

International Court of Justice, *Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 6 November 2003

The question of the annexation of the Occupied Palestinian Territory

[...]

158. By the term “annexation”, in the present context, the Court understands the forcible acquisition by the occupying Power of the territory that it occupies, namely its integration into the territory of the occupying Power. Annexation, then, presupposes the intent of the occupying Power to exercise permanent control over the occupied territory.

159. The Court recalls, in this regard, that, under the law of occupation, the control of the occupied territory by the occupying Power must be temporary in character. Thus, the law is based on the principle that the occupying Power shall preserve the *status quo ante* in the occupied territory. [...]. Consequently, conduct by the occupying Power that displays an intent to exercise permanent control over the occupied territory may indicate an act of annexation.

160. The assertion by the occupying Power of permanent control of the occupied territory may manifest itself in a variety of ways. In this connection, the Court notes that a distinction between “*de jure*” and “*de facto*” annexation is occasionally made, including by some of the participants in these proceedings. According to this distinction, *de jure* annexation consists in the formal declaration by the occupying Power of sovereignty over the occupied territory, whereas *de facto* annexation comprises acts short of a formal declaration that create a “fait accompli” on the ground and that consolidate the occupying Power’s permanent control over the occupied territory. Although differing in terms of the means through which the annexation is carried out, both types of annexation share the same objective — the assertion of permanent control over the occupied territory.

[...]

173. [T]he Court is of the view that Israel’s policies and practices, including the maintenance and expansion of settlements, the construction of associated infrastructure, including the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel’s capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel’s control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank. These policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground. Consequently, the Court considers that these policies and practices amount to annexation of large parts of the Occupied Palestinian Territory.

The prohibition of the acquisition of territory by force

175. The annexation of occupied territory by an occupying Power is unlawful. Under the principle enshrined in Article 2, paragraph 4, of the Charter of the United Nations: “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations”.

Resolution 2625 (XXV) of 24 October 1970, entitled “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, emphasized with reference to this principle that “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal” (General Assembly resolution 2625 (XXV)). As the Court has affirmed, the prohibition of territorial acquisition resulting from the threat or use of force, as a corollary of the prohibition of the threat or use of force, is a principle of customary international law.

[...]

The legality of the continued presence of Israel in the Occupied Palestinian Territory

251. The Court considers that the rules and principles of general international law and of the Charter of the United Nations on the use of force in foreign territory (*jus ad bellum*) have to be distinguished from the rules and principles that apply to the conduct of the occupying Power under international humanitarian law (*jus in bello*) and international human rights law. The former rules determine the legality of the continued presence of the occupying Power in the occupied territory; while the latter continue to apply to the occupying Power, regardless of the legality or illegality of its presence. It is the former category of rules and principles regarding the use of force, together with the right of peoples to self-determination, that the Court considers to be applicable to its reply to [...] the request for an advisory opinion by the General Assembly.

[...]

261. The Court considers that the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people’s right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. 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.

Legal consequences arising from Israel’s policies and practices and from the illegality of Israel’s continued presence in the occupied Palestinian territory

A. Legal consequences for Israel

267. With regard to the Court’s finding that Israel’s continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character which has been brought about by Israel’s violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible. [...]

268. The Court further observes that, with respect to the policies and practices of Israel [...] which were found to be unlawful, Israel has an obligation to put an end to those unlawful acts. In this respect, Israel must immediately cease all new settlement activity. Israel also has an

obligation to repeal all legislation and measures creating or maintaining the unlawful situation, including those which discriminate against the Palestinian people in the Occupied Palestinian Territory, as well as all measures aimed at modifying the demographic composition of any parts of the territory.

269. Israel is also under an obligation to provide full reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned. The Court recalls that the essential principle is that “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”. Reparation includes restitution, compensation and/or satisfaction.

270. Restitution includes Israel’s obligation to 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, and all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents. It 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.

271. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons, and populations, where that may be the case, having suffered any form of material damage as a result of Israel’s wrongful acts under the occupation. [...]

B. Legal consequences for other States

273. The Court will now turn to the legal consequences of Israel’s internationally wrongful acts in the Occupied Palestinian Territory as regards other States.

274. The Court observes that the obligations violated by Israel include certain obligations *erga omnes*. As the Court indicated in the *Barcelona Traction case*, such obligations are by their very nature “the concern of all States” and “[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection” (para. 33). Among the obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law.

[...]

278. Taking note of the [relevant] resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, inter alia, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or

a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.

279. Moreover, the Court considers that, in view of the character and importance of the rights and obligations involved, 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 its 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 international humanitarian law as embodied in that Convention.

International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), Advisory Opinion, 21 June 1971

119. The member States of the United Nations are [...] under obligation to recognize the illegality and invalidity of South Africa's continued presence in Namibia. They are also under obligation to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia, subject to paragraph 125 below.

[...]

125. [T]he non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.

Otázky:

- 1. Jakým způsobem se mezinárodní právo staví k otázce anexe a okupace (obecně i ve vztahu k Izraeli)? Jsou anexe a okupace mezinárodním právem v každém případě zakázány?**
- 2. Z jakého důvodu zakládá protiprávní jednání Izraele právní důsledky pro třetí státy? Jaké dvě základní kategorie povinností (není třeba vypisovat jednotlivé dílčí povinnosti) má každý stát s ohledem na protiprávní okupaci území jiného státu?**