

International legal responsibilities for preventing genocide, holding perpetrators of war crimes accountable, and for ending the unlawful occupation of Palestine: Briefing by The Committee on the Exercise of the Inalienable Rights of the Palestinian People

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For almost 13 months now, we have witnessed the brutality of Israel's settler colonial genocidal assault against the Palestinian people in Gaza. But this is only the most violent manifestation of the ongoing 76-yearlong Nakba, and apartheid that has been inflicted upon the entirety of the Palestinian people across the geography and in the diaspora, who are not allowed to return.

For those of us who have followed this genocidal onslaught on our screens for the past 13 months, we are all too familiar with the haunting pleas from Palestinian journalists, who are being brutally targeted as we speak, for "broadcasting their own destruction in real-time." The first 11 pages of the 649-page list of identified martyrs released by the Health Ministry in September were names of Palestinian children who hadn't yet reached the age of 1.

But you already know all of this, and more. In line with UNSC Resolution 2334, since January 2017, the Council and member States have received monthly updates on the situation in Palestine. Member States have also been given ample documented evidence through the UN Special Procedures, the Commissioner, and the ICJ, who have all been establishing fact patterns and analysing them legally. The Palestinians have been documenting this for over 76 years now. Lack of knowledge is really not the concern here.

I will not make in this intervention, which is an urgent call to action to stop the genocide and end the settler colonial apartheid regime and occupation, an appeal to your morality by detailing the loss of Palestinian lives, or talking Palestinians in arbitrary detentions, the extensively documented mass torture, forced displacement, starvation and famine. If that was a factor in consideration, we would have not had to witness Palestinian children being blown to smithereens by 2000-pound bombs. We wouldn't still be here calling for a ceasefire, 13 months later.

Instead, what I want to do is to outline the legal consequences and responsibilities for third States for failing to prevent and punish the crime of genocide Israel is committing, the illegality of Israel's continued presence in the occupied Palestinian Territory, tantamount to aggression, its breach of Article 3 of CERD amounting to racial segregation and apartheid, its violation of peremptory norms including the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination – all legal findings of the International Court of Justice, which is the UN court, your court. Findings that, again, the Palestinian people have been articulating for decades now.

The International Court of Justice's historic Advisory Opinion of 19 July 2024 (ICJ AO) rendered Israeli occupation of the Palestinian territory unlawful, the Assembly resolution ES

10/24 that followed in September, demanded an end to the occupation within a year and called on all States to comply with their obligations under international law.

The Court affirmed that all States are under an obligation not to recognize as legal the situation, including the violation of Article 3 of CERD, and not to render aid or assistance in maintaining the situation. Even though the ICJ AO is restricted to the 1967 borders, in line with what the UNGA asked, understanding the systematic nature of apartheid and racial segregation means recognizing that it applies to the entirety of the Palestinian people, including refugees who have been denied the right of return.

The UN Independent Commission of Inquiry (CoI) in their position paper on the ICJ AO has extensively detailed the obligation on States to act, individually and collectively, including by building political, economic and cultural pressure on the Israeli Government to end this unlawful occupation. It also states that member States can be found complicit in the internationally wrongful act, because of aiding and abetting Israel's internationally wrongful act.

So, at this point, 13 months in, after all of these preliminary measures orders from the ICJ and the ICJ AO, the most basic ask, not least because of the on-going genocide, is a complete embargo on the buying, selling, and transfer of arms, munitions and related equipment, as outlined in the UNGA resolution. It is not only an obligation arising from the ICJ AO but also from the duty of States to prevent and punish the crime of genocide as outlined in the genocide convention and in the ICJ preliminary measures order in the *South Africa v Israel* case. In *Nicaragua v. Germany*, the ICJ has reminded all member States, based on both the Geneva Conventions and the Genocide Convention, of the obligation to not transfer arms to parties in this armed conflict, because States could be found complicit in this conflict, in this genocide. This restriction on arms also extends to military training, research, and development cooperation with Israel that supports the unlawful occupation, and I would add the racial segregation and apartheid across the territory.

The ICJ along with States parties that made interventions in the case also emphasised on the prolonged nature of the occupation, longest in the post-World War 2 era. This prolonged nature of the occupation, along with the entrenched settler colonial apartheid regime, the infrastructure built around it, the annexation of vast territories including through illegal settlements or colonies and legislative changes around it means that today, the possibility of making a distinction between Israel and its operations in the occupied Palestinian territory is nearly impossible. The CoI in their position paper also critically identifies that the burden of proof for making this distinction is now on Israel. Therefore, third States dealing with any of these entities in Israel have the obligation to make this distinction clear, otherwise they will be found complicit in this wrongful act.

Beyond arms, this obligation of non-assistance also includes the areas of economic, diplomatic, cultural, and academic relations. Third States are obliged to cease all financial, trade, investment, and economic relations with Israel that maintain or support the unlawful occupation

and the apartheid. War economies are usually organised such that making a distinction between financial institutions that are located in Israel and not contributing to the unlawful presence of Israel in the oPt is nearly impossible. Therefore, banks, financial institutions, and other such institutions stand complicit in the maintenance of this unlawful situation, and third States have a duty to not trade with them, to not be complicit, in accordance with the ICJ AO.

States are also obliged not to provide aid to academic, research, or cultural institutions that support the occupation. And again, here we draw on the extensive work done by Palestinian colleagues and academics that trace the direct connection between Israeli academia and the armed forces that operate in the occupied Palestinian territory, making it impossible to make a distinction, where one stops and the other begins.

All these obligations are not just incumbent on States for their own actions but also extend to all persons and corporations that are domiciled in the jurisdiction of States. Having adequate legislation at the national level to hold individuals and corporations that are engaged in rendering aid and assistance to the unlawful situation are therefore prerequisites for States to have in place now. At the same time, having legislation that respects the freedom of expression and assembly and does not criminalise support for Palestinian rights, including the measures outlined by the ICJ such as boycotts, divestment, and sanctions, is in line with the ICJ AO.

Finally, we have witnessed this for decades but especially over the last year, Israel systematically infringes upon its duties towards the UN, violating the protections afforded to UN bodies such as the UNRWA and UNIFIL, reflected in the unprecedented number of UN staff members killed and the repeated assaults on UN facilities across the geography. The latest Israeli legislation banning UNRWA, as many of you have rightly pointed out, is absolutely outrageous. Other than being in direct contravention to the three ICJ Preliminary measures orders, this action is also in violation of Article 105 of the UN Charter. Condemnation is not sufficient for the devastating impact this will have on the Palestinian people.

Furthermore, Israeli refusal to engage with UN Mechanisms, not allowing visits from UN Special Rapporteurs and the UN Independent Commission of Inquiry, attacking them, declaring the UN Secretary General persona non grata, flouting UNGA resolutions and multiple UN Security Council resolutions are violations of Article 25 of the UN Charter. Therefore, in accordance with Article 6 of the UN Charter, member States, for the sake of maintaining international peace and security must suspend from the UNGA. This is not an exceptional ask; it is not specific to Israel. It has in fact been done for the apartheid regime in South Africa and several other States in different forums.

We are at a critical juncture now. The stability, along with the legitimacy of the post-World War 2 international legal order, is hanging by a thread, if it still exists. This is a direct result of decades of absolute impunity extended to the state of Israel. We, as Palestinian civil society organisations along with allies, are working on bringing these legal obligations to all the mechanisms available to us, internationally but also, and importantly, domestically. Submitting communications to the ICC, to the UN Special Procedures, bringing national litigation as and

where is necessary. The protests on the streets, campuses, docks, and weapons factories are visible manifestations of these efforts and a clear sign that this movement will only continue to grow until we reach liberation. The genocide on the ground continues unabated, the occupation worsens, and the apartheid is more entrenched than ever before. How member States that are sitting in this chamber today respond to their legal obligations, bringing an end to the occupation, the apartheid, dismantling the settlements and colonies, returning the land back to the Palestinians, and allowing Palestinian refugees to return, will determine the credibility of this institution and the multilateral system in general. Ensuring Palestinian people's inalienable right to self-determination, liberation is the only way out of the situation we find ourselves in today.

We have outlined all the tools we have at our disposal. After 76 years of relentless atrocities inflicted on the Palestinian people, documented and analysed legally, socially, and in other aspects, the only call is to bring this to an end. Accountability, for States, individuals, institutions, and corporations is now a legally binding obligation for every State present here. Repression for following international law norms and outcomes that member States, these UN institutions have created, is unacceptable. Not just for the sake of the Palestinian people and for ensuring the exercise of their inalienable right to self-determination but for the legitimacy of this institution.