

UN Report: The Legality of the Israeli Occupation, Of the Occupied Palestinian Territory, Including East Jerusalem

By [UN Committee on the Exercise of the Inalienable Rights of the Palestinian People](#)

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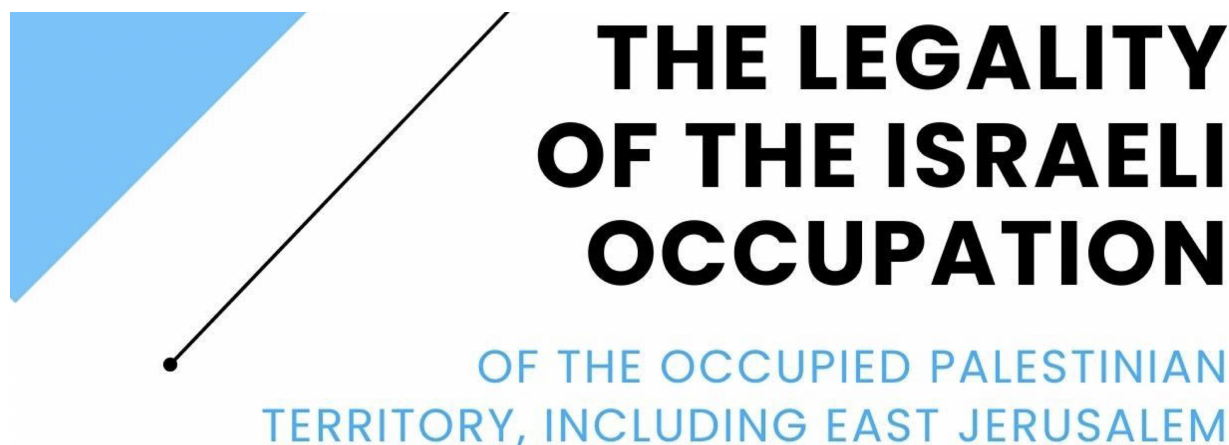
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COMMITTEE ON THE EXERCISE OF
THE INALIENABLE RIGHTS
OF THE PALESTINIAN PEOPLE



The Legality of the Israeli Occupation of the Occupied Palestinian Territory, Including East Jerusalem

UN Committee on the Exercise of The Inalienable Rights of the Palestinian People

Foreword

It is with a deep sense of responsibility that on behalf of the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, I present this groundbreaking Study on the Legality of the Israeli occupation of the Occupied Palestinian Territory, including East Jerusalem. As the Chair of the Committee, it is my honour to endorse this comprehensive examination, which has been meticulously researched and drafted by the Irish Human Rights Centre of the National University of Ireland in Galway.

The relevance and urgency of this study cannot be overstated. The Israeli occupation which started in 1967 is the only reality generations of Palestinians have grown up with. It continues to have far-reaching implications on the lives and rights of the Palestinian people. It is incumbent upon us, the international community, to deepen our understanding of the legal issues raised by this prolonged occupation and its profound impact on human rights, peace and stability in the region.

Against this backdrop, the study on the legality of the Israeli occupation fills a critical knowledge gap. This thorough legal analysis aspires to contribute to an informed discourse, empowering individuals and institutions with the knowledge and tools to advocate for justice, accountability and the realization of the inalienable rights of the Palestinian people. By examining the relevant international legal instruments, conventions and resolutions, the study also provides a comprehensive appraisal of the legal obligations and responsibilities incumbent on the occupying Power and the parties involved.

This study also underscores the pressing need for a just and lasting resolution based on international law of the Question of Palestine in all its aspects. It highlights the imperative of upholding the principles of international law, including respect for human rights, self-determination and the prohibition of the acquisition of territory by force. Such an understanding is crucial for fostering a conducive environment that paves the way for the end of the Israeli occupation and the realization of the inalienable rights of the Palestinian people.

Moreover, the timely nature of this study cannot be overlooked at a time when Israel is deepening its colonization and creeping annexation of the Occupied Palestinian Territory. In a rapidly evolving global landscape, where geopolitical dynamics continue to shape the debate on the Question of Palestine, the study offers a frame of reference to anchor policymakers, diplomats, international organizations and civil society actors on a comprehensive and authoritative legal analysis enabling informed decision-making, advocacy and the pursuit of justice.

I extend my heartfelt gratitude to the Irish Human Rights Centre of the National University

of Ireland Galway for their unwavering commitment and for the rigorous research that underpins this study.

Finally, I recommend this study to all those dedicated to the realization of a just and lasting peace in the Middle East. It is my hope that the findings and insights presented herein will serve as a catalyst for informed dialogue, effective advocacy and meaningful actions towards a future where the rights and aspirations of both Palestinians and Israelis are realized with full respect for the rule of law.

Ambassador Cheikh Niang

Chair, United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People and Permanent Representative of Senegal to the United Nations

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Executive Summary

Part I

This study examines two central questions. First, it asks whether Israel's *de facto* and *de jure* annexation measures, continued settlement and protracted occupation of the Palestinian territory – the West Bank, including East Jerusalem, and the Gaza Strip – render the occupation illegal under international law. Second, the study examines the question raised by the implications arising from a finding of illegal occupation. If an occupation can become illegal, what would be the legal consequences that arise for all States and the United Nations, considering, *inter alia*, the rules and principles of international law, including, but not limited to, the Charter of the United Nations; the Fourth Geneva Convention; international human rights law; relevant Security Council, General Assembly and Human Rights Council resolutions; and the advisory opinion of the International Court of Justice of 9 July 2004?

The study establishes that there are two clear grounds in international law establishing when a belligerent occupation may be categorized as illegal. First, where a belligerent occupation follows from a prohibited use of force amounting to an act of aggression, such occupation is illegal *ab initio*. Second, where a belligerent occupation follows from a permitted use of force in self-defence under Article 51 of the Charter of the United Nations but is subsequently carried out *ultra vires* the principles and rules of international humanitarian law and in breach of peremptory norms of international law, the conduct of the occupation may amount to an unnecessary and disproportionate use of force in self-defence. The study examines Israel's breaches of peremptory norms of international law, the prohibition of the acquisition of territory through force, the right to self-determination, and the prohibition on racial discrimination and apartheid, as indicative of an occupation being administered in breach of the principles of necessity and proportionality for a use of force in self-defence.

Part II - The nature of belligerent occupation

Part II of the study provides a thematic introduction to the legal nature of belligerent occupation and the divergent approach of Israel to the occupation of Palestine. In doing so, it broadly examines the principles underpinning the laws governing belligerent occupation,

presents the theory of belligerent occupation as illegal under the *jus bello*, and highlights international practice and jurisprudence classifying belligerent occupations as illegal under the *jus ad bellum*. Further, the study introduces the central tenets of Israel's official policies and positions on the nature of the belligerent occupation of Palestine, its settlement enterprise and its annexation of Palestinian territory.

The laws governing belligerent occupation establish a number of important principles, including the temporary or *de facto* nature of occupation enshrined in Article 42 of the Hague Regulations (1907), which finds that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army". As such, although governmental authority may be "temporarily disrupted or territorially restricted" during a belligerent occupation, the "State remains the same international person".¹ The occupying Power therefore does not acquire sovereignty over the occupied territory,² but rather, is obliged to administer the territory weighing the best interests of the occupied population with those of military necessity, under the limitative conservationist principle.³ Significantly, the present study highlights the positions of leading authorities on international law which consider that the practice of "prolonged occupation" has related to occupations of no more than four or five years in length, such as Germany's four-year occupation of Belgium during World War I,⁴ or Germany's five-year occupation of Norway in World War II.⁵ Former United Nations Special Rapporteur Michael Lynk observes that modern occupations compliant with the principles of occupation law "have not exceeded 10 years, including the American occupation of Japan, the Allied occupation of western Germany and the American-led occupation of Iraq".⁶

That belligerent occupations may be considered illegal is not unique to Israel. For example, in *Case Concerning Armed Activities on the Territory of the Congo* (2005), the International Court of Justice held that Uganda's occupation of Ituri "violated the principle of non-use of force in international relations and the principle of non-intervention".⁷ Concomitantly, the United Nations Security Council condemned Iraq's "illegal occupation" of Kuwait,⁸ and South Africa's "illegal administration" in Namibia.⁹ The United Nations General Assembly, meanwhile, called on Third States to not "recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan"¹⁰ and condemned Portugal for "perpetuating its illegal occupation" of Guinea-Bissau.¹¹ Similarly, the United Nations Commission on Human Rights denounced Vietnam's "continuing illegal occupation of Kampuchea".¹² In 1977, the General Assembly expressed its deep concern "that the Arab territories occupied since 1967 have continued, for more than ten years, to be under illegal Israeli occupation and that the Palestinian people, after three decades, are still deprived of the exercise of their inalienable national rights".¹³ Likewise, the preambles to successive United Nations Economic and Social Council resolutions refer to the "severe impact of the ongoing illegal Israeli occupation and all of its manifestations".¹⁴

Finally, section II concludes with a presentation of Israel's policies and positions on the nature of its administration of the Palestinian territory, the legality of settlements and its annexation of Jerusalem. For instance, Israel's Ministry of Foreign Affairs considers there to be "competing claims" over the West Bank which "should be resolved in peace process negotiations", including the settlements.¹⁵ However, Israel's High Court of Justice, in *Gaza Coast Regional Council v Knesset of Israel*, held that "the legal outlook of all Israel's governments" is that the "areas are held by Israel by way of belligerent occupation".¹⁶ Nevertheless, Israel does not apply the Fourth Geneva Convention (1949) to the occupied territory as it has not been transposed into its domestic law; also, politically, Israel disputes

the application of the Convention premised on its theory of the “missing sovereign”. Meanwhile, Israel considers occupied Jerusalem “the eternal undivided capital of Israel”¹⁷ and explains that Jerusalem was “reunified” in 1967 “as a result of the six-day war launched against Israel by the Arab world”.¹⁸

Part III - Legality of the occupation

Part III presents two separate grounds under the *jus ad bellum* where a belligerent occupation may be considered illegal, whether from the outset or beginning at some subsequent point in the occupation. First, an occupation arising from an act of aggression is illegal *ab initio*. Article 2(4) of the United Nations Charter requires that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”. Criminal liability may arise for aggressive acts of occupation; for example, the International Military Tribunal at Nuremberg considered Austria to be “occupied pursuant to a common plan of aggression”.¹⁹

Second, a belligerent occupation may be conducted in a manner that amounts to an unnecessary and disproportionate use of force in self-defence.²⁰ Here the caselaw of the International Court of Justice provides useful guidance on proportionality. For example, in *Nicaragua*, the International Court of Justice considered, “the reaction of the United States in the context of what it regarded as self-defence was continued long after the period in which any presumed armed attack by Nicaragua could reasonably be contemplated”.²¹ Further, in *Nuclear Weapons* the International Court of Justice suggested that a use of force should meet “in particular the principles and rules of humanitarian law” to be a lawful use of force in self-defence.²² This study suggests that the occupying Power’s breach of the principles and rules of international humanitarian law and peremptory norms of international law provide a strong indicator that a use of force is disproportionate. Such breaches include *de facto* and *de jure* annexations of territory, illegal acquisition of territory through use of force, the denial of the right of self-determination, and the administration of the occupied territory in breach of the prohibition of racial discrimination and apartheid.

Having established the two grounds for illegal occupation under the *jus ad bellum*, the study proceeds to examine, as a separate and subsequent ground of illegality, the occupying Power’s breach of the external right of self-determination of Palestine as Mandate territory. Article 1(2) of the United Nations Charter provides for the right of self-determination of peoples, a *jus cogens* norm of international law²³ which has obligations on States *erga omnes*.²⁴ The right of self-determination has special resonance for Mandate territories, whose right of self-determination is held internationally as a “sacred trust” until full independence. As such, the colonial process can only be considered to be fully brought to a complete end once the right of self-determination has been exercised by the inhabitants of the colony.²⁵ The *South West Africa* advisory opinion provides the leading example of an illegal occupation of Mandate territory, considered by the International Court of Justice to be illegal *ab initio*. However, whereas South West Africa was mandated territory, held under occupation after the termination of the Mandate, it can be distinguished from Palestine, which is mandated territory held under belligerent occupation in the context of an international armed conflict. Nevertheless, if the occupation is administered in a way that denies the exercise of the right of the people to external self-determination and sovereignty, this may similarly be considered in breach of the “sacred trust”. Depending on the circumstances giving rise to the breach of self-determination, the occupation could be illegal either *ab initio* or at some point thereafter.

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Introduction

A. Outline

This study examines two central questions. The first is whether Israel's *de facto* and *de jure* annexation measures, continued settlement and protracted occupation of the Palestinian territory – the West Bank, including East Jerusalem, and the Gaza Strip – render the occupation illegal under international law. Second, the study examines the question raised by a finding of illegal occupation. If an occupation can become illegal, what would be the legal consequences that arise for all States and the United Nations, considering, *inter alia*, the rules and principles of international law, including, but not limited to, the United Nations Charter; the Fourth Geneva Convention; international human rights law; relevant Security Council, General Assembly and Human Rights Council resolutions; and the advisory opinion of the International Court of Justice of 9 July 2004?

Although the establishment of a belligerent occupation operates as a question of fact, the rationale behind the *de facto* nature of belligerent occupation was to prevent the disinterested or malevolent occupying Power from reneging on their obligations towards the occupied population.⁵⁸ For these purposes, international humanitarian law norms continue to bind the occupying Power regardless of the legality of the occupation. However, Giladi observes that “regulating situations of occupation is as much a *jus ad bellum* exercise as it is one of *jus in bello*”.⁵⁹ *Jus ad bellum* refers to “conditions under which States may resort to war or to the use of armed force in general” while *jus in bello* refers to the law regulating the conduct of parties engaged in an armed conflict, primarily international humanitarian law.⁶⁰ Accordingly, this study establishes that there are two clear grounds in international law establishing when a belligerent occupation may be categorized as illegal. First, where a belligerent occupation follows from a prohibited use of force amounting to an act of aggression, such occupation is illegal from the outset. Second, where a belligerent occupation follows from a permitted use of force in self-defence under Article 51 of the United Nations Charter, but subsequently breaches the principles of necessity and proportionality, the resulting occupation may become illegal.

This study foregrounds its analysis on the illegality of the belligerent occupation primarily on Israel's breach of the law governing the use of force as an act of aggression. There is persuasive documentary evidence to indicate that Israel's initial invasion of Egypt in 1967 constituted a pre-emptive armed attack against the Egyptian blockade and therefore an unlawful use of force.⁶¹ Even assuming *arguendo* that Israel's use of force was a legitimate act of self-defence in response to an armed attack, Israel's continued belligerent occupation of the Palestinian territory for almost 56 years – decades after it concluded peace agreements with Egypt and Jordan, key parties to the conflict, and after multiple Security Council calls for it to end – makes it clear that the belligerent occupation has exceeded the parameters of military necessity and proportionality for a legitimate act of self-defence. The study demonstrates that Israel is carrying out an indefinite belligerent occupation, with annexationist intent, in violation of the exercise of the Palestinian people's right to self-determination and permanent sovereignty over national resources. In doing so, this research broadly examines Israel's breach of the principles and rules of international humanitarian law, and in particular, the breach of three peremptory norms: (1) the right to self-determination; (2) the prohibition on the acquisition of territory by use of force; and (3) the prohibition of racial discrimination and apartheid, as particularly compelling indicators

that Israel is occupying the Palestinian territory in breach of the principles of immediacy, necessity and proportionality, rendering the belligerent occupation an unlawful use of force in self-defence.

Having established that Israel's pre-emptive use of force against Egypt amounted to an act of aggression, and dispelling Israel's arguments of self-defence, the study examines the particular consequences of the occupation and its breach of the external right of self-determination of the Palestinian people. It is clearly articulated in the *South West Africa* advisory opinion that the continued occupation of Mandate territory after the termination of the Mandate is illegal *ab initio*.⁶² Nevertheless, the study draws a distinction between the administration of Namibia by South Africa – which had previously been the Mandatory Power and was acting *ultra vires* international resolutions terminating the Mandate – and the case of Palestine, a Mandate territory which is the subject of an international armed conflict and subsequent belligerent occupation.⁶³ As a “sacred trust” with particular international consequences, Israel's continued administration of occupied Palestine, as a *mala fide* illegal occupant, breaches the exercise of the right of the Palestinian people to external self-determination.

The study demonstrates that there are international consequences for Israel's illegal occupation and its breaches of peremptory norms of international law,⁶⁴ and that Third States and the international community are obliged to bring the unlawful administration of occupied territory to an end. In doing so, this study underscores the requirements for the full de-occupation and decolonization of the Palestinian territory, starting with the immediate, unconditional and total withdrawal of Israeli occupying forces and the dismantling of the military administration. Critically, withdrawal, as the termination of an internationally wrongful act, cannot be made the subject of negotiation. Full sanctions and countermeasures, including economic restrictions, arms embargoes and the cutting of diplomatic and consular relations, should be implemented immediately, as an *erga omnes* (*towards all*) response of Third States and the international community to Israel's serious violations of peremptory norms of international law. The international community must take immediate steps towards the realization of the collective rights of the Palestinian people, including refugees and exiles in the diaspora, starting with a plebiscite convened under United Nations supervision, to undertake the completion of decolonization.

B. Methodology

The study takes it as a starting point that the Palestinian territory – i.e., the West Bank, including East Jerusalem, and the Gaza Strip – was occupied by Israel in 1967, in the course of an international armed conflict. That the territory is under belligerent occupation is recognized by the International Court of Justice in the *Wall* advisory opinion:

The territories situated between the Green Line... and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories... have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.⁶⁵

The study also takes it as a starting point that Israel continues to occupy the Gaza Strip.⁶⁶ While recognizing that Israel is administering the territory occupied in 1967 as an occupying

Power under the laws of armed conflict, the study also makes reference to territory held under Israeli control beyond the occupied territory acquired in the 1948–49 conflict. This territory includes both the effectively annexed West Jerusalem⁶⁷ and the territory demarcated for a Palestinian State under General Assembly resolution 181,⁶⁸ territory which at a minimum continues to be held as a “sacred trust” for the Palestinian people.⁶⁹

The study undertakes a comparative analysis of the legal consequences of a number of occupations where the Security Council, the General Assembly and the International Court of Justice have pronounced on the illegality of the occupation. This includes South Africa’s occupation of Angola, Iraq’s occupation of Kuwait, Armenia’s occupation of Azerbaijan, Uganda’s occupation of Ituri in the Democratic Republic of Congo, Vietnam’s occupation of Democratic Kampuchea, South Africa’s occupation of Namibia, and Portugal’s occupation of Guinea-Bissau. Drawing from these case studies, the study concludes with an outline of the requirements for the de-occupation and decolonization of occupied Palestine.

The research draws from the leading international law scholars on the subject of belligerent occupation, broadly analysing the discourse on illegality under three central legal arguments. The first argument provides that belligerent occupations may become illegal premised on breaches of peremptory norms of international law.⁷⁰ A second school of thought suggests that the occupying Power’s breach of the principles of occupation law *in bello* taint the occupation with illegality.⁷¹ And a third line of arguments posits that an occupation following from an unlawful use of force, in breach of the *jus ad bellum*, is illegal, or may become illegal should the occupation follow from an act of self-defence that later violates the principles of necessity and proportionality.⁷² The study provides a substantive overview of the principles governing belligerent occupation. It provides a rationale for proceeding with use-of-force arguments,⁷³ while taking Israel’s violation of the principles underpinning occupation, along with its breach of peremptory norms of international law in administering the occupied territory, as evidence that the continuing unnecessary use of force is disproportionate to its original aim.⁷⁴

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Featured image: Palestinian residents of Huwara walk among their burned homes, cars, and businesses the morning after Israeli settlers rampaged through their town in the West Bank, Feb. 27, 2023. ([Oren Ziv](#))

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