Court determined that Israel cannot invoke the protection of the settlers and settlements as a ground to justify measures that treat Palestinians differently, especially in view of blanket discrimination on the basis of their identity. Moreover, the Oslo accords cannot be understood to detract from Israel's obligations.

The ICJ is the highest court of the United Nations system. All its members states have the obligation to comply with its decisions. All EU member states are then bound to them. Disregarding the ICJ's opinion would be against the rules-based world order that the EU supports and promotes everywhere. The EU is therefore expected to fully acknowledge and accept the findings of the Court. Failure to do so would severely undermine the EU's credibility and the application of international law in other contexts.

In view of the ICJ's AO, we recommend the following measures to ensure that EU policies are aligned with the ICJ's determination:

- **Ban trade and investments in Israeli settlements in the OPT, including East Jerusalem:** The EU must take steps towards banning trade in settlement goods, including through the adoption of an appropriate tracking system and a punitive mechanism for violations to halt activities that entrench unlawful Israeli presence in Palestine;
- **Ban investing in Israeli companies or banks that are contributing to maintain Israel's unlawful occupation:** This includes companies that produce or develop weapons, surveillance, policing equipment or technology, as well as companies involved in constructing settlements or settlements infrastructure and banks that are facilitating transactions for settlers and settlements;
- **The European Commission should conduct a legal assessment to determine which aspects of EU-Israel cooperation violate international law:** While the letter outlines areas of cooperation in which Amnesty International believes that the EU and member states are in violation of international law, the list is not exhaustive and an in-depth analysis must be conducted by the Commission;
- **The European Commission must conduct a review to determine whether Israel has violated its obligations under article 2 of the EU-Israel Association Agreement:** To date, the Commission has not responded to the letter sent by Ireland and Spain and backed by Slovenia. As part of the EU-Israel Association Council, the Commission must conduct such a review and ensure that the findings of the ICJ are clearly reflected;
- **Update the EU's position concerning Israel and the OPT and align it with the AO:** Statements by the EU must reflect the findings of the ICJ, including correctly referring to the OPT including East Jerusalem as

unlawfully occupied, recognizing that Israel has unlawfully annexed parts of the OPT and recognizing that Israel is committing the crime of apartheid against Palestinians;

- **The EU and member states must refrain from moving diplomatic missions to occupied East Jerusalem**, or taking any measures that would constitute recognition of Israel's unlawful annexation of Palestinian territory;
- **The EU and member states must impose a comprehensive arms embargo on Israel:** In particular, all arms or equipment or technology or parts that allow Israel to maintain its unlawful occupation, including policing and surveillance equipment used in the OPT;
- **The EU and member states must back action at the UN to bring an end to Israel's unlawful occupation:** This includes supporting resolutions at the United Nations General Assembly and United Nations Security Council that aim to bring an end to Israel's unlawful occupation of the OPT.

We are ready to discuss these issues with you any time.

Sincerely,



Eve Geddie

Director European Institutions Office  
Amnesty International