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WHERE JOURNALISTS MEET ISRAEL

## Israel and International Tribunals

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*As tensions escalate and global attention remains focused on the Israeli war with Hamas, the Jerusalem Press Club is committed to providing journalists with comprehensive insights into the situation on the ground, including Israel's involvement in international tribunals. Our newly compiled factsheet offers a detailed overview of the various cases in which Israel finds itself embroiled on the international stage and its particularities.*

### **Israel and the International Court of Justice (ICJ):**

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). The Court's role is to settle, in accordance with international law, legal disputes submitted to it by member states and to provide advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. Composed of 15 judges, the court is one of the six organs of the United Nations and it is also located in The Hague, Netherlands.

#### **Advisory proceedings**

##### [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 9, 2004](#)

The court responded to a request from the United Nations General Assembly (UNGA) from December 10, 2003 on the legality under international law of the West Bank barrier built by Israel that partially follows the Green Line boundary between Israel and the West Bank.

On 9 July 2004, the court [concluded](#) that the fence violated international law. On 20 July 2004, the UN General Assembly accepted [Resolution ES-10/15](#) condemning the barrier with 150 countries voting for the resolution and 10 abstaining.

Israel [has said](#) that the security fence is a temporary defensive measure that would not have been necessary if there hadn't been terrorism targeting innocent Israelis. Furthermore, it emphasized that the fence does not constitute a border and that the border will be established through negotiations. Israel also [points to](#) the effectiveness of the fence. Since the construction of the fence began, there has been a significant decrease in the number of attacks originating in Judea and Samaria reducing suicide attacks to zero.



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## [Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem](#) – ongoing case

In January 2023, the ICJ acknowledged a request from the UNGA for an advisory opinion on the legal consequences arising from the 'policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem'. Public hearings opened on Monday, 19 February 2024 in The Hague with 52 states and three international organizations participating.

Israel also sent a [written statement](#) to the court noting the request for an advisory opinion to be contrary to the established legal framework governing the Israeli-Palestinian conflict, and an abuse of international law and the judicial process. Israel maintains that the Court is being asked to simply presume Israeli violations of international law - to accept, as given, "plainly biased and flawed assertions directed against Israel alone and without consideration of Israeli security concerns".

In addition, Israel has noted that in pointing a finger at one side only, the questions overlook thousands of dead and wounded Israelis who have fallen victim to murderous Palestinian acts of hatred and terrorism, and furthermore, that the questions ignore Israel's voluntary withdrawal from the Gaza Strip in 2005 that was met with the brutal takeover by the Hamas terrorist organization

### **Contentious cases:**

## [Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\)](#) - ongoing case

South Africa has requested that the ICJ render immediate provisional measures of protection by issuing an order to Israel to immediately suspend its military operations in and against Gaza.

Israel's Foreign Ministry characterized South Africa's charges as 'baseless' and further said South Africa was "functioning as the legal arm" of Hamas. Israel argues that it is conducting a war of self-defense in accordance with international law following the Hamas-led massacre on its territory on 7 October 2023 that killed 1200 people, mostly civilians.

The Court issued an [Order in relation to the provisional measures](#) request on 26 January 2024, in which it ordered Israel to take all measures to prevent any acts that could be considered genocidal according to the 1948 Genocide Convention. The Court did not order Israel to suspend its military campaign in the Gaza Strip, as South Africa had requested. The court also expressed "grave concern" regarding the fate of the Israeli hostages held in the Gaza Strip and emphasized the fact that international humanitarian law applies to all parties, including Hamas.



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On February 16, [the Court rejected](#) South Africa's request for additional provisional measures regarding the most recent developments in the Gaza Strip, and in Rafah in particular.

On February 26, 2024 Israel [submitted a report to the International Court of Justice](#) detailing the measures it has and is taking to comply with a court order from January 26, when judges called on it to prevent actions in the Gaza war that could violate clauses of the Genocide Convention.

To consider:

- In the case brought by South Africa, the court only has jurisdiction over the crime of genocide in accordance with Article 9 of the Genocide Convention.
- Unlike rulings, the Court's advisory opinions have no binding effect. The requesting UN organ or agency remains free to act in the spirit of the court's opinion, or not to do so.

## **Israel and the International Criminal Court (ICC)**

The International Criminal Court (ICC) is an international court located in The Hague, Netherlands that investigates and tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. The ICC has jurisdiction over these crimes in three cases:

- 1) When they take place on the territory of an entity which is party to the Rome Statute.
- 2) When they are committed by a national of a state which is a party to the Rome Statute.
- 3) When the crimes were referred to the Prosecutor by the UN Security Council.

The court was established in 2002 under the [Rome Statute](#), under which signatory states agreed to prosecute individuals accused of the abovementioned international crimes. Israel, as a state which is not a signatory of the Rome statute, maintains that the court lacks jurisdiction over its territories and its officials.

### Open investigation:

On 3 March 2021, the Prosecutor [announced](#) the opening of the investigation into the Situation in the State of Palestine. This followed the ICC decision on 5 February 2021 that the Court could exercise its criminal jurisdiction in this case and, by majority, that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.



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Prime Minister Benjamin Netanyahu [assailed the International Criminal Court](#) for ruling it has jurisdiction to open a war crimes investigation against Israel, calling such a probe “pure anti-Semitism” and vowing to fight it.

The prosecutor confirmed that it is presently conducting an investigation into the Situation in the State of Palestine, which remains ongoing and extends to the escalation of hostilities and violence since the attacks that took place on 7 October 2023.

Karim Khan, the chief prosecutor of the International Criminal Court, visited Israel at the request of families of hostages held by Hamas, the first trip to the country by an ICC chief prosecutor. After visiting both Kibbutz Beerli and Kibbutz Kfar Azza, as well as at the site of the Nova Music Festival in Re'im, he affirmed to witness "scenes of calculated cruelty" and stated that the attacks against innocent Israeli civilians on 7 October represent some of the most serious international crimes that “shock the conscience of humanity, crimes which the ICC was established to address”.

On February 14, 2024, a delegation of family members of Israeli hostages being held by terrorists in Gaza [filed complaints of war crimes against Hamas leaders](#) at the International Criminal Court in The Hague.

### [Legal background of the open investigation.](#)

To consider:

- Israel is not a party to the Rome Statute, nevertheless, the court stated its jurisdiction is based on the territory of Palestine in which the alleged crimes may have been committed. Despite not being a member of the ICC and denying the Court's jurisdiction over the Israeli-Palestinian conflict, the hostages' families are entitled to pursue international criminal responsibility of the Hamas leaders.
- It should be noted that the ICC is distinct from the International Court of Justice, an organ of the United Nations that hears disputes between states.

*\*The terminology used in this fact sheet is the legal language utilized by the courts and does not necessarily reflect any position on the matter by the JPC*



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