
FATALLY FLAWED

One-sided legal opinion of the ICJ on the occupied Palestinian territories plays into the hands of Israel's enemies, especially Iran

Executive Summary

Background / Facts:

On 19 July 2024, at the request of the United Nations General Assembly (UNGA), the International Court of Justice (ICJ) presented an Advisory Opinion on “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; and on how these policies and practices affect the legal status of the occupation.

Eleven¹ of the Court's fifteen judges came to the conclusion that Israel's military presence in the so-called ‘Occupied Palestinian Territory’ is illegal, that the United Nations (UN) and all states must ensure that the occupation is ended ‘as rapidly as possible’. Fourteen judges² said that all settlers must vacate the territory.

One-sided Opinion

The ICJ's legal opinion is the result of the one-sided UN resolution (77/247) and a one-sided advisory opinion process driven by the Palestinians and supported by around 80 states, many of them hostile to the State of Israel.

Six³ out of fifteen judges of the Court criticised the one-sided nature of the Opinion, especially the Opinion’s failure to adequately take account of Israel’s legitimate security difficulties. Of these, three judges (Tomka, Abraham and Aurescu) strongly disagreed with the conclusion that the occupation is illegal, and one judge (Sebutinde) said the Opinion is totally flawed, and the Court should not have issued an Opinion at all.

Because of the bias of the questions posed by the UNGA, the ICJ focused exclusively on Israel's alleged misconduct and failed to answer disputed questions of law and fact fairly. Rather, it has adopted a historical and legal narrative that undermines the sovereignty of Israel as a UN member state and rewards Arab-Palestinian aggression.

¹ All judges except Sebutinde, Tomka, Abraham and Aurescu.

² All except Vice-President Sebutinde.

³ Sebutinde, Tomka, Abraham, Aurescu, Nolte and Cleveland.

Moreover, as some judges noted, the Opinion ignores the realities on the ground. Compelling unilateral Israeli withdrawal opens the door wide for Iran and its terrorist proxies and allies like Hamas, to consolidate their presence in the West Bank and pursue their goal of destroying the Jewish State of Israel.

Other criticisms of the ICJ Advisory Opinion by some of the judges:

(1) *Occupation, annexation and sovereignty*. The ICJ ignores Israel's legitimate sovereign claims to East Jerusalem and the West Bank, which are based on the former British Mandate of Palestine (1922). The ICJ disregarded the well-established principle of international law 'uti possidetis juris', which provides that newly formed sovereign states should maintain the internal borders that their previous territory had before their independence. The court did not have sufficient evidence or arguments to conclude that the entire territory captured in the 1967 Six-Day War was 'Palestinian' or that Israel had forcibly acquired or attempted to acquire foreign territory during or after the war.

(2) *Self-determination and security*. By calling on Israel to end its military presence in East Jerusalem, the West Bank and Gaza without adequate security guarantees, the legal opinion rewards aggression and ignores the existential threats posed to Israel by these territories. This approach is more likely to exacerbate tensions in the Middle East than to de-escalate them.

(3) *UNSC Res 242, Oslo Accords and negotiations*. The ICJ's approach undermines the Oslo Accords and the Security Council-sanctioned peace process, which is based on a negotiated solution to all outstanding issues in the conflict, including security, borders, the status of Jerusalem and the settlements.

(4) *Illegality of Israel's practices and policies vs. illegality of Israel's presence*. The ICJ does not provide sufficient grounds for concluding that Israel's presence in the territories is illegal.

Recommendations:

The ICJ's legal opinion is not binding. Almost half of the Court's judges had significant criticisms of the one-sided nature of the Opinion, undermining its legal weight. And four of the judges strongly disagreed with the conclusion that the occupation is illegal. As a result, the UN General Assembly -

- should not act to require Israel to end its presence in the territories in the absence of agreed security measures and should also not take steps to pre-empt or prevent negotiations between the parties on conflicting claims, as provided for in the legal principles of UN Security Council Resolution 242 (1967), the Oslo Accords and the UN-approved Roadmap for Peace.

The Complete Legal Analysis by thinc. is available on its website: [thinc. briefing concerning the Advisory Opinion of the International Court of Justice - Israel and International Law \(thinc-israel.org\)](https://www.thinc-israel.org/briefing-concerning-the-advisory-opinion-of-the-international-court-of-justice-israel-and-international-law)

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