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Netanyahu Visit & US Contempt for International Law

To comply with the World Court ruling, the U.S. would have to end its military assistance to Israel and stop providing political and diplomatic cover to enable Israel's occupation of Palestinian territory, writes Marjorie Cohn.



U.S. President Joe Biden with Israeli Prime Minister Benjamin Netanyahu in Tel Aviv on Oct. 18, 2023. (The White House)

Netanyahu got cozy with Congress, just days after the ICJ told U.N. members to stop aiding the Israeli occupation.

The U.S. has long ignored many commands of international law, but its casual disregard of the International Court of Justice (ICJ) has come into sharp focus this week as the U.S.

Congress extended a warm welcome to Israeli Prime Minister Benjamin Netanyahu, just five days after the ICJ notified all U.N. member states that they have a legal “obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory.”

The World Court’s historic 83-page advisory opinion, which was issued on July 19 and held that the Israeli occupation of Palestinian territory is illegal, was quickly hailed by Middle East political expert Nomi Bar-Yaacov as a “legal earthquake” and the strongest decision that the court had ever issued.

Unsurprisingly, however, both the Israeli and U.S. governments denounced the ICJ’s ruling and proceeded with their plans — including Netanyahu’s visit to Washington, D.C. — as if it had never occurred.

The purpose of Netanyahu’s trip has been to shore up U.S. support for his ongoing genocidal campaign against the Palestinians in Gaza and for his crusade against Iran.

“The Jewish people are not occupiers in their own land, including in our eternal capital Jerusalem nor in Judea and Samaria, our historical homeland,” Netanyahu declared after the ICJ issued its decision. “No absurd opinion in The Hague can deny this historical truth or the legal right of Israelis to live in their own communities in our ancestral home.”

Joe Biden’s administration meanwhile conveyed that it is “concerned that the breadth” of the decision will “complicate” the “efforts to resolve the conflict.” The U.S. State Department said the ICJ’s order that Israel withdraw from the Palestinian territories is “inconsistent with the established framework” for resolving “the conflict.” Parroting Israel’s mantra, the State Department said the resolution should occur through negotiations.

The State Department “strongly discourages” the parties from using the ICJ ruling “as a pretext for further unilateral actions that deepen divisions or for supplanting a negotiated two-state solution.”

Negotiations have proved worthless in ending Israel’s illegal occupation and its genocide in Gaza and achieving justice for the Palestinians. Although the Biden administration has advocated a two-state solution, its unbridled support for the Zionist regime, which continues to carve up occupied Palestinian territory into noncontiguous enclaves, makes that “solution” impossible.

The U.S. government enables Israel’s illegal occupation by providing \$3.8 billion annually and it has sent Israel an addition \$15 billion in military aid since October 7, 2023. This helps fund Israel’s genocide, which has killed nearly 39,000 Palestinians by the official Gaza Health Ministry count, although the true death toll is likely much higher.

Moreover, the U.S. has vetoed three Security Council resolutions that would have demanded a ceasefire in Gaza.

In order to comply with the ruling of the World Court, the U.S. government would have to end its military assistance to Israel and stop providing political and diplomatic cover to enable Israel's occupation of Palestinian territory.

The ICJ's Legal Findings



The gates of the International Court of Justice in The Hague. (Joe Lauria)

The ICJ ruled that Israel's occupation of the West Bank, East Jerusalem and Gaza violates international law, which prohibits the acquisition of territory by threat or use of force and enshrines the right of the Palestinian people to self-determination.

“The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful,” the court wrote.

Israel has occupied the West Bank, Gaza and East Jerusalem since it illegally seized them in 1967. Even though Israel withdrew its military presence from Gaza in 2005, the ICJ affirmed that Israel continues to occupy Gaza since it maintains “effective control” of “the land, sea and air borders” as well as “restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone.”

The court added, “This is even more so since 7 October 2023,” even though that time period is beyond the scope of the ICJ's decision.

“Occupation is a temporary situation to respond to military necessity, and it cannot transfer title of sovereignty to the occupying Power,” the court wrote. The occupying power of authority over foreign territory is allowed for the benefit of the local population.

Israel’s occupation is unlawful but Israel still has legal obligations to protect the occupied Palestinians under international humanitarian law, the court noted. As occupier, Israel’s role is as “administrator and usufructuary of natural resources” and it must “safeguard the capital” of those resources.

Israel has a continuing duty to ensure adequate food and water to the occupied people and avoid environmental harm. But the court found that Israel “exploits these natural resources ... for the benefit of its own population” and “prioritizes the water supply of settlements, to the detriment of Palestinian communities.” Thus, the ICJ held that Israel is violating “its obligation to respect the Palestinian people’s right to permanent sovereignty over natural resources.”

The court also found that the maintenance and expansion of settlements in the West Bank and East Jerusalem constitute illegal annexation of large portions of the occupied Palestinian territory. More than 700,000 Israeli settlers (10 percent of the almost 7 million people in Israel) have been transferred into the occupied Palestinian territory. The ICJ cited Article 49 of the Fourth Geneva Convention, which says: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Article 49 of Geneva IV also forbids the forcible transfer of the occupied Palestinian people, including transfers within the occupied territory. Evacuations are supposed to be temporary, which must be reversed when the imperative military reason subsides. “[E]vacuations of a permanent or indefinite character breach the prohibition of forcible transfer,” the court wrote.

In addition, the court held that Israel’s policies and practices in the West Bank and East Jerusalem violate the prohibition on racial, religious and ethnic discrimination. The ICJ cited Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which condemns “two particularly severe forms of racial discrimination: racial segregation and apartheid,” the court wrote.

Citing “the encirclement of Palestinian communities into enclaves” and the two unequal legal systems governing the Israelis and the Palestinians in the occupied Palestinian territory, the ICJ ruled that “Israel’s legislation and measures constitute a breach of Article 3 of CERD.”

Since 2009, nearly 11,000 Palestinian structures have been demolished by Israel. The court found that Israel’s practice of demolition of Palestinian properties in the West Bank and East Jerusalem, including punitive demolitions and demolitions for lack of a building permit,

constitute prohibited discrimination under Article 3 of CERD. Moreover, punitive demolition amounts to illegal collective punishment under Article 33 of the Fourth Geneva Convention because all the people who live or use the property are victimized, the court said.

In cases of foreign occupation, the right to self-determination constitutes a peremptory norm of international law. That means it is binding on all states without exception. “Israel’s policies and practices obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development,” the ICJ found. It noted that the prolonged character of Israel’s unlawful policies and practices aggravates the violation of the right of the Palestinian people to self-determination.

Legal Consequences for Israel, the UN and UN Member States



Palestinian women looking up at an illegal Israeli outpost in the West Bank village of Jalud. (EU Civil Protection and Humanitarian Aid, Flickr, CC BY-NC-ND 2.0)

“Israel’s continued presence in the Occupied Palestinian Territory is illegal,” the ICJ found. “Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible.”

“Israel must immediately cease all new settlement activity,” the court ordered. It must repeal “all legislation and measures creating or maintaining the unlawful situation” and “all measures aimed at modifying the demographic composition of any parts of the territory.”

Israel must “provide full reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned.” That includes restitution, compensation and/or satisfaction (moral damages).

Restitution requires that Israel “return the land and other immovable property, as well as all assets seized from any natural or legal person since its occupation started in 1967.” The ICJ ruling also “requires the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence.”

Israel’s violations of international law in the occupied Palestinian territory are *erga omnes*, that is, all states have a duty to remedy them. Henceforth, the court stated, “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.

The obligation of nonrecognition applies to the United Nations as well. All states and the U.N. must distinguish in their dealings with Israel between the territory of Israel and the occupied Palestinian territory.

All states are “under an obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence” in the occupied Palestinian territory.

States are also forbidden from recognizing “any changes in the physical character or demographic composition, institutional structure or status” of the occupied Palestinian territory. States must abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the occupied Palestinian territory.

States must also abstain from diplomatic relations with Israel, and economic or trade dealings or investments that may entrench Israel’s unlawful presence in the occupied Palestinian territory or assist in the maintenance of the illegal situation created by Israel there.

The U.N. General Assembly and Security Council shall determine the “precise modalities” to ensure an end to Israel’s illegal occupation of Palestinian territory and “the full realization of the right of the Palestinian people to self-determination.” Moreover, “all States must cooperate with the United Nations to put those modalities into effect,” the court ordered.

Consequences of the Ruling

The World Court’s advisory opinion was issued in response to a request by the U.N. General Assembly. Although not legally binding, the decision carries great moral weight.

Philippe Sands KC, a member of Palestine’s legal team in this case before the ICJ, told *The Guardian*, “This is as clear and far-reaching a ruling as I have come across from this court. Its legal consequences are entirely without ambiguity, its political consequences far-reaching.”

At the time of this writing, 146 nations have officially recognized Palestine as a state. The ICJ ruling, which says that Israel's occupation is an impediment to Palestinian statehood, might inspire more countries to follow suit.

In April, the U.S. vetoed a resolution in the Security Council that would have recognized Palestine as a U.N. member state. The U.S. said at the time that Palestinian statehood could only result from direct negotiations between Israel and Palestine.

“There is a lot of room for hope that this ruling will support a movement, an international movement, across the board in the West and elsewhere in the world in favour of more sanctions, more pressure on Western governments to put more pressure on Israel,” Marwan Bishara, Al Jazeera's senior political analyst, said.

Israel, however, will not take this ruling lying down. Days before it was issued, Israel's far right Finance Minister Bezalel Smotrich called on Netanyahu to annex the entire occupied West Bank if the ICJ ruled the settlements illegal. Smotrich pledged to “thwart the establishment of a Palestinian state through massive construction, regulating settlements, building roads and other measures in the field.”

All of this violates international law.

Meanwhile, both Israel and the U.S. have not only condemned the ICJ's landmark ruling; they are actively violating it. Israel specifically rejected the court's finding that it is occupying Palestinian territory. The Biden administration has shown no sign that it intends to follow the ICJ's command to stop supporting Israel's illegal occupation.

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