

Jurists for Palestine Forum – Season 3 – [Panel Discussion \(2\)](#)**Economic Responsibility of Third-Party States Arising
from the ICJ Advisory Opinion on Palestine**

This document offers a briefed analysis of key essays concerning the Palestinian right to self-determination and third-state responsibilities under international law. It explores how the legal frameworks and economic obligations of third-party states should align with recent international rulings and practices. The analysis highlights how decolonization principles, trade measures, and global legal norms converge to address the prolonged Israeli occupation.

**This summary was prepared by Assalah Mansour and Shireen Mikkawi and
reviewed by Nourhan Fahmy**

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Summary:

- The International Court of Justice (ICJ) Advisory Opinion entails obligations on third states to implement trade measures that are essential for addressing Israel's serious breaches of peremptory norms of international law, particularly the Palestinians' right to self-determination.
- According to the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), States are obligated to collaborate to end serious breaches of international law through lawful means, and are prohibited from aiding in maintaining illegal situations created by serious breaches.
- Third States' trade relations with Israel fall under World Trade Organization (WTO) rules, which take into account security exceptions under Article XXI of the General Agreement on Tariffs and Trade (GATT). These exceptions serve as legal bases for trade measures against Israel.
- Trade measures aim to make Israel's illegal occupation economically unsustainable and are to be distinguished from unilateral coercive actions condemned by the global community.
- The Palestinian struggle for self-determination must be understood through the lens of decolonization, rather than statehood alone. The ICJ's Advisory Opinion marks a significant shift in framing the issue as one of colonization and alien domination rather than a mere territorial dispute.
- The responsibilities of third states in addressing Israel's occupation must go beyond merely boycotting settlement products to extend to the broader objective of making colonization economically unsustainable while emphasizing the right of return.
- UN General Assembly resolutions from the decolonization era could be applied as a guiding framework in the Israel-Palestine context to draw the connection between the principle of self-determination of colonized people and sustaining economic ties with the occupying power.
- Businesses operating in Israel and Palestine have a responsibility to respect human rights where the risk is heightened so greater due diligence is required. The private sector must align operations with international human rights standards and the UN Guiding Principles on Business and Human Rights (UNGPs). This corporate responsibility is also affirmed by the ICJ's ruling and the ICC arrest warrants which considers Israel's policies in the OPT as war crimes and serious violations of international human rights law.

The Summary of Article One, Titled: “Preliminary brief: Legal basis for trade measures in relation to Israel following the ICJ Advisory Opinion on the Occupied Palestinian Territory” by *Third World Network*

The original language of the Article is English.

This is a forthcoming publication.

Legal Framework Applicable to Trade Measures by Third States

This brief prepared by Third World Network examines the obligations of third States in implementing trade measures in response to the International Court of Justice (ICJ) Advisory Opinion regarding Israel's occupation of Palestinian territories. These measures are essential for addressing Israel's serious breaches of peremptory norms of international law, particularly the right to self-determination.

The brief examines four key considerations:

1. Trade measures as part of fulfilling the duty to cooperate and avoid assistance under Article 41 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).
2. The legal basis in trade law for such measures as exceptions to trade obligations.
3. The scope of trade measures that third States should undertake.
4. The distinction between these measures and unilateral coercive measures.

Duty to Cooperate and Not Render Assistance

Duty to Cooperate

Under Article 41(1) of ARSIWA, States are obligated to collaborate to end serious breaches of international law through lawful means. The International Law

Commission (ILC) emphasizes that cooperation can occur through formal international organizations like the UN or non-institutional arrangements. This duty applies universally, regardless of direct involvement or impact on individual States.

Duty Not to Render Assistance

Article 41(2) ARSIWA prohibits States from aiding in maintaining illegal situations created by serious breaches. This prohibition extends beyond direct participation in the breaches to any actions supporting the maintenance of these unlawful conditions.

Historical UN practices, such as trade embargoes against apartheid South Africa, highlight the importance of limiting trade relations to pressure governments violating international law. Trade measures are seen as strengthening the international legal system by holding States accountable when multilateral actions are inadequate.

* For more details on UN and state practices regarding grave violations of international law, including calls for sanctions and embargoes against states that violate international legal norms, please refer to Law for Palestine's [database](#), which compiles key United Nations resolutions on the matter.

Relevant WTO Rules and Exceptions

Most third States' trade relations with Israel fall under World Trade Organization (WTO) rules. The brief identifies security exceptions under Article XXI of the General Agreement on Tariffs and Trade (GATT) and similar provisions in other WTO agreements as potential legal bases for trade measures against Israel. These exceptions allow States to prioritize obligations under the UN Charter over WTO rules in maintaining international peace and security.

Article XXI(b) and XXI(c) Analysis

- **Article XXI(b):** States can invoke this provision for measures necessary to protect essential security interests during international emergencies. However, WTO dispute panels have clarified that these invocations are subject to review, emphasizing the need for a connection between the security measure and the identified emergency.
- **Article XXI(c):** This provision allows measures to fulfill obligations under the UN Charter without requiring a necessity condition. Historical practices under GATT show States invoking this provision to suspend trade relations in compliance with UN resolutions.

Scope of Trade Measures by Third States

Third States are urged to review and potentially suspend all economic and trade relations with Israel that support its illegal occupation of Palestinian territories. This includes not just settlement products but broader financial and trade relations intertwined with Israel's occupation regime.

Key considerations include:

- The systemic and entrenched nature of Israel's occupation and its economic exploitation of Palestinian resources.
- The difficulty in distinguishing trade relations solely with Israel proper from those benefiting illegal activities in the occupied territories.
- The necessity for comprehensive trade measures to avoid normalising Israel's violations and ensuring compliance with international legal obligations.

Distinguishing from Unilateral Coercive Measures

The brief clarifies that trade measures against Israel, guided by the ICJ advisory opinion, differ from unilateral sanctions typically condemned by the UN. These measures are

supported by legal affirmations from the ICJ and UN resolutions highlighting the collective responsibility of States to address Israel's violations.

Annexes

The brief includes several annexes that detail:

1. **Erga Omnes Obligations:** The legal right of any State to invoke responsibility for breaches of obligations owed to the international community.
2. **Israel's Free Trade Agreements (FTAs):** A comprehensive list of Israel's trade partners, including the United States, EU, and regional agreements.
3. **Examples of Trade Measures:** Specific cases of countries halting trade with Israel or imposing economic restrictions due to its actions in Palestinian territories.

Conclusion

This brief emphasizes that comprehensive trade measures by third States are vital for challenging Israel's prolonged occupation and supporting the Palestinian right to self-determination. These measures, rooted in international law and supported by the ICJ, seek to make Israel's illegal occupation economically unsustainable while distinguishing them from unilateral coercive actions condemned by the global community.

Summary of Article 2 titled *"The Premises of Envisioning the Economic Dimension of Third State Responsibilities -The Palestinian Right of Self-determination as Decolonisation"* by Shahd Hammouri

The original language of the article is English.

This Article is a forthcoming publication.

The Palestinian Right of Self-Determination as Decolonisation

The article titled "The Palestinian Right of Self-Determination as Decolonisation" by Shahd Hammouri explores the idea that the Palestinian struggle for self-determination must be understood through the lens of decolonization, rather than statehood alone. The author analyzes the July 2024 advisory opinion of the International Court of Justice (ICJ), which declared that Israel's prolonged control over Palestinian territories is illegal in its entirety. The ICJ emphasized the Palestinians' right to self-determination, which includes their right to return to their homeland.

Historical and Legal Context

Reflecting on Dr. Martin Luther King's critique of "moderate" positions on freedom, the author critiques the international legal community's historical reluctance to recognize the colonial nature of the Israeli occupation. She argues that decades of efforts by Palestinian lawyers to highlight Israel's violations have often been met with moderation or inaction by the global community. The ICJ's recent opinion, however, marks a significant shift in framing the issue as one of colonization and alien domination rather than a mere territorial dispute.

The Colonial Roots and Right of Return

Hammouri argues that Israeli policies of apartheid, annexation, and racial

discrimination are colonial practices rooted in the Nakba of 1948, which established the framework for ongoing Palestinian exploitation and dispossession. Zionism, as Israel's founding ideology, openly embraced colonial ambitions, creating systemic inequalities that favor Jewish citizens and marginalize Palestinians. The right of return, central to Palestinian self-determination, was a condition for Israel's UN admission, yet its denial has perpetuated economic disenfranchisement. Hammouri critiques the Oslo Accords for legitimizing Israel's control over the occupied territories and calls for a decolonization framework, drawing from liberation struggles in South Africa, Namibia, and Algeria.

Third-State Responsibilities and Economic Obligations

Hammouri stresses the need to broaden third-state responsibilities in addressing Israel's occupation, arguing that measures must extend beyond boycotting settlement products to making colonization economically unsustainable. She outlines three layers of economic obligations: first, to halt recognition of colonial acts by ending economic activity linked to the occupied territories; second, to prevent trade and investment that entrench the occupation; and third, to implement proactive measures such as arms embargoes and sanctions. Drawing on historical examples like South Africa, Hammouri argues that dismantling colonization requires making it financially unviable for the occupying state, urging states to act decisively against Israel's war economy.

Lessons from UNGA Resolutions and Public Awareness

Hammouri emphasizes the relevance of historical United Nations General Assembly (UNGA) resolutions from the decolonization era, noting that these provide a crucial framework for addressing the Palestinian struggle. The UNGA has consistently recognized that economic ties with colonial powers prolong occupation and hinder the self-determination of colonized peoples. Hammouri advocates for applying this framework to the Israeli-Palestinian context, urging states to take economic measures that reflect this principle. Additionally, she highlights the critical role of media in

shaping public perception, critiquing mainstream outlets for normalizing Israel's occupation. Hammouri calls for a resolution to hold media platforms accountable and stresses the importance of mobilizing global public opinion to support Palestinian liberation and resist the exploitation of Palestinian resources.

Recommendations for Action

In her recommendations, Hammouri outlines several concrete steps that states and international organizations can take to support Palestinian self-determination. These include enacting arms and energy embargoes, divesting from Israel's war economy, establishing a reparations committee, and creating an audio-visual repository of evidence documenting Israeli violations. She also emphasizes the importance of centering global south expertise in discussions on Palestinian self-determination and learning from the experiences of previously colonized nations.

The Broader Implications of Third-State Responsibilities

Hammouri argues that limiting third-state responsibilities to economic dealings in the settlements is a reductive interpretation of the ICJ's decision. She calls for a broader understanding of the economic reality of colonization and a rejection of narrow legal frameworks that perpetuate Palestinian suffering. She critiques the terrorism framework that has been used to delegitimize Palestinian resistance and affirms the Palestinians' right to resist occupation.

Conclusion

The article concludes that achieving Palestinian self-determination requires dismantling the colonial structures that underpin Israel's occupation. This involves recognizing the colonial reality of the occupation, addressing the economic dimensions of third-state responsibilities, and taking concrete steps to make colonization economically unviable. Hammouri stresses that the right of return must be a central

element of any solution and that the international community must take immediate action to end the occupation and support Palestinian liberation.

Summary of Article 3: *"The responsibility of the Private Sector in Light of the ICJ Decisions on Gaza and Occupied Palestine"* by Tara Van Ho

The original language of this article is English.

This article was prepared as a submission for a report being prepared by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

The Responsibility of the Private Sector in Light of the ICJ Decisions on Gaza and Occupied Palestine

The article titled "The Responsibility of the Private Sector in Light of the ICJ Decisions on Gaza and Occupied Palestine" by Tara Van Ho discusses the human rights responsibilities of businesses operating in Israel and Palestine, particularly in the context of the International Court of Justice's opinions on Israel's policies in the occupied Palestinian territories (OPT).

Key Points

Legal Framework and Assumptions

The analysis assumes that the UN Guiding Principles on Business and Human Rights (UNGPs) provide the minimum framework for evaluating business responsibilities. It builds on the ICJ's rulings, considering Israel's occupation of Palestinian territories unlawful.

Private Sector Responsibilities

Businesses must respect human rights by conducting "heightened human rights due diligence," especially in conflict-affected areas like the OPT. This due diligence includes understanding how their activities may legitimize, normalize, or support the occupation and settlements.

Degrees of Responsibility

The UNGPs categorize business impacts as "cause, contribute to, or directly linked to" human rights violations, with corresponding obligations to mitigate harm or provide remedies. Businesses can escalate their responsibility through continued involvement in harmful activities without adequate corrective measures.

Implications for Different Sectors

- **Businesses in Settlements:** Directly participating in settlements contributes to war crimes like forced displacement.
- **Banks:** Transnational banks supporting settlements are seen as contributing to violations due to their independence and power over recipients of financial support.
- **Institutional Investors:** Investors in companies tied to settlements also share responsibility and must either leverage their influence or terminate relationships if human rights risks persist.
- **Parent Companies:** They bear responsibility for the activities of subsidiaries operating in violation-prone areas.
- **Global Value Chains:** Businesses trading with or supplying settlements normalize the unlawful activity, though essential service providers (healthcare, food) may have some justification for limited involvement.
- **ESG Data Providers:** Firms like Morningstar's Sustainalytics are criticized for downplaying risks associated with businesses operating in Palestine, thereby contributing to normalization of occupation and erasure of Palestinian rights.

Ethical Challenges and Mitigation

Businesses are encouraged to take proactive steps to address their impact on human rights. Terminating relationships, leaving conflict zones, and adopting robust due diligence processes are seen as necessary actions when risks cannot be mitigated.

Recommendations

The private sector must align operations with international human rights standards and the UNGPs. Avoiding complicity in war crimes and systemic violations is a moral and legal imperative, regardless of profitability concerns.

Conclusion

The article emphasizes that businesses operating in conflict zones like the OPT cannot remain neutral; their activities either support or mitigate human rights violations. The UNGPs provide a framework requiring heightened human rights due diligence to avoid complicity in systemic violations, such as war crimes tied to unlawful settlements. Key sectors—including banks, investors, parent companies, and ESG data providers—must recognize their responsibilities, leveraging their influence to avoid contributing to harm. Businesses should prioritize ethical practices over profit, ensuring alignment with international human rights standards. The private sector has a crucial role in addressing these violations, and proactive efforts can promote accountability and foster peace in conflict-affected regions.