



THE HAGUE INITIATIVE
for INTERNATIONAL CO-OPERATION

BRIEFING

The UN General Assembly's Request to the International Court of Justice for "an Advisory Opinion on the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem."

15th July 2024

1. What it is about

On 30th December 2022, the UN General Assembly (UNGA) adopted [Resolution 77/247](#) requesting the International Court of Justice (ICJ) to give an Advisory Opinion on the legal status of the Israeli occupation of the territories referred to by the UN General Assembly as the "Occupied Palestinian Territory" (OPT): "East Jerusalem", West Bank, and the Gaza Strip.

In operative paragraph 18 of the resolution, the UNGA posed the following questions:

"... considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

(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?"

In its submission, the Palestinian delegation [asked](#) the Court to opine (a) that the Israeli occupation that began in 1967 is illegal, and (b) that Israel must withdraw from the occupied territories immediately, completely and unconditionally.

The Palestinian arguments were supported by most of the 52 states that submitted arguments to the Court, as well as the three international organisations.

There are a number of reasons, set out in this Briefing, why the Court should not give an Advisory Opinion.

2. What is an Advisory Opinion

The UN Charter and the ICJ Statute allow for the ICJ to give an “advisory opinion” on a legal question, when requested by a UN organ, including the General Assembly and the Security Council (article 96 of the UN Charter, Article 65 of the ICJ Statute).

The ICJ has given several advisory opinions in the past, most recently the use of nuclear weapons (1996), the legality of the Israeli West Bank barrier (2004), the independence of Kosovo (2010), and the United Kingdom’s administration of the Chagos archipelago (2019).

ICJ Advisory Opinions have no binding force. However, the Court’s advisory opinions nevertheless carry great legal weight and moral authority. They are supposed to contribute to the clarification and development of international law.

3. Why the General Assembly made this Request

The UNGA alleges in [Resolution 77/247](#) that Israel is violating international law in the Occupied Palestinian Territory, including:

- the Fourth Geneva Convention,
- the human rights and right to self-determination of the Palestinian people, and
- international humanitarian law.

Further, Resolution 77/247 states that “the international community, through the United Nations, has a legitimate interest in the question of the City of Jerusalem and in the protection of the unique spiritual, religious and cultural dimensions of the city, as foreseen in relevant United Nations resolutions on this matter”, and “that security measures alone cannot remedy the escalating tensions, instability and violence, and call[s] for full respect for international law, including humanitarian and human rights law.”

The Resolution suggests that, according to the General Assembly, an Advisory Opinion will assist in confirming that Israel is indeed violating international law, as the general Assembly alleges, and that such confirmation by the Court will contribute to “the protection of civilian life, as well as for the promotion of human security, the de-escalation of the situation, the exercise of restraint, including from provocative actions

and rhetoric, and the establishment of a stable environment conducive to the pursuit of peace.”

4. What has happened in these advisory proceedings?

On 3rd February 2023, the Court [invited](#) the United Nations, UN member states and “the observer State of Palestine” to participate in the proceedings.

The Court subsequently allowed three international organisations (the [League of Arab States](#), the [Organisation of Islamic Cooperation](#) and the [African Union](#)) to participate in the advisory proceedings.

The Court received written and oral submissions between July 2023 and February 2024. Fifty-two states and the three organisations made [submissions](#) to the Court.

In its submission, the Palestinian delegation [asked](#) the Court to opine (a) that the Israeli occupation that began in 1967 is illegal, and (b) that Israel must withdraw from the occupied territories immediately, completely and unconditionally.

On Friday 19th July 2024, the ICJ will issue its decision on the request for an advisory opinion.

5. Palestine’s main arguments

[Resolution 77/247](#) contains many allegations that Israel’s activities in the occupied territories are violating international law. Most of these allegations are based on UN resolutions and reports by UN organs - which are not definitive or binding statements of either law or fact.

The State of Palestine made extensive written and oral [submissions](#) to the Court to the following effect:

- a) The Palestinians have a right to self-determination in all of “Palestine” (the whole territory of Mandate Palestine - everything between the Mediterranean Sea and the Jordan River).
- b) That right is a “peremptory norm” that may not be infringed.
- c) This norm gives the Palestinians sovereignty over natural resources, and the right to freely determine their future in the whole of that territory.
- d) The establishment of the Jewish homeland in Palestine pursuant to the Balfour Declaration (1917) and the Mandate for Palestine (1922) was a breach of the right of the Palestinian people to self-determination, as reflected in Article 22 of the Covenant of the League of Nations.

- e) For various reasons cited in the Palestinian submissions - including the “prolonged occupation”, “illegal Israeli settlements” and “annexation” - Israel’s occupation of East Jerusalem, West Bank and Gaza has become illegal.
- f) Israel must “immediately and unconditionally” withdraw from the OPT.
- g) Moreover, “[t]his means, *inter alia*, that Israel must abandon its policy of annexing Jerusalem and the rest of the West Bank, dismantle its illegal settlements and infrastructure on the Palestinian territory, end its blockade of the Gaza Strip, revoke all legislation and measures that discriminate against the Palestinian people, and refrain from further violation of the fundamental rights of the Palestinian people under international law, including their right to self-determination.”
- h) Under international law, other states are also required to ensure that Israel terminates its occupation. They must impose boycotts and sanctions.

Approximately forty of the participating states and each of the three the international organisations supported these claims.

However, number of states argued that the Court should exercise its discretion not to give an opinion on the questions posed:

- Canada, Czech Republic, Fiji, France, Hungary, Italy, UK, and Zambia argued that the Court should exercise its judicial discretion not to issue an opinion at all.
- The USA also argued that the Court should not take sides (the USA [oral statement](#) in 2024 was slightly different from its [written observations](#) in 2023).

6. Reasons why the ICJ should not give an Advisory Opinion

In the documents listed below, all of which were provided to the ICJ in the advisory proceedings, experts provide detailed legal analysis of six main reasons why the Court should not give an Advisory Opinion. The following is a summary of those arguments:

6.1 Politically motivated nature of the Request.

A draft motion prepared by the “State of Palestine” was approved by the Special Political and Decolonization Committee (Fourth Committee) on 11 November 2022. A resolution resolving that the General Assembly should ask the ICJ for an Advisory Opinion was passed by a vote of 98 to 17, with 52 abstentions, and was sent to the UNGA. Nicaragua presented the draft resolution because Palestine is not a full member of the UN. On 30 December 2022 the UN General Assembly adopted Resolution 77/247, with 87 votes in favor, 26 against, and 53 abstentions. This means only a minority (87 of 193 Member States) supported the resolution.¹

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A number of countries changed their votes from “Yes” or “Abstain” in November 2022 (Fourth Committee) to “No” in December 2022 (General Assembly), including Austria, Czech Republic, Estonia, Germany, Italy, Romania, and the United Kingdom. Several EU countries also changed their votes from “Yes” to “Abstain”.² Details of the UNGA vote are below:

- YES: 87, including China, Cuba, Iran, Iraq, Libya, North Korea, Pakistan, Russia, Saudi Arabia, Syria, Turkey, Vietnam, Yemen, and Zimbabwe. From Europe, Belgium, Ireland, and Luxembourg also voted yes.
- NO: 26, including the United States, United Kingdom, Germany, Italy, Australia, Canada, Austria, Czech Republic, Costa Rica, Croatia, Estonia, Guatemala, Kenya, Liberia, Lithuania, and Romania.
- ABSTAIN: 53, including 11 EU countries.
- ABSENT: 26



Voting on Resolution 77/247 on 30th December 2022

6.2 The Request conflicts with the negotiations-based framework sanctioned by the Security Council for resolution of the conflict.

The Court *must steadfastly* maintain and uphold the binding legal framework established specifically to resolve the Palestinian-Israeli conflict, as mandated by the United Nations Security Council and by the parties to the Oslo Accords. These legal frameworks are binding not just on the parties to the conflict but also on the entire international

² <https://unwatch.org/background-icj-advisory-opinion-on-legal-status-of-israels-prolonged-occupation/>

community. It is imperative that the Court ensures that they are respected and enforced to achieve last peace and justice.

- The Peace Process established at the UN-endorsed Madrid conference in 1991 led to partial resolution of the conflict between Israel and Jordan concerning the West Bank, and to a series of agreements negotiated and entered into between Israel and the PLO.
- The PLO under Chairman Arafat negotiated and signed the “Oslo Accords” between 1993 and 1997 on behalf of all Palestinians, and thus committed to a political process for resolving the conflict. In these agreements, Israel and the PLO (representing the Palestinian people) agreed to a detailed and comprehensive plan for the gradual redeployment of Israeli military forces, and the transfer of powers, responsibilities and authority from the Israeli military government and its Civil Administration to the Palestinian Self-governing Authority.
- The Oslo Accords are binding and entail ongoing legal rights and obligations – not only for the parties to the agreements (Israel and the PLO), but also for the USA, Russia, Egypt, Jordan, Norway and the EU (as signatory witnesses), as well as all Members of the UN. The UN General Assembly endorsed the Oslo Accords as the basis for a negotiated political process in Resolution ES-10114 of 8 December 2003 and the agreements were deposited with the UN Secretariat. The Court endorsed the importance of the Oslo Accords in the “Wall” case.³
- In the Oslo Accords, the parties accepted that the only way to resolve their dispute is through “the agreed political process”. They specifically agreed that, pending a final agreement Israel is entitled to maintain a military government and civil administration in the West Bank and Gaza Strip; the West Bank would be divided into three areas – A, B and C. The Palestinians would obtain full control over Area A, Area B would be under joint Israeli/Palestinian control, and Area C would be under exclusive Israeli control; while “Settlements”, “borders”, “Jerusalem” and several other issues would be the subject of permanent status negotiations.
- Regarding the current legal status of settlements, the verbatim quotation of the two following paragraphs of the two following provisions of the Oslo Accords is compelling:

“It is understood that these [permanent status] negotiations shall cover remaining issues, including, Jerusalem, refugees, settlements, borders, relation and cooperation with other neighbors, and other issues of common interests” (Declaration of Principles -Oslo I -Article 5 paragraph 2)

“The Palestinian side shall ensure that no construction close to the [Israeli] settlements and military installations will harm, damage or adversely affect them or the infrastructures serving them” (Israeli-Palestinian Interim Agreement -Oslo II -Annex III Article 27).

³ *Construction of a Wall (Advisory Opinion)*, 2004, I.C.J. Reports, p. 158, para.77.

- It is therefore clear that Palestinians when signing the Oslo Accords did not consider settlements as an unsurmountable obstacle for peace.
- The Oslo Accords seek to implement principles expressed in the seminal UN Security Council Resolution 242. It acknowledged Israel's rights to secure and recognized boundaries and territorial integrity and did not require complete Israeli military withdrawal from the territories captured in 1967 and did not recognize or even refer at that time to "Palestinian" rights to that territory. In the meantime, the status of the West Bank remains subject of negotiation as between Israel and the PLO.
- On 19 November 2003, the Security Council adopted [resolution 1515](#) (2003), by which it "Endorse[d] the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict". According to the Road Map:

"A two state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism, when the Palestinian people have a leadership acting decisively against terror and willing and able to build a practicing democracy based on tolerance and liberty, and through Israel's readiness to do what is necessary for a democratic Palestinian state to be established, and a clear, unambiguous acceptance by both parties of the goal of a negotiated settlement as described below."

- The Roadmap for Peace eventually failed because the Palestinian side never fulfilled its first and foremost obligation to "cease violence and incitement to violence". Instead, Palestinians intensified violence and terror during the Second Intifada.

The ongoing binding nature and relevance of the Oslo Accords were recently confirmed by the Palestinian Authority, on behalf of the PLO, in Sharm el Sheikh, Egypt. At the invitation of the Arab Republic of Egypt, on 19 March 2023 Jordanian, Israeli, Palestinian and U.S. political and security senior officials met in Sharm El Sheikh. The Government of Israel and the Palestinian Authority reaffirmed, their "unwavering commitment to all previous agreements between them", and "reaffirmed their commitment to all previous agreements between them and reaffirmed their agreement to address all outstanding issues through direct dialogue".⁴

The circumstances bearing upon the Chagos archipelago, and which facilitated the delivery of an Advisory Opinion by the Court concerning decolonization, do not apply here.⁵ In the *Chagos* case, Mauritius challenged its 1966 agreement with the United Kingdom. In contrast, the Palestinian Authority endorses the continuing binding status of the Oslo Accords with Israel. The two situations are clearly distinguishable on these and other grounds.

⁴ <https://il.usembassy.gov/joint-communicue-from-the-march-19-meeting-in-sharm-el-sheikh/>

⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion)*, 2019, I.C.J. Reports 1, paras 28-49.

Israel has made it clear that it does not consent to the Court’s jurisdiction to make a determination in relation to issues the subject of its agreements with the PLO. The parties agreed not to take action outside the framework of negotiations. The Request for an Advisory Opinion is a legal maneuver that circumvents obligations imposed on the PLO by the Oslo Accords. It would reshape those Accords to undermine the responsibilities of the PLO pursuant to them.

By submitting a Request to the ICJ to opine *solely* on legal sanctions flowing from alleged Israeli non-compliance with international law, without even referring to the rights and obligations of the PLO under the [Oslo Accords](#), seeks to undermine the delicate balance of rights and obligations referred to in the Oslo Accords.

6.3 Israel has not consented.

Israel has not consented to submit the dispute to the Court for judicial settlement. Reliance on the Advisory Opinion procedure in such a case would circumvent and erode the principle enshrined in Article 36 of the Court’s statute, which is that contentious cases can only be brought before the Court with the consent of the parties concerned. This is indeed a contentious case disguised as an advisory opinion. As the Court has previously observed:

"In certain circumstances . . . the lack of consent of an interested State may render the giving of an Advisory Opinion incompatible with the Court’s judicial character. An instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent."⁶

6.4 The questions ask the Court to make factual and legal assumptions, which are unverified assertions, and which the Court cannot verify.

As the IJL Submission notes (at paras 8-12), the Request invites the Court to assume –

- (1) Israel’s presence in the West Bank, the Gaza Strip and Jerusalem is without any legal justification;
- (2) Israel’s presence in these areas violates Palestinian rights; and
- (3) this territory is “Palestinian.”

These assumptions are inherent in the framing of the General Assembly’s questions which presuppose Israel’s “ongoing violation” of the Palestinian people’s right to self-determination, and settlement and “annexation” of “Palestinian territory.”

While the language of Resolution 77/247 portrays these assumptions as true, we submit that while they may accurately reflect certain actors’ political aspirations, **they**

⁶ *Western Sahara, I.C.J. Reports 1975*, p. 25, paras. 32-33.

do not accurately represent established legal facts. Consequently, it will be for the Court to carry out its obligation to unpack, test and verify these assumptions, both for the purpose of determining whether the Court should exercise its jurisdiction and deliver the requested opinion, and also substantively should it choose to do so.

The General Assembly's formulation of the questions before the Court, if accepted as they are, will prevent the Court from conducting the in-depth factual and legal analysis that is required, and will naturally raise questions as to the propriety of the Court's accepting the General Assembly's request, should they not be reconsidered.

It follows that the Court should consider whether to reformulate the General Assembly's questions. As put by Judge Kooijmans in his separate opinion in the *Wall* Advisory Opinion:

"In the present case the request is far from being 'legally neutral'. In order not to be precluded, from the viewpoint of judicial propriety, from rendering the opinion, the Court therefore is duty bound to reconsider the content of the request in order to uphold its judicial dignity. The Court has done so but in my view it should have done so proprio motu and not by assuming what the Assembly 'necessarily' must have assumed, something it evidently did not."

6.5 Unreliable factual evidence.

UKLFI has noted that, due to the one-sided formulation of the questions posed in Resolution 77/247, the Court does not have before it the accurate and reliable information that it would need to render an opinion on the questions posed:

- The Court is asked to rely on UN documents as conclusive proof of the factual and legal assertions they contain. This is unacceptable. Israel's complete exclusion from all regional groups of UN members from their formation in 1961 until 2000 (when it was admitted to the West European and Others Group (WEOG) in New York) and its partial exclusion thereafter until 2014 (when it was eventually admitted to the WEOG in Geneva) mean that Israel's voice is never heard in UN committees and other organs.
- The UN Secretariat has already provided the Court with over 29,000 pages of documentation from the period since 1967. Numerous statements in these documents are disputed. The forensic examination of this material needed before it could be relied on would require very extensive resources and time, as well as confidence in the Court's process on the part of persons with the expertise and objectivity required for the examination to be effective. At the same time, the UN Secretariat has not provided documentation published before 1967, despite the importance of the history prior to 1967 in assessing the position and determining the rights and obligations of different parties since then. The failure to provide documents published before 1967 would appear to be non-compliant with Article 65(2) of the Court's Statute. While the Court has

various powers to obtain evidence and information, it is not able to compel their provision. This would be a further, potentially insuperable, impediment to establishing critical facts reliably in this case.

- The Court should not rely on any information contained in documents provided by the UN Secretariat in the present case or on any other information, unless this Court has been able to verify the information by a robust and impartial forensic examination.
- The Court must decide in each case "whether the Court has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character". While the Court has previously referred to the sufficiency of the information provided, the reliability of the information is also critical. In this case, the Court lacks sufficiently reliable information to arrive at a judicial conclusion on disputed questions of fact whose determination is necessary for it to give an opinion in conditions compatible with its judicial character.

6.6 Bias.

Another problem is that there are judges on the Court who are not impartial. Take the President of the Court, Lebanese Judge [Nawaf Salam](#), who has been a member of the court since February 2018 and had previously been employed as an Ambassador and Permanent Representative of Lebanon to the United Nations from 2007 until 2017. Salam has a [history](#) of making anti-Israel statements. The President should recuse himself.

6.7 Contentious legal assertions.

The assertions in the Request and in the State of Palestine's submissions are one-sided and ignore competing arguments. These competing arguments were not adequately presented in the submissions to the Court, as the states opposing the Opinion focused on the question of the Court's jurisdiction and discretion, not the substantive issues. However, they are referred to in the IJL, UKLFI, TSTP, and Fiji submissions (written and oral):

Self-determination

UKLFI expresses it as follows:

Self-determination is a relative right, which needs to be accommodated with other rights and requirements.

The right of Palestinian Arabs to self-determination must be accommodated with the right of the Jewish people to self-determination in their national home and the right of Israelis to live in peace within secure borders.

The need for these accommodations gives rise to a set of difficult issues that have to be resolved in final status negotiations, including Jerusalem, refugees, settlements, security arrangements and borders.

These accommodations also require an end to incitement of hatred and terrorism against Israelis by the Palestinian Authority and other actor. Without an end to this incitement, peace and security will not be possible, particularly given the proximity of the populations and the topography of the land. In particular, the Palestinian Authority needs to end policies of rewarding terrorists and their families by lavish salaries, pensions and other payments; glorifying terrorism against Israelis in media including children's television; promoting terrorism in education and in sport; and punishing Palestinians who engage in activities or have normal relations with Israelis.

Territorial sovereignty

Israel has valid sovereignty claims to the OPT. These claims were not presented in the Advisory proceedings, because of the one-sided nature of the questions. Therefore, the Court did not have the benefit of such arguments, and thus cannot make a determination on the issue.

IJL: "It is incorrect to assume that Israel and the Jewish people have no valid legal claims, under international law, in the West Bank and Jerusalem. Without prejudice to, but without accepting the validity of any Palestinian claims, this is plainly a situation of competing claims to sovereign legal entitlement. In law and in fact, for over a century, sovereign legal title over the West Bank (and indeed the Gaza Strip) has been, and continues to be, indeterminate, or in abeyance. This has been the legal position under international law since the end of the First World War, when Turkey (as the successor to the Ottoman Empire) ceded sovereignty of the areas outside of its current borders. No agreement, instrument, judgment, opinion, or event with legal effect has changed this status since, as reflected – and explicitly stated – in agreements between the interested parties, and particularly agreements between the Israeli and Palestinian authorities. Under these agreements, the question of the final disposition of these areas shall be determined only by negotiation. Until then, both sides have agreed to provisional arrangements, which continue to apply and govern the legal relationship between them today."

UKLFI continues: "In accordance with the doctrine of *uti possidetis juris*, the State of Israel was entitled to inherit the borders of the Mandate of Palestine as they existed on 14 May 1948, including the eastern boundary along the Jordan river and Arava valley. These were also the borders of the Jewish national home recognised by the League of Nations Mandate. The position was not altered by the armistice agreements of 1949 which delineated "the lines beyond which the armed forces of the respective Parties shall not move". These agreements explicitly stated that that these lines were without prejudice to any rights, claims or positions of the parties or the ultimate settlement of the Palestine question. New borders can be

created by agreement, and it was envisaged by the Oslo Accords that borders would be one of the subjects of final status negotiations.

The correct starting point is that Israel was entitled to inherit the borders of the Mandate of Palestine as of 14 May 1948 and that relinquishing part of the territory within them constitutes a concession by Israel in terms of territory, albeit that it may assist the resolution of other difficult issues.”

Alleged Illegality of occupation

ILF: “International law recognizes that a State, in implementing its right to self-defense, in particular in the context of fighting terrorism, can in principle take all required measures to put an end to an ongoing attack and to avoid any future attack from the same source, especially when they are part of the same pattern of conduct which constitutes the overall armed attack.

In light of the magnitude of the threat from Palestinian armed groups evidenced by the horrific attack of 7 October 2023, there can be little doubt that Israeli presence in the West Bank and the Gaza Strip is legally justified as a measure of self-defense.

The existence of an occupation is a matter of fact. Once occupation has been established an occupant is permitted, subject to the laws of war, to apply lawful force to maintain and restore public security and safety, and to prevent security and other threats within and from the territory in question. An occupation does not become illegal with the passing of time and there is no basis in public international law to conclude that an occupation preventing the exercise of the right of self-determination becomes illegal.

Even assuming, *arguendo*, it is accepted that an occupying power is required to justify, on a continuing basis, its presence in occupied territory pending resolution of a conflict, then, given the reality of the factual and political situation on the ground in Israel, the West Bank and Gaza, it would be incumbent on the Court to take into account the application of Israel’s right to use force in its protection as a relevant aspect of the applicable legal framework. Indeed, there is currently little doubt, especially in light of events on 7 October 2023, that Israel (a) continues to face serious security challenges and threats of armed attacks from both the West Bank and Gaza which it is entitled to address in the exercise of its rights under the law of occupation and, as a sovereign State, to protect its territory and its citizens, and (b) that an Israeli military presence in these territories is necessary to prevent such threats.

State practice and *opinio juris* do not support the existence of a rule of customary international law providing that a lawfully created occupation may subsequently become illegal on account of violations of the right to self-determination of the population under occupation.”

7. Possible negative effects of an Advisory Opinion

An Opinion requiring unilateral Israeli withdrawal (without agreement) would present an existential threat to Israel's security.

Even if one were to concede that Israel does not have sovereign title over Judea and Samaria (the West Bank) - which, for the sake of clarity, we do not concede - Israel cannot withdraw from this area for compelling security reasons. Such a withdrawal would not merely pose a heightened threat for Israel, it would amount to outright suicide.

The Samaritan Highlands (the central part of the West Bank) provide a significant elevation advantage. From these heights, there is a clear line of sight to key areas in Israel, including the densely populated coastal plain where Tel Aviv and the Ben Gurion Airport are located. If hostile forces were to gain control of these highlands, they could easily launch rockets and artillery into these targets and other critical infrastructure for Israel making them extremely vulnerable to devastating attacks, even from short-range weapons like mortars.

Given these security concerns, Israel simply cannot withdraw from the area, and a ruling that Israel is obliged to withdraw from these territories would be a fundamental infringement of Israel's right under international law to territorial integrity and secure and defensible borders.

In context of 7th October, an Advisory Opinion affirming Palestinian sovereignty over all of the OPT will escalate, rather than de-escalate, the conflict.

The ICJ's ruling has the potential to further destabilize the region and escalate the armed conflict by emboldening anti-Israel enemies, both non-state and state actors, notably Hezbollah and Iran, to attack Israel under the guise that that the upcoming ICJ ruling provides them with a strong legal justification for those attacks.

Israel, on the other hand, can also decide to depart from the bilateral negotiation framework provided by the Oslo Accords and take all necessary measures to unilaterally give effect to the provisions of the Mandate for Palestine as it deems appropriate, particularly the "right to close settlement of the land". Pro-Palestinian actions are stretching the situation to its limits, and the upcoming ICJ ruling may precipitate an all-out war of apocalyptic proportions by dragging new actors into the conflict.

As Hungary [argued](#): "We are of the view that both the present proceedings, as well as the proceedings against the State of Israel in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip*, may be considered as provocations in the ongoing conflict, not contributing to the de-escalation and an

eventual settlement of the conflict. A potential utilization of the Court in the communication war could create newer dividing lines and could continue to fuel tensions in one of the most severe conflicts of recent history.”

An Opinion denying Israeli rights in the OPT would be a subversion of international law.

The Mandate for Palestine and the Oslo Accords conform to international law and do not undermine the right to self-determination of the Palestinian people, particularly in the light of Article 38 of the ICJ.

Any possible court’s arguments to the contrary would lack substance and involve a complete and unprecedented subversion of international law.

Indisputably, the Mandate for Palestine of 1922, sanctioned by the League of Nations, provides Israel with a sovereign title over what are today the territories of Israel, the West Bank and Gaza. Israel’s title to sovereignty is based on that Mandate, not on the subsequent occupation of these territories after the 1967 war. Of course, this occupation does not invalidate the prior acquisition of the territories based on the Mandate, nor does it represent a relinquishing of Israel’s sovereign rights over them.

Ultimately, the Palestinians’ desire is to find legal justification to establish a Palestinian Arab State “from the river to the sea”, which would lead in practice to the extinguishing of the State of Israel established in 1948.

As for the concept of “prolonged occupation” posed by the GA’s question, we should consider that Israel seized the territories of the West Bank and Gaza in the course of a legitimate self-defense war under *ius ad bellum*. UNSC Resolution 242 (1967), which is still in force, does not call Israel for an “immediate and unconditional” withdrawal from the occupied territories. Rather, Resolution 242 called (and calls) parties to negotiate a final agreement that would secure every state in the area “their right to live in peace within secured and recognized borders”. Consequently, until Israel’s right to secure borders is achieved, Israel is entitled, under international law, to remain in lawful occupation of the area as long as military needs exist (conceding that this a military occupation, which, for the sake of clarity, we do not concede). This is nothing else than a continued exercise of Israel’s right of self-defense under Article 51 of the Charter and customary international law. This dismantles any argument that a “prolonged occupation” is inherently illegal.

In the same vein, state practice and *opinio juris* do not support the existence of a rule of customary international law providing that a lawfully created occupation may subsequently become illegal on account of violations of the right to self-determination of the population under occupation.

8. Why the majority of member states did not vote in favor of the request for an Advisory Opinion

While 80% of UN resolutions are typically adopted by consensus, Resolution 77/247 was passed by a vote, requiring a simple majority of the states present. This divisive process disregarded the perspectives of the minority, with a majority of UN member states not supporting the resolution.

The countries that explicitly voted against the resolution typically based their decisions on the line of the following arguments:

- *Concerns about bias:* Some countries, notably the United States and Israel, claim that the Resolution is biased against Israel and does not adequately address the complexity of the conflicts or the responsibility of the parties.
- *Security concerns:* The United States and several European nations often cite concerns about Israel's security and the need for a balanced approach that considers Israel's right of self-defense.
- *Diplomatic and Political Considerations:* Some countries may oppose such resolutions due to their diplomatic relations with Israel and broader geopolitical considerations.
- *Legal and Procedural Issues:* There are also arguments regarding the appropriateness of the UNGA addressing issues that some believe should be resolved through direct negotiations between the parties involved.

9. Why Israel did not participate in the Advisory Opinion proceedings.

Israel made a short [written submission](#) in July 2023 in which it explained its reasons for not participating further in these advisory proceedings:

- The questions put to the Court by resolution 77/247 represent a clear distortion of the history and present reality of the Israeli-Palestinian conflict.
- The prejudicial nature of the questions is evident not only in the contorted manner in which they are framed, but also in what they disregard. In pointing a finger at one side only, the questions overlook thousands of dead and wounded Israelis who have fallen victim to murderous Palestinian acts of hatred and terrorism - acts that continue to endanger Israel's civilians and national security on a daily basis.

- The questions similarly ignore compelling evidence of ongoing official Palestinian incitement to violence against Jews and Israelis,
- The tendentious questions placed before the Court not only distort the factual reality: they fundamentally misrepresent the legal reality as well. Thus, they fail to recognize Israel's right and duty to protect its citizens, as well as the well-established principle – long enshrined in bilateral Israeli- Palestinian agreements and in the statements and resolutions of the UN and other international bodies.
- Israel's deep historical ties and own valid claims to the territory in question are likewise discounted, as are Israel's rights and responsibilities in this territory pending a negotiated resolution of the conflict, including in the sphere of security, as recognized under international law and in Israeli-Palestinian agreements.
- the failure of the questions to appreciate the very existence of the Israeli-Palestinian agreements, according to which the two sides have agreed to resolve through direct negotiations precisely the subject-matter placed before the Court.
- It follows that the present situation is not only one in which Israel, as an interested party, has not given its consent to judicial settlement of its dispute with the Palestinian side; it is also one in which both interested parties have given their express and binding consent to resolving that dispute through another settlement means. The request for the Court's advisory opinion perversely seeks to circumvent the lack of Israel's consent, and to make a dead letter of the fundamental international legal principle underlying the indispensable need for it.

SOURCES

Fiji Written Statement (25 July 2023) (“Fiji Written”)

<https://www.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-37-00-en.pdf>

Fiji Oral Submission (26 February 2024) (“Fiji Oral”)

<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240226-ora-02-00-bi.pdf>

IJL Submission (submitted under ICJ Practice Direction XII) (“IJL”)

https://www.9brchambers.co.uk/media/1916/240216_ijl-statement_icj_final.pdf

UKLFI/ELNET Submission (submitted under ICJ Practice Direction XII) (“UKLFI”)

<https://www.uklfi.com/elnet-and-uklfi-challenge-false-allegations-against-israel-in-international-court>

Two States for Two Peoples? (Referred to in footnote 6 of the Fiji Written Submission) - Executive Summary (“TSTP”)

<https://drive.google.com/file/d/1Vxkr3bRCQ3uMaYTdg5J30mDk5LW5ApGR/view>

The ICJ website with all documents relating to these proceedings.

Can be accessed [here](#).

Direct links to some of the main documents and presentations:

States supporting Palestine	States opposing the Advisory Opinion
<i>The State of Palestine</i> Written statement Volume II Annexes Written comments Oral presentation	<i>Canada</i> Written statement
<i>League of Arab States</i> Written statement Written comments Oral presentation	<i>Czech Republic</i> Written statement
<i>Organization of Islamic Cooperation</i> Written statement Written comments	<i>Fiji</i> Written statement Oral presentation
<i>Belgium</i> Oral presentation	<i>France</i> Written statement Oral presentation
<i>Netherlands</i> Oral presentation	<i>Hungary</i> Written statement Oral presentation
<i>Norway</i> Written statement Oral presentation	<i>Italy</i> Written statement
<i>Spain</i> Written statement Oral presentation	<i>United Kingdom</i> Written Statement Oral presentation
<i>Switzerland</i> Written statement Oral presentation	<i>United States</i> Written statement Written comments Oral presentation
<i>Ireland</i> Written statement Oral presentation	