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The United States and Israel as International Outliers, Outlaws, and Losers



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If you were a bookmaker taking bets on the position of the United States in the world today, you should take into consideration three recent events. The world's post-World War II dominant power just lost three times internationally, once politically and twice legally. Losing three times before important international institutions is not a demonstration of hegemonic strength. The three defeats reflect how the United States, and its Middle East proxy Israel, could be losing whatever moral authority they have left.

It is one thing for a country to go against the flow and to be an outlier; it is another to go against international law and to be an outlaw. The United States and Israel are both political outliers and international legal outlaws.

The February 20 veto by the United States of a Security Council resolution calling for an Israeli ceasefire in Gaza highlighted the political isolation of the United States and Israel.

The U.S. was the sole country voting against the resolution. Voting for the resolution and against the United States were such traditionally U.S.-friendly countries as France, Japan, Switzerland, Republic of Korea, and Malta.

Algeria sponsored the latest ceasefire resolution. Before the vote, Algeria's U.N. Ambassador, Amar Bendjama, told the Council: "A vote in favor of this draft resolution is a support to the Palestinians right to life. Conversely, voting against it implies an endorsement of the brutal violence and collective punishment inflicted against them." With this veto, the United States continues to defend Israel before the Security Council in an isolated manner; it has vetoed resolutions criticizing Israel over forty times since 1945. The latest U.S. veto was its third in the Security Council about Israel and Gaza.

The fact that the United States steadfastly defends Israel before the Security Council in the face of the International Court of Justice's (ICJ's) recognition of Israel's "plausible" genocide places the U.S. as a political outlier. The final Council vote on the Algerian resolution was 13-1. The U.K. abstained, avoiding a unanimous U.S. defeat in the 15-member Council. "It is awfully embarrassing for the Americans," Richard Gowan, the U.N. director of the International Crisis Group, said. "They have had to use a veto just days before the Security Council meeting commemorating Russia's all-out assault on Ukraine," he added. "That will simply fuel talk about U.S. double standards" as well as isolation; double standards and a loss of moral authority.

An outlaw legal example is Israel's refusal to participate orally in an ICJ Advisory Opinion hearing February 19-26 called for by a 2022 U.N. General Assembly resolution. The subject was the "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem." Fifty-two countries and three organizations presented, the largest number of parties to participate in any single ICJ case since 1945. Israel did not participate in the oral hearings, only submitting a 5-page written statement.

Israeli Prime Minister Netanyahu called the case "despicable" and "disgraceful." But over fifty countries and three international organizations did think it worthwhile to go to The Hague to present oral arguments about the legality of Israel's occupation of Palestinian territories.

And once again the United States defended Israel against a large majority. According to the *Washington Post*, "A lawyer for the Palestinians said the United States was 'the only state besides Fiji to defend Israel' during the proceedings." *The New York Times* reported that "a few speakers at the court, including those from the United States, Britain and

Hungary, have sided with Israel.” The rest of the speakers, over fifty, spoke for Palestine. As the eminent international jurist Philippe Sands argued for Palestine: “The function of this court – of these judges, of you – is to state the law: to spell out the legal rights and obligations that will allow a just solution in the future.”

The major recent U.S. legal rebuff was the ICJ’s provisional measures in the South Africa v Israel case. The question of American complicity in Israel’s “plausible” genocide will not go away. As Richard Gowan pointed out in relation to Russia’s aggression against Ukraine, “The more the United States unequivocally backs Israel, the weaker its arguments sound against Russia.”

What is next? An advisory opinion is not binding. On the other hand, the Court’s 15-2 decisions in South Africa v. Israel are binding. Among the provisional measures the Court ordered was that Israel submit a report to the Court within one month of all activities it has conducted to implement the provisional measures. Israel is legally obligated to comply with the preliminary measures as a signatory to the Genocide Convention.

As a reminder: The ICJ ordered Israel to refrain from all acts prohibited under the Genocide convention, prevent, and punish the direct and public incitement to genocide. The fourth order obliged Israel to take immediate steps to “*enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip.*” (Italics added)

What has happened to the provisional measures? The *Guardian* pointed to the humanitarian aid provisional measure as the one Israel is most evidently in egregious breach: “The most serious infraction has occurred over the order concerning aid,” it reported. “The UN office for the coordination of humanitarian affairs [OCHA] reported on 5 February: ‘In the northern Gaza and Gaza governorates, the humanitarian situation has reached an exceedingly critical state, exacerbated by existing restrictions that impede the delivery of essential aid.’”

Following a February 12 request by South Africa for urgent measures for effective implementation of the provisional measures, the ICJ said in a February 15 press release: “The Court notes that the most recent developments in the Gaza Strip, and in Rafah in particular, ‘would exponentially increase what is already a humanitarian nightmare with untold regional consequences’, as stated by the United Nations Secretary-General.” However, the Court said, this “does not demand the indication of additional provisional measures.” The Court went on to say: “The Court emphasizes that the State of Israel remains bound to fully comply with its obligations under the Genocide Convention and

with the said Order, *including by ensuring the safety and security of the Palestinians in the Gaza Strip.*” (italics added)

Among the provisional measures, the Court required Israel to submit a report by February 26 to South Africa and the Court. The report will not be public unless leaked by South Africa, the Court or Israel. Article 94(2) of the UN Charter requires all members to comply with the decisions of the ICJ in any case to which they are party. Since the ICJ has no enforcement mechanisms, non-compliance to ICJ decisions can go to the Security Council. In this case, this may happen only at the time the Court makes its final judgment, which is a long time away. The fact that the Court refused South Africa’s February 12 demand for more measures is not promising in the short run. If it is up to the Security Council to consider actions against Israel, once more the United States could veto any sanctions.

Would it be effective to go once again to the Security Council? A fourth veto? “[E]xperts say that Washington’s veto of an ICJ-approved decision could damage and undermine US President Joe Biden’s calls for others – including rivals like China and Russia – to uphold the international rules-based order,” Al Jazeera stated.

For those who don’t consider international outlaw status important, the *New York Times* reported on February 26 that: “Mr. Biden has said that Prime Minister Benjamin Netanyahu’s government has been ‘over the top’ in its conduct of the war in Gaza. And on Friday, Secretary of State Antony J. Blinken said that the American government was reversing a Trump administration policy and would now consider new Israeli settlements in Palestinian territories to be ‘inconsistent with international law.’”

That is what Joe Biden said. That is what Tony Blinken said. Until the United States separates itself from Israel by cutting off funding and supplying weapons, it remains complicit in “plausible” genocide. For the moment, at least, the United States and Israel are outliers, outlaws, and losers.

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