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AT INTERNATIONAL COURT OF JUSTICE, ONLY US AND HUNGARY BACK ISRAEL STARVING GAZA



Thirty-seven states, the U.N. and international NGOs all condemned Israel's denial of aid to the starving people of Gaza at the International Court of Justice last week, Marjorie Cohn reports.

Since March 2, Israel has blocked all food, medicine, fuel, and other relief from entering the besieged Gaza Strip, home to 2.1 million Palestinian people.

"Israel is starving, killing and displacing Palestinians while also targeting and blocking humanitarian organizations trying to save their lives," Ammar Hijazi, Palestine's ambassador to the Netherlands, told the International Court of Justice (ICJ) during last week's five-day hearing. "Humanitarian aid is being used as a weapon of war."

The ICJ convened the hearing at the request of the U.N. General Assembly to address the following [question](#):

“What are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people’s right to self-determination?”

Just days after the World Food Programme said it had run out of food in Gaza, the hearing commenced at the Peace Palace in The Hague, Netherlands. [Thirty-seven states](#), the United Nations and three other international organizations presented oral arguments.

All states but two — the U.S. and Hungary — condemned Israel’s denial of humanitarian assistance to the starving people of Gaza.

Although Israel refused to orally address the ICJ, it filed a [written statement](#) with the court. Israeli Foreign Minister Gideon Sa’ar [said](#) that Israel decided “not to take part in this circus” and [called](#) the ICJ hearings part of a “systematic persecution and delegitimation of Israel.”

Patricia Pérez Galeana, representing Mexico, quoted U.N. Secretary-General António Guterres’s April 29 [statement](#) to the U.N. Security Council: “The humanitarian situation throughout the Gaza Strip has gone from bad, to worse, to beyond imagination.”

Since Oct. 7, 2023, Israel has killed more than 52,000 Palestinians, over 15,000 of them children. Thousands are missing under tons of rubble. Using the excuse of destroying Hamas, Israel has destroyed the life-sustaining infrastructure in Gaza, including shelter, hospitals, water treatment facilities, sanitation systems, farms, heat and power grids.

During the hearing, Saudi Arabia’s Mohamed Saud Alnasser [said](#), “Israel’s hideous conduct, which piles illegality upon illegality, is well documented.” Zane Dangor, representative of South Africa, [told](#) the court, “The humanitarian aid system is facing total collapse. This collapse is by design.”

In June 2024, the U.N. Independent International Commission [found](#),

“Throughout the siege on Gaza, Israel has weaponized the withholding of life-sustaining necessities, specifically by cutting off supplies of water, food, electricity, fuel and other essential supplies, including humanitarian assistance.”

“Under the world’s watchful eye, Palestinians across the Occupied Palestinian Territory are being subjected to atrocity crimes, persecution, apartheid and genocide,” Dangor stated.

“While we watch, the gaze of Palestinians is directed squarely at the international community, and this Court — whose advice is urgently being sought, for the protection of their most fundamental rights, including the right to life.”

While the current blockade on Gaza is unprecedented in scope and duration, Israel has maintained a siege by air, sea and land on the Occupied Palestinian Territory since 2007.

A [report](#) by the Euro-Med Human Rights Monitor released in 2021 stated that the Israeli blockade “has affected all social, economic and humanitarian sectors,” leading to mass poverty and unemployment, a deteriorating health sector, and energy and wastewater crises.

“Most refugees are unable to secure their daily needs of food, water, electricity, health care and education,” the report stated.

Israel’s False Claims About Humanitarian Assistance



Girl in Gaza on her way to get food, Aug. 25, 2024. (Jaber Jihad Badwan / Wikimedia Commons / CC BY-SA 4.0)

In its written submission, Israel maintained that its refusal to allow humanitarian assistance into Gaza is justified by defense and security concerns no matter how urgently that assistance is needed.

Israel said the case was “outrageously brought against it for seeking lawfully to repel heinous attacks against its citizens and territory” and it “is part of an abusive and systematic campaign that regrettably weaponizes international law, and international legal institutions, with the aim of depriving Israel of fundamental rights accorded to all sovereign States, including the right to defend itself.”

Israel failed to mention that the ICJ unequivocally established in its 2004 advisory opinion “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” the non-applicability of self-defense under Article 51 of the U.N. Charter in the situation between Israel and the Occupied Palestinian Territory.

A state cannot invoke the right of self-defense to defend against an attack which originates inside a territory it occupies. Because Israel continues to occupy Gaza, it has relinquished its right to claim self-defense in response to Palestinian attacks.

Moreover, as Marko Rakovec [argued](#) for Slovenia, no claim to the right of self-defense can ever justify violations of international humanitarian law or international human rights law, including the denial of urgently needed humanitarian assistance.

In addition, Israel falsely stated that “as before,” it “goes to great lengths to continue to allow and facilitate the provision of necessary humanitarian assistance and services in Gaza under very challenging circumstances.”

Although Israel has blocked all humanitarian aid from Gaza since March 2, it began [preventing food, water, electricity and gas](#) from entering Gaza immediately after the Oct. 7, 2023, attacks.

Israel argued that it “is committed to observing all the international legal obligations that are incumbent upon it, including those prescribed by the law of armed conflict and those reflected in the provisional measures indicated by the International Court of Justice.”

But in spite of the ICJ’s orders in January, March and June of 2024 that it take immediate steps to allow unrestricted and unhindered aid to enter Gaza, Israel has shamelessly violated those commands.

Israel’s Legal Obligations as Occupying Power



Displaced Palestinians gather to receive food from a charity in Deir el-Balah, Gaza Strip, June 26, 2024. (UNRWA /Wikimedia Commons/ CC BY 4.0)

On July 19, 2024, the ICJ [ruled](#) that Israel was illegally occupying the West Bank, East Jerusalem and Gaza. Even though Israel withdrew its military presence from the Gaza Strip in 2005, the ICJ affirmed that Israel continues to occupy Gaza because it exercises “effective control” over “the land, sea and air borders” and maintains “restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone.”

The court also held that international law prohibits the acquisition of territory by threat or use of force and protects the right of the Palestinian people to self-determination.

During last week’s hearing, state after state reiterated Israel’s legal obligations by virtue of its status as an occupying power.

Israel has a legal duty to administer the territory for the benefit of the local population; to agree to and facilitate relief schemes; to facilitate the proper functioning of all institutions dedicated to the care and education of children; and to maintain the medical establishments and hospitals, including those set up by U.N. entities.

In addition, Israel must respect the decisions of the Palestinian people to receive basic goods and services from U.N. entities, including food, water, shelter, hygiene, medical supplies and clothing, in order to fully benefit from their right to self-determination. Israel has an obligation to assist those U.N. activities.

Israel’s Unilateral Ban on UNRWA Is Illegal

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is the agency that has provided food, education and health care to Palestinian refugees since 1949.

“As a subsidiary organ of the United Nations established by the General Assembly, UNRWA is entitled to all rights and privileges accorded to U.N. organs by international law,” Ma Xinmin [said](#) on behalf of China. “In fulfilling its obligations toward U.N. organs in good faith, Israel shall safeguard and facilitate UNRWA’s humanitarian operations, protect the safety of the personnel and ensure its privileges and immunities.”

Nevertheless, in January, Israel banned UNRWA from operating in the Occupied Palestinian Territory and urged funders to stop financial support of the organization. The U.S. and several of its allies (which provided 60 percent of UNRWA’s funding) immediately suspended funds. All except the U.S. resumed funding UNRWA.

Since Israel is a member state of the United Nations, bound by the U.N. Charter, it may not deny any impartial humanitarian organization such as the U.N. the ability to administer relief schemes.

Because it is the occupying power in the Occupied Palestinian Territory, Israel cannot unilaterally declare that a humanitarian organization is not impartial and deny its relief procedures. Humanitarian relief employees, medical personnel and U.N. personnel must be respected, protected and treated humanely and not subjected to intimidation or harassment. Attacks shall not be directed against them.

Ardi Imseis, speaking on behalf of Palestine, [quoted](#) U.N. Secretary-General Guterres, who said that “UNRWA is *indispensable* in delivering essential services to Palestinians” and “UNRWA is the *backbone* of the United Nations humanitarian relief operations” in Gaza. The secretary-general’s written statement to the court says:

“Since October 2023, UNRWA has supported nearly 2.3 million affected individuals [in Gaza] with food, healthcare, and shelter. It has distributed food aid to around 1.9 million people and provided more than 60% of primary healthcare services in Gaza. Furthermore, UNRWA has sheltered hundreds of thousands of internally displaced persons in more than 100 schools and continues to deliver psychosocial support and primary health consultations.”

Imseis told the ICJ that Israel seeks to prevent UNRWA from fulfilling its mandate in order to further “the erasure of the Palestinian people in Gaza, and ultimately in the rest of the Occupied Palestinian Territory, including through forcible transfer.” UNRWA, Imseis added, is the “last hope” of the Palestinians, particularly in Gaza, to survive Israel’s genocide.

Israel alleged that 19 out of UNRWA’s 13,000 staff took part in Hamas’ Oct. 7, 2023, attack. UNRWA fired nine staffers, concluding that they could have been involved, although the evidence was not authenticated or corroborated.

The U.N. secretary-general appointed Catherine Colonna, former foreign minister of France, to lead an independent review to assess whether UNRWA was doing everything within its power to ensure neutrality and respond to allegations of serious neutrality breaches when they are made. The review [concluded](#) that Israel’s allegations were unsubstantiated and lacked credible evidence.

Colonna, as chair of the independent review on UNRWA, briefing reporters at U.N. Headquarters in February 2024. (U.N. Photo/Manuel Elías)

Sally Langrish [argued](#) to the ICJ that, “The United Kingdom considers that UNRWA is an ‘impartial humanitarian organization’ for the purposes of Article 59 of [the Fourth Geneva

Convention]. In so far as impartiality is understood as meaning ‘neutrality,’ UNRWA also satisfies that requirement.”

She quoted the Colonna report, which states that “since 2017 UNRWA has established and updated a significant number of policies, mechanisms and procedures to ensure compliance with the obligation to uphold the principle of neutrality.”

Since Israel occupies Palestinian territory, it cannot exercise sovereignty or sovereign powers over it, Elinor Hammar skjöld, legal counsel of the United Nations, [told](#) the ICJ, quoting a prior ruling of the court.

“The enactment of the ‘Law to Cease UNRWA Operations’ and of the ‘Law to Cease UNRWA Operations in the Territory of the State of Israel’ by the Knesset of Israel on 28 October 2024 appears to constitute an extension of sovereignty over — or exercise sovereign powers in — the Occupied Palestinian Territory, including East Jerusalem,” she added.

In the past 19 months, Israeli forces have killed nearly 300 UNRWA workers, and detained and abused more than 50 UNRWA staff, including teachers, doctors and social workers.

Nuh Yilmaz, arguing on behalf of Turkey, [called](#) Israel’s unilateral decision to stop the transfer of humanitarian aid to Gaza “a form of collective punishment against all civilians in Gaza.” Article 33 of the Fourth Geneva Convention, to which Israel is a party, specifically forbids collective punishment. It says,

“No protected person [civilian] may be punished for an offense he or she has not personally committed. ... Reprisals against protected persons and their property are prohibited.” Collective punishment is considered a war crime.

Israel has long had UNRWA in its sights. In 2018, Prime Minister Benjamin Netanyahu [said](#) that “UNRWA is an organisation that perpetuates the Palestinian refugee problem and the narrative of the right-of-return, as it were, in order to eliminate the State of Israel” and it needed “to pass from the world.”

“UNRWA is much more than a relief agency,” Mohamed Helal [argued](#) on behalf of the League of Arab States. “UNRWA is the principal instrument by which the United Nations protects the right of return of Palestine refugees. It is not an exaggeration to argue that preserving the right of return is the agency’s *raison d’être*.”

He added, “In addition to being a fundamental right of Palestine refugees, preserving the right of return is essential to protecting the right of self-determination.”

In an apparent attempt to circumvent UNRWA’s delivery of humanitarian assistance to the people of Gaza and neutralize criticism, the U.S. and Israel are [planning](#) to establish an

alternative delivery scheme. But the U.N. and all aid organizations operating in Gaza reject the U.S.-Israeli plan. It is thus unlikely that funders will finance it.

Only US & Hungary Support Israel's Claims



Orbán addressing European Parliament in October 2024. (European Union 2024– Source: EP/CC-BY-4.0)

In [their testimonies](#) at the ICJ hearing, both the U.S. and Hungary parroted Israel's specious claims. Josh Simmons, a legal adviser at the U.S. State Department, admitted that Israel must provide aid to Gaza but [said](#) it does not have to work with UNRWA. Hungary argued that the ICJ should not render an advisory opinion as it “may directly contribute to the escalation of the conflict.”

It is no coincidence that it is the U.S. and Hungary that are attempting to shield Israel and its leaders from international accountability.

In November 2024, the International Criminal Court (ICC) issued [arrest warrants](#) for Netanyahu and former Defense Minister Yoav Gallant for war crimes and crimes against humanity. They are charged with the war crimes of starvation as a form of warfare and intentional attacks on civilians.

The warrants also charge them with the crimes against humanity of murder, persecution, and other inhumane acts. The charges stem from Israel's denial of food, water, electricity and fuel, and specific medical supplies to the Palestinians in Gaza.

States parties to the [Rome Statute](#), including Hungary, have a duty to cooperate with the court and facilitate the arrest of any ICC suspect who enters their territory.

On April 3, Hungarian President Viktor Orbán hosted Netanyahu, blatantly refusing to fulfill Hungary's legal obligation to arrest the Israeli prime minister and send him to The Hague.

Although Orbán announced Hungary's withdrawal from the statute on April 3, it does not take effect for one year.

The U.S. government has long enabled Israel in its commission of genocide, war crimes and crimes against humanity. It has furnished Israel with billions of dollars in military assistance and provided it with diplomatic and political cover in the U.N. Security Council.

It is likely that the ICJ will issue its advisory opinion in a matter of months. Although its decision will not be legally binding, it will probably have a profound impact on international law, international assistance to Israel and global public opinion.

Meanwhile, the people of Gaza continue to endure unimaginable suffering. Maher Ghanem, who lives in the Gaza city of Deir al-Balah, [told](#) *The New York Times*, "What we're going through in Gaza can't be called life."

-Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, dean of the People's Academy of International Law and past president of the National Lawyers Guild.

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