

# The ICJ Obligations of Israel Advisory Opinion: A Quasi-Occupying Power?

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On 22 October 2025, the International Court of Justice (ICJ) published an [advisory opinion](#) under the descriptive yet unwieldy title, *Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory*. The opinion responds to a 19 December 2024 [request](#) from the UN General Assembly to identify and interpret legal obligations owed by Israel with respect to relief activities as an occupying power in the Gaza Strip and other Palestinian territory.

The Court could hardly have been asked to address a subject more fraught in diplomatic, political, security, or humanitarian terms. In legal terms, the Court's opinion also touches difficult and highly charged conflict-related issues. They include obligations owed with respect to UN entities, international human rights law, and privileges and immunities of the UN during war. However, as the General Assembly request directs, much of the advisory opinion focuses on law of war obligations arising during belligerent occupation such as consent to relief actions, non-governmental organizations' access to internees, respect for medical personnel and facilities, and the prohibition on civilian starvation.

We at *Articles of War* plan to offer a series of posts on the advisory opinion in the coming weeks. Meanwhile, this post introduces our readers to the opinion's brief treatment of the applicability and operation of the law of belligerent occupation. It highlights especially the Court's advice concerning whether and how a State may find itself owing legal duties based on belligerent occupation in conditions short of traditionally established occupation, as what might be termed a quasi-occupying power.

## The Advisory Opinion

The factual background of the advisory opinion was not new to the Court. Two prior ICJ advisory opinions had already advised the General Assembly on Israeli activities in the region. In its 2004 *Wall* advisory opinion, the Court [advised](#) that military exigencies did not justify Israeli security measures near Jerusalem and breached Israel's international law obligations. The Court also [advised](#) that Israel was an occupying power to whom the law of belligerent occupation applied (para. 101). In its 2024 *Policies and Practices of Israel* opinion, the Court further [advised](#) that Israeli presence in some Palestinian territories amounted to an unlawful annexation and unlawful belligerent occupation. Meanwhile, the Court's present docket includes a [contentious case](#) brought against Israel by South Africa, [joined](#) by other States, alleging that Israel's security activities in the Gaza Strip amount to genocide against the Palestinian population.

The Court's preceding and pending work notwithstanding, Israel's status as an occupying power in the Gaza Strip and other Palestinian territory has been contested for decades. Many have [maintained](#) that Israel has occupied the Gaza Strip continuously since 1967 (p. 15). This view is especially [prominent](#) among international organizations and institutions. Others long ago categorically [rejected](#) the possibility of a belligerent occupation in light of the uncertain (though rapidly [evolving](#)) legal status of Palestine. Still others have urged a [nuanced view](#), tied to evolving conditions of Israeli presence and influence in the Gaza Strip and elsewhere (p. 760-61).

This latest ICJ advisory installment seemed initially to afford the Court a chance to avoid revisiting this knotty legal work. The General Assembly request limited the [question presented](#) to "the obligations of Israel as an occupying power" (para. 10). The request therefore presumes Israel's status as occupying power and presented the Court an opportunity to merely assume belligerent occupation, *arguendo*, for purposes of rendering a responsive advisory opinion. The Court might then have simply sketched out Israel's corresponding legal duties concerning relief actions.

Considering the Court's record on the question, however, it was not surprising the Court passed on this opportunity. It acknowledged, that a "small group of participants" in written and oral advisory proceedings had contested Israel's status as an occupying power, though without citations or recounting their reasoning (para. 85). But the Court then immediately and summarily recalled its own 2024 advisory determination that "Israel remained capable of

exercising, and continued to exercise, certain key elements of authority over the Gaza Strip” to conclude it bears the obligations of an occupying power (para. 85, quoting [Policies and Practices of Israel](#), para. 93).

The Court next recounted its prior advice concerning Israel’s duties as an occupying power. It advised that these duties “have remained commensurate with the degree of its effective control over the Gaza Strip” (para. 85, quoting [Policies and Practices of Israel](#), para. 93). The opinion then noted that Israeli control over the Gaza Strip has “increased significantly” since the Court’s 2024 determination (para. 86). And so, the Court concluded, “Israel’s obligations under the law of occupation have also increased significantly, commensurate with the increase in its effective control over territory.”

Again, that the Court regarded Israel as an occupying power in the Gaza Strip was an important determination, even reasonable with respect to some Palestinian territory. However, its conception of precisely how and the extent to which occupation law duties operate in light of that determination may prove to be its more significant conclusion.

## **The Law of Belligerent Occupation**

The law of war long ago abandoned formalities—such as public proclamations or declarations—as conclusively marking the beginning or the extent of belligerent occupations. Instead, *de facto* conditions activate the law of occupation in both treaty and custom. Regulations [annexed](#) to the 1907 Hague Convention IV and [custom](#) capture the point well (§ 11.1.2.2). They consider territory occupied when it is “actually placed under the authority” of another State ([art. 42\(1\)](#)). The official [French version](#) of that passage is even clearer. It requires that territory be “*placé de fait sous l’autorité*” or “placed in fact under the authority” of another State.

Two historical points give helpful context to this legal threshold of occupation. First, States have frequently [attempted to mask](#) their belligerent occupations as mere invited support or as invasions short of occupation (p. 12-13). The Hague standard wisely looks through such accounts and propaganda. It instead examines actual conditions to determine both when and where an occupation exists. Second, classically speaking, the law of belligerent occupation has been binary in its application. A State either places another State’s territory under its authority as occupying power or it does not. There has been no condition of quasi-occupation. There has been no status of quasi-occupying power.

This binary character notwithstanding, the law of belligerent occupation has long recognized conditions of partial occupation. Many belligerent occupations have [not fully displaced](#) territorial sovereigns from their political boundaries. For a variety of reasons, belligerents have often occupied only portions of enemy territory. The 1907 Hague Regulations account for this fact as well, indicating that “occupation extends only to the territory where such authority has been established and can be exercised” ([art. 42\(2\)](#)). Each of the four 1949

Geneva Conventions also anticipates the point, providing, “The Convention shall also apply to all cases of *partial* or total occupation of the territory of a High Contracting Party” ([art. 2/2/2/2](#)) (emphasis added).

However, these references to partial occupation should not be misunderstood. Neither the Hague nor Geneva partial occupation standard means to suggest that occupation law obligations apply partially or severally. Each treaty’s reference to partial occupation describes instead the geographic extent of the occupying power’s exercise of authority and the commensurate territorial reach of its status as belligerent occupant. Where the State is an occupying power, its occupation law obligations apply fully. Where it is not an occupying power, it has classically had no such obligations.

At first blush, the Court’s advice that Israel’s duties as an occupying power are “commensurate with the degree of its effective control” could be understood to refer to such a partial occupation. That is, the Court might have advised that Israel’s duties are co-extensive with the portions of the Gaza Strip over which it exercises authority consistent with a state of belligerent occupation. Such a reading would be consistent with the established notion of partial occupation and would accurately reflect the highly dynamic and fragmented situation on the ground.

But it soon becomes clear this was not the Court’s intent in the above passage. Instead, its comment on duties being commensurate with control is meant to evaluate *how* rather than whether the law of occupation operates, that is, which obligations of occupation law apply to an occupying power and which do not.

### **Quasi-Occupation**

In academic and humanitarian circles, Israel’s activities have provoked mounting dissatisfaction with the binary, all-or-nothing approach to belligerent occupation duties. In particular, fluctuations in Israeli exercises of authority and influence over Gaza, its varying territorial presence and withdrawal, and its disavowals of legal duties as an occupying power have led many to urge a new approach to the law of belligerent occupation. Scholars in particular have [disputed](#) the legal logic of permitting an occupying power to extinguish its obligations by merely dialing back its activities below the legal threshold that established the occupation in the first place (p. 297). Further [unease](#) has arisen with respect to invaded territory, wherein a belligerent has nonconsensual physical presence and influence but exercises insufficient authority to activate the law of belligerent occupation.

A so-called [functional approach](#) to belligerent occupation duties has proposed to reduce these concerns. By this approach, an occupying power (and by some views a mere invading power) holds duties under the law of belligerent occupation not as an all-or-nothing proposition but rather “along a sliding scale for the purpose of the applicability of certain rules of [international humanitarian law] of military occupation but not for others” ([p. 341](#)).

Under functional occupation, obligations of an occupying power apply according to the functions that State is capable of performing and in light of the extent of control it exercises in foreign territory. Under this approach even a State that has not exercised or no longer exercises the authority required to establish an occupation is bound by certain obligations of occupation law.

Which obligations apply depends on the State's "degree of control." Negative obligations, such as the prohibition on deportations or transfers of populations would apply "as soon as the conduct they prohibit is materially possible ..." (p. 342). Positive obligations, such as duties to provide protection and support, would apply by the same measure of feasibility. In this latter sense, the functional approach has also been [offered](#) as a means to fill perceived protective gaps in the law of occupation (p. 40).

The International Committee of the Red Cross (ICRC) has long [nurtured](#) and supported these views. Those efforts culminated recently in its [updated](#) *Commentaries on the 1949 Geneva Conventions*. Whereas its prior projects had merely explored possibilities offered by functional occupation, the ICRC *Commentaries* couch functional occupation as an established interpretation of all States' obligations under the Geneva Conventions. Each of the four commentaries urges taking account of the competencies and control exercised by a State in determining its obligations as an occupying power. The ICRC [concludes](#) that in some circumstances the duties of belligerent occupation apply according to "functional limits of those competences" ([para. 378](#)). Early editions of the updated *Commentaries* cited scholarly and the ICRC's own work to support adoption of functional occupation (see e.g. paras. [307-13](#), n. 164-66). Its most recently updated 2025 commentary, however, updates and bolsters that support with a citation to the ICJ's own 2024 *Policies and Practices of Israel* advisory opinion ([para. 378](#), citing [para. 92](#)).

Despite an appealing [humanitarian logic](#) (apply as many protective rules as possible) and a seeming practical bent (just do what you can), the functional approach is not without hazards. Nor is the Court's adoption of it without problems. As much as selective application of occupation law obligations may fill gaps in protections or even generate [rights](#) for occupied populations, the *à la carte* approach can also be used to exclude application of protections and rights an occupying power finds burdensome or detrimental to its political or military goals. And while onerous—perhaps to the point of being [impossible](#) for many States to implement fully—all-or-nothing occupation law involves extraordinarily high standards of protection and preservation that counsel caution with respect to displacing and substituting for States' authority over their territory and populations (p. 1574). The significant military, logistical, and administrative burdens of belligerent occupation, that cover nearly every aspect of life, may have a restraining effect of their own. Whether the cautionary effects of the law can be preserved without full operation of its protective aspects is worthy of careful thought.

Further concern stems from the details of the selective application of legal obligations. The advisory opinion accounts well for evolving practices and practicalities. However, the underlying *legal basis* for excusing an occupying power from some obligations—but not others—remains unclear. Other posts in this series will explore in greater depth precisely how the Court conceives that duties of occupation law operate under the functional approach. But for now, it is worth asking whether excluded duties would be excused on the basis of derogation? The Court acknowledged that hostilities can “affect implementation of certain obligations ... required of an occupying power” (para. 87). But it immediately added that the law of belligerent occupation admits “no freestanding security exception” (para. 89). The latter is true, however, a far clearer reconciliation of what functional occupation would excuse and what very limited derogations and exceptions the law of belligerent occupation affords is surely needed (see Hague Regulations art. 43 (“as far as possible”); Fourth Geneva Convention art. 5 (“where absolute military security so requires”)). Alternatively, under functional occupation, are putative breaches of an occupying power’s duties precluded from wrongfulness by some theory of the general law of State responsibility such as [necessity](#)? Or more remotely, and radically, does the Court envision borrowing the concept of [limitations](#) from human rights law (see para. 89: “Any *limitations* on Israel’s obligations under international humanitarian law must be grounded in a specific rule”) (emphasis added)?

Additionally, just how the functional approach matured from the academic and humanitarian projects into the Court’s advice as law is worth examination as well. By the Court’s account, the functional approach’s legal pedigree leans heavily toward private and non-governmental sources. It is worth asking whether the Court could have more clearly grounded its advice in the views of States on this new approach. Although States often avoid expressing legal opinions on developing controversies, the advisory opinion appears to have [attracted](#) an impressive array of input from States. Could the Court have bolstered its advice with an overt survey of preexisting State practice and *opinio juris* or by providing a clear catalog of the views offered in the advisory proceedings? And if it had engaged in such a survey, would support among States for functional occupation have been sufficiently analogous to the consensus that formed the traditional binary approach to belligerent occupation law in 1907 and 1949 in the first place? For that matter, would it have supported a conclusion of universally applicable customary international law?

As with so many current law of war issues, whether one is persuaded by the Court’s advice on functional occupation (or quasi-occupation if you prefer) will likely be a function of one’s views on such interpretative considerations.

## Concluding Thoughts

It should be reemphasized that the General Assembly’s request for an advisory legal opinion dropped the Court into perilous legal waters. The questions the request posed to the Court sit astride not only long-developing schisms in States’ views on the laws of war and belligerent occupation. They require consideration of complex and fast-developing evolutions

in warfare that challenge, even strain, the existing law. The practices and conditions that fed development of the law belligerent occupation as we find it, may indeed no longer reflect the full range of practices that deprive or supplant a State's exercise of authority over its territory. And it is of course true that, "Deviation from the traditional stereotype of occupied territory is an insufficient reason for the law not to apply" ([p. 329](#)).

However, whether and by whom that law should be remade in response to such deviations is a compelling question raised by the Court's advisory opinion. For its part, the Court seems to have relied heavily on private scholarship and humanitarian organizations' contributions to have shifted the law of belligerent occupation toward fuller coverage of conditions involving foreign authority over territory. How exactly the General Assembly will put this advice from the Court to use remains to be seen. So does how and whether States will accept and use it, particularly those that find themselves in the challenging conditions of exercising authority in the territory of another State.

Other aspects of the Court's advice on the law of belligerent occupation will no doubt attract attention as well as other portions of its advisory opinion. We plan to cover much of this in our forthcoming series and hope you will stay tuned.

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