

## Al-Haq Submission for the General Comment on the Application of the International Covenant on Economic, Social and Cultural Rights in Situations of Armed Conflicts

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### Introduction

Al-Haq welcomes the decision of the Committee on Economic, Social and Cultural Rights to elaborate a General Comment on the application of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in situations of armed conflicts.

The ICJ’s recent jurisprudence concerning Israel’s military occupation of the Occupied Palestinian Territory (OPT) indicates that a comprehensive review of the applicable international legal framework is both necessary and practicable. The 2024 Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, in concluding on Israel’s overall illegal policies and practices, revitalised the significance of ESC rights during armed conflict, ensuring that their systematic violation are recognised both as discrete violations of international legal obligation, and evidence of structural illegality such as apartheid and unlawful occupation.

## 1. The *Palestine* Advisory Opinion (2024)

### 1.1 International Humanitarian Law

Al-Haq considers the content and approach of the ICJ in its 2024 Advisory Opinion presents an opportunity for development and mainstreaming of ESC rights in situations of armed conflict, countering the fragmentation of international law.

The Advisory Opinion affirmed that core Israeli policies and practices were in violation of IHL. The Court concluded that Israel’s transfer of civilians into occupied territory is unlawful (para 119); that ‘By diverting a large share of the natural resources to its own population, including settlers, Israel is in breach of its obligation to act as administrator and usufructuary’ (para 133); that Israel exercises its authority as an occupying Power in a manner inconsistent with Article 43 Hague Regulations and Article 64 Fourth Geneva Convention (para 141); that ‘Israel’s policies and practices are contrary to the prohibition of forcible transfer of the protected population’ under Article 49(1) of the Fourth Geneva Convention (para 147); and that Israeli military and settler violence against Palestinians is in breach of the right to life as established in Article 46 Hague Regulations, Article 27(1) Fourth Geneva Convention, and Articles 6(1) and 7 of the ICCPR (para 154).

### 1.2. International Human Right Law (ESCR)

The ICJ reviewed in detail the implications of Israel’s regime of policies and practices on the Palestinian people’s civil, political, economic, social and cultural rights, by reference to the principle at Article 1(3) of the UN Charter and as developed in the ICESCR, ICCPR, and ICERD. Analysing ESC rights in tandem with the other treaties, the Court found Israeli policies and practices to be in breach of Article 2 and Article 10 ICESCR (para 195, 206, 222, 213), amounting to systemic discrimination against Palestinians, in violation of Article 2(2) ICESCR.

### 1.3 Racial Segregation and Apartheid

The ICJ confirmed that international human rights instruments are applicable ‘in respect of acts done by a State in the exercise of its jurisdiction outside its own territory’, particularly in occupied territories’ and recalled ‘that the protection offered by human rights conventions does not cease in case of armed conflict or of occupation [...] Some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may concern both these branches of international law” (para 99). Al-Haq recalls that the Convention Against Apartheid defines the crime of apartheid by reference to economic, social, and cultural rights violations, in addition to physical violence and repression.

Concluding that ‘Israel’s legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities’, a breach of Article 3 of the Convention on the Elimination of Racial Discrimination that prohibits racial segregation and apartheid, (para 229) the Court relied significantly on Israel’s violations of Article 2(2) and Article 10(1) ICESCR.

#### 1.4. Self-Determination

ESC rights were vital when analysing the right of self-determination in the Palestinian context, the Advisory Opinion noted key elements as including ‘the right to territorial integrity’ (para 237) and protection ‘against acts aimed at dispersing the population and undermining its integrity as a people’ (para 239). The Court emphasised ‘the right to exercise permanent sovereignty over natural resources’, observing that ‘In depriving the Palestinian people of its enjoyment of the natural resources in the Occupied Palestinian Territory for decades, Israel has impeded the exercise of its right to self-determination.’ (para 240)

The Court, noting ‘the right of a people freely to determine its political status and to pursue its economic, social and cultural development’, concluded that ‘The dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination’ (para 241) and that Israel obstructs ‘the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development.’ (para 242)

Al-Haq considers it imperative that, particularly in situations of prolonged or unlawful occupation, the nexus between the denial of self-determination, through the manufacture of dependency upon the Occupying Power for basic goods and services, and the necessity of recognising and enforcing ESC obligations (across all applicable treaties regardless of categorisation as IHL, IHRL, or other) must be highlighted and reinforced in order to reveal both the root causes of ongoing armed conflict and for engaging complicity in international crimes.

#### 2. The *UNRWA* Advisory Opinion (2025)

In its 2025 Advisory Opinion on the *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* (*UNRWA* Advisory Opinion) the ICJ reviewed Israel’s obligations as an Occupying Power, observing ‘that customary international law imposes a duty on all parties to an armed conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need [...] Articles 55 and 56 of the Fourth Geneva Convention obligate an occupying Power to ensure that the population of the occupied territory is supplied with the essentials of daily life, including food, water, shelter, medical supplies and medical care. Article 59 imposes additional obligations that depend on the population being inadequately supplied. (paras 91-2)<sup>1</sup>

Following its IHL analysis, which affirmed that ‘Customary international law prohibits the use of starvation of the civilian population as a method of warfare’ (para 143), the Court undertook

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<sup>1</sup> ICJ Advisory Opinion, *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*, 22 October 2025.

an analysis of an Occupying Power’s obligations under IHRL, asserting that in addition to prior determinations of the Court that the ICCPR, ICESCR, ICERD, and CRC were applicable to Israel as an Occupying Power in the occupied Palestinian territory, such principle ‘applies also with respect to CEDAW, the CAT and the CRPD’ (para 150).

Al-Haq recommends that the Committee further develop this reasoning, on the grounds that treaties such as the Apartheid and Genocide Conventions, as well as for example the UN Convention on the Law of the Sea, and treaties concerning investment law, arbitration, and trade are no less significant for the enjoyment of and respect for ESC rights during armed conflict.

Al-Haq emphasises that once again the ICJ’s reasoning, drawing upon IHL and IHRL, including the ICESCR specifically, connected the importance of respect for ESC rights with the right to self-determination:

‘The deprivation of a people of its essential means of subsistence threatens the fundamental conditions that are indispensable for that people to exercise its right to self-determination. Respect for the right to self-determination of the Palestinian people requires Israel not to prevent the fulfilment of the basic needs of the Palestinian people in the Gaza Strip, including by the United Nations, its entities, other international organizations and third States.’ (para 220)

Al-Haq stresses the need that ESC rights in the context of armed conflict be understood through a variety of lens, including impacts upon children and gendered impacts. We recall the finding of the UN Commission that ‘Israeli authorities, through the manner in which they have conducted their military campaign in the Gaza Strip, committed the war crime of using starvation as a method of warfare. The Commission found that starvation and famine have had a severely detrimental impact on women and girls, in particular pregnant and post-partum women, with adverse consequences for physical, reproductive, and mental health that constitutes reproductive violence.’<sup>2</sup>

### 3. The Genocide Convention

The impact of such dependency, resulting from domination by way of apartheid, has been revealed through the conduct of Israel’s genocidal campaign.

In the series of Orders issued by the ICJ in the *South Africa v Israel* case during 2024, the Court stressed obligations of Israel which reflect the interconnection between IHL, IHRL (ESCR), and the Convention Against Genocide, when it affirmed that Israel, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, ‘shall take immediate and effective measures to enable the provision of urgently needed basic

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<sup>2</sup> “More than a human can bear”: Israel’s systematic use of sexual, reproductive and other forms of gender-based violence since 7 October 2023, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/58/CRP.6, 13 March 2025, para 173.

services and humanitarian assistance to address the adverse conditions of life faced by Palestinians’ (26 January 2024).<sup>3</sup>

#### 4. Enforcement

The urgency for analysing ESC rights as they exist across otherwise discrete areas of international law, is particularly significant during armed conflict given a characteristic feature of IHL has been the absence of viable enforcement mechanisms. As is apparent from the preceding analysis, there is significant jurisprudence, not least from the ICJ, clarifying the legal obligations binding upon Israel and Third States and international organisations, and identifying the widespread and systematic violations of such obligations which Israel is inflicting upon the Palestinian people.

Developments, such as the failure in 2025 to convene (as mandated by the UN General Assembly,<sup>4</sup>) the Conference of High-Contracting Parties to the Geneva Conventions,<sup>5</sup> evidences the need for principles common across IHL and IHRL to be addressed in fora and bodies whose review and enforcement mechanisms may be more efficient. The failure to convene a Conference evidenced the continuing undermining of the Geneva Conventions as a basis for ensuring the protection of civilians, accentuating the warning of UN experts, who, when calling for compliance with the ICJ’s Advisory Opinion, stressed that ‘irresponsible inaction’ threatens to jeopardise ‘the entire edifice of international law and rule of law in world affairs.’<sup>6</sup>

##### 4.1 Enforcement of ESC Rights: Accountability, remedies and reparations

A clear conclusion of the 2024 Advisory Opinion is that all states are ‘under an obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory’ (para 279). Third State obligations must ensure that legal or natural persons under their jurisdiction do nothing to aid or assist Israel’s illegal presence in the Occupied Palestinian Territory, including through the illegal settlement of the territory.

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<sup>3</sup> Subsequent Orders required Israel to ensure ‘the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza’ (28 March 2024), ‘Maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance’ (24 May 2024) Beyond the Orders: An Analysis of the ICJ’s Decisions, Opinions, and Declarations in South Africa v. Israel Gaza’s Urgent Need for Implementation (2025) [https://www.alhaq.org/cached\\_uploads/download/2026/01/05/beyond-the-orders-icj-1767609791.pdf](https://www.alhaq.org/cached_uploads/download/2026/01/05/beyond-the-orders-icj-1767609791.pdf)

<sup>4</sup> Briefing Paper: Conference of High-Contracting Parties to the Fourth Geneva Convention, 27 February 2025. <https://www.alhaq.org/publications/25985.html>

<sup>5</sup> Cancellation of Conference of the High Contracting Parties to the Fourth Geneva Convention, an International Failure to Protect Palestinians Illegally Occupied under Brutal Genocide, 10 March 2025. <https://www.alhaq.org/advocacy/26044.html>

<sup>6</sup> UN experts warn international order on a knife’s edge, urge States to comply with ICJ Advisory Opinion 18 September 2024 <https://www.ohchr.org/en/statements-and-speeches/2024/09/un-experts-warn-international-order-knives-edge-urge-states-comply>

Recalling the Special Rapporteur’s observation that ‘Had proper human rights due diligence been undertaken, corporate entities would have long ago disengaged from Israeli occupation’,<sup>7</sup> Al-Haq has sought to enforce respect for ESC rights as against states and corporate actors, through participation in both civil and criminal litigation, including for example in Canada,<sup>8</sup> The Netherlands,<sup>9</sup> Spain,<sup>10</sup> and Ireland.<sup>11</sup>

In September 2025 Al-Haq and partners appeared before the Committee on Economic Social and Cultural Rights on the occasion of The Netherlands periodic review.<sup>12</sup> Building upon the authoritative jurisprudence of the ICJ in its 2024 *Palestine* advisory opinion and the Court’s Provisional Measures Order of 26 January 2024 in *South Africa v. Israel*, the Committee noted ‘the current gross and systematic violations of the human rights of the Palestinian people, particularly in the Gaza Strip, to life, food, health, water and sanitation and housing and the right to self-determination, as enshrined in the Covenant’.<sup>13</sup> The Committee recommended that as a state party to the ICESCR, the Netherlands:

- Take all necessary and urgent measures to ensure a complete ban and its effective implementation on the export and transit of weapons, weapon parts, and dual-use items to Israel;
- Cease all trade and investment relations that can contribute to the current gross and systematic human rights violations of the Palestinian people, particularly in the Gaza Strip, to life, food, health, water and sanitation, housing, and the right to self-determination; and
- Take all necessary steps to avoid recognising, aiding, or assisting the Israeli occupation of Palestinian territory, including by all business enterprises domiciled in its territory or under its jurisdiction.

These Concluding Observations mark a significant example of the scope of the Committee’s potential in striving to ensure the protection and enforcement of ESC rights in the context of

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<sup>7</sup> From economy of occupation to economy of genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 02 July 2025 A/HRC/59/23, para 3. Expert Legal Opinion: the Obligations of Third States and Corporations to Prevent and Punish Genocide, 11 June 2024 <https://www.alhaq.org/advocacy/23294.html>.

<sup>8</sup> Palestinian and Canadian legal advocates urge Canada’s Department of Justice to investigate Metrontario’s illegal activities in Occupied Palestinian Territory 06 May 2026 <https://www.alhaq.org/advocacy/27613.html>

<sup>9</sup> Dutch Court of Appeal must decide on prosecution of Booking.com over money-laundering 09 April 2026 <https://www.alhaq.org/advocacy/27452.html>

<sup>10</sup> Coalition files complaint in Spain against eDreams for laundering proceeds linked to crimes in Palestine and Syria 17 February 2026 <https://www.alhaq.org/advocacy/27328.html>

<sup>11</sup> Press release Unprecedented multi-jurisdictional legal action over properties in illegal Israeli settlements targets Airbnb HQ in Ireland, 10 June 2025 <https://www.alhaq.org/advocacy/26506.html>

<sup>12</sup> Al-Haq, Al-Haq Europe, Arab NGO Network and Third World Network for Development send Submission on Netherlands to Committee on Economic, Social and Cultural Rights 16 August 2025 <https://www.alhaq.org/advocacy/26632.html>

<sup>13</sup> Committee on Economic, Social and Cultural Rights Concluding observations on the seventh periodic report of the Kingdom of the Netherlands, E/C.12/NLD/CO/7, 29 October 2025, para 17.

armed conflict including military occupation. Al-Haq would like to emphasise its experience with respect the final recommendation concerning the arms trade.

What Al-Haq's litigation during the course of Israel's genocide has demonstrated is the existence of an accountability and governance gap, whereby national courts have facilitated the discretion of governments to continue their arms trade with Israel. Having regard to concepts such as separation of powers, security, and foreign policy, national courts have repeatedly prevented Al-Haq's efforts at having legal challenges to third states arms trade with Israel heard on the merits of our claims.<sup>14</sup>

In the UK for example, the courts rendering of state conduct non-justiciable had the effect of facilitating the *de facto* legalisation of government decisions which prioritise the supply of weapons (in the name of international peace and security), regardless of the scale or nature of the actual consequential violations of international law.<sup>15</sup>

In The Netherlands, while the Court of Appeal in The Hague concluded that there is a serious risk Israel is committing genocide in Gaza and violating international humanitarian law, it rejected claims from Al-Haq and partners that it order the revocation of existing Dutch arms export licenses to Israel.<sup>16</sup> In Denmark the Supreme Court concluded that neither Al-Haq, nor our partner organisations, have legal standing to have claims regarding the legality of Denmark's licencing of export of military equipment reviewed by the Courts.<sup>17</sup> As with previous litigation in the UK,<sup>18</sup> the Danish state emphasised the importance of the F-35 project to security policy interests.

Repeatedly we are confronted with an accountability gap which undermines the effectiveness of both the ICESCR itself, and those elements of IHL and public international law with which it overlaps and informs.

As has been noted in this respect, 'the arms trade is deeply connected to the national security and foreign relations apparatus of the state, and is often insulated from litigation prompting the concern that:

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<sup>14</sup> Vincent Holzhauser and Dorothea Seyfarth, The Failure of German Courts to Address International Law in Relation to Arms Exports 27 November 2025

<https://voelkerrechtsblog.org/the-failure-of-german-courts-to-address-international-law-in-relation-to-arms-exports/>

<sup>15</sup> Our Legal Challenge Against the UK's Licensing of Weapons to Israel Concludes, But Our Fight for Justice and Accountability for the Palestinian People is Far From Over 12 November 2025

<https://www.alhaq.org/advocacy/26742.html>

<sup>16</sup> Dutch court: Serious risk that Israel is committing genocide in Gaza 06 November 2025

<https://www.alhaq.org/advocacy/26725.html>

<sup>17</sup> Our Legal Challenge Against Denmark's Licensing of Weapons to Israel Concludes, But Our Struggle for Justice and Accountability Continues 19 March 2026 <https://www.alhaq.org/advocacy/27426.html>

<sup>18</sup> Our Legal Challenge Against the UK's Licensing of Weapons to Israel Concludes, But Our Fight for Justice and Accountability for the Palestinian People is Far From Over 12 November 2025

<https://www.alhaq.org/advocacy/26742.html>



‘Survivors and solidarity groups that pursue accountability and justice for the arms trade through existing legal accountability mechanisms should self-reflexively interrogate the risks and impact of their efforts to challenge this industry through legal systems that often serve to safeguard its economic interests. Given these limitations, could the continued focus on legal interventions potentially legitimise certain arms transfers and undermine possibilities to pursue truly transformative anti-militarist social justice, that accounts for the role of arms supplies in enabling mass and structural violence and thus also in the struggles for justice and accountability around such violence?’<sup>19</sup>

Al-Haq would ask that the Committee review the manner by which ICESCR rights and obligations, particularly pertaining to arms trade, are to be understood as applying within national jurisdictions. If a turn to litigation, in order to seek enforcement of ESC rights, including pertaining to the arms trade, were, by design or omission of national authorities, to have the converse effect, then not only are the necessary judicial remedies required by the ICESCR absent, but they may have the effect of actively undermining the very object and purpose of the entire treaty.<sup>20</sup>

#### 4.2 ‘Board of Peace’: International assistance and cooperation

Illustrative of the contemporary backsliding from international legal norms and the ‘irresponsible inaction’ threatening to jeopardise ‘the entire edifice of international law’, Al-Haq would draw to the Committee’s attention the urgency of addressing the role and accountability of the UN Security Council itself, and the manner by which it has endorsed Donald Trump’s establishment of the so-called Board of Peace, by way of UN Security Council Resolution 2803. While the ICESCR was established with the intention of promoting the progressive realisation of ESC rights, the Board of Peace represents an example of how international institutions are being turned to achieve the erasure of human rights.

The resolution does not end the occupation, but rather draws more states (via the International Stabilisation Force) into the armed conflict in a perpetual multinational unlawful occupation. Institutionalising foreign control over Gaza, Resolution 2803 provides for the exploitation of Gaza by international groups and inherently violates the Palestinian people’s right to economic self-determination and sovereignty over our own natural resources, including energy resources in Palestine’s territorial waters and exclusive economic zone off Gaza.<sup>21</sup>

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<sup>19</sup> Azarova et al, Corporate Accountability in the Arms Sector: Possibilities, Limits, and Visions of Justice, 11 Business and Human Rights Journal 1 (2026) 90 - 94 <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/corporate-accountability-in-the-arms-sector-possibilities-limits-and-visions-of-justice/583921822C99793B5004C60053BE326F>

<sup>20</sup> CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant) 1990.

<sup>21</sup> Palestinian Organisations Welcome Withdrawal of Eni from Israeli Gas Exploration Consortium, and Encourage Corporations to End Trade in Illegally Occupied Territory 03 April 2026 <https://www.alhaq.org/advocacy/27441.html>

The World Bank serves as a limited Trustee for the Financial Intermediary Fund (FIF) for Gaza Reconstruction and Development (GRAD), so as to enable the Board of Peace to accumulate and disperse funds. The World Bank has a duty to diligently ensure its international engagements do not undermine ICJ Advisory Opinions and Provisional Measures Orders. By joining the Board of Peace, the World Bank is failing to comply with such rulings and is participating in a framework that runs contrary to international law, explicitly undermining the UN multilateral system.<sup>22</sup>

Al-Haq requests that the Committee address the legal consequences of the UN Security Council's, and World Bank's conduct in light of the UN Charter, the ICESCR, IHL, and the ICJ's advisory opinions on the legal responsibilities of international organisations. We recall that the Security Council's power is not unlimited, and that the Council is obliged to act within the restraints of its jurisdiction, as clearly outlined in *Tadic*: 'neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutus* (unbound by law).'<sup>23</sup>

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<sup>22</sup> Civil Society Demands World Bank Withdraw from the Board of Peace; Terminate Facilitation of Funding 22 April 2026 <https://www.alhaq.org/advocacy/27474.html>.

<sup>23</sup> Prosecutor v Dusko Tadic a/k/a "Dule", Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 02 October 1995, para 28. Application of the Genocide Convention (*Bosn. & Herz. v. Serb.*), 1993 I.C.J. 325, 440 (Sept. 13) (sep. op. Lauterpacht, J, para 102). <https://icj-cij.org/sites/default/files/case-related/91/091-19930913-ORD-01-05-EN.pdf>.