



GENEVA INTERNATIONAL CENTRE FOR JUSTICE (GICJ)

# ICJ ADVISORY PROCEEDINGS

ON THE LEGAL CONSEQUENCES ARISING FROM THE  
ISRAELI PROLONGED OCCUPATION AND THE ONGOING  
VIOLATION ON THE RIGHT OF PALESTINIAN  
PEOPLE TO SELF-DETERMINATION

MARCH 2024

**The International Court of Justice (ICJ) on the Legal Consequences Arising from the Prolonged  
Israeli Occupation and the Ongoing Violation on the Right  
of Palestinian People to Self-Determination**

**Geneva International Centre for Justice (GICJ)**

March 2024



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## Introduction

In a landmark event in the history of the International Court of Justice (ICJ), a diverse coalition of 52 States and three prominent international organisations, namely the Organisation of Islamic Cooperation (OIC), the African Union (AU), and the Arab League, made unprecedented contributions to a case before the court. The hearings scrutinised decades of Israeli illegal actions in occupied regions such as the West Bank, East Jerusalem and the Palestinian territory as a whole. The urgency of these proceedings is underscored by the recent escalation of the genocide in Gaza, considered the deadliest moment in Israel's decades-long and violent occupation to date, coupled with a prior court ruling directing Israel to restrain its attacks in the region. In his opening address, the Palestinian Authority's foreign minister, Riyad al-Maliki, lamented the decades-long plight of Palestinians, framing their options as a stark choice between "displacement, subjugation, or death."

Central to the proceedings was Israel's settlement policy, particularly in the West Bank and East Jerusalem, areas where settlements for Israeli citizens on Palestinian territory have been officially promoted alongside instances of violent land grabs tolerated by the government. While Israeli governments over the years have endorsed some level of construction, the tenure of the Netanyahu government witnessed a notable expansion of such programs, with plans for thousands of new housing units announced. The West Bank's settler population has swelled to over 400,000 since the 1967 War, a reality that has drawn condemnation from international bodies, including the United Nations.<sup>1</sup> Navanethem Pillay, who chaired a U.N. commission urging the General Assembly to seek the court's opinion on the occupation's legality, emphasised Israel's persistent disregard for U.N. resolutions, regarding illegal settlements, making this inquiry into the lawfulness of prolonged occupation a pivotal moment in the quest for justice and resolution for the Palestinian people.<sup>2</sup> This development revolves

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<sup>1</sup> Committee on the Exercise of the Inalienable Rights of the Palestinian People. (1980). Israeli settlements in Gaza and the West Bank (including Jerusalem): Their nature and purpose. New York: United Nations.

<sup>2</sup> United Nations. (2022, September 14). Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. Note by the Secretary-General (Document No. A/77/69). Retrieved from United Nations General Assembly.

around an advisory opinion sought from the ICJ by the United Nations General Assembly in December 2022. The case pertains to the "legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem."

At the heart of this legal inquiry are two fundamental questions posed by the UN General Assembly to the ICJ:

*(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?"*

*(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?"<sup>3</sup>*

The inquiry seeks clarification on the legal ramifications stemming from Israel's ongoing violation of the right to self-determination of the Palestinian people, manifested through its prolonged occupation, settlement activities, and annexation of Palestinian territory occupied since 1967. Additionally, it seeks an understanding of how Israel's actions, including measures altering the demographic composition and status of Jerusalem, as well as discriminatory legislation, affect the legal status of the occupied territories. It also delves into the broader implications of Israel's policies and practices on the legal status of the occupation and seeks to ascertain the resulting legal consequences for all States and the United Nations.

Against this backdrop, the initial phase of the proceedings unfolded over three days from February 19 to 21, featuring a comprehensive range of perspectives from various stakeholders. This recap aims to

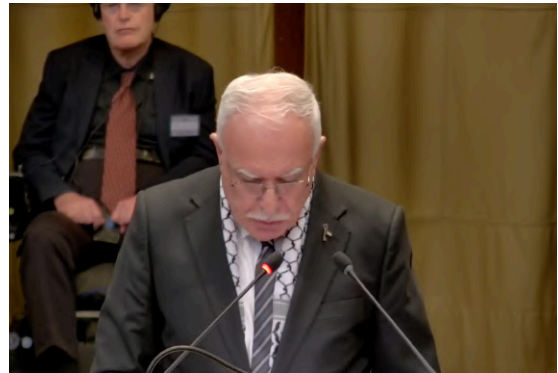
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<sup>3</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion) - Filing of written comments. (2023, November 14). Retrieved from <https://www.icj-cij.org/node/203274>

provide a non-exhaustive overview of the diverse viewpoints articulated during these sessions, with further insights expected from additional speakers as the hearings conclude on February 26.

## **Palestine Plea**

Palestinian foreign Minister Riyad Al-Maliki's statement began by emphasising the multifaceted and atrocious humanitarian situation that Palestinians face, underscoring the pervasive challenges they endure. Minister Al-Maliki stated that "2.3 million Palestinians in Gaza, half of them children, are besieged and bombed,



killed and maimed, starved and displaced." he proceeded by adding that "more than 3.5 million Palestinians in the West Bank, including east Jerusalem, are subject to colonisation of their territory and the racist violence that enables it". He also mentioned the 1.7 million Palestinians treated as second class citizens and the seven million Palestinian refugees that continue to be denied the right to return. While this is the reality Palestinians have to live with, Israel offers them three options: displacement, subjugation, or death. He added that the UN promised in its charter that all peoples have the right to self-determination and vowed to eliminate colonialism and apartheid worldwide. However, Palestinians have been deprived of this right for decades.<sup>4</sup>

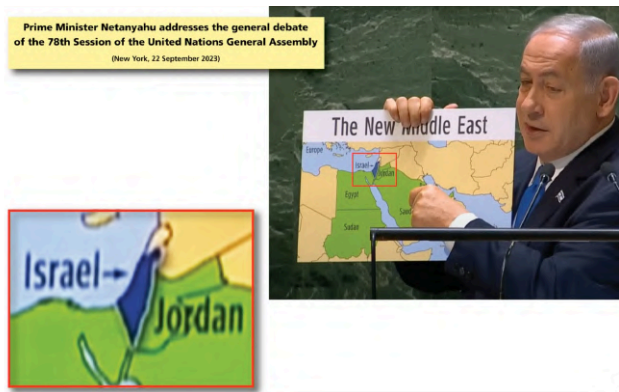
The Palestinian foreign minister proceeded to show the court five maps .The first one was the map of historic Palestine – the territory, he said, where the Palestinian people should have had the right to decide for themselves. The second map displayed the 1947 UN Partition Map, which, according to al-Maliki, ignored the wishes of Palestinians. The third map illustrated that three-fourths of historic

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<sup>4</sup> United Nations International Court of Justice. (2024, February 19). Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240219-ora-01-00-bi.pdf>

Palestine became Israel from 1948 to 1967. “From the first day of its occupation, Israel started colonising and annexing the land with the aim of making its occupation irreversible.

He also added a fifth map that was presented by Netanyahu at the UNGA described as "the new Middle East". “There is no Palestine at all on this map, only Israel comprising all the land from the Jordan River to the Mediterranean Sea," said al-Maliki.<sup>5</sup> “This shows you what the prolonged, continuous occupation of Palestine is intended to accomplish: the complete disappearance of Palestine and the



destruction of the Palestinian people”. According to al-Maliki, Israel's intentions have been unmistakably clear and publicly acknowledged, constituting grave violations of the most fundamental norms of international law. He finalised by stating that “we [the Palestinian people] seek peace which can only be rooted in

Justice”

## Legal Determination

The second speaker, professor Andreas Zimmerman addressed the court on the legal Determination Regarding The General Assembly’s questions. As previously stated, UNGA, under Article 69 of its chapter, has submitted questions to the court seeking a legal determination regarding the ongoing Israeli war on Palestine. These questions pertain to serious breaches including human rights violations, denial of self-determination, and racial discrimination. The court's legal determination is essential to address the legal consequences of these breaches. Zimmerman stated that the



<sup>5</sup> The Times of Israel, “PM: I’m proud I blocked a Palestinian state. Looking at Gaza, everyone sees what would have happened”, 16 Dec. 2023, available at <http://tinyurl.com/4ba4usea>.



court is urged not to decline the requested opinion, as there are no compelling reasons to do so, adding that Israel has consistently refused to engage in meaningful negotiations with Palestine based on international law and United Nations resolutions. Despite repeated calls by the Security Council for a solution consistent with international law, Israel has maintained its stance of tolerating only one state - Israel - between the Mediterranean Sea and the Jordan River. This position has been reflected in concrete policy decisions and measures on the ground, including rejecting attempts for meaningful negotiations.

Professor Andreas Zimmerman stated that Israel breaches international law by violating the prohibition against acquiring territory by force, practising racial discrimination and apartheid, and denying Palestinians the right to self-determination. It is crucial to recognize that the United Nations has a continuous responsibility to resolve the question of Palestine satisfactorily in all its aspects.

Subsequently, legal representative Paul Reichler took the floor to address the legality of Israel's prolonged occupation, annexation and settlement of the occupied Palestinian territory. His presentation identified the elements that determine whether, and in what circumstances, a belligerent occupation is, or becomes, unlawful under international law. He also reviewed the evidence to assess the presence of these elements. "I will show that based on the applicable and the well-established and undisputed facts Israel's 56-year occupation of Palestinian territory is manifestly and gravely unlawful and that international law requires that it be brought to an end completely and unconditionally," he stated.

### **Permanent Character of Israel's Occupation of Palestine Territory**

Reichler examined Israel's prolonged occupation. According to international law, occupation is considered a temporary situation where the occupying power must maintain the status quo and refrain



from making permanent changes to the territory. This principle has been reaffirmed by various resolutions, including General Assembly Resolution 77/126. As part of the evidence he stated that the majority of states have agreed

to the principle including, but not limited to, Switzerland's statement which emphasises that the occupation is inherently temporary and requires the occupying power to respect the territorial integrity of the occupied territory.

Out of 35 states and international organisations who submitted written statements on the legality of Israel's occupation, only two of them argued that the occupation is not unlawful – the United States and Fiji. Reichler discussed how the U.S. protects Israel from legal consequences, stating "**the only state besides Fiji to defend Israel is the U.S.**" He observed that regardless of Israel's actions violating international law, the US consistently steps in to shield it from accountability. The US does not argue that Israel's occupation is legal; instead, it contends that it falls into a grey area where it is neither legal nor illegal. The US supports this stance by asserting that international humanitarian law, rather than the UN charter or general international law, exclusively governs belligerent occupation.

Israel's occupation of Palestinian territory for over 56 years is deemed unlawful due to its permanent character. Israel has established de facto control over the West Bank and considers it as part of its sovereign territory. The presence of over 700,000 Israeli settlers in the occupied territory, along with official statements and documents expressing Israel's intention to incorporate the territory into Israel, further reaffirm the permanent nature of the occupation. Furthermore, legal representative Paul Reichler underscored that Israel has annexed East Jerusalem and maintains it as its capital – which is in contradiction to international law. Additionally, it has facilitated the establishment of over 465,000 Israeli settlers in the West Bank, with the intention of permanently altering the demographics of the region. These actions violate international law prohibiting the acquisition of territory by force and the transfer of civilian populations into occupied territory. Israel has violated several General Assembly resolutions, including **Resolution 76/80**, **Resolution 478/80**, and **Resolution 2334/16**. He finalised his statement by quoting Palestinian poet Mahmoud Darwish, “In silence, we become accomplices’ but he assured us, when we speak, every word has the power to change the world”

## **Israel's Persecution, Racial Discrimination, and Apartheid Against the Palestinian People**

Since the Nakba in 1948, Israel has implemented discriminatory legislation and measures, creating a deep rooted system of racial discrimination against Palestinians. According to the next speaker, Dr. Namira Negm, discrimination against Palestinians is as essential to Israel's prolonged occupation as annexation and colonisation of Palestinian territory. These aspects are intertwined components of the same oppressive structure. Palestinians face alarming levels of human and material losses, enduring ongoing injustices. Negm highlighted that, in the eyes of Israel, Palestinians are automatically considered guilty. This perspective manifests in a staggering 99 percent conviction rate for Palestinians tried before Israeli military courts. Conversely, settlers rarely face prosecution for crimes against Palestinians, enjoying absolute impunity. Despite calls from the UN Security Council for Israel to disarm settlers, their violence persists, often supported by the Israeli government and military.

### **'Apartheid exists in occupied Palestinian territory'**



Negm stated that Israel's policies and practices in the occupied Palestinian territory meet the legal standards to describe the situation as apartheid, emphasising that victims of apartheid South Africa and Namibia, among other countries, hold the view that apartheid exists in the occupied Palestinian territory. Israel's actions meet the existence of apartheid: "first, the existence of two or more different racial groups is present. Second, the establishment of an institutionalised regime of systematic oppression and domination by one racial group over another undoubtedly exists. Third, the commission of inhumane acts is endemic. Finally, the inhumane acts are committed with the purpose of maintaining the apartheid regime and by it, maintaining permanently Israel's illegal occupation of Palestinian territory." The legal definition can be found in both the 1998 Rome Statute of the International Criminal Court and the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid.

## **Violation of the Palestinian people's Right to Self-Determination**

Professor Philippe Sands affirmed that there is universal acknowledgment of the Palestinian people's right to self-determination, as no participating country, including Israel, contests this entitlement under international law. Sands emphasised three fundamental propositions advanced by the state of Palestine, underscoring the distinctiveness of the Palestinian people and their entitlement to the same rights as all other nations. These rights include the crucial right to self-determination, encompassing



the authority to shape their political, social, and economic structures within the framework of international law. Sands stressed that the Palestinian people's right to self-determination is not merely symbolic but carries tangible implications, including sovereignty over their land and resources, protection from external demographic manipulation, and the prerogative to determine their political status and economic development.

In his concluding remarks, Sands reiterated the illegality of the occupation and called for its immediate, unconditional, and total cessation. He asserted that all UN member states are legally obligated to terminate Israel's presence in Palestinian territory. Furthermore, Sands underscored the court's affirmation of the Palestinian people's right to self-determination, emphasising that this right is not subject to negotiation. Through these statements, Sands underscored the imperative of upholding international law, ensuring justice for the Palestinian people, and acknowledging their inherent right to shape their own destiny without external interference.

## **Consequences of Israel Breaches**

Professor Alain Pellet's crucial remarks centred on the issue of compensation and reparations owed to Palestine by Israel, highlighting the need for accountability and redress for the injustices suffered.

Pellet underscored that both the Security Council and the General Assembly have issued legally binding findings affirming Palestine's entitlement to compensation. In light of this, Pellet urged the UN and other relevant parties to ensure certain guarantees, including refraining from providing any military or technological support that could perpetuate Israel's occupation and its discriminatory regime in the occupied



Palestinian territories. Additionally, Pellet emphasised the importance of aiding and supporting the Palestinian people, including refugees affected by recent Israeli actions, such as those assisted by UNRWA. Pellet stressed the necessity of refraining from engaging in economic or other relations with Israel involving the population or natural resources of the occupied Palestinian territories without the explicit consent of a legitimate representative of the Palestinian people. Through these directives, he stated the imperative of upholding justice, dignity, and sovereignty for Palestine while holding Israel accountable for its actions. He finalised by stating “all these violations have been brought about by the prolonged occupation of Palestine, which is surely the mother of all its violations. Your opinion, distinguished members of the court, will be a very precious guide for Palestine.”

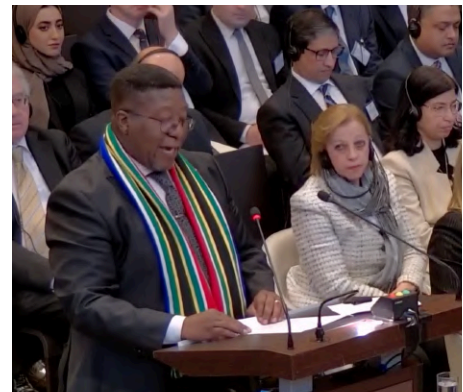
### **Closing Statement**

Riyad Mansour, with visible emotion, concluded the first hearing by emphasising the profound significance of the court's potential determination regarding the illegality of the occupation and its legal ramifications in bringing it to an immediate end, thereby paving the path for a just and lasting peace. He appealed to the court to guide the international community in upholding international law and ending injustice, envisioning a future where Palestinian children are treated with dignity, where identities do not diminish human rights, and where both Palestinians and Israelis live without fear of violence. Mansour pointed out that the Palestinian people seek only respect for their rights, affirming that the future of freedom, justice, and peace can begin in the present moment.

## South Africa

On 20 February 2024, the court continued hearings with delegations from the following countries: South Africa, Algeria, Saudi Arabia, Netherlands, Bangladesh, Belgium, Belize, Bolivia, Brazil, Canada, and Chile responding to a request from the United Nations General Assembly (UNGA) regarding issues concerning the occupied Palestinian territory.

South Africa presented the first argument of the hearing. Ambassador Vusi Madonsela addressed the court by stating that South Africa's foreign policy has long advocated for a two-State solution in Palestine, yet the prevailing conditions demand a solution that addresses the fundamental injustices faced by the indigenous Palestinian population. As emphasised by South Africa, achieving a just settlement requires international assistance and a clear legal characterization of Israel's regime over Palestine. The prolonged delay in reaching a fair resolution has perpetuated a cycle of violence, highlighting the urgent need for action.



Ambassador Madonsela reminded the court that the recent legal submissions made by South Africa highlighted the gravity of the situation, emphasising Israel's persistent defiance of international law and its devastating impact on Palestinian lives. Drawing parallels with South Africa's own history of apartheid, South Africa asserts that the discriminatory policies and practices by the Israeli regime echo a more extreme form of apartheid.

Despite a clear ruling by the Court nineteen years ago calling for the dismantling of the segregating wall built by Israel in the Occupied Palestinian Territory, **Palestinians continue to endure discriminatory policies and systemic violence.** In the West Bank and East Jerusalem, Palestinians face arbitrary arrests, indefinite detention without trial, and a dual legal system that denies them basic rights and protections. Meanwhile, in Gaza, Palestinians live under a sustained siege, deprived of essential resources and subjected to relentless assault. **South Africa urged the Court to recognize the institutionalised discrimination imposed by Israel as constituting apartheid and called for decisive**

**action to end the cycle of violence and achieve a just settlement.**<sup>6</sup> As the international community witnesses the ongoing atrocities in Gaza and beyond, the urgent need for accountability and justice cannot be overstated.

### **The Palestinian people should be able to exercise the right of self-determination**

The second speaker for South Africa, Mr Pieter Andreas Stemmet, took the floor and stated that Israel's persistent occupation and annexation of Palestinian territory since the 1967 Arab-Israeli War represents a grave violation of the Palestinian right to self-determination, a fundamental principle of international law. He reaffirmed that the ongoing construction and expansion of settlements, in breach of international law, not only disrupt Palestinian territorial integrity but also constitute a denial of their right to self-governance. Moreover, Israel's administration of the occupied territory, marked by discriminatory laws and practices, further exacerbates the violation of Palestinian rights. As emphasized by South Africa, such actions by the occupying Power contravene multiple norms of international law, including prohibitions on annexation, apartheid, and genocide. Andreas Stemmet, then concluded that the disruption of Palestinian territorial integrity resulting from Israeli settlements and annexation of parts of the Occupied Palestinian Territory, including East Jerusalem, constitutes a flagrant violation of the Palestinian right to self-determination as stated in General Assembly resolution 1514 (XV) of 1960,

*“any attempt aimed at the partial or total disruption of a country's national unity and territorial integrity is incompatible with the Purposes and Principles of the Charter of the United Nations.”*

The Court, in its Advisory Opinion on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, affirmed that resolution 1514 has the status of customary international law, binding on all States, including Israel.

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<sup>6</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion) - Filing of written comments. (2023, November 14). Case 186 - Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Number 2023/65. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240220-ora-01-00-bi.pdf>

## **Saudi Arabia**

In the provided written statement to the court, the Kingdom of Saudi Arabia asserts that the International Court of Justice (ICJ) has jurisdiction to issue an opinion on the recent increase in violence and destruction by Israel in the Occupied Palestinian Territory. The Kingdom argues against the claims that issuing such an opinion might influence ongoing negotiations for resolving the Israeli war on Palestine. Mr Ziad Al Atiyah, representative of Saudi Arabia emphasised that the Court has previously considered similar matters and that deference should be given to the General Assembly's request for guidance. Furthermore, the Kingdom stated that Israel's actions in annexing territory, expanding settlements, and obstructing the establishment of a cohesive Palestinian state, shows Israel's lack of commitment to genuine negotiations for peace.

### **The advisory opinion would not prejudice the negotiation process aimed at a resolution of the Israeli-Palestinian conflict**

The Kingdom of Saudi Arabia asserts that the International Court of Justice (ICJ) possesses jurisdiction to issue its opinion on the questions posed, emphasising that there are no compelling reasons for the Court to abstain from doing so. Saudi Arabia addressed opposing arguments, particularly those suggesting that the opinion might interfere with ongoing negotiations or that the dispute is bilateral and therefore not within the Court's purview, the Kingdom dismisses them as unfounded. They assert that such contentions have been consistently rejected by the ICJ in analogous situations, referencing the Court's past rulings, including the *Wall Advisory Opinion*<sup>7</sup>. Moreover, they refute claims that issuing an advisory opinion would prejudice negotiation processes, highlighting the absence of legal foundation for such assertions and pointing to the Court's established practice of providing guidance when requested by the General Assembly.

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<sup>7</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 159, para. 49.



They concluded by urging the International Court of Justice to explicitly declare the illegality of Israel's occupation of the Palestinian territories. Alongside the Kingdom of Saudi Arabia, numerous other states have meticulously outlined in their written submissions the legal responsibilities stemming from Israel's violations. Citing Article 30 of the Articles on State Responsibility and drawing upon the guidance provided by the Court in the *Wall Advisory Opinion*, Israel must cease its wrongful conduct, reinstate compliance with its obligations, and furnish suitable assurances and guarantees of non-repetition. Additionally, Articles 31 and 36 require that Israel provide full reparations for the extensive damage throughout the decades of its unlawful occupation. Such a declaration from the Court would not only affirm the principles of international law but also signal a crucial step towards rectifying the injustices endured by the Palestinian people.

### **The United States**

The third day of the hearing, 21 February 2024, the International Court of Justice (“ICJ” or “the Court”) continued holding the public hearings with delegations from the following countries: Colombia, Comoros, Cuba, The Arab Republic of Egypt, United Arab Emirates, United States, Russian Federation, France, The Gambia, Guyana, and Hungary.

A delegation that is important to emphasise is the United States because of their disagreement with the timing and validity question of the Court’s advisory opinion. Representative Mr. Richard Visek stated that “this Court’s advisory opinion will have consequences for the parties to the conflict, and for the ongoing efforts of all of those working to achieve a durable peace.”



## **Court's Advisory opinion will have Consequences for the Parties to the Conflict**

The United States urged the Court to ensure that its opinion respects the established framework and the authority of the principal political organs of the United Nations to address matters of international peace and security. The Court was reminded of its previous recognition that the Israeli-Palestinian conflict can only be resolved through the good faith implementation of relevant Security Council resolutions, particularly resolutions 242 and 338. These resolutions, he argued, remain crucial for achieving peace, as affirmed by the Security Council, General Assembly, and the international community. The established framework for a comprehensive and enduring peace, as outlined in these resolutions, emphasised two key requirements: the withdrawal of forces from occupied territory and the establishment of peace and security for all states in the region. This framework underscored the principle of "*Land for Peace*," which emphasised the interdependence of Israeli withdrawal from occupied territories, and the termination of belligerency, mutual recognition, and respect for each state's right to live in peace within secure and recognized boundaries, Mr Visek explained.

The United States has called for a "balanced approach." Such rhetoric ignores the ongoing suffering in Gaza and the West Bank, which is a direct result of the Israeli occupation and blockade, violations that have resulted in the deprivation of Palestinians' basic rights and freedoms. Mr Visek stated that "the request specifically seeks advice on the legal consequences of the conduct of one party to the conflict." This focus on one party's conduct contrasts with the reciprocity inherent in the established framework, which should inform the Court's approach according to his government.

Mr Visek continued, stating **"under the established framework, any movement towards Israel's withdrawal from the West Bank and Gaza requires consideration of Israel's very real security needs. We were all reminded of those security needs on 7 October, and they persist."**<sup>8</sup>

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<sup>8</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion) - Filing of written comments. (2023, November 14). Case 186 - Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Number 2023/65. [Press release]. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240221-ora-01-0-bi.pdf>

According to his delegation, such an outcome would overlook the interdependent elements of withdrawal and the conditions necessary for peace and security for all states in the region, as structured by the Security Council and General Assembly. An enduring peace necessitates progress on both these balanced elements, according to him. He then finalised by stating that Hamas is designated as a terrorist organisation by the United States and other countries due to its history of attacks, hostage-taking, and other atrocities. Hamas's actions, along with ongoing hostilities and suffering in Gaza and the West Bank, highlight the urgent need for a final peace settlement that includes the full realisation of Palestinian self-determination.

In making these statements, the United States appears to deliberately ignore the sheer scale of the ongoing destruction of Gaza, conducted indiscriminately by Israeli forces. Its defence of Israel's supposed security needs cannot override Palestinians' right to self-determination and sovereignty. The country's repeated references to Hamas, ignoring the actual subject of the hearings - Israel's illegal occupation - is indicative of its biased and politically motivated approach, which fails to address the root causes of the occupation, and does not address the questions posed to the Court. The urgent need for a final peace settlement must be framed within the context of achieving justice for Palestinians, including the right of return for refugees and the establishment of an independent Palestinian state with East Jerusalem as its capital.

## **The Arab Republic of Egypt**



Egypt's representative Ms. Jasmine Moussa, addressed the ongoing suffering of the Palestinian people. Agreeing with the majority of the delegates, she brought to light the most recent and brutal onslaught, the killing of 29,000 civilians in occupied Gaza and the impending attack on Rafah, where 1.4 million people have sought refuge.

“These ongoing, grave violations of international law by Israel, the occupying Power, are part of a wider policy that seeks to dispossess the Palestinians of their land and assert Israeli sovereignty over it. This is manifestly illegal and renders the occupation, as a whole, unlawful”, she stated.

Egypt’s statement focused on four main points: (1) the Court’s jurisdiction and competence, (2) the legal framework for assessing Israel’s prolonged and illegal occupation, which violates non-derogable principles of international law (3) the purported justifications of self-defence or military necessity and (4) conclusion of the legal consequences and a summary of each of the submissions.<sup>9</sup>

### **Jurisdiction of the Court**

First, on the matter of jurisdiction of the Court, Ms Moussa stated that the objections raised regarding the Court's jurisdiction and competence, including claims of political motivation and concerns about prejudicing peace negotiations, have been consistently rejected by the Court. As demonstrated in previous opinions, such as *the Kosovo Advisory Opinion*, the Court does not consider the motives behind requests or the political implications of its decisions. Furthermore, the Court has affirmed the General Assembly's authority to seek legal opinions under *Article 96(1) of the United Nations Charter*, and has emphasised that requests brought forth by the General Assembly should generally not be refused. Additionally, the Court has recognized the General Assembly's right to determine the usefulness of an opinion based on its own needs, as seen in cases like the *Nuclear Weapons* and *Chagos Advisory* opinions. The Court's jurisprudence underscores the importance of respecting the General Assembly's requests and providing legal answers to assist in fulfilling its functions, particularly regarding the Palestinian-Israeli conflict, where peace negotiations have not yielded significant progress.

### **The Legal Framework for Assessing Israel’s Prolonged and Illegal Occupation**

On the second point, Ms Moussa, expressed that Israel's prolonged occupation of the Palestinian territories violates several distinct legal regimes concurrently. These include the laws of occupation,

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<sup>9</sup> Ibid p.30 para. 1

which prohibit altering the status of or annexing occupied territory, and emphasise the temporary nature of the occupying power's authority. Additionally, the international law on acquisition of territory through force, the principle of self-determination, and the prohibition of racial discrimination have been violated. The illegality of Israel's policies and practices in the occupied territories is assessed within this legal framework, which underscores the temporary nature of occupation and the prohibition of transferring sovereignty to the occupying power. Furthermore, Israel's support for settlements and demographic alterations in the occupied territories violates international law, as affirmed by numerous resolutions of the General Assembly and Security Council. The occupation, characterised by its permanence and annexation attempts, blatantly disregards the principle of inadmissibility of acquiring territory through force. Attempts to justify Israel's actions are baseless and reminiscent of outdated international law that justified territorial conquest through denial of the sovereign status of colonised peoples. Alongside this, addressing the third point, Ms Moussa stated that “Egypt firmly denounces the ongoing obstruction of the Palestinian people’s inalienable, permanent and unqualified right to self-determination, a violation as argued by Palestine that is an “essential feature” of Israel’s prolonged occupation”.

### **The People's Republic of China**

On 22 February 2024, the court continued hearings with delegations from China, Iran, Iraq, Ireland, Japan, Jordan, Kuwait, Lebanon, Libya, Luxembourg, and Malaysia. During this hearing China’s representative Mr Ma Xinmin elaborated on the arguments raised by the United States regarding the advisability of the Court to render an advisory opinion. China sustained that the contention that such an opinion would contravene the principle of consent is unfounded, as the Advisory Opinion process is inherently designed to provide impartial guidance on matters of international law, regardless of explicit consent from involved parties. Furthermore, concerns about undermining the established legal framework for addressing the question of Palestine or impeding negotiation processes were deemed invalid. Mr

Xinmin stated that an advisory opinion could complement existing mechanisms by offering clarity and guidance, ultimately aiding in the pursuit of a peaceful resolution.

### **On the Right to Self-Determination**

On the right to Self-Determination, Mr Xinmin expressed that the Palestinian people's resistance against Israeli oppression and their pursuit of establishing an independent state on the occupied territories are undeniably just actions aimed at reclaiming their legitimate rights. **“In pursuit of the right to self-determination, Palestinian people's use of force to resist foreign oppression and complete the establishment of an independent state is (an) inalienable right well founded in international law”.**

<sup>10</sup>Central to their struggle is the fundamental principle of self-determination, which serves as the precise legal foundation for their aspirations. Being found in the United Nations Charter and recognized as a collective human right under customary international law, self-determination is a cornerstone of modern international legal norms. This principle was reaffirmed and endorsed by Chinese Premier and Foreign Minister Zhou Enlai during the 1955 Bandung Conference, where China pledged full support for the self-determination of peoples and nations as outlined in the UN Charter.

### **Iran and Jordan: On the Right to Self-Determination and the Prolonged Occupation**

Country delegations such as Iran and Jordan spoke on the legal status of the right to self-determination as previously stated in these hearings and generally understood to be attributed to “peoples” and grounded first in the United Nations Charter, in several United Nations General Assembly resolutions, and its inclusion in common Article 1 of the two International Covenants of Human Rights:

*“all peoples have the right freely to determine, without external interference, their political status and their place in the international community and to pursue their economic, social and cultural*

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<sup>10</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion) - Filing of written comments. (2023, November 14). Case 186 - Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Number 2023/65.. Retrieved from <https://icj-cij.org/sites/default/files/case-related/186/186-20240222-ora-01-00-bi.pdf>

*development, and every State has the duty to respect this right in accordance with the provisions of the Charter”*



They stated that in line with the elements mentioned, Israel's occupying regime reaffirms its intention to perpetuate the occupation, which stands as the longest military occupation in existence today. This continued occupation denies the Palestinian people their right to self-determination. One of the key measures that has violated this right is the altering character of the occupation.

### **The Holy City of Al-Quds**

Representative of the Islamic Republic of Iran, Mr Reza Najafi, brought to light the altering character of the Holy City of Al-Quds. The alteration of Al-Quds' status holds profound religious and cultural significance for Palestinians, as well as for adherents of Islam, Christianity, and Judaism worldwide. Al-Quds Al-Sharif stands as a symbol of immense religious and historical importance for Palestinians, making any changes to its status quo – deeply impactful. Through these alterations, the Israeli occupying regime not only undermines the cultural heritage and identity of Palestinians but also violates their inherent right to self-determination. **“The establishment of the Israeli regime was done through a violent process which involved the forcible displacement of native Palestinian people to create a majority Jewish colony in line with the Zionist movement”**, said Najafi. The construction and expansion of settlements, coupled with restrictions on Palestinians' freedom of movement and the revocation of residency permits, have further exacerbated these violations, resulting in a significant demographic and cultural shift within the city.<sup>11</sup>

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<sup>11</sup> Ibid. p. 57.

Mr Ahmad Ziadat appeared before the Court on behalf of the Hashemite Kingdom of Jordan. In his statement, he affirmed that Jordan and the Hashemite Royal Family hold a distinctive position as protectors of the Muslim and Christian holy sites in Jerusalem. According to Mr Ziadat, this role bears immense significance globally as it contributes to maintaining peace and upholding the historical status quo of Jerusalem's sacred sites. Given the city's revered status to Muslims, Christians, and Jews, representing a significant portion of the world's population, he states, **“Jerusalem must be a city of peace.”** Preserving the established status quo serves as a crucial factor in fostering this peace and mitigating global religious tensions. Jordan’s protective role is recognized historically and internationally, affirmed by various influential entities including the United States, the European Union, Russia, the United Kingdom, the Vatican, Islamic States, and even Israel itself. Mr Ziadat then cites the final declaration of the Joint Arab-Islamic Summit held this year (2024):



“[T]he blessed Al-Aqsa Mosque, . . . with its entire area of 144 thousand square metres, is an exclusive place of worship for Muslims... [and it is under the management of the Jordanian Jerusalem Awqaf] within the framework of the historical Hashemite Custodianship of the Islamic and Christian Holy Sites”.

Article 2 (1) of the Jordan-Palestine Agreement of 2013<sup>104</sup> states:

“His Majesty King Abdullah II, as the Custodian of the Jerusalem Holy Sites, exerts all possible efforts to preserve the Jerusalem Holy Sites . . . and . . . to represent the interests of the Holy Sites in international forums and competent international organisations through feasible legal means.”<sup>12</sup>

He asserts that Israel itself recognized Jordan’s special role in the Treaty of Peace between Jordan and Israel of 1994. Article 9 (2) of the treaty provides: “In this regard, . . . Israel respects the present role of the Hashemite Kingdom of Jordan in the Muslim holy shrines in Jerusalem”. Turning to violations,

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<sup>12</sup> Ibid. p. 58 para. 3-4



then he highlighted several instances of Israeli transgressions within the holy sites following its occupation of East Jerusalem in June 1967: Initially, within days of the occupation, Israel demolished the historic Mughrabi Quarter, displacing its residents to expand space in front of the Al-Buraq western wall for Jewish prayers. Additionally, in 2004, the Mughrabi Gate Pathway, an ancient ramp leading to the Al-Aqsa Mosque, was demolished and replaced with a wooden ramp. Perhaps more concerning, he stated, is the ongoing extensive and systematic digging and tunnelling around and beneath the Al-Aqsa Mosque, posing a serious threat to its structural integrity. UNESCO criticised Israel for persisting in these illegal activities despite international condemnation. During the holy month of Ramadan in April 2022, Israeli forces raided the Al-Aqsa Mosque, injuring over 150 worshippers and making numerous arrests. Similar attacks targeted the ancient Qibli Mosque, resulting in significant damage to its historic elements. Additionally, Jewish radical groups have frequently targeted Christians and their holy sites, aiming to diminish their presence in the region, as noted by the Patriarchs and Heads of Churches of Jerusalem. **These actions not only violate the sanctity of the holy sites but also exacerbate tensions and threaten religious coexistence in the region,** he said.

### **The Syrian Arab Republic: The Nature of Israel's Occupation**

The following hearings on 23 February 2024 encompassed delegations from the United Kingdom, Slovenia, Sudan, Switzerland, Syria, and Tunisia. Addressing the Court representatives of several delegations continued to agree on the nature of Israel's occupation. For instance, the Syrian Arab Republic reaffirmed the principle that "States shall not obtain legal rights from unilateral acts that do not comply with international law." Syria underscored the "temporary nature of the occupation," emphasising that **"even if it is a fait accompli, this does not and will not give the occupying Power the right to acquire sovereignty over the occupied territories, no matter how long this brutal occupation lasts."** Syria reiterated the imperative of implementing "all relevant international resolutions to end the Israeli occupation of all occupied Arab territories" **to ensure stability in the Middle East and uphold the**

**credibility of the United Nations system.** Addressing the Court, Syria asserted that its role today was not to create new rights but to **"reveal rights that are violated by Israel, every day since 1948."** Syria condemned Israel's actions, including genocide in the occupied Gaza Strip and attacks on Syria and Lebanon, calling for accountability and an end to the illegal occupation. In urging all states to prevent further annexations and illegal settlements, Syria stated the necessity of establishing a viable Palestinian State for peace and stability.

### **The United Kingdom Calls on ICJ to Decline Issuing an Advisory Opinion**

On the other hand the representative from the United Kingdom (UK) reiterating the commitment to a negotiated two-state solution, the speaker rejected certain portrayals of Israel's actions and emphatically disputed interpretations of the UK's conduct and motivations. The UK's stance on the matter was grounded in legal principles, with submissions focusing on matters of propriety rather than the merits of the request. Ms Langrish reiterated the UK's stance on the jurisdiction of international courts in issuing opinions that may affect the rights or duties of states involved. According to the UK's submission, **"The United Kingdom's submission is that where a request is 'directly related to the main point' of a dispute between two parties, then the Court should refrain from giving an opinion."** The UK's position focused on the importance of maintaining the integrity of the non-circumvention principle, indicating that answering the request as currently formulated would constitute a breach of this principle.

### **The Non-Circumvention Principle**

Also in representation of the United Kingdom before the Court, Professor Sarooshi addressed the Non-Circumvention Principle<sup>13</sup>. The UK addressed the other delegations' counter-argument that the

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<sup>13</sup> The non-circumvention principle, in the context of international law, refers to the idea that international courts and tribunals should not render decisions or opinions that effectively bypass or circumvent the core issues of a dispute between parties. It emphasises the importance of respecting the sovereignty of states and their right to determine the scope and manner in which their disputes are resolved. Essentially, it prevents courts from rendering judgments or opinions that could indirectly interfere with the underlying dispute without the consent of the concerned parties.

non-binding nature of advisory opinions allows the Court to opine on a bilateral dispute. The UK contended that such an approach would undermine the practical application of the non-circumvention principle. By emphasising the serious legal consequences that may result from the Court's findings and the need to respect state consent in resolving disputes, the UK advocated for the Court to uphold the non-circumvention principle. The United Kingdom voiced concerns regarding the practical feasibility of the Court's ability to address the multifaceted issues posed by the current request. Pointing out the



complexity of the task at hand, the UK representative highlighted, **"It is unclear how the Court can properly make the broad range of findings required to answer the request and consider such a volume of material."**<sup>14</sup>

Moreover, the UK expressed the necessity for the Court to reach its own independent findings of fact rather than deferring to United Nations reports, stating, "It is no answer to assume that the Court can defer to the reports of United

Nations bodies. The Court must reach its own independent findings of fact."

Addressing the contention that an advisory opinion might assist in the negotiation process, the UK representative presented a compelling rebuttal, pointing out the potential pitfalls of such an approach. Citing examples from past jurisprudence, the UK argued **that rendering legal conclusions on the parties' obligations could compromise their negotiating positions, thereby contravening the Court's mandate to maintain the integrity of the parties' legal positions.** It continued to highlight the foundational principles of reciprocity and negotiation embedded in the Security Council framework' they stated an unconditional order directed at only one party could undermine the framework's fundamental requirements. Ultimately, the United Kingdom urged the Court to decline the request in its current form,

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<sup>14</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion) - Filing of written comments. (2023, November 14). Case 186 - Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Number 2023/65. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240223-ora-02-00-bi.pdf>

citing the numerous challenges and potential risks associated with rendering an advisory opinion under the prevailing circumstances. The United Kingdom proposed an alternative approach rooted in the Court's jurisprudence, aiming to endorse the implementation of Security Council resolutions 242 and 338, **which call for a negotiated solution to the Israeli-Palestinian dispute**. Emphasising the significance of these resolutions, the UK suggests reframing the request's terms to respect the existing framework and avoid prejudicing the parties' bilateral dispute.

### **Last Day and Conclusion to Hold Public Hearings in the Advisory Proceedings – the League of Arab States**

On 26 February 2024, the court hold the last hearing in the Advisory Proceedings with delegations from different nations and organisations including: Türkiye, Zambia, League of Arab States, Organization of Islamic Cooperation, African Union, Spain, Fiji, and the Maldives regarding issues concerning the occupied Palestinian territory. Some organisations such as the League of Arab States, highlighted the significance of the ongoing proceedings. Mr Abdel Hakim El Rifai, expressed optimism about their potential contribution to upholding international law principles. Central to their concerns was the inalienable right of the Palestinian people to self-determination, amidst the last remaining oppressive, expansionist, apartheid, settler-colonial occupation in the twenty-first century. Despite enduring acts of genocide, ethnic cleansing, and other atrocities, Palestinians remain committed in their pursuit of justice, Mr Hakim El Rifai stated.

The League condemned the politicisation of accountability, stressing the need for Israel to be held accountable under universal rules of international law, **“the insistence on placing Israel above the law, through the politicisation of accountability and adopting double standards in the application of justice is a direct threat to international peace and stability,”** they stated.<sup>15</sup> Additionally, they

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<sup>15</sup> Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion) - Filing of written comments. (2023, November 14). Case 186 - Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Number 2023/65. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240226-ora-wri-01-00-bi.pdf>

highlighted the Arab Peace Initiative of 2002 as a significant effort towards peace, urging Israel to adhere to its obligations. The League insisted that the prolonged occupation is an affront to international justice and called for the Court's confirmation of its illegality, **“only through the rule of law can genuine peace and coexistence be achieved in the region”**.

The League of Arab States highlighted the legal foundation of Palestinian self-determination, rooted in the "sacred trust" obligations of Article 22 of the League Covenant. Despite attempts to bypass this right, including the incorporation of the Balfour Declaration commitment by the League Council, such actions were legally void. The League asserts that the Mandate for Palestine provided no legal basis for a specifically Jewish State or for the United Kingdom's failure to implement Palestinian self-determination, focusing on the ongoing struggle for justice.



Following World War II, a right to self-determination for colonial peoples emerged in international law, complementing the pre-existing Covenant right for Palestinians. The League views the 1947 proposal to partition Palestine as contrary to this right, with the Arab rejection affirming the legal status quo. The proclamation of the State of Israel in 1948, accompanied by the forced displacement of Palestinians, constitutes a grave violation of Palestinian self-determination. **Despite this, Israel's statehood was recognized, perpetuating the ongoing Nakba and the denial of Palestinian rights,** they stated.

## **The African Union**

The African Union's Legal Counsel also delineated the internationally wrongful acts attributable to Israel, emphasising the illegality of its occupation. The essence of their argument focused on the absence of Israeli title over the West Bank, Gaza, and East Jerusalem, traced through a concise historical

narrative that discredited any purported claim to sovereignty. Mr Mohamed Helal asserted, "**At no point in this process did Israel acquire title over these territories,**" **dismissing notions of a sovereign vacuum or indeterminate legal status as unfounded.**"<sup>16</sup>

Furthermore, the African Union's position rested on three pivotal arguments, dissected by their Legal Counsel. Firstly, Israel's occupation violated the fundamental prohibition on acquiring territory by force, substantiated by undeniable evidence of annexationist intentions. Secondly, the occupation infringed upon the Palestinians' right to self-determination, a universally recognized entitlement enshrined in international law, "**Israel must end its unlawful occupation of all the Palestinian territories as rapidly as possible, in order to enable the Palestinian people to exercise their fundamental right of self-determination.**" Lastly, the cumulative effect of Israel's policies and practices formed a compendium of breaches that rendered the occupation unlawful, transcending mere violations of belligerent occupation law. Through meticulous legal reasoning, the African Union unequivocally maintained that Israel's occupation of Palestinian territories was both unlawful and untenable.

## **Conclusion of the Public Hearings**

Following a series of comprehensive hearings, the International Court of Justice (ICJ) entered a crucial phase of deliberation on the contentious issue of Israel's occupation of Palestinian territories. Throughout the hearings, a diverse array of voices, including those of the State of Palestine, 49 Member States of the United Nations, and three international organisations, presented oral statements. This extensive participation underscored the global significance and complexity of the matter at hand.

The procedural history leading up to the hearings reflected the gravity of the situation and the international community's concerted efforts to seek legal clarity. Triggered by a resolution adopted by the United Nations General Assembly in December 2022, the request for an advisory opinion from the ICJ encapsulated two crucial questions concerning the legality and consequences of Israel's actions in the occupied Palestinian territories. The meticulous procedural steps undertaken, including notifications to

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<sup>16</sup> Ibid p. 50.

concerned parties and the fixed time-limits for written submissions, underscored the Court's commitment to a rigorous and impartial examination of the matter.

As the Court commenced its deliberations, we await for the forthcoming advisory opinion, which would be delivered at a public sitting, the date of which would be announced in due course. This opinion holds the potential to shape international discourse and influence diplomatic initiatives aimed at resolving one of the most enduring oppression in modern history. With the weight of legal arguments and international law principles at its disposal, the ICJ's advisory opinion promises to provide critical guidance on the path towards a just and sustainable resolution.

**Geneva International Centre for Justice (GICJ)** acknowledges the importance of the ICJ's public hearings in the advisory proceedings regarding the Occupied Palestinian Territory. These hearings represent a crucial step towards addressing the ongoing violations of international law in the OPT. GICJ urges the ICJ to carefully deliberate the evidence presented, emphasising the need for a clear and unequivocal determination regarding the unlawfulness of Israel's occupation and actions and the legal obligations of all states to uphold international law. As advocates for justice and accountability, GICJ calls upon the international community to support the ICJ's efforts in seeking a just and lasting resolution to the Palestine question that respects the rights and dignity of the Palestinian people.

## **Geneva International Centre for Justice (GICJ)**

GICJ is an independent, non-profit, international non-governmental organisation dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights.

**GICJ** is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Right Law, GICJ observes and documents human rights violations and seeks justice for their victim through all legal means available.

### **MISSION:**

GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.







### **WORK:**

GICJ has been tackling issues of justice and accountability since it was established. The United Nations and corresponding human rights mechanisms are pivotal to our work. GICJ participates extensively with these mechanisms, in particular the Human Rights Council (HRC) and the Universal Periodic Review (UPR).

### **NETWORK:**

GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network around the world. Through these channels, GICJ is able to receive documentation and evidence of human rights violations and abuses as they occur in several countries. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.





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