
FATALLY FLAWED

One-sided Advisory Opinion of the ICJ on the *Occupied Palestinian Territory* plays into Iran's hands

Executive Summary

On 19 July 2024, the International Court of Justice (ICJ) rendered its Advisory Opinion to the UN General Assembly (UNGA).

Eleven of the Court's fifteen judges concluded that Israel's military presence in the "Occupied Palestinian territory" has become unlawful; that the UN and all states must ensure that the occupation ends "as rapidly as possible"; and that all settlers must be "evacuated".

This Opinion is the result of a one-sided UNGA resolution (77/247), and one-sided Advisory Opinion proceedings – all driven by a group of States hostile towards the Jewish State of Israel.

By focusing exclusively on Israel's alleged misconduct, the Court has failed to judiciously arrive at a fair conclusion upon disputed questions of fact, in a manner compatible with its judicial character.

The Court has adopted a historical and legal narrative that undermines the sovereignty of a UN member state (Israel), and rewards Arab/Palestinian aggression.

Six of the Court's fifteen judges were very critical of the majority's approach.

Main flaws in the Opinion:

(1) *Occupation, annexation and sovereignty*. The Court has ignored Israel's legitimate sovereign claims to East Jerusalem and the West Bank (Judea and Samaria) grounded in the former British Mandate of Palestine (1922). The Court disregarded the well-established principle of international law "uti possidetis juris". The Court did not have sufficient evidence or arguments before it to conclude that all the territory captured in June 1967 is "Palestinian", or that Israel has acquired foreign territory, or attempted to acquire such territory, by force during or after the June 1967 war.

(2) *Self-determination and security*. By requiring Israel to remove its military presence from the whole of East Jerusalem, West Bank and Gaza without adequate security guarantees, the Opinion effectively rewards aggression, and ignores the existential threats posed to Israel from within those territories. This approach therefore is more likely to exacerbate than de-escalate tensions in the Middle East.

(3) *UNSC Res 242, Oslo Accords and negotiations*. The Court's approach undermines the Oslo Accords and the peace process sanctioned by the Security Council based on negotiated resolution of all outstanding issues in the conflict, including: security, borders, Jerusalem, and settlements.

(4) *Illegality of Israel's practices and policies vs. illegality of Israel's presence*. The Court provides insufficient reasons for concluding that Israel's presence in the territories is illegal.

Recommendations:

The Advisory Opinion is non-binding. The UN General Assembly should not implement the Court's conclusion that Israel must end its presence in the territories. It should not take any steps that may impede or prejudice the existing competing claims between the parties being resolved through negotiations between them, as mandated by the legal principles referred to in UNSC Resolution 242 (1967), the Oslo Accords and the UN-sanctioned Roadmap for Peace.

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