

ICJ Ruling 19 July 2024 on Israel

# Israel is called upon to abide by international law

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Pascal Lottaz.  
(Picture ma)

(CH-S) The Swiss historian and professor of international relations, Pascal Lottaz, analyses the fundamental dimensions of the opinion of the “International Court of Justice” (ICJ) of 19 July 2024 regarding the occupation of Palestinian

territories by Israel. After a written introduction by the author, we reproduce the content of his English-language video contribution.<sup>1</sup>

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The *International Court of Justice* (ICJ) just delivered another landmark ruling concerning Israel’s illegal occupation of Palestine that, judging from *Netanyahu’s* furious reaction, must really hurt. So, let’s have a look at this. But before going into the ruling of the International Court of Justice or the ICJ, let’s make it clear what we are dealing with here.

## Just an Opinion?

While this is a highly significant decision that had to be duly voted on by all the court’s 15 judges, it is not an enforceable judgment over a concrete case brought to the ICJ by a UN member, like the South Africa case against Israel. There is no ‘guilty’ verdict or punishment attached to this one. What the court produced was a so-called “advisory opinion” on a legal matter which the UN General Assembly asked it to produce.

Why did the Assembly do this? Well, advisory opinions from the ICJ are the most authoritative interpretations of international law that you can get. It means the court’s 15 lawyers and their teams studied a certain legal question for



The panel of judges announces the advisory opinion.  
(Picture ma)

months and years and then deliver a judgment in the sense of a ‘super expert opinion’ on the matter.

In the practice of international law, these opinions then become ‘sources of law’, which itself can serve several purposes:

1. They can be the basis for future verdicts on concrete questions if members decide to drag each other to the court.
2. They can inform UN members at the General Assembly and the Security council of what the law actually says, which makes it easier to argue for or against resolutions that might be proposed. Which is something we can expect to happen in this case. The General Assembly will certainly in the future create resolutions that will be based on this verdict.

## The Nature of International Law

The second thing to note is that while Israel forcefully ‘rejects’ the ruling and certainly won’t adjust its behavior. This is a big set-back for the Zionist project.\*\*

You see, International Law is not like domestic law. It’s not enforceable the way that domestic law is. It also doesn’t come about the same way

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\*\* (Supplement by editor CH-S) ‘Zionism’ – from ‘Zion’, the name of the Temple Mount in Jerusalem and designation for the residence of YHWH, the God of the Israelites – denotes both a national movement and a nationalist ideology that aims to establish, preserve and justify a Jewish nation state in geographical Palestine. (cf. <https://de.wikipedia.org/wiki/Zionismus>)

as domestic law. Domestic law is made (usually) by legislative bodies, (usually) called parliaments. They are more or less concrete rules which are then used by the state machine to structure social life inside a country.

International Law doesn't work like that, because there is no world parliament with the same force over everyone. The UN General Assembly might look a bit like a parliament, but it really isn't the same kind of institution.

International Law represents first and foremost the 'general collective will' of the international community as expressed through treaties, declarations, custom, and – expert opinions.

So, what this verdict signifies is another instant of 'the world' not recognizing Israel's claims over Palestinian lands. Of course, Israel is angry now and says, literally, 'The people of Israel are not occupiers in their own land and in their eternal capital, Jerusalem' – this is actually a quite useful statement, because exactly this is the core of the issue. The verdict means that the world does not recognize precisely this claim, namely that Israel, by virtue of Jews having lived in these lands 2000 years ago, derives some magical historical rights over the land. This is not a concept of international law and won't be one. And Israel is furious about not being able to impose its will here.

### **The Problem for Zionism**

This is a very big problem for Zionism, since Israel's entire political strategy is to just create facts on the ground. Israel's idea ever since its establishment in 1948 has been to just ignore international law, do things that are clearly considered crimes under that law, just take the land, replace the people who are living there, and, over time, let that become a fact of international life.

This is not even a new strategy as this is exactly how all successful settler colonial states were created. New people from Europe eradicated native populations, set up their own states and those became members of the international community by virtue of all other states at the time recognizing them. You see, recognition by other states is really the core of how international law works.

International Law is the will of the world, so if the world loses the will to oppose Israel and actually recognizes its claims, then those claims will become 'legal' in the sense of being recognized by the international community. Past ac-

tions will always remain illegal under past IL, but for the future they will become recognized and the illegality of them will cease.

And since this is the strategy, Israel 'wins' every time states move toward recognizing its claims – like when Donald Trump decided to recognize the Golan Heights, which legally belong to Syria as parts of Israel – and Israel 'loses' every time someone does the opposite. And this verdict here is very much a case of the opposite. It enshrines yet again in the books of current international law that what Israel is doing is in fact still illegal and will remain so for the foreseeable future. The great majority of the world does not share Israel's interpretation of its rights.

This is where also the 'weight' of the verdict matters since it was voted on by 15 judges and all the questions the court ruled over were voted on individually and were recognized by at least 11 of the judges, some questions by even more. This means of course that most questions are not a matter of uncertain law or of differences in nuance. It is a very clear verdict.

Now, let's look at what the court enshrined in current international law.

*[In the following, the 'Swiss Standpoint' reproduces Pascal Lottaz' oral analysis of the ICJ opinion from his video report. (Ed.)]*

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The *original document*<sup>2</sup> was published in English and French on 19 July 2024 and bears the title: "Legal Consequences arising from the Policies and Practices of Israel in Occupied Palestinian Territories, including East Jerusalem". It contains 80 pages and 285 paragraphs. The court was asked for the advisory opinion by the general assembly before the 7th of October 2023. It was requested in 2021.

In art. V. paragraph 103–242 the ICJ reviews Israel's policies. It creates an official record of the illegalities, (8 points) and explains why they are illegal which is quite important for anyone who wants to understand the Israel Palestine conflict for its legal sense. The court establishes with authority of how these questions have to be looked at.

E.g. the violence against Palestinians, the extension of Israeli law, the transfer of civilian population.

Then in art. VII. the legal consequences arising from Israel's policies and practices and

from the illegality of Israel's continued presence in the occupied Palestinian territory are determined. It is important to know that the court first looked at the consequences for Israel itself.

- A. Legal consequences for Israel
- B. Legal consequences for other States (This will be quite important.)
- C. Legal consequences for the United Nations

So, the court created a wholistic view of what this situation means, not just for Israel and Palestine but for all other UN member states – and this will hurt in the long run.

The fact is that the US judge and the judges from the western countries also voted in favour, which gives this ruling great legal weight.

Let's go to the actual rulings first: All decisions are summarised in paragraph 285 on two pages (pp. 78/79):

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.

Point 6 is a big one: it's about reparations.

This verdict gives the Palestinians a right to sue Israel for compensation for everything they have lost. This can have a lot of implications in future cases, or even in international law cases or even national law cases, because if there are ways the Palestinians can show that they cannot get justice from Israeli courts or from international courts, then

some states may actually recognize their right to sue Israel under local law if the states have provisions of creating universal jurisdiction, depending on how domestic law works.

Some domestic laws accept that they can rule over claims outside of their jurisdiction if good reasons exist. And this might actually be one in the future.

There might be law cases coming along Israel's way.

Point 7 is very important! This creates an official legal obligation not just to Israel but to all other states. So, everybody else in the world community now knows that they are obliged not to assist Israel in the occupation. This is powerful of course and we haven't had that before, as far as I'm aware of.

Point 9 is the last one. It is the admission that it should be the obligation that the UN organization itself works on this. It is basically playing the ball back to the General Assembly and the Security Council to keep working on this on a political level, because the court is of course a judicial body and not a political one. Now it should go back to the politicians.

### Implementation of the ruling

Of course this will be ignored to a good degree. And in the security council the US will veto, or on any resolutions that could damage Israel's interests in whatever tiny little way. But at the general assembly there are good chances that we will see new resolutions coming out and the states will be motivated. Based on this judgment, resolutions could go as far as recom-

mending sanctions and further actions against Israel.

### **Rules for third states**

The legal consequences for other states (B) is very significant. That the so called *erga omnes*, obligations start occurring, so the conflict does not only impact the two parties it also impacts third states, and the court now formulated rules for third states.

### **Charter of the United Nations and Fourth Geneva Convention must be respected**

Among the obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people for self-determination and the opinion here says very clearly that other states are obliged to help the Palestinians to realize their right to self-determination. It's quite a long passage here that you can go and read on page 75.

A very important paragraph is the number 279 that says and I quote again in full:

"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 the 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 the international humanitarian law as embodied in the Geneva Convention."

### **Advisory opinion was asked for before 7 October 2023**

Here I need to point out that this advisory opinion was asked for by the general assembly before the 7<sup>th</sup> of October 2023. It was requested in 2021.

At the beginning of the text the court actually says: It's only considering things that happened before the 7<sup>th</sup> of October. For its opinion it doesn't take into consideration everything that happened since. So, the genocide in Gaza is not even considered in this opinion.

So, what the court does is: it considers the legal implications of the occupation. And it re-affirms it is an occupation, Israel is acting illegally and against international law, it has to withdraw and has to withdraw to the 1967 borders. And it is the fact that Israel manages to impose its might and its power over the Palestinians but that doesn't render it ok.

That's what I said earlier: this does not make it international law. It is a violation and very importantly so. Why I point out this sentence here is that the Fourth Geneva Convention is the one that deals with the rules in armed conflict and the legal requirements not to breach these laws of war in the Geneva Convention.

This is a direct pass onto what happened after 7th October and all of the breaches of international law that are currently occurring of international humanitarian law. So, again the court says no, you cannot breach international humanitarian law. Israel's claim that the Palestinians have no right to self-determination doesn't give Israel the right of self-defense that Israel keeps claiming all the time to justify all the breaches of the Geneva Convention—and by now also the genocide convention.

### **Third countries must not help Israel**

Why this is important is that here we now have a very hard ruling of the ICJ that third states must not help Israel. You must not do anything that helps Israel to prolong the occupation. So, this can be used by activist groups and courageous third states to try to sue others or to sue state organs who might be in breach of this regulation.

### **Verdict is a strong instrument for third countries' legal routes**

It does not only connect directly to international humanitarian law, but it also connects directly to international human rights law. So, this is going to be a very strong instrument for courageous parties that want to try to go the legal route through any institution that they can find, either at home, or in the international sphere, like one of the treaty bodies of the United Nations or the ICC. Again, you could try to use this in front of the ICC.

This is just very strong! So, it's not just Israel that's under the watch. It's also the third states that help it, like the United States, but also the European Union. All of these states are now in-

formed that they must not do anything that helps Israel prolong the occupation.

### ICJ recognizes the borders of 1967 and the two-state solution

The court recognizes the borders of 1967. The illustration (Territorial changes in Palestine) shows more or less what the court recognizes as the actual state borders of Palestine or as legal Palestinian lands belonging to the Palestinians.

The court doesn't at all delegitimize Israel. It recognizes the state of Israel, it recognizes the right of the state of Israel to exist. At the end it says Israel and Palestine should live side by side.

This two-state solution is what the court recognizes under international law. So, the court does not at all justify for instance the dissolution of Israel which is something that a couple of Arab states are demanding. However, the court recognizes that any soldiers or illegal settlements of Israel in these Lands in these territories of Palestine are in breach of international law. So, that's what we need to keep in mind.

### No changes expected on political level

Don't expect any changes on the political level. We have of course the United States that came out immediately in support of Israel and the

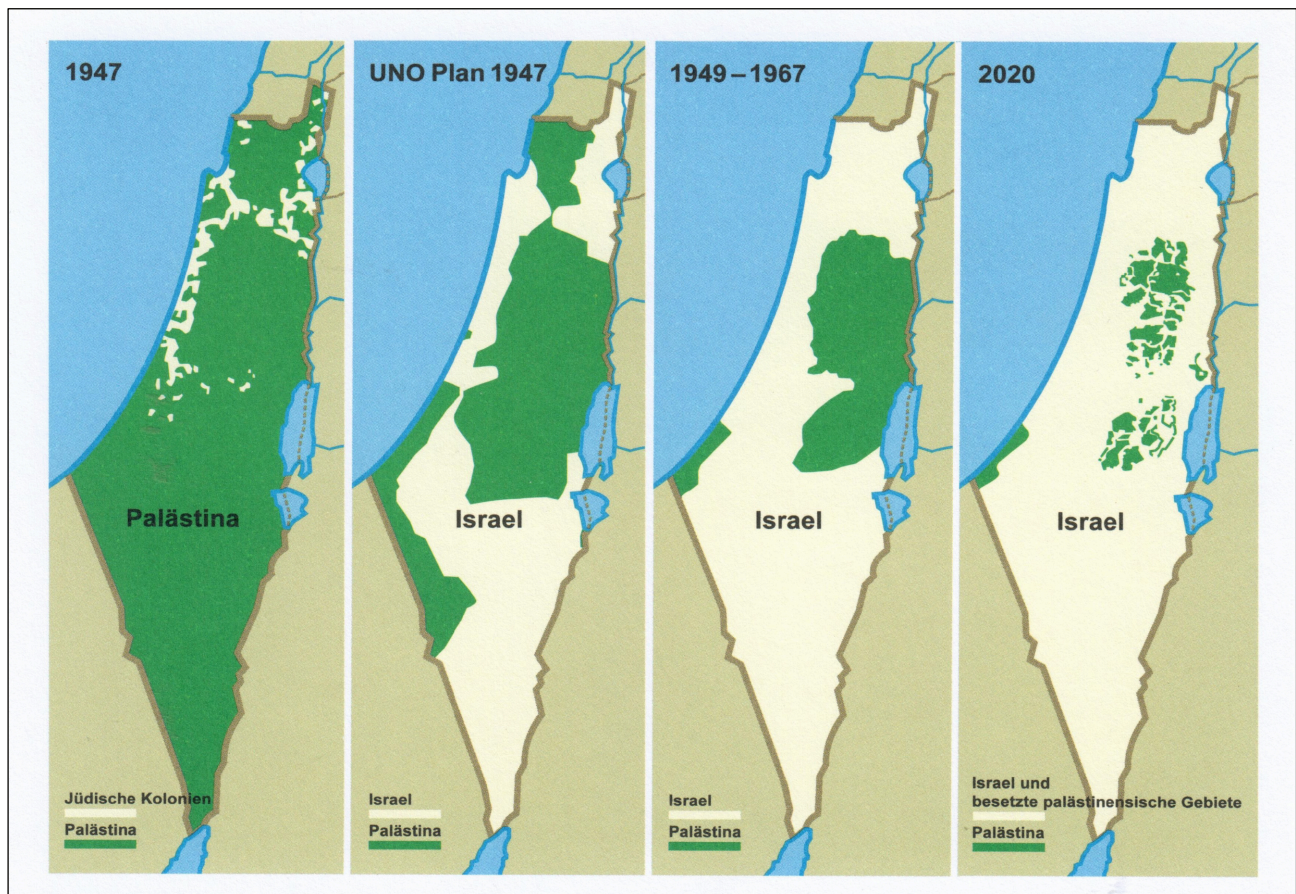
State Department that says that it views this ruling as inconsistent with the established framework for resolving the conflict and that Washington strongly discourages parties from using the court's opinion as a pretext for further unilateral actions.

Another international lawyer pointed out to me that it is highly hypocritical of the US to speak of unilateral actions. What they mean of course are further actions of other countries to recognize Palestine as a state. As you know some European countries have already done and some have abstained. The US calls that unilateral action. You know the recognition of Palestine – any kind of recognition of a state by a third state is always a unilateral action, that's always by definition.

If a country, its government decides to recognize another state, then that is a unilateral action. What the State department here says is what it wants, meaning that anyone who wants to recognize Palestine first needs to ask Israel whether it agrees or not.

### Israel cannot break the dam of international legal opinion

The important is to keep in mind that this is now the expression not just of a court but more or less of world opinion and of international law.



The long-term strategy of Israel to just create facts and then have them recognized later, is not working.

This doesn't end their illegal occupation, and it won't change their policies immediately, but it means that for now international law is holding, the dam is holding, and Israel is not able to break through this firewall of international legal opinion.

And if this opinion doesn't change things immediately – even if this still takes decades or a century – then at some point the political realities on the ground are going to change. Because currently it is of course the military support of the United States and Europe that keeps Israel safe and in place. But if that changes or once that changes the entire political game will move into another direction.

And at that point, when once this military support gets weaker, Israel will need the support of this part of the international community to continue existing and that could be the moment when Israel might be willing to actually come to

a real conclusion of this absolute tragedy and accept the two-state solution and actually move toward resolving the apartheid within the state and all of the injustices that have been committed.

So, again, international law can't change the situation immediately, but it does create the long-term trajectory. The good news here is, that the long-term trajectory is not the one that the Zionists would like to start taking shape which is slowly moving towards becoming silent and then just accepting the fact that Israel creates. That's not the case. That's the good news of today and we will see whether this advisory opinion will have more serious legal consequences in the months and years to come. Thank you.

*(Transcript "Swiss Standpoint"/Ursula Cross)*

<sup>1</sup> Video: <https://www.youtube.com/watch?v=eJlnZj5j6nl>

<sup>2</sup> Advisory Opinion of 19 July 2024, "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem": <https://www.icj-cij.org/index.php/case/186>