



Occupied Palestinian Territory: Legal Analysis of the Advisory Opinion of the International Court of Justice

The International Court of Justice Pronounces on the Illegality of the Israeli Occupation in Palestine: A Breakdown of Jurisdiction, Legal Analysis, and Potential Implications for the International Community.



One of the most pressing issues today is the conflict between Palestine and Israel, whose roots go back to the 19th century with the rise of the Zionist movement.

Although the conflict has persisted for decades, even centuries, due to a combination of socio-cultural, economic, political, and religious factors, the military escalation seems endless. This situation has claimed the lives of tens of thousands of people and has caused the displacement of millions due to increasing insecurity.

The ongoing occupation and violence are contrary to the fundamental values of the United Nations, which promote peace, justice, respect, human rights, and tolerance for all peoples. In line with these values, on July 19th, the International Court of Justice declared the Israeli occupation of Palestinian territory illegal and urged an end to this situation as soon as possible.

What is the International Court of Justice?

To understand the reasons behind the recent resolution, it is necessary to know what the International Court of Justice (hereinafter ICJ) is and what its role is within the institutional framework of the United Nations.

The ICJ, also known as the World Court, is the principal judicial organ of the United Nations (hereinafter UN) and performs a dual function. Firstly, it settles disputes submitted to it by states in accordance with international law. Secondly, it gives advisory opinions on legal

questions referred to it by authorized UN organs and agencies.

It is important to highlight that the ICJ's jurisdiction depends on the consent of the parties. However, in certain cases, if states have previously agreed to submit their disputes to the Court, its jurisdiction can be compulsory.

The ICJ's judgments are binding on the parties involved and must be complied with. In contrast, advisory opinions are not binding, as their purpose is to provide significant legal guidance to the international community.



Advisory opinion on the legal consequences of Israel's policies and practices in the occupied Palestinian territories

Despite the non-binding nature of advisory opinions, their impact on the global stage can be significant, especially in contexts of high relevance and complexity, such as the conflict between Israel and Palestine.

In December 2022, the UN General Assembly (hereinafter UNGA) decided to request the ICJ to issue an advisory opinion to address two questions related to the legal consequences of Israel's occupation, annexation, and discriminatory practices in the Palestinian

territories occupied since 1967, following the Six-Day War. In response, more than a year and a half later, by eleven votes to four, the Court ruled that Israel's continued presence in the Occupied Palestinian Territory is illegal.

To understand the reasons behind this conclusion, it is necessary to recognize that the conflict involves a highly intricate interplay of national and international jurisdictions.

In fact, the ICJ had to first examine the status of the Occupied Palestinian Territory to determine the applicability of certain rules of international law. In this regard, a territory is considered occupied when it is under the effective control of a state without the sovereign title over it. Therefore, the decisive criterion is not whether the occupying power maintains a constant military presence in the territory, but whether its authority has been established and can be effectively exercised. In light of this, Israel's case as an occupying power in Palestine fits this definition.

Based on this foundation, the ICJ was able to delineate the relevant rules to answer the questions posed by the UNGA. The main starting point is a key norm of customary international law, which arises from a practice generally accepted as law: the inadmissibility of the acquisition of territory by military conquest. This principle was emphasized by the UN Security Council (hereinafter UNSC) in its famous Resolution 242, which focused on achieving a lasting peace in the Middle East.

Resolution 242 (1967)

of 22 November 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

On the other hand, the UNGA stipulated that "all peoples have the right to self-determination; by virtue of this right, they freely determine their political status and freely pursue their economic, social, and cultural development." In line with this, in 1974, it recognized that "the Palestinian people have the right to self-determination in accordance with the *UN Charter*".

Beyond that, the ICJ considered international humanitarian law, particularly the *Fourth Geneva Convention* of 1949, which complements the *Hague Regulations on the Laws and Customs of War on Land*. As the Court has observed in its jurisprudence, these regulations have become part of customary international law and are therefore binding on Israel.

Furthermore, international human rights law has also been crucial in the ICJ's advisory opinion. Israel is a party to numerous legal instruments containing human rights obligations, such as the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1965. Naturally, these obligations extend beyond the jurisdiction of its own territory, and Israel should comply with them.

Having delineated the applicable jurisdiction in the case, according to the ICJ's interpretation, it is now appropriate to examine the following sections of the advisory opinion that address certain relevant aspects of the questions posed by the UNGA.



The issue of prolonged occupation

Israel's occupation of Palestinian territory has lasted for more than 57 years.

Revisiting the initial definition of the concept of "occupation," it is important to remember that the fundamental criterion is not the duration of the act but its effectiveness. In other words, there is no specific time limit. However, it should be temporary and respond to a military necessity, without implying the transfer of sovereignty.

On the other hand, this exercise of effective control does not permit the use of force, so the principle from Resolution 242 regarding the inadmissibility of acquiring territory through war comes into play. Additionally, the status of an Occupying Power entails a series of responsibilities, among which is the administration of the territory for the benefit of

the local population —something that has been clearly violated by Israel.

The issue of settlement policy

Israel's settlement policy as an Occupying Power aims to establish a system in such a way that it becomes firmly entrenched. Consequently, the power has undertaken various actions that, according to the ICJ, have violated international jurisdiction.

It is important to note that, under the *Hague Regulations*, the Occupying Power must take measures to restore and maintain public order and safety while respecting the existing law in the occupied territory, unless it is absolutely impossible to do so. However, Israel has not complied with this requirement.

As an occupying state, Israel should be considered merely an administrator and usufructuary of the immovable property in the occupied territory. In this capacity, it has the real right to use and benefit from these properties, provided that it preserves their form and substance and does not exceed their use beyond the strict purpose of the occupation. Nevertheless, many lands have been confiscated or requisitioned, which clearly exceeds the established limits.

Regarding the civilian population, numerous articles have been violated. The lack of supplies to the local population, combined with inhumane living conditions, has led to a massive wave of deportations and forced displacements. According to the *Fourth Geneva Convention*, “individual or mass forced transfers [...] are prohibited, regardless of their motive.” They would be considered

evacuations and thus permissible if they were temporary and reversed as soon as the military reasons ceased, but the ICJ believes that Israel's military practices demonstrate otherwise.

In other words, the Court understands that there has been intolerable violence against Palestinians, characterized by differential and discriminatory treatment.



The issue of self-determination

The prolonged duration of Israel's illegal policies and practices has exacerbated the violation of the Palestinian people's right to self-determination.

This right is defined as the freedom of colonial peoples to decide their own future. It is a means of acquiring sovereignty, which includes the possibility of establishing a sovereign and independent state.

The ICJ maintains that it is up to the UNGA and the UNSC to determine the necessary measures to end Israel's illegal presence in the Occupied Palestinian Territory and ensure the full realization of the Palestinian people's right to self-determination.



Legal consequences for Israel

The Court's advisory opinion could not be clearer that Israel must assume its international responsibility. This not only entails the obligation to end its presence in the Occupied Palestinian Territory as soon as possible and to cease all unlawful acts but also to fully compensate Palestine for the damages caused.

Firstly, Israel will need to return land and other assets to Palestine. Additionally, it must evacuate settlers and allow the return of displaced Palestinians. It will also have to dismantle sections of the wall built on Palestinian territory.

Finally, the ICJ emphasizes that Israel must respect the Palestinian people's right to self-determination.

Legal consequences for other states

However, a conflict of such magnitude involves not only the directly engaged parties but also extends to other UN members. In this context, the Court has established that all Member States have certain *erga omnes* obligations, such as respecting the Palestinian people's right to self-determination. Consequently, they should not recognize any

changes —whether physical, demographic, or institutional— between Palestine and Israel since June 5, 1967, the date the Six-Day War began.

In summary, Member States must refrain from legitimizing this situation and, in accordance with the prohibition on the use of force, must not provide any form of aid or assistance that would perpetuate it.

Conclusions

"Nothing can justify the collective punishment of the Palestinian people." These were the words of António Guterres, the current Secretary-General of the UN.

There is no doubt that ending the Israeli-Palestinian conflict is one of the most pressing priorities of our time. This war has triggered a humanitarian catastrophe, devastating the lives of innocent people and turning the existence of countless families into a true nightmare.

Although the Court's opinion received four dissenting votes, questioning the UNGA's impartiality in formulating the questions and arguing that Israel's policies and practices in the Occupied Palestinian Territory are independent of the legal status of the occupation, the overall message is clear: global peace and security depend on all of us.

According to Guterres' statements, the only viable option is the vision of two independent and democratic states living peacefully side by side, with Jerusalem as the capital of both. The urgency of a ceasefire and unimpeded access to humanitarian aid is not only an obligation for Member States but a moral imperative.

The preamble of the United Nations Charter begins by declaring the resolve of the peoples to save future generations from the scourge of war and its unimaginable suffering. Although current generations are not explicitly mentioned, the message is implicit: the starting point is the present. For this reason, everyone should consider what kind of world they want to live in. After all, what use is having everything if we cannot live in peace?

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