

# Conventional Wisdom: The ICJ Ruling on Israeli Settlements

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Global Research, July 22, 2024

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*The International Court of Justice has again deliberated over the thorn-bloodied subject of Israeli-Palestinian relations. Its latest [advisory opinion](#), [sought](#) by the UN General Assembly early last year, was unremarkably conventional though nonetheless affirming: a finding that Israeli settlements in the West Bank and East Jerusalem, along with “the regime associated with them, have been established and are being maintained in violation of international law.”*

Given the avalanche of international opinions, deliberation and understanding on the status of the settlements that arose after 1967, the ICJ was merely revising homework and reiterating home truths of international law. As Eitay Mack, an Israeli attorney working for Palestinian rights in the West Bank [told](#) *The Intercept*,

“The court just said the obvious.”

Various acts and practices are accordingly examined, amounting to what the Court considered annexation of territory Israel had no sovereignty over. Israel, for instance, treated the Palestinians in East Jerusalem as “foreigners” requiring a valid residence permit and had imposed a strict building permit scheme, violation of which could result in structural demolition and steep fines. In the West Bank, the Basic Law of 2018 had explicitly stated that Israel “views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation”. Various areas prohibited Palestinian construction, while the expansion of Israeli settlements had burgeoned.

Israeli control of the occupied territory had been accordingly maintained by such things as the extension of its domestic law to the West Bank and East Jerusalem, the maintenance and expansion of the settlements, the construction of relevant infrastructure connected with that aim, the ongoing exploitation of natural resources, and proclaiming Jerusalem capital of Israel. Such practices were “designed to remain in place indefinitely and to create irreversible effects on the ground.”

The Court also found that Israeli authorities had failed to “prevent or to punish” the violence of settlers directed against Palestinians, thereby contributing “to the creation and maintenance of a coercive environment”.

The opinion further notes that Israeli policies and practices in the West Bank and East Jerusalem impose a separation between the Palestinian populace and Israeli settlers “transferred” into the territories. Such a separation was physical and juridical, thereby breaching Article 3 of the International Convention on the Elimination of All Forms of

Discrimination (CERD). As State parties to the CERD expressly condemn both racial segregation and apartheid, undertaking to prevent, prohibit and eradicate such practices in territories under their control, the finding is particularly damning.

Gaza's imperilled status also drew the Court's attention. While Israel officially withdrew its forces from the strip in 2005 pursuant to its "Disengagement Plan" announced the previous year, Israel maintained effective control over the territory.

"Where a State has placed territory under its effective control, it might be in a position to maintain that control and to continue exercising its authority despite the absence of a physical military presence on the ground."

In this case, Israel continued to exercise authority over land, sea and air borders, restricted movement of people and goods, controlled the collection of import and export taxes, and exerted military control over the buffer zone.

It also followed that international bodies such as the UN Security Council, the General Assembly and the international community were under an obligation not to recognise the status of such an occupation, nor supply aid or support in maintaining them. Israel was also "under an obligation to end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible." All further settlement activities were to cease, and all current settlers in the OPT areas evacuated.

As a result of its policies regarding the occupied territories, Israel had also incurred obligations "to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory."

For countries professing to follow the "rules-based order", the opinion should have made perfect sense. But in power politics, rules bend. Take, for instance, these [words](#) from the US State Department to Reuters:

"We are concerned that the breadth of the court's opinion will complicate efforts to resolve the conflict and bring about an urgently needed just and lasting peace with two states living side by side in peace and security."

As for observing international law, the Israeli government continued to prove not only selective but historically parochial.

"The Jewish people are not occupiers in their own land - not in our eternal capital Jerusalem, nor in our ancestral heritage of Judea and Samaria," [claimed](#) Prime Minister Benjamin Netanyahu in a statement.

This was, the PM went on to say, a "historical truth" that could not be contested.

Some Israeli politicians did acknowledge certain merit in the Court's decision. Labor MK Gilad Kariv [warned](#) that the policy of "de facto annexation" being pursued in the West Bank, the broader "theft of land" and the refusal to negotiate with the Palestinians threatened "Israel's status as an accepted democratic country."

What the decision amounts to is an excoriation of the occupation, those consequential to it (the settlements), and the bolstering system of segregation that has drawn accusations of

apartheid from activists to tribunals. As an advisory opinion, it is non-binding though freighted with persuasive reasoning. In doing so, the decision further pushes arguments for Palestinian self-determination and eventual statehood. For Israel, the judgment will be a hard one to ignore.

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*Featured image: An aerial view of the Israeli settlement of Tekoa in the occupied West Bank. Photo from Shutterstock.*

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