

## Palestine, Israel and International Law

Written evidence, UK Parliament Foreign Affairs Committee Inquiry, ‘The Israeli-Palestinian conflict’

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### 1. Introduction

1. I am a [university academic](#) and legal practitioner before international courts. My expertise is in international law, including as it relates to Palestine and Israel. I acted as Senior Counsel and Legal Advisor to the League of Arab States in the [\*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem\*](#) Advisory Opinion case before the International Court of Justice (ICJ). The [landmark](#) 19 July 2024 ruling in that case is one of the most, if not the most, significant judicial decisions ever rendered in international law. Although not itself a legally-binding judgment, it is an authoritative determination of what international law—which is binding—means. Its main findings were endorsed, and supplemented, by the UN General Assembly (UNGA) in its [resolution](#) of 13 September 2024. The ICJ and UNGA affirmed a profound shift of focus, compared to certain existing approaches, notably by most western States including the UK, on the question of the occupation’s legality: the Israeli presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem—the Occupied

Palestinian Territory (OPT)—is illegal in not only its conduct, but also its very existence, as a violation of the legal right of self-determination of the Palestinian people, and the prohibition of annexation through the use of force in the law on the use of force. Consequently, in the words of the ICJ, it must be brought to an end “as rapidly as possible”.

2. The submissions I made for the League of Arab States in the case (see [here](#), [here](#), and [here](#)) were based on ideas in my academic writing (see [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#)). These academic ideas were adopted by many of the other participants in the proceedings, and, ultimately, formed the basis for the determination of existential illegality made by the ICJ and the UNGA. I subsequently published an [expert legal opinion](#) for the Palestinian NGO [Al Haq Europe](#), explaining the significance of this determination, and the consequential legal obligations that all states, including the UK, have to bring the illegality to an end, and not to recognize or aid or assist Israel in maintaining it.
3. In what follows, I draw on the foregoing to explain the international law aspects of the Palestine-Israel situation, writing in my personal capacity only.

2. More than century-long denial of self-determination of, and war against, the Palestinian people, on the basis of racism

4. The Palestinian people have been denied the exercise of their legal right to self-determination through the more-than century-long violent, colonial, racist effort to establish a nation-state exclusively for the Jewish people in the land of Mandatory Palestine.

5. When this began in earnest after the First World War, the Jewish population there was 11 per cent. Forcibly implementing Zionism in this demographic context has necessarily involved the extermination, or forced displacement, of some of the non-Jewish Palestinian population; the exercise of domination over, and subjugation, dispossession and immiseration of, remaining non-Jewish Palestinians; the emigration to that land of Jewish people, regardless of any direct personal link; and the denial of Palestinian refugees the right to return. All operating through a racist distinction privileging Jewish people over non-Jewish Palestinian people.
6. This has necessitated serious violations of all the fundamental rules of international law: the right of self-determination; the prohibitions of aggression, genocide, crimes against humanity, racial discrimination, apartheid, and torture; and the core protections of international humanitarian law.

### 3. Palestinian self-determination under Article 22 of the League of Nations Covenant

7. The legal right of self-determination of the Palestinian people originates in the “sacred trust” obligations of Article 22 of the League Covenant, part of the Versailles Treaty. Palestine, an ‘A’ class Mandate under British colonial rule, was, after the First World War, supposed to have its existence as an independent state “provisionally recognized”: A *sui generis* legal right of self-determination.
8. The UK and other members of the League Council attempted to bypass this, incorporating the 1917 Balfour Declaration commitment to establishing a national home for the Jewish people in Palestine into the instrument stipulating how the Mandate would operate. However, the Council had no legal power to bypass the Covenant in this way. It acted *ultra vires*, and the relevant provisions were, legally,

void. There was and is no legal basis in that Mandate instrument for either a specifically Jewish state in Palestine, or the UK's failure to discharge the "sacred trust" obligation to implement Palestinian self-determination.

4. Self-determination in international law after the Second World War—an additional right

9. After the Second World War, a self-determination right applicable to colonial peoples generally crystallized in international law.

10. For the Palestinian people, this essentially corresponded to, and supplemented, the pre-existing Covenant right, regarding the same, single, territorial unit. The 1947 proposal to partition Palestine into two states was contrary to this; the Arab rejection an affirmation of the legal *status quo*.

11. In 1948, then, Palestine was, legally, a single territory with a single population enjoying a right of self-determination on a unitary basis.

5. Nakba in 1948—violation of self-determination, and creation of a regime involving an ongoing violation of this right, as well as racial discrimination and apartheid, and a denial of the right to return

12. Despite the foregoing, a State of Israel, specifically for Jewish people, was proclaimed in 1948 by those controlling 78%—more than three quarters—of Palestine, accompanied by the killing and forced displacement of a significant number of the non-Jewish Palestinian population—the Nakba, catastrophe.

13. There was no international legal basis for the creation of a state exclusively for one racial and religious group—the Jewish people—on land populated not only by members of this group, but also non-Jewish Palestinian people. In particular, there was no legal basis for creating this state to protect the Jewish people from discrimination, displacement and extermination, in the light of the Holocaust, if this necessitated discrimination, displacement and extermination of the non-Jewish Palestinian population of the land in question. The Shoah did not justify the Nakba. There was and is no international legal rule requiring a non-European people, the Palestinian people, not responsible for the discrimination, displacement and extermination of the Jewish people of Europe by other Europeans, to pay the price for that through their own discrimination, displacement and extermination.
14. The illegal secession involved in the proclamation of Israeli statehood was an egregious violation of Palestinian self-determination. This statehood was recognized, and Israel admitted as a UN member, despite this illegality. Israel is not the legal continuation or successor of the Mandate.
15. This violation of Palestinian self-determination is ongoing, and unresolved. Two key elements are as follows. In the first place, Palestinian people not displaced from the land proclaimed to be of Israel in 1948, and their descendants, have been forced to live as citizens—presently they constitute 17.2 per cent—of a state conceived to be of and for another racial group, under the domination of that group, necessarily treated as second-class, because of their race. In the second place, Palestinian people displaced from that land, and their descendants, are prevented from returning.
16. These are serious breaches of the right of self-determination, the prohibitions of racial discrimination and apartheid, and the right of return. These serious violations must end, immediately.

## 6. 1967 Israeli capture of the Palestinian Gaza Strip and West Bank

17. As if the ongoing Nakba was not catastrophic enough, in 1967, Israel captured the remaining 22% of historic Palestine—the Gaza Strip and West Bank, including East Jerusalem—the Naksa. It has maintained that use of force to remain in control for the 57-year period since.

## 7. Illegal racial domination—apartheid—from the Jordan River to the Mediterranean Sea

18. For more than half a century, therefore, a state defined to be of and for Jewish people exclusively has governed the entire land of Palestine and the Palestinian people there. And the regime of racial domination—apartheid—and denying the right of return, has been extended throughout. In the case of Palestinians living in the occupied territory, this has involved the same serious violations of international law, supplemented by serious violations of norms applicable in occupied territory.

19. Indeed, these people are subject to an even more extreme form of racist domination, as they aren't even citizens of the state exercising authority over them. Even in East Jerusalem, which Israel has purported to annex, the majority non-Jewish Palestinian residents do not have citizenship, whereas Jewish residents, including illegal settlers, are citizens.

20. Just as in territorial Israel, in occupied territory, these serious violations concerning how Israel exercises authority over the Palestinian people must end immediately.

21. However, here, a more fundamental matter must also be addressed. The illegality of the exercise of authority *itself*.

8. Gaza Strip and West Bank as Palestinian territory—consequently, Israel’s purported annexation, and attempted colonization, are illegal

22. The enduring Palestinian legal right of self-determination means that the Palestinian people, and the State of Palestine, not Israel, are sovereign over the territory Israel captured in 1967. For Israel, this land is extraterritorial, and, given what was said about the Mandate, territory over which it has no legal sovereign entitlement.
23. Despite this, Israel has purported to annex East Jerusalem, and taken various actions there and in the rest of the West Bank constituting purported annexation, including implanting Jewish settlements. It is Israeli policy that Israel should be, not only the exclusive *authority* over the entire land between the river and the sea, but also the exclusive *sovereign authority* there.
24. This constitutes a complete repudiation of the existence of Palestinian self-determination as a legal right, since it empties the right entirely of any territorial content.
25. Actualizing it through purported annexation, is, first, a serious violation of Palestinian self-determination and, second, a serious violation of the prohibition on the purported acquisition of territory through force in the law on the use of force, and so an aggression. Serious violations of further areas of the law regulating the conduct of the occupation are also being perpetrated, notably the prohibitions on implanting settlements and altering, unless absolutely prevented, the economic, legal, political, social and religious *status quo*.

26. The occupation is, therefore, existentially illegal because of its use to actualize purported annexation. To end this serious illegality, it must be terminated, Israel must renounce all sovereignty claims, and all settlements must be removed. Immediately.
27. However, this is not the only basis on which the occupation's existential legality must be assessed. It is also necessary to account for the law of self-determination, and the law on the use of force.

9. Self-determination as a right to be self-governing, requiring the occupation to end immediately

28. The right of self-determination, when applied to the Palestinian people in the territory Israel captured in 1967, is a right to be entirely self-governing, free from Israeli domination.
29. Consequently, the Palestinian people have a legal right to the immediate end of the occupation. And Israel has a correlative legal duty to immediately terminate the occupation.
30. This right exists and operates simply and exclusively because the Palestinian people are entitled to it. It does not depend on others agreeing to its realization. It is a right.
31. It is a repudiation of 'trusteeship', whereby colonial peoples were ostensibly to be granted freedom only if and when they were deemed 'ready', because of their stage of 'development' determined by the racist standard of civilization. The anti-colonial self-determination rule replaced this with a right based on the automatic, immediate entitlement of all people to freedom, without preconditions. In the words of UN General Assembly Resolution 1514, "inadequacy of preparedness should never serve as a pretext for denying independence".



32. Some suggest that the Palestinian people were offered, and rejected, deals that could have ended the occupation. And, therefore, Israel can maintain it, pending a settlement. Even assuming, *arguendo*, the veracity of this account, the ‘deals’ involved a further loss of the sovereign territory of the Palestinian people.
33. Israel cannot lawfully demand concessions on Palestinian rights as the price for ending its impediment to Palestinian freedom. This would mean Israel using force to coerce the Palestinian people to give up some of their fundamental legal rights: illegal in the law on the use of force, and, necessarily, voiding the relevant terms of any agreement reached. The Palestinian people are legally entitled to reject a further loss of land over which they have an exclusive, fundamental legal right. Any such rejection makes no difference to Israel’s immediate legal obligation to end the occupation.

#### 10. The occupation as an illegal use of force in the law on the use of force

34. Israel’s exercise of control over the Palestinian territory since 1967, as a military occupation, is an ongoing use of force. As such, its existential legality is determined by the law on the use of force, as a general matter, beyond the specific issue of annexation.
35. Israel captured the Gaza Strip and West Bank from, respectively, Egypt and Jordan, in the war it launched against these two states and Syria. It claimed to be acting in self-defence, anticipating a non-immediately-imminent attack. The war was over after six days. Peace treaties between Israel and Egypt and Jordan were subsequently adopted.
36. Despite this, Israel maintained control of the territory—a continuation of the use of force enabling its capture.

37. Israel's 1967 war was illegal in the law on the use of force—even assuming, *arguendo*, its claim of a feared attack, states cannot lawfully use force in non-immediately-imminent anticipatory self-defence.
38. Moreover, assuming, again *arguendo*, that the war was lawful, the justification ended after six days. However, the requirements of the law on the use of force continued to apply to the occupation as itself a continuing use of force. In 1967, with self-determination well established in international law, states could not lawfully use force to retain control over a self-determination unit captured in war, unless the legal test justifying the initial use of force also justified, on the same basis, the use of force in retaining control. Moreover, this justification would need to continue, not only in the immediate aftermath, but for more than half a century. Manifestly, this legal test has not been met.
39. Israel's exercise of control over the Gaza Strip and West Bank through the use of force has been illegal in the law on the use of force since the capture of the territory itself, or, at least, very soon afterwards.
40. The occupation is, therefore, again existentially illegal in the law on the use of force—an aggression—this time, as a general matter, beyond illegality specific to purported annexation. To terminate this serious violation, the occupation must, likewise, end immediately.

#### 11. Legal right to resist vested in the Palestinian people

41. Israel's failure to end the occupation gives rise to a right to resist in international law on the part of the Palestinian people. This is equivalent to the right the Ukrainian people have to resist, and the right the Ukrainian state has to use force in self-defence

against, Russia's current war, including its occupation and purported annexation of certain areas, in Ukraine. The right does not justify the intentional targeting of civilians, or indiscriminate attacks that risk harming civilians, or the kidnapping of civilians, all of which are illegal as outside of what is permitted by the right itself, and also as violations of international humanitarian law, international human rights law, and international criminal law.

12. Illegal force does not become lawful in response to resistance to it

42. Israel's current military action in Gaza is not a war that began in October 2023. It is a drastic scaling-up of the force exercised there, and in the West Bank, on a continual basis, since 1967. A justification for a new phase in an ongoing illegal use of force cannot be constructed solely out of the consequences of violent resistance to that illegal use of force, even when resistance goes beyond what is legally justified and is, therefore, itself unlawful. Otherwise, an illegal use of force would be rendered lawful because those subject to it violently resisted—circular logic, with a perverse outcome.

13. Israel cannot lawfully use force to control the Palestinian territory for security purposes/pending a peace agreement

43. More generally, Israel cannot lawfully use force to control the Palestinian territory for security purposes pending an agreement providing security guarantees. States can only lawfully use force outside their borders in extremely narrow circumstances. Beyond that, they must address security threats non-forcibly.

44. Likewise, there is no rule of international law justifying the continuation of the occupation until there is a peace agreement meeting Israeli security needs. Such a rule would actually do away with the very operation of the fundamental legal rules of international law concerning self-determination and the limits on lawful force as outlined above. As a result, the matters these rules conceive as rights vested in the Palestinian people would be realized only if agreement is reached, and only on the basis of such an agreement. At best, if an agreement is forthcoming, this would mean that it would not need to be compatible with Palestinian fundamental rights. It could be determined only by the acute power imbalance in Israel's favour. At worst, if no agreement is forthcoming, this would mean that the indefinite continuation of Israeli rule over the Palestinian people in the OPT, on the basis of racist supremacy and a claim to sovereignty, would be lawful. In sum, the 'Israel must agree before the occupation must end' approach is an affront to the international rule of law, and the UN Charter imperative that disputes are settled in conformity with international law.

*25<sup>th</sup> December 2024*