



AL-HAQ



Explainer:

**The Advisory Opinion
on Illegal Occupation,
What Can We Expect?**



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ISBN 978-9950-327-98-6
Design Hamza Dado
Publisher Al-Haq - © All Rights Reserved - 2024

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1. WHAT IS THE ADVISORY OPINION ABOUT?

On Friday 19 July 2024, the International Court of Justice will deliver its Advisory Opinion in respect of the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*.

The proceedings, and the Court's authority to issue its Advisory Opinion, arose from a request contained in a UN General Assembly [resolution](#) of 30 December 2022.

The questions that the Court will address in its Advisory Opinion are:

- 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 policies and practices of Israel referred to [...] 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?

In determining to request this Advisory Opinion from the Court, the General Assembly Resolution recalled:

[T]he continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators, as well as journalists, medical personnel and humanitarian personnel; the arbitrary imprisonment and detention of Palestinians, some of whom have been imprisoned for decades [...] and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and demanding the cessation of all such unlawful actions.

During public hearings held at the Court between 19 to 26 February, 2024, against the backdrop of Israel's genocidal assault on the Gaza Strip, 50 States, including

the State of Palestine, South Africa, Algeria, Saudi Arabia, the Netherlands, Bangladesh, Belgium, Belize, Bolivia, Brazil, Chile, Colombia, Cuba, Egypt, United Arab Emirates, United States of America, Russian Federation, France, The Gambia, Guyana, Hungary, China, Iran, Iraq, Ireland, Japan, Jordan, Kuwait, Lebanon, Libya, Luxembourg, Malaysia, Mauritius, Namibia, Norway, Oman, Pakistan, Indonesia, Qatar, United Kingdom, Slovenia, Sudan, Switzerland, Syria, Tunisia, Türkiye, Zambia, Spain, Fiji and the Maldives, and three international organizations (League of Arab States, Organisation of Islamic Conference and the African Union), articulated their positions on the nature of Israel's occupation and Israel's policies and practices in the occupied Palestinian territory.

2. MAJOR ARGUMENTS ON THE LEGAL CONSEQUENCES ARISING FROM ISRAEL'S OCCUPATION:

Israel's occupation aims to ensure a permanent presence and control over Palestinian land and resources through its settlements, legal and *de facto* annexation of territory, restriction of housing and movement for Palestinians, and the imposition of a racially discriminatory legal and administrative system that maintains Israeli Jewish domination and deprives Palestinians of their fundamental rights on both sides of the Green Line. While the Occupying Power is obliged under international law to administer the territory for the benefit of the population it occupies, Israel administers the territory solely for the benefit of its own citizens, whom it has transferred into the territory for the purpose of permanent colonisation and territorial expansion, in contravention of the Geneva Conventions to the detriment of the occupied population.

Al-Haq previously published its position on key arguments to the ICJ for their Advisory Opinion on the legal consequences arising from Israel's occupation. In summary form, Al-Haq's core legal analysis concludes that the occupation is unlawful, including by reference to the facts that:

- a. Israel's occupation of the Palestinian territory breaches the right to external self-determination of the Palestinian people, which includes the exercise of the right of the Palestinian people to an independent State.
- b. Israel's belligerent occupation has been illegal since the outset in 1967 as an occupation arising from an unlawful act of aggression prohibited under Article 2(4) of the United Nations Charter.
- c. Even (for the purposes of argument) applying the law of self-defence to Israel's acts in 1967, the continuing belligerent occupation of the Palestinian territory breaches the principles of proportionality and necessity under Article 51 of the UN Charter. The belligerent occupation on this basis amounts to an unlawful use of force *ad bellum* and an act of aggression. Israel's continuing breach of peremptory norms of international law — the right to self-determination, the prohibition of annexation, the prohibitions of racial discrimination and apartheid — provides clear evidence of a

breach of necessity and proportionality.

- d. Israel's ongoing violation of the prohibition of annexation and its unlawful settlement regime, including the prohibition of the transfer of its civilian population into occupied territory, constitutes a widespread violation of human rights and humanitarian law, and an unlawful acquisition of territory through use of force.
- e. Since 1948, Israel has established a regime of racial domination and oppression in a system of apartheid over the Palestinian people as a whole primarily in the domains of nationality and land appropriation. Since 1967, Israel has operationalized its apartheid regime in the occupied West Bank and Gaza Strip through the imposition of military rule and the expansion of its illegal settler-colonial enterprise.

For an in-depth review of each of these positions, please refer to [this position paper](#).

3. WHAT DID OTHER STATES HAVE TO SAY AT THE ICJ?

In total, 57 countries submitted written pleadings to the Court, and over the course of six days of hearings, 49 States gave an oral presentation on their positions regarding the legal consequences of Israel's occupation of Palestine.

The overwhelming majority of States' and organizations' interventions at the public hearings expressed the view that Israel's occupation of Palestine is characterised by unlawful policies and practices. The majority of States and organizations expressed the [positions](#) that the Israeli occupation is a violation of the Palestinians' right to self-determination, that Israel has imposed a system of apartheid or systematic racial discrimination in the occupied territory, and that the occupation itself is illegal as a whole. Out of 57 States, 16 examined whether Israel's prolonged occupation could be justified on grounds of self-defence, and all concluded that it could not be.

States and organizations arguing that Israel's occupation is illegal, emphasised such illegality by reference to the violation of Palestinians' right to self-determination, because of the violation by Israel of the prohibition on the acquisition and annexation of territory by force, because it is illegal under *jus in bello*, and because of Israel's implementation of an unlawful system of apartheid.

The League of Arab States outlined two legal bases on which the Palestinian people have a right to self-determination: "(1) In the first place, there is a *sui generis* treaty-based right derived from the provisions of Article 22 of the League of Nations Covenant of 1919 applicable to Palestine as a particular type of Mandate. (2) In the second place, the right stems from the '(anti-)colonial' basis that became part of customary international law, because of the Palestinian people having been subjected to colonial rule by the British empire, and the continued denial of their ability to exercise self-determination since the creation of Israel in 1948, and the occupation of the West Bank, including East Jerusalem and Gaza since 1967". Further, that the right of return is integral to the right of self-determination. In particular, the right of "the Palestinian people to be free of the occupation on the basis of the right of self-determination includes, but goes beyond, impediments to this which are linked to annexation".

Nearly every single State and every organization was of the opinion that the occupation must end immediately.

Certain States, including the Netherlands, China, and Libya, [recognized](#) the legitimacy of the struggle of peoples for independence and liberation from colonial domination, including the legitimacy of armed struggle and the use of force to achieve the inalienable right to self-determination. Furthermore, Libya noted that it is a moral and legal obligation for third States to assist and support Palestinians in their legitimate struggle for liberation and independence.

A number of States [expressed](#) their legal conclusion that Israel's policies and practices amount to apartheid, and therefore the occupation is illegal. Among these States were [South Africa](#) and [Namibia](#), who were themselves subjected to apartheid systems of governance from 1948 until the 1990s. In its written intervention to the Court, South Africa submitted:

[T]hat Israeli apartheid must be viewed in the context of the inherent illegality of the occupation as a whole; it being an additional breach of peremptory norms under an illegal situation. The fragmentation of Palestinian territory, the subjugation of its people, restrictions on movement, racial discrimination and state-sanctioned extrajudicial killings are all calculated to impede the right of the Palestinians to self-determination.”

Cuba submitted that “rather than an obvious apartheid situation, pursued as a crime against humanity,” the occupation “is an act of [low-intensity genocide](#) that is being perpetrated with systematic and effective cruelty.” Namibia highlighted Cuba's statements, commenting that, without prejudice as to whether “a low-intensity genocide” was occurring prior to 7 October 2023, “Israel is now attempting to commit, if not actively committing crimes against humanity which could be tantamount to an act of genocide in the Occupied Palestinian Territory,” and that Israel's commission of the crime against humanity that could amount to genocide “does not exclude its ability to simultaneously impose a system of apartheid over the Occupied Palestinian Territory, as it indeed is doing.” Belize underscored that it was “compelled at this juncture to express its grave concern in respect of indications that war crimes, crimes against humanity and genocide (including intent to commit and incitement to genocide) are being, or may be,

committed against the people of Gaza”.

A number of states argued that Israel’s occupation is illegal because it violates international legal norms, including those of international humanitarian law and human rights law. Lebanon explicitly stated that:

“Israel’s occupation of Palestinian territories and its blockade of the Gaza Strip constitute acts of [aggression](#). This fact has been established on multiple occasions by the United Nations Security Council, which since 1967 has repeatedly called on Israel to end its occupation.”

[Bolivia](#) argued that Israel’s occupation must be considered illegal under *jus in bello* and *jus ad bellum*, as Israel’s policies and practices are designed “to result in the [displacement](#) and replacement of the Palestinian people, serving the ultimate goal of acquiring the territory by force.”

4. HOW IS THIS SEPARATE FROM THE GENOCIDE CASE?

The ICJ may hear two different types of cases: (1) legal disputes between States submitted to the Court (contentious cases); or (2) requests for advisory opinions on legal questions referred to it by UN organs and specialized agencies.

On 11 January 2024 South Africa presented its contentious case against Israel before the ICJ, accusing the Israeli state of perpetrating genocide against the Palestinian people in Gaza, requesting that the Court order Israel to cease its unlawful activity, and for the Court to issue a judgment against Israel for violating the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which obligates Israel to refrain from committing genocide and for third States to prevent genocide wherever it occurs.

The present advisory opinion on the legal consequences of the occupation in Palestine, has its genesis in a question submitted to the Court under a General Assembly resolution, and is separate from the contentious case that South Africa brought before the ICJ against Israel for the crime of genocide under the Genocide Convention.

5. WHAT ARE THE LEGAL CONSEQUENCES OF A FINDING THAT THE OCCUPATION IS ILLEGAL?

In its previous Advisory Opinion on Palestine in July 2004, the ICJ concluded that the construction of the wall being built by Israel, the Occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime of settlements was contrary to international law. The ICJ held that Israel was under an obligation to terminate its breaches of international law and to make reparation for all damage caused. The ICJ further held that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction, and that all States parties to the Fourth Geneva Convention have in addition the obligation to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

Enforcement of the Court's conclusions of 2004 has been unacceptably weak, a situation which has greatly contributed to the environment of impunity in which Israel has accelerated and expanded its commission of abuses against Palestinians.

The legal consequences of a finding that the occupation is unlawful should entail at a minimum, that:

- a. Israel must immediately end the violation of its international obligation to respect the right of the Palestinian people to self-determination by ceasing all acts and measures that prevent and/or impede the Palestinian people from exercising their right to self-determination, including the immediate cessation of the occupation in all its manifestations, and including immediate ceasefire in Gaza, complete withdrawal of all Israeli civilian and military personnel and infrastructure, and an end to the illegal blockade of the Gaza Strip.
- b. Israel is obligated to immediately repeal all its laws that have the purpose or effect of perpetuating racial segregation and discrimination enshrining its apartheid regime imposed against the Palestinian people and the geographic fragmentation of the occupied Palestinian territories, including ending its settlement activities and the regime associated with

them, and to cease all discriminatory policies and practices on both sides of the Green Line, and to provide assurances and guarantees of non-repetition and adequate reparations to all those affected by such policies and practices, including Palestinian refugees.

- c. The right of Palestinians to return is specifically provided for in the recommendations of the Court, and the restitution and return of all properties appropriated unlawfully from its Palestinian owners, in Israel and the Occupied Palestinian Territory, resulting from racist segregationist policies and practices.
- d. That all States, while respecting the Charter of the UN and international law, ensure that any impediment to the exercise of the right to self-determination by the Palestinian people is brought to an immediate end.
- e. That all States have the obligation not to recognise the illegal situation resulting from Israeli violations in the occupied Palestinian territories, including in relation to Jerusalem. They are also obliged not to provide aid or assistance in maintaining the situation created by these illegal acts.
- f. That all States must immediately work to put an end to the system of racial segregation and discrimination enshrining Israeli apartheid imposed on the Palestinian people as a whole, and must not recognise this unlawful state of affairs, nor provide any form of aid or assistance in maintaining it.

That the United Nations, and in particular the General Assembly and the Security Council, should:

- a. Consider what further measures are necessary to remove without delay any obstacle to the realisation of the Palestinian people's right to self-determination and to take the necessary measures to ensure the implementation of its relevant resolutions without further delay.
- b. Consider what further action is required to bring the illegal occupation to an immediate end and take the necessary measures to ensure the implementation of its relevant resolutions without further delay. And

- c. Consider what further measures are necessary to put an immediate end to the system of racial segregation and discrimination amounting to apartheid established by Israel and take the necessary measures to ensure the implementation of its relevant resolutions without further delay, including considering the reconstitution of the UN Special Committee on the Policies of Apartheid and the UN Centre against Apartheid.

6. WHEN CAN WE EXPECT A DECISION?

The ICJ announced that it will deliver its advisory opinion on 19 July 2024 at 3:00 p.m. CET. Judge Nawaf Salam, President of the Court, will read out the advisory opinion from the Peace Palace in the Hague. Find more information [here](#) and tune in to watch live on [UNWebTV](#).



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About Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah in the Occupied Palestinian Territory (OPT). Established in 1979 to protect and promote human rights and the rule of law in the OPT, the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. Al-Haq conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. Al-Haq has a specialised international law library for the use of its staff and the local community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), ESCR-Net – The International Network for Economic, Social and Cultural Rights, the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO). In 2018, Al-Haq was a co-recipient of the French Republic Human Rights Award, whereas in 2019, Al-Haq was the recipient of the Human Rights and Business Award. In 2020, Al-Haq received the Gwynne Skinner Human Rights Award presented by the International Corporate Accountability Roundtable (ICAR) for its outstanding work in the field of corporate accountability.

