

# The UN General Assembly Refers Israel to The Hague

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**In late December, the UN General Assembly asked the International Court of Justice (ICJ) for its opinion on the legality of the "ongoing Israeli occupation." The opinion will likely include critical statements about the illegality of Israel's conduct in the West Bank and East Jerusalem and about its "annexation" moves. Harsh assertions by the Court could significantly damage Israel's foreign relations, be used as ammunition by the Boycott, Divestment and Sanctions (BDS) movement, and even possibly affect the investigation into Israel's case at the International Criminal Court (ICC). Statements and actions by the Israeli government that explicitly disavow international law, or imply that Israel has no intention of ending its control over the Palestinians within the framework of a political solution – including steps to annex parts of the West Bank, the blurring of the legal distinction between the State of Israel and these territories, or violations of the rights of Palestinians – can influence both the content of the advisory opinion and its severity, and above all, the degree of endorsement and adoption of the opinion in the global arena.**

On December 30, 2022, the UN General Assembly [adopted](#) a resolution requesting the International Court of Justice (ICJ) to issue an advisory opinion regarding two questions. One, what are the legal consequences arising from Israel's ongoing violation of the Palestinian people's right to self-determination, the prolonged occupation, the settlements, and annexation, including measures aimed at changing the demographic composition and the character and status of Jerusalem, and the adoption of discriminatory legislation and measures in this context. Two, how do these violations affect the legal status of the occupied territories, and what

are the possible implications for the countries of the world and the UN. The decision was supported by 87 countries; 26 opposed, including the United States, Canada, Germany, and Great Britain; and 53 abstained, including most European countries. This resolution once again demonstrates the anti-Israel bias of the United Nations, which focuses disproportionately on Israel. To be sure, most of the UN member states opposed, abstained, or did not participate in the vote (106 countries). This is in part due to persuasion on the part of Israel that led some of the countries that supported this decision at the committee stages to change their position. However, there was no real chance of preventing the decision. Israel [condemned](#) the resolution and stated that "the Jewish people is not occupying its land and is not occupying its eternal capital Jerusalem. No UN resolution can distort this historical truth."

The decision constitutes an adoption of a recommendation that was included in the October 20, 2022 [report](#) of the Commission of Inquiry established by the UN Human Rights Council after Operation Guardian of the Walls. The report claims that the "Israeli occupation" is illegal based on its being irreversible due to facts on the ground established by Israel – primarily, the settlement enterprise. It is also claimed that the use of security considerations is intended to disguise Israel's true intention to annex parts of the territory, de facto and de jure.

In international law, the term "occupied territory" describes a factual situation in which territory is captured during an armed conflict, and the occupying power effectively controls it. The international laws of occupation define terms and conditions that apply to the occupying power in its management of the territory. There is no provision in the laws of occupation that refers to the illegality of the occupation itself (as distinct from the violation of the obligations applicable throughout the time of occupation), or a limitation on the duration of the occupation. In recent years, some have [sought](#) to claim that the "Israeli occupation" is illegal, since it fundamentally deviates from the basic principles underlying the laws of the occupation – being a temporary regime; the lack of entitlement for the occupying power to apply sovereignty in the territory; and the

occupier's role as a "trustee" that must administer the territory in favor of the occupied. On the other hand, it is [claimed](#) that the appeal to the Court is a hypocritical attempt to invent a new status of "unlawful occupation" that is not recognized in international law, borne out of political motives and that disregards the fact that there is a deep-rooted dispute over the territory.

The ICJ, which was established under the UN Charter in 1945, is the main judicial tribunal of the UN. Most of its work addresses the resolution of disputes between countries that have consented to this role, and who are obliged to obey the decisions in their case. Alongside this, the Court provides advisory opinions on legal questions at the request of UN bodies. Although the opinions are not binding, they enjoy great prestige and are seen as bearing much weight in the international arena.

This is the second time that the Court has been asked by the General Assembly to give its opinion regarding Israel. On July 9, 2004, the court [issued](#) an advisory opinion regarding the construction of the security barrier, in which it stated that the construction of the "wall," which creates a reality of de facto annexation, constitutes a violation of international law, including Israel's obligation to respect the Palestinians' right to self-determination, international humanitarian law, and human rights laws. It was also determined that the settlements constitute a violation of international law. Israel, which refused to take part in the proceedings, [criticized](#) the opinion. Israel's Supreme Court [allowed](#) construction of the barrier to continue, noting that the ICJ ignored the reality on the ground. The ICJ "wall" opinion did not lead to practical measures against Israel, although it was and continues to be used as a reference to present the illegality of Israel's conduct in the territories by its critics. A significant counterargument, which served to reduce the effects of the 2004 opinion, was that the conflict between Israel and the Palestinians must be resolved through political channels and not through judicial proceedings, and indeed political processes were conducted then and subsequently, including the decision on the disengagement plan implemented in 2005. In addition, the opinion was criticized by other parties beyond Israel, due to

its ignoring the dangers of terrorism at a time when the United States and its allies were involved in active conflicts in Iraq and Afghanistan against terrorist elements.

Following the General Assembly's recent decision, the Court will first discuss its authority to issue an opinion. Presumably, it will find that it has such authority. Later, a panel of judges will be selected and the claims themselves will be deliberated. Various countries and parties will be able to submit their opinions to the Court. The procedure, which stands to take between one and two years, will likely result in critical statements about the illegality of Israel's conduct in the West Bank and in East Jerusalem, and about the annexation moves it is taking, although it is difficult to assess in advance the severity of the statements and whether there will also be minority opinions. The reference in the resolution requesting the opinion on "discriminatory legislation and measures," and the claims made in the [report](#) of the commission of inquiry established by the Human Rights Council that Israel maintains continuous "discrimination against Palestinians throughout the West Bank and East Jerusalem," raises the concern that the Court might even adopt the far-reaching (and unfair) claims that Israel maintains a regime of apartheid.

It can be expected that the opinion will call on the UN and other countries and organizations to take practical steps to put pressure on Israel to stop its illegal activity, and it may even recommend the imposition of sanctions on Israel. Even in this state of affairs, however, it seems that the chance that the Security Council will impose sanctions is extremely slim, in light of the veto power of the United States. However, the Court's harsh determinations could significantly damage Israel's foreign relations, including by eroding support for Israel among its allies, which in any case hold a critical position regarding Israel's conduct in the Palestinian arena. Thus, for example, in early December, the European Union [froze](#) a draft of an advanced agreement for the exchange of information between the Israel Police and Europol, due to a dispute over the use of information in the West Bank. The opinion may also encourage the promotion of additional unilateral diplomatic moves on the part of the Palestinians, such as

applying for full membership in the United Nations and upgrading the level of representation in countries around the world.

There is no doubt that a critical opinion will be used as ammunition by the Boycott, Divestment and Sanctions (BDS) movement and other parties promoting initiatives for measures against Israel. In addition, following Russia's invasion of Ukraine, many global companies have decided of their own accord to cease operating in Russia for moral reasons; an opinion by the ICJ might push them to consider similar moves against Israel. In December it was [reported](#) that the Norwegian sovereign wealth fund, which manages assets worth \$1.3 trillion and is considered the largest in the world (in 2020 it invested \$1.3 billion in Israeli companies), is re-examining its investments in Israel to ensure that the money is not invested in settlements or companies operating beyond the Green Line. In addition, there is a worldwide trend of renewed division into camps between the democratic-liberal countries and the anti-liberal autocratic countries, and the ICJ opinion could serve those claiming that Israel should be viewed as a member of the latter group.

The opinion can also affect the investigation into Israel's case at the other (and separate) court in The Hague, the International Criminal Court (ICC). The investigation, which was officially opened in March 2021, focuses on allegations of crimes committed in the territories of the West Bank, East Jerusalem, and the Gaza Strip since June 13, 2014, including the "settlements crime" defined in the Court's statute. In the year and a half since he took office, the Court Prosecutor, Karim Khan, has rarely addressed the investigation, and it seems that it is not his priority, although [there are signs](#) that in the coming year it may be advanced somewhat. A recommendation by the court to launch criminal proceedings against Israeli officials, and in particular regarding the settlements, can wield additional pressure on the Prosecutor to accelerate the investigation. In addition, assertions by the Court on the existence of systematic discrimination may affect the investigation, since the crime of apartheid is included in the list of crimes against humanity under the Court's jurisdiction.

Nevertheless, it must be remembered that the actions of states derive primarily from their interests, which are broader than considerations of adherence to international law alone. Therefore, even if a critical opinion is given, the degree of its impact will be derived from the way in which the international community adopts it. The policy of the Israeli government and its conduct can influence both the content of the opinion and its degree of severity, and in particular the degree of support and adoption of the content of the opinion in the global arena. Statements and steps that explicitly disavow international law, or that imply that Israel has no intention of bringing about an end to its control over the Palestinians within the framework of a political solution, will be used against Israel in the international arena, make it difficult to gather support for Israel's positions vis-a-vis the opinion, and likely exacerbate the damage to Israel. Such measures by Israel include: steps to annex parts of the West Bank, including de facto annexation and blurring of the legal distinction between the State of Israel and these territories, for example by applying Israeli legislation directly to the territory and exercising the powers of the Israeli government directly and not through the military government; measures that violate the rights of Palestinians, including the seizure of private land for settlement purposes and measures of collective punishment; and steps that undermine the rule of law in Israel and the status of the courts, whose independence and professional prestige constitute a central argument by Israel in the international campaign, especially in light of the fact that the Palestinians can raise their claims before an independent and professional court.

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