

Legal Consequences arising from the Policies and Practices of Israel  
in the Occupied Palestinian Territory, including East Jerusalem

(Request for Advisory Opinion)

Written Comments

Republic of Guatemala

**I. Introduction**

1. The United Nations General Assembly adopted, on 30 December 2022, Resolution 77/247<sup>1</sup>. Said Resolution in its Paragraph 18 requests the International Court of Justice an advisory opinion. The said paragraph reads as follows:

*18. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, 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,*

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<sup>1</sup> <https://www.undocs.org/A/RES/77/247>

*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?*

2. The Secretary General of the United Nations, by a letter addressed to the President of the Court, dated 17 January 2023 and received in the Registry on 19 January 2023,<sup>2</sup> transmitted to the Court the above request.
3. The International Court of Justice, by Order of 3 February 2023<sup>3</sup>, decided, in accordance with Article 66, paragraph 2 of its Statute, that the United Nations and its Member States, as well as the Observer State of Palestine, were likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and fixed 25 July 2023 and 25 October 2023 as the time-limits within which written statements and written comments may be submitted to it, respectively. The Court reserved subsequent procedure for further decision.
4. By letter dated 6 February 2023, the Registrar of the International Court of Justice informed States of the decision of the Court. Such letter, the Registrar requested, was to be considered as constituting the special and direct communication required by the Statute. Further communications informed that upon their request, the Court decided that the League of Arab

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<sup>2</sup> <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230117-REQ-01-00-EN.pdf>

<sup>3</sup> <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230203-ORD-01-00-EN.pdf>

States and the African Union were likely to be able to furnish information on the questions.

5. The Republic of Guatemala, as a founding member of the United Nations and, pursuant to Article 66 paragraph 2 of the Statute of the International Court of Justice, being in receipt of a *special and direct communication*, decided to assist the Court in this matter and submitted its written statement.
6. Besides Guatemala, 51 other States filed written submissions within the time limits, as well as three organisations authorised to do so by the Court. Two additional States presented written statements after the time limit.
7. The written statement filed by the Republic of Guatemala addressed mainly issues related to the jurisdiction and the Court's discretionary power regarding the request for advisory opinion contained in the United Nations General Assembly Resolution 77/247 of 30 December 2022 and included some comments on the substance of the questions. In it, the Republic of Guatemala reserved its right to comment on the questions as a reaction to other written statements and to supplement its statement at the written comments phase.
8. However, after the events that took place on 7 October 2023, and the ensuing ones that are still unfolding, the Republic of Guatemala concluded that the only issues it wishes to comment on are the ones stated in the following paragraphs that reinforce some of the arguments made in its written statement.

## **II. Comments after the events of 7 October 2023**

9. The Republic of Guatemala states from the outset that there is no possible justification for the attacks that took place on 7 October 2023 and targeted primarily civilians in an indiscriminate manner. The world has taken note of the brutality of the actions of the organisation and individuals responsible for these attacks because, adding to its already inhumane actions, most of these were recorded, streamed, made public and distributed through social media. The level of sadism and disrespect toward any tenet of human dignity and law displayed by the organisation in question and the individuals that carried out each one of these crimes shall remain for posterity as undeniable evidence of the threat they represent, not just to Israel and its population, but to everyone, anywhere in the world.
  
10. Such concrete and undeniable evidence sheds new light on what has been stated before: Israel faces a real, imminent and grave threat to its security and the life and well-being of its citizens constantly. This threat is not a mere risk; it is real, it is constant, and it will not disappear by any pronouncement of law that denies the need for Israel to protect itself and its population in a concrete and meaningful way.
  
11. As the Court is aware, Israel unilaterally withdrew precisely from Gaza, where the attacks were launched and where, until the date this written comment was made, a very large number of hostages are being kept in the worst possible conditions.
  
12. Gaza and its centrality to the events of 7 October 2023 and subsequent ones could be considered an example of what could happen if Israel were to unilaterally terminate its presence in other territories, as suggested by the

questions contained in the request for an advisory opinion, and a signification number of the written statements filed with the Court by or shortly after 25 July 2023.

13. Secondly, and derived from the above, the Republic of Guatemala is a firm believer that the only possible solution to what appears to be an intractable conflict is a negotiated outcome between the parties with the support of the international community, including the United Nations.
14. In that regard, the Republic of Guatemala reinstates that there is a negotiated international framework that remains binding on both Israel and Palestine, which enjoys the recognition of the international Community and the endorsement of the Security Council, among many other instances and actors.
15. That framework includes the Security Council's call for “States and international organizations to contribute to an atmosphere conducive to negotiations.”<sup>4</sup> Surely, the mention of “international organizations” ought to encompass the United Nations, including its principal judicial organ.
16. However, vast swaths of such framework were either fully ignored or diminished in a substantial number of written statements, including the one filed by Palestine.
17. Consequently, the Republic of Guatemala invites the Court, in the most respectful manner, to take that international legally binding framework into consideration when analysing the subject matter of this request and how

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<sup>4</sup> S/RES/1850 (2008) para.4

that framework already provides an outcome to the situation that forms the underlying reality to the request for an advisory opinion.

18. Thirdly, the ongoing events have also demonstrated that the facts and information about the subject matter are not fully reflected in the dossier the Court has been provided with by the United Nations nor the additional information furnished by participating States and other organizations.

19. Without enough factual elements, the Court faces a nearly impossible task in delivering an advisory opinion that addresses all the elements of the questions – in their current form – included in the request for an advisory opinion. As quoted in Guatemala’s written statement, the Court must assess whether it “has before it sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact, the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character.”<sup>5</sup>

20. The above brings about the fourth point of the Republic of Guatemala’s written comments: The two questions subject of the request for an advisory opinion, as forwarded to the Court in observance of Article 65, paragraph 2, pose a significant challenge for the Court, specifically on how to assess all relevant information and arrive at conclusions with respect to the overall situation and one that is currently evolving and under the scrutiny of the United Nations Security Council and General Assembly.

21. As indicated before, the questions raise claims against one State involving charges of exceptional gravity. Whilst the Court has admitted that in such circumstances, the said charges must be proved by evidence that is fully

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<sup>5</sup> *Western Sahara*. para.46

conclusive, advisory proceedings may not be the most suitable procedural framework for that heightened evidentiary threshold to materialise as opposed to contentious proceedings, which require the manifest consent of the involved parties for adjudication

22. Consequently, if it is decided to proceed and render an advisory opinion, Guatemala insists on inviting the Court to exercise its inherent powers to interpret, constrain or redraft the questions brought to it by the request for an advisory opinion at hand. For the sake of clarity, Guatemala's invitation proceeds from the understanding that the "lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court."<sup>6</sup> It is Guatemala's view that the Court may want to employ its inherent powers and interpret, restrict and/or modify the two questions transmitted to it in order to protect its judicial function.

### **III. Concluding Remarks**

23. Besides reaffirming the contents of its written statement filed with the Court on 25 July 2023 and the preceding paragraphs, and without questioning the value and usefulness of the opinion the Court may render, Guatemala further insists that the final settlement of the Israel-Palestine dispute will only be achieved through bilateral negotiations, just as the Court stated in the *Wall*<sup>7</sup>

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<sup>6</sup> *Wall*. para.38

<sup>7</sup> *Wall*. p. 69 para.162

24. In that regard, Guatemala wishes to remind the Court that notwithstanding the fact that Advisory Opinions are not legally binding as they are not directed to States but to the requesting entity, the legal authority its opinions carry is undeniable, and it cannot distance itself from the impact and potential consequences that its pronouncement may bring about, whether these are intended or not, or the (mis)uses its opinion may be subsequently subjected to.
25. The Republic of Guatemala reserves its right to expound its arguments during the oral hearings the Court has fixed to start on 19 February 2024, especially in view of the still-evolving situation in Israel and Gaza, and reinstates that all the arguments made in this written comments are for the purpose of the ongoing proceedings only.

The Hague, October 2023