

Facts

1. Occupation under international law?

What is an “occupation”?

International law provides that a situation of occupation is a form of international armed conflict that arises when a territory, or parts thereof, come under the authority of foreign hostile armed forces, even if it is not met with armed resistance.

Is Israel occupying the Palestinian Territory?

Yes. Since 1967, the Israeli armed forces have had the effective authority (control) over the Palestinian Territory (the West Bank, including East Jerusalem, and the Gaza Strip). This effective control has been combined with agreements whereby some authority over the territory has been delegated to the Palestinian Authority, while some territories have been unlawfully annexed by Israeli law. However, as long as effective control is being exercised, neither delegation of some authority nor annexation changes the application of the law of occupation as a matter of international law.

After decades of statements to the effect by the UN Security Council and the UN General Assembly, as well as other UN agencies, the International Court of Justice (ICJ), in its 2004 Advisory Opinion, reaffirmed that the Palestinian territory is under occupation. This is also the position of the European Union, the United States and the International Committee of the Red Cross (ICRC).

Which international laws apply during an occupation?

The conduct of the occupying force is governed by the law of occupation, in particular international humanitarian law (IHL), also known as the laws of war (“jus in bello”), as well as international human rights law (IHRL). (For more detail on the application of IHL and HRL to occupation, see Fact Sheet 2 and 7 on the application of IHL and IHRL.)

Does IHL tell you if a conflict or occupation is legal or illegal?

IHL does not legitimize armed conflict or occupation, the right to use force is regulated by the UN Charter. IHL does not care whether it was legal or illegal to start the war, or who started it. It simply regulates a factual situation by looking to provide protection for civilians and regulating means and methods of warfare.

What are the main principles concerning the law of occupation?

The central notions under the law of occupation is that an occupying power must administer the territory for the benefit of the local population; in general maintain the status quo in the occupied territory, must not act as sovereign over such territory, and must protect, respect and enhance the rights of the protected occupied population.

Why does the government of Israel claim that the West Bank is “disputed” rather than occupied?

The position of the Israeli government is that East Jerusalem has been annexed (see Fact Sheet 10 on annexation), despite the fact that this is a clear violation of the UN Charter, and that the West Bank is not occupied, but “disputed”, pointing to what it considers as the absence of a sovereign power over the

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territories before 1967. As stated above, this has been consistently rejected by the international community based upon the clear provisions of international law. In addition Israel regularly refers to and uses the law of occupation to justify policies relating to the treatment of children, natural resources, and training in the West Bank.

Is the Gaza Strip still “occupied”?

The withdrawal of Israeli army land forces from the Gaza Strip in 2005 raised questions about whether the Gaza Strip remains occupied. The Israeli Government considers that it has withdrawn completely from the Gaza Strip, affirmed by an Israeli Supreme Court ruling. According to IHL, occupation ends when the occupying power no longer exercises effective military control over the occupied territory and does not apply government authorities there.

The test of “effective control” should take into account both military control and control over

civilian life. Since 2005, there have been on-going as well as new measures of Israeli military and administrative control in the Gaza Strip, which amount to “effective control”, including over residency and citizenship issues, air space, maritime spaces and international borders.

This can be compared with Israel’s responsibilities in areas fully or partly under the Palestinian Authority in the West Bank. However, the adaptation of the level of responsibility does not change the status of the territory as occupied. The ICRC, the UN, the US and the EU have maintained their positions, since, that the Gaza Strip remains occupied. It is important to note that even if it would be considered that Gaza is not occupied, that many of the key rules of IHL would still apply, notably those on the conduct of hostilities and humanitarian aid.

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