



ICJ Ruling on Advisory Opinion

LEGAL CONSEQUENCES ARISING FROM THE POLICIES AND PRACTICES OF ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM

20 July 2024

Introduction

On 19 July 2024, the International Court of Justice issued a historic [ruling](#) declaring the Israeli occupation and associated regime of systematic discrimination – amounting to racial segregation and/or apartheid – unlawful. Flowing from this illegality, it calls on Israel to end the occupation and associated regime, evacuate the settlements, dismantle the wall, provide full reparation, and allow displaced Palestinians to return. The Court finally stipulated that Member States and the United Nations are obliged not to recognize the above illegality and that the UN should consider the precise modalities and further action required to bring the illegal situation to an end as rapidly as possible.

The ruling came in the form of an advisory opinion in response to questions posed by the United Nations General Assembly (UNGA) in a resolution adopted in December 2022. The questions included:

- (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, 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 (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?

As part of the proceedings leading to the ruling, 57 countries submitted written pleadings to the Court, and over the course of six days of hearings in February 2024 an unprecedented 49 States gave an oral presentation on their positions regarding the legal consequences of Israel's occupation of Palestine. The majority of submissions made arguments that the occupation is illegal and addressed the consequences for Israel. 25 submissions included analysis, or at least a reference, to apartheid and/or systematic discrimination or discriminatory policy.

Principal findings



Below are some of the Court's most notable findings:

- Israel's ongoing presence in the Occupied Palestinian Territory (OPT) is deemed illegal.
- Israel must end its presence in the OPT as soon as possible.
- Israel must immediately cease settlement expansion and establishment of new settlements and evacuate all settlers from the OPT.
- Israel is required to make reparations for the damage caused to the OPT's population. This includes restitution, including allowing displaced Palestinians to return.
- Member States and international organizations have a duty not to recognize the Israeli presence in the territories as legal and to avoid supporting its maintenance.
- The UN, in particular UNGA and UNSC, should consider what actions are necessary to end the Israeli presence in the territories as soon as possible.

The Court also found 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, amounting to racial segregation and/or apartheid, in violation of international law.
- Israel's unlawful policies and practices are in breach of Israel's obligation to respect the right of the Palestinian people to self-determination.
- The West Bank, East Jerusalem, and the Gaza Strip (OPT) constitute a single territorial unit whose unity and integrity must be preserved and respected.
- Given Israel's ongoing control (even before 7 October 2024), the Gaza Strip continues to be occupied under international humanitarian law.
- Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law.
- Israel's policies and practices amount to the annexation of large parts of the OPT.

Implications of the ruling

This is a ground-breaking ruling which confirms what Palestine, many other states, experts, activists, and others have been saying for years, as such giving a tremendous push to the Palestinian quest for freedom and liberation.

This includes a huge push for the BDS Movement. By asserting the illegality of the occupation and by stipulating that the Member States and the UN should not recognize and sustain the illegal situation, and ensure that it ends and that Israel complies with international law, the Court affirms that the Movement's call for boycott, divestment



and sanctions to achieve equal rights, the end of occupation and refugee return are legitimate. Among others, this should prompt States that have criminalized support for BDS to immediately take corrective action.

Although strictly speaking not binding, ICJ Advisory Opinions are the most authoritative expressions of international law, however, and carry enormous political weight. In the current case, many of the Court's findings reflect *jus cogens* – i.e. peremptory principles of international law – making the ruling declaratory. As these norms are binding, States will have a duty to respect them. Many of the Court's findings are so damning that it will be difficult for States to ignore them. Also, the Advisory Opinion is binding on the UN and its various organs, which are urged by the Court to take all possible measures to end Israel's illegal occupation and related policies and practices.

A very important point in the opinion, from a practical perspective, is the obligation it places on UN Member States and the UN itself not to recognize as legal or help to maintain the situation arising from Israel's unlawful presence in the territories. Member States and the UN are in effect obliged, in the wake of the opinion, to conduct a preliminary review of any interaction with Israel, whether in the territories or in Israel proper, to ascertain that it does not contribute to Israel's presence in the territories.

The Court's ruling also confirms that the Oslo Framework is irredeemably broken and a paradigm shift in the quest for solutions is called for. The Middle East Peace Process and Oslo Accords had turned the Question of Palestine into an essentially bilateral issue to be negotiated between Israel and the Palestinians, starting from the premise of a false equivalence between two vastly unequal parties. As the Court affirmed, according to the international normative framework that emerged from WWII, ending the systematic violation of the Palestinian people's rights to self-determination, freedom from foreign military occupation, colonialism, and apartheid, and the Palestinian refugees' right to return, restitution and compensation should be inherent in any solution and cannot be a matter for negotiation.

Some of the further implications and opportunities provided by the ruling include:

- Helping States to maintain their support for Palestine and Palestinians, including UNRWA.
- Providing a further push for the recognition of the State of Palestine.
- Putting pressure on the ICC Prosecutor concerning the ongoing investigation into the 'Situation in Palestine', including by urging him to focus on Israel's settlement policy, annexation, and systemic discrimination (segregation and apartheid).
- Leading to further Western sanctions on (radical) settler leaders and organizations.
- Urging UNGA to reactivate the UN Special Committee against Apartheid

- Urging the Committee on the Elimination of Racial Discrimination to expedite finalizing its consideration of the complaint against Israel.
- Ending discussions as to the applicability of the Fourth Geneva Convention to the OPT, including Gaza.

Key excerpts of the ruling

Paragraph numbers are in reference to those in the full ruling. Emphasize added by ARDD.

Settlement policy

155. In light of the above, the Court reaffirms that the Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law (...).

Annexation

173. In light of the above, the Court is of the view that Israel's policies and practices, including the maintenance and expansion of settlements, the construction of associated infrastructure, including the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel's capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel's control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank. These policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground. Consequently, the Court considers that these policies and practices amount to the annexation of large parts of the Occupied Palestinian Territory.

179. The Court has found that Israel's policies and practices amount to the annexation of large parts of the Occupied Palestinian Territory. It is the view of the Court that to seek to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force. (...)

Systemic discrimination, racial segregation and apartheid

223. For the reasons above, the Court concludes that a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds specified by international law. As the Court has noted, this differentiation of treatment cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim (see paragraphs 196, 205, 213,

and 222). Accordingly, the Court is of the view that the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on, inter alia, race, religion, or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

224. A number of participants have argued that Israel's policies and practices in the Occupied Palestinian Territory amount to segregation or apartheid, in breach of Article 3 of CERD.

225. Article 3 of CERD provides as follows: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." This provision refers to two particularly severe forms of racial discrimination: racial segregation and apartheid.

229. The Court observes 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. For this reason, the Court considers that Israel's legislation and measures constitute a breach of Article 3 of CERD.

Self-determination

243. The prolonged character of Israel's unlawful policies and practices aggravates their violation of the right of the Palestinian people to self-determination. As a consequence of Israel's policies and practices, which span decades, the Palestinian people has been deprived of their right to self-determination over a long period, and further prolongation of these policies and practices undermines the exercise of this right in the future. For these reasons, the Court is of the view that Israel's unlawful policies and practices are in breach of Israel's obligation to respect the right of the Palestinian people to self-determination. (...)

Legal status of the occupation

261. The Court considers that the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration with the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful.

Legal consequences for Israel

265. The Court has found that Israel's policies and practices referred to in question (a) are in breach of international law. The maintenance of these policies and practices is an unlawful act of a continuing character entailing Israel's international responsibility.

267. With regard to the Court's finding that Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character that has been brought about by Israel's violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible.

268. The Court further observes that with respect to the policies and practices of Israel referred to in question (a) which were found to be unlawful, Israel has an obligation to put an end to those unlawful acts. In this respect, Israel must immediately cease all new settlement activity. Israel also has an obligation to repeal all legislation and measures creating or maintaining the unlawful situation, including those which discriminate against the Palestinian people in the Occupied Palestinian Territory, as well as all measures aimed at modifying the demographic composition of any parts of the territory.

269. Israel is also under an obligation to provide full reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned (...).

270. Restitution includes Israel's obligation to return the land and other immovable property, as well as all assets seized from any natural or legal person since its occupation started in 1967, and all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents. It also requires the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence.

271. In the event that such restitution should prove to be materially impossible, Israel must compensate, in accordance with the applicable rules of international law, all-natural or legal persons, and populations, where that may be the case, having suffered any form of material damage as a result of Israel's wrongful acts under the occupation.

Legal consequences for other states

278. Taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their

dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. (...).

279. Moreover, the Court considers that, in view of the character and importance of the rights and obligations involved, all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory. It is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

Legal consequences for the United Nations

280. The duty of non-recognition specified above also applies to international organizations, including the United Nations, in view of the serious breaches of obligations erga omnes under international law. (...)

281. Finally, the Court is of the view that the precise modalities to bring to an end Israel's unlawful presence in the Occupied Palestinian Territory is a matter to be dealt with by the General Assembly, which requested this opinion, as well as the Security Council. Therefore, it is for the General Assembly and the Security Council to consider what further action is required to put an end to the illegal presence of Israel, taking into account the present Advisory Opinion.

Conclusion

285. For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

(3) By eleven votes to four,

Is of the opinion that the State of Israel's continued presence in the Occupied Palestinian Territory is unlawful;



(4) By eleven votes to four,

Is of the opinion that the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible;

(5) By fourteen votes to one,

Is of the opinion that the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory;

(6) By fourteen votes to one,

Is of the opinion that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory;

(7) By twelve votes to three,

Is of the opinion that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory;

(8) By twelve votes to three,

Is of the opinion that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory;

(9) By twelve votes to three,

Is of the opinion that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.

Resources

ICJ Advisory Opinion: <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>

Summary of Advisory Opinion (by ICJ): <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-sum-01-00-en.pdf>



النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

Summary of Advisory Opinion (by L4P): <https://law4palestine.org/summary-of-the-advisory-opinion-of-the-international-court-of-justice-on-the-illegality-of-the-israeli-occupation-of-the-occupied-palestinian-territories-and-the-consequences-thereof/>

Statement of the BDS National Committee (BNC) on the Advisory Opinion: <https://bdsmovement.net/news/historic-ruling-icj-finds-israel-guilty-apartheid-against-palestinians-and-its-military>