

International Human Rights and Humanitarian Law on Trial at the International Court of Justice in *The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem*

On 30 December 2022, the General Assembly of the United Nations (UNGA) adopted [Resolution A/RES/77/247](#) (UNGA Resolution) with 87 states voting yes, 26 voting no and 53 abstaining. The UNGA Resolution requests the International Court of Justice (ICJ)

"to render an advisory opinion on 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?"**(emphasis added)

The UNGA Resolution was received by the ICJ from the Secretary General of the UNGA on 19 January 2023. The [ICJ](#)

[Press Release of 20 January 2023](#) announced opening of the Advisory Opinion case under the title of *The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Territory including East Jerusalem*.

[Written submissions to the ICJ](#), regarding *The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Territory including East Jerusalem* were filed during 2023 by 52 UN member states and three organizations: the Arab League with 22 member states, the African Union with 55 member states and the Organization for Islamic Cooperation with 57 member states. Since 1947, 193 cases have come before the ICJ. Never have so many states made written and oral submissions on a case before the ICJ. The appearance of three organizations of states is also unprecedented.

Oral presentations from 51 states and the three organizations were heard by the ICJ in The Hague from 19 to 26 February 2024. The missing state was Canada. After filing written submissions objecting to even non-binding intervention by the ICJ on the basis that it is the Security Council not the UNGA that should 'broker a negotiated peace,' Canada did not make oral submissions. Videos of the presentations are available on [the ICJ website](#) and, [on the UN WebTV](#) .

Oral submissions made on 26 February 2024 by Türkiye, Zambia, The Arab League and The Organization for Islamic Cooperation identify facts and **law** relevant to the questions to be examined by the ICJ and varying analyses of what is needed to ensure the rights of Palestinians. Zambia opposes the ICJ taking jurisdiction, arguing that because of the Oslo Accords and other failed processes, the questions of whether Palestinians have rights including the right to self-determination must be settled by negotiation and consensus. Türkiye took the ICJ through a decades-long history of violations and non-compliance by Israel of resolutions, recommendations and decisions by the ICJ, UNGA, UN Security Council, UN Human Rights Council and other UN bodies and mandate holders regarding Israel's treatment of Palestinians and occupation of Palestinian lands. The three organizations and Türkiye called on the ICJ to immediately recommend effective measures to end over five decades of violations by Israel of the internationally

protected rights of Palestinians, enable Palestinian rights to self-determination and stop and prevent further occupation or control by Israel of Palestinian Territory of Gaza, West Bank and East Jerusalem. The ICJ Advisory Opinion is expected within six months of the February 2024 hearing.

Can international human rights and humanitarian law provide meaningful protection from, prophylaxes against and remediation of gross violations including genocide, war crimes, crimes against humanity and widespread and systemic violations of both derogable and non-derogable rights? Outcomes of three ICJ cases may decide this vital issue. See the Advisory Opinion described above and ICJ proceedings in [South Africa v Israel](#) and [Nicaragua v Germany](#).

Prepared by Gail Davidson



March 10, 2024