

**DOUBLE STANDARDS ON PALESTINE OR
PRESSURE ON ISRAEL**

**ICJ RULING FORCES EU TO RETHINK ITS PASSIVE
TWO-STATE POLICY**

Timo R. Stewart



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- In July 2024, the International Court of Justice (ICJ) issued an Advisory Opinion on the legal consequences of Israel's occupation of the West Bank, the Gaza Strip and East Jerusalem. It declared the occupation unlawful and called for its immediate end. The ICJ emphasized that all states are under an obligation not to assist in maintaining Israel's presence in the Occupied Palestinian Territory (OPT).
- Building on this Advisory Opinion, the UN General Assembly passed a resolution in September 2024 demanding that Israel end its unlawful presence in the OPT within 12 months.
- Israel is opposed to ending its illegal occupation. It also opposes the two-state solution. There is not even a pretence of a peace process. This new lack of ambiguity will unavoidably put Israel's non-compliance in the spotlight.
- EU member states again split into three groups: those sympathetic to Palestinian rights, those supporting Israel, and those regularly abstaining on votes on the matter. During the Gaza war, the number of states sympathetic to Palestinian rights has increased.
- The basic choice for the EU is between rallying to apply meaningful pressure on Israel in the face of member state divisions, or playing for time. The latter risks jeopardizing the two-state solution as well as the credibility of the EU's commitment to international law.



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INTRODUCTION

The question of Palestine has been a central component of Middle Eastern politics for decades, and a key focus of international involvement in the region. In 1947, the United Nations voted to partition British-ruled Palestine into a Jewish state and an Arab state, but this plan, like many later ones, was never fully implemented. While Israel was able to declare independence as a Jewish state in 1948, the Palestinians have remained stateless.

The current contours of the problem are shaped by the June 1967 Six-Day War, in which Israel occupied all the remaining territories of the former British Palestine Mandate. Since then, the Occupied Palestinian Territory (OPT) – the Gaza Strip, the West Bank, and East Jerusalem – has remained under Israeli military control.

The Middle East Peace Process of the 1990s led to a widely shared understanding of what the eventual outcome should be: two states for two peoples living side by side in peace. The exact details of this two-state

solution were to be agreed upon in negotiations between the Israelis and the Palestinians. This final status agreement would settle questions, including the fate of Jerusalem, the Palestine refugees, Israeli settlements, security arrangements between the states, as well as the exact borders of Israel and Palestine.¹

Despite attempts, such as those in 2000, 2001 and 2008, a final status agreement has not been reached. Interim arrangements from the 1990s peace process are still in force three decades later, and Israel's occupation has now continued for over 57 years with no end in sight.

At the end of 2022, the United Nations General Assembly (UNGA) passed a resolution requesting an Advisory Opinion from the UN's principal judicial organ, the International Court of Justice (ICJ), on this matter. The ICJ's consequent *Advisory Opinion, Legal Consequences Arising from the Policies and Practices of*

1 Declaration of Principles on Interim Self-Government Arrangements (Oslo I), 13 September 1993, Article V. <https://www.un.org/unispal/document/auto-insert-180015/>.

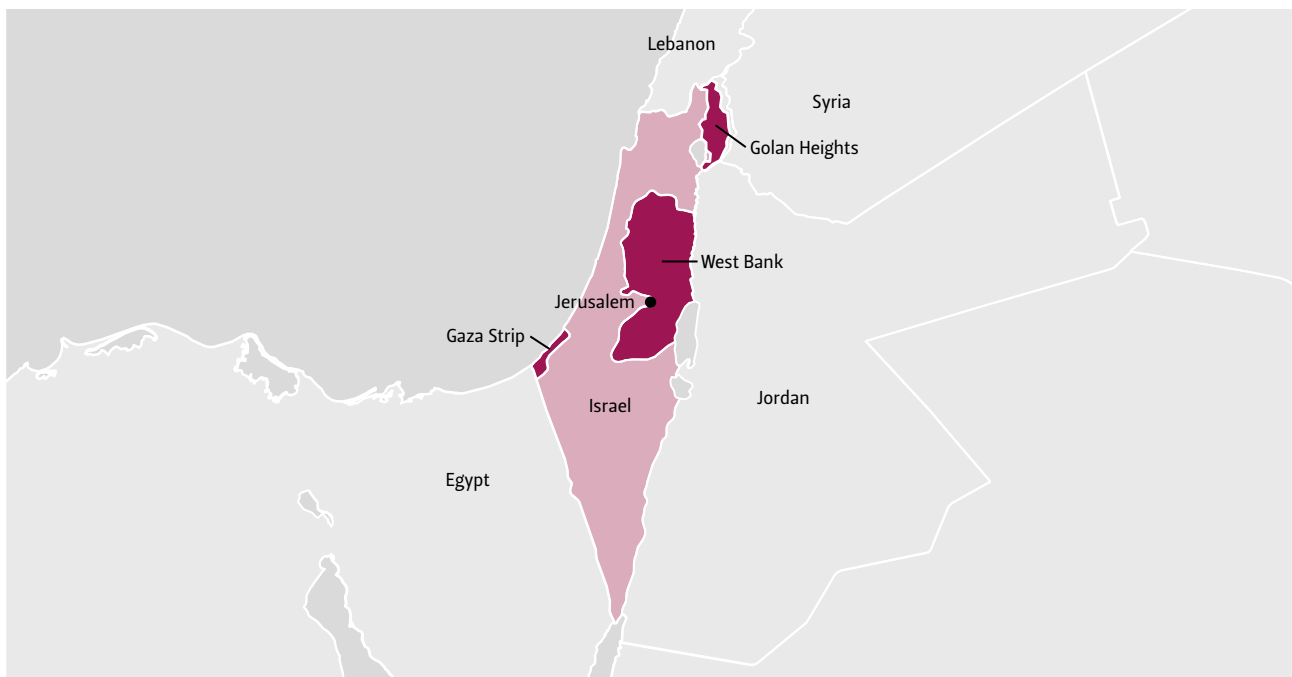


Figure 1. Map of Israel and the Occupied Palestine Territory (OPT) in the Middle East

Israel in the Occupied Palestinian Territory, Including East Jerusalem, was issued on 19 July 2024.²

ICJ Advisory Opinions are non-binding and the court itself has no power to enforce them. However, as the UN's top court, these opinions have considerable moral and legal authority. States and international organizations can use ICJ Advisory Opinions to help clarify specific questions of international law. One measure of the extent to which they succeed is the number of states welcoming and affirming these opinions.

This Briefing Paper examines the ICJ Advisory Opinion's key contents and its significance for the Israel-Palestine conflict and the now non-existent Middle East Peace Process. It also addresses the ICJ Advisory Opinion's current standing, particularly among European Union member states. This is highlighted through an analysis of EU member state voting on the UNGA resolution that was passed on 18 September 2024, specifically for the purpose of affirming the ICJ Advisory Opinion.³

WHEN OCCUPATION BECOMES ILLEGAL

Belligerent occupation is not necessarily illegal. However, annexing territory acquired through war is. The laws of occupation are intended to ensure that the occupying power administers the territories it occupies for the benefit of the civilian population for as long as the occupation lasts. While there is no time limit on occupation, it is meant to be a temporary situation. For example, in Iraq, the United States invaded in April 2003, administered a direct military occupation until June 2004, handed over control to an interim Iraqi government, and then withdrew most of its troops by December 2011.

According to the ICJ Advisory Opinion, during over 57 years of occupation, Israel has attempted to annex at least part of the Occupied Palestinian Territory in various ways. This is apparent in the transfer of Israeli civilian settlers to the OPT, which the ICJ deemed a violation of the Fourth Geneva Convention of 1949. The convention relates to the protection of civilians in time of war, and has been universally ratified. Confiscation

of land in the OPT for settlement expansion is another key violation of the duties of the occupying power, as is the exploitation of natural resources, including water.

Furthermore, the ICJ determined that Israel has extended its domestic law to the OPT, which is inconsistent with its duties as an occupying power and implies annexation. This is most obvious in East Jerusalem, which has been openly annexed. Israeli domestic law is also applied to the settlements.

Finally, the court also judged that Israel's policies and practices had induced the Palestinian population to leave the OPT against their will. This, including outright forcible evictions, the impunity of settler violence against Palestinians, and the Israeli military's excessive use of force, was seen to contribute to the forced displacement of parts of the Palestinian population. This is also in contravention of the Fourth Geneva Convention.

Overall, the ICJ Advisory Opinion found that Israel's policies and practices were inconsistent with its duties as an occupying power and amounted to annexation. Annexing occupied territory is a clear violation of international law. UN Security Council Resolution 242 (1967) underlined this very point specifically in relation to Israel's conquests, emphasizing "the inadmissibility of the acquisition of territory by war". This fundamental principle has been violated elsewhere as well, such as Russia's 2014 annexation of Crimea and Morocco's annexation of Western Sahara in 1975. Although there is some deterioration in the way this key norm is upheld – some states have been willing to condone annexations – all three cases of annexation remain largely unrecognized by the international community.⁴

In addition, the ICJ determined that Israeli policies and practices prevent the Palestinian people from exercising their right to self-determination – a right reiterated by the UNGA in 1974 and reaffirmed, for example, by the ICJ in its 2004 Advisory Opinion.⁵ This right is also the basis for the two-state solution, which the US, EU, and practically the entire international community have advocated for over two decades.

Due to these violations of fundamental principles of international law, Israel's presence in the OPT is unlawful. Consequently, the occupation is illegal, and Israel is obligated to end its presence in the Occupied Palestinian Territory "as rapidly as possible".

2 United Nations General Assembly (2022) Resolution 77/247, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem. A/RES/77/247, 30 December 2022. <https://digitallibrary.un.org/record/3999158?ln=en>; Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. International Court of Justice (ICJ), Advisory Opinion of 19 July 2024. <https://www.icj-cij.org/case/186>.

3 United Nations General Assembly (2024) Resolution ES-10/24, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory. A/RES/ES-10/24, 18 September 2024. <https://digitallibrary.un.org/record/4061432?ln=en>.

4 See also Brunk, Ingrid & Hakimi, Monica (2024) "The Prohibition of Annexations and The Foundations of Modern International Law". *American Journal of International Law*, 30 April 2024.

5 United Nations General Assembly (1975) Resolution 3236 (XXIX), Question of Palestine. A/RES/3236(XXIX), 22 November 1974. <https://digitallibrary.un.org/record/189835?ln=en>; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. International Court of Justice (ICJ), Advisory Opinion of 9 July 2004. <https://www.icj-cij.org/case/131>.

Every state has an obligation not to recognize any changes created during the occupation and to differentiate between the State of Israel and the Occupied Palestinian Territory in all their dealings. States should avoid all kinds of assistance to the maintenance of the illegal occupation, such as trade and investment, and ensure that Israel complies with international law.

DIFFERENTIATING ISRAEL FROM ITS ILLEGAL SETTLEMENTS

The question of assistance in maintaining Israel's illegal occupation has various ramifications. The aspect most widely recognized, even before the ICJ Advisory Opinion, is the issue of trade and investment connected to Israel's illegal settlements in the West Bank and East Jerusalem.

Establishing civilian settlements in the Occupied Palestinian Territory started as early as 1967 and has continued to the present day. In 2005, Israel withdrew some 9,000 settlers from the Gaza Strip; however, elsewhere, the settlement enterprise has consistently grown. By 2023, the population of Israel's settlements in the West Bank and East Jerusalem totalled around 700,000, roughly one-tenth of Israel's Jewish population.

Israel's position has been that the occupied territories are, in fact, disputed territories that came into its possession in a defensive war, and that Israel has legitimate rights in these territories dating back to the British Mandate era. While it is true that the 1949 armistice demarcation lines that fell within the Palestine Mandate area were specifically defined as not constituting permanent borders, changing the situation by force of arms is unlawful.

The acquisition of territory by war is inadmissible, regardless of who started the war. As reiterated by the Security Council and General Assembly on several occasions, only negotiated changes agreed upon by the parties can be accepted.

The illegality of the settlements has been widely accepted, and the ICJ Advisory Opinion presented no surprises whatsoever in its interpretation in this regard. Despite Israel's claims to the contrary, there has been no meaningful disagreement on the issue.

The illegality of the settlements had already been stated in the ICJ's Advisory Opinion on the Wall in July 2004.⁶ The settlements have also been condemned by

the United Nations Security Council as a "flagrant violation" of the Fourth Geneva Convention and as having "no legal validity", a position that has been repeated time and again.⁷

In keeping with UN Security Council resolutions on the matter, the longstanding position of the European Union is that settlements are illegal under international law. EU statements also often underline that settlements are not only illegal, but also pose an obstacle to the two-state solution – a position that the EU has supported since the late 1990s.

While there are significant differences within the EU member states regarding the acceptance of practical measures, such as sanctions and the tone of diplomatic engagement towards Israel's illegal settlements, none have openly challenged the basic position that settlements are illegal. The member states most opposed to measures like sanctions against violent settlers or the labelling of settlement products have been Hungary and Czechia. However, their arguments have been political and pragmatic, not legal.

Within the European Union, the legal requirement of non-recognition of illegal Israeli settlements has resulted in what are known as policies of differentiation. This refers to practices of ensuring that the illegal settlement enterprise does not benefit from EU-Israel trade arrangements, in accordance with two Council of the European Union declarations from 2012.⁸ It is also in line with UN Security Council Resolution 2334 (2016), which calls on all states "to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".

While the key principles invoked are not directly challenged, there is considerable disunity regarding their implications, particularly among EU member states. This is evident when taking a look at voting patterns at the UNGA.

6 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. International Court of Justice (ICJ), Advisory Opinion of 9 July 2004. <https://www.icj-cij.org/case/131>.

7 United Nations Security Council (1979) Resolution 446, On establishment of a commission to examine the situation relating to settlements in the Arab territories occupied by Israel. S/RES/446(1979), 22 March 1979. <https://digitallibrary.un.org/record/1696?ln=en&v=pdf>; United Nations Security Council (1979) Resolution 452, On Israeli settlement policies in the occupied territories. S/RES/452(1979), 20 July 1979. <https://digitallibrary.un.org/record/3657?ln=en&v=pdf>; United Nations Security Council (1980) Resolution 465, On Israeli settlement policies in the occupied territories. S/RES/465(1980), 1 March 1980. <https://digitallibrary.un.org/record/11767?ln=en&v=pdf>; United Nations Security Council (1980) Resolution 476, On the status of Jerusalem. S/RES/476(1980), 30 June 1980. <https://digitallibrary.un.org/record/25616?ln=en&v=pdf>; United Nations Security Council (2016) Resolution 2334, On cessation of Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem. S/RES/2334 (2016), 23 December 2016.

8 Persson, Anders (2018) "'EU differentiation' as a case of 'Normative Power Europe' (NPE) in the Israeli-Palestinian conflict". *Journal of European Integration* 40(2), 193–208; Lovatt, Hugh (2016) "EU differentiation and the push for peace in Israel–Palestine". *European Council on Foreign Relations* 31.10.2016; Lovatt, Hugh & Toaldo, Mattia (2015) "EU Differentiation and Israeli settlements". *European Council on Foreign Relations*, 22 July 2015.

A DIVIDED EUROPEAN UNION

The ICJ Advisory Opinion on Israel’s occupation was originally requested by the UN General Assembly. As outlined in the previous section, the illegality of the settlements, their implications for the question of annexation, and their centrality to the entire occupation were well established. Hence the general outlines of the Advisory Opinion could be anticipated in advance, and it was expected to condemn Israeli policy in the OPT.

The resolution was adopted on 30 December 2022, with 87 votes in favour, 26 against, and 53 abstentions. It is worth paying particular attention to the votes of the European Union member states. The EU is Israel’s largest trading partner. In 2022, 31.9% of Israel’s imports were from the EU, while 25.6% of its exports went to EU countries.⁹ The EU and its member states also provide by far the most financial support to the Palestinian Authority. The EU therefore has considerable potential leverage and importance for both sides.

In the 2022 UNGA vote, EU member states were split into three groups: seven states were in favour of requesting the Advisory Opinion on the occupation, nine states joined Israel, the United States and the United Kingdom in opposing it, and the largest group, 11 states, abstained (see Table 1).

The ICJ Advisory Opinion was issued on 19 July 2024, a year and a half after it was requested by the UNGA. The draft resolution summarizing and welcoming this ICJ

Advisory Opinion, and calling for an end to the occupation within 12 months, was passed at the UNGA two months later, on 18 September 2024.

By this stage, the Gaza war had been raging for almost a year. Compared to the original UNGA request for the Advisory Opinion, the majority in favour was significantly clearer, with 124 votes in favour, 14 against, and 43 abstentions.¹⁰ This vote provides a snapshot of where states stand on challenging Israel’s occupation, with support for international law and the rules-based order frequently cited as a reason for backing the resolution.

Yet again, EU member states were split into three groups, although the balance had shifted: 13 states now voted in favour, only two opposed, and a total of 12 abstained. The changes between the 2022 and 2024 resolutions were mainly among states that had previously abstained now voting in favour, and most of those that had voted against in 2022 deciding to abstain in 2024.

The groupings reflected previous recent votes on a ceasefire in Gaza (27 October and 12 December 2023), as well as on Palestine’s membership in the United Nations (10 May 2024). Israel’s staunchest allies have been Czechia and Hungary, whereas Belgium, France, Ireland, Luxembourg, Malta, Portugal, Slovenia and Spain have most consistently supported Palestinian rights. Of these, Ireland, Slovenia, and Spain recently recognized the State of Palestine, together with Norway.

9 European Commission (2024) “EU trade with Israel 2022”. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/israel_en.

10 United Nations General Assembly (2024) Resolution ES-10/24, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory. A/RES/ES-10/24, 18 September 2024. <https://digitallibrary.un.org/record/4061432?ln=en>.

Table 1. Voting by EU member states on UNGA Resolution 77/247 (2022)

In favour	Against	Abstaining
Belgium	Austria	Bulgaria
Ireland	Croatia	Cyprus
Luxembourg	Czechia	Denmark
Malta	Estonia	Finland
Poland	Germany	France
Portugal	Hungary	Greece
Slovenia	Italy	Latvia
	Lithuania	Netherlands
	Romania	Slovakia
		Spain
		Sweden
7	9	11

Resolution 77/247 (Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem), was adopted (87–26–53) by the UNGA on 30 December 2022.

Table 2. Voting by EU member states on UNGA Resolution ES-10/24

In favour	Against	Abstaining
Belgium	Czechia	Austria
Cyprus	Hungary	Bulgaria
Estonia		Croatia
Finland		Denmark
France		Germany
Greece		Italy
Ireland		Lithuania
Latvia		Netherlands
Luxembourg		Poland
Malta		Romania
Portugal		Slovakia
Slovenia		Sweden
Spain		
13	2	12

Resolution ES-10/24 (Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory) was adopted (124-14-43) by the Tenth Emergency Special Session of the UNGA on 18 September 2024.

Table 3. Voting by EU member states on UNGA Resolution ES-10/23

In favour	Against	Abstaining
Belgium	Czechia	Austria
Cyprus	Hungary	Bulgaria
Denmark		Croatia
Estonia		Finland
France		Germany
Greece		Italy
Ireland		Latvia
Luxembourg		Lithuania
Malta		Netherlands
Poland		Romania
Portugal		Sweden
Slovakia		
Slovenia		
Spain		
14	2	11

Resolution ES-10/23 (Admission of new Members to the United Nations) upgrading Palestine's rights as a UN Observer State and urging the Security Council to give Palestine's request for full membership "favourable consideration", was adopted (143-9-25) by the Tenth Emergency Special Session of the UNGA on 10 May 2024.

EU member states that regularly abstain on votes pertaining to Israel–Palestine issues include Bulgaria, Germany, Italy, Lithuania, the Netherlands, and Romania. The remaining states have mostly alternated between voting in favour and abstaining, depending on the contents of the resolutions and the circumstances.

The most significant divisions between European Union member states do not seem to lie in decades-old support for a two-state solution in the abstract. Rather, they appear to relate more to the willingness, or

lack thereof, to push Israel towards such a solution. It appears that the Gaza war has markedly increased the number of states willing to apply such pressure. Given that the two-state solution has been firmly rejected by Israel, including through legislation in 2024,¹¹ this pressure is precisely what would be required to keep it viable.

11 The Times of Israel (2024) "Knesset votes overwhelmingly against Palestinian statehood, days before PM's US trip". The Times of Israel, 18 July 2024. <https://www.timesofisrael.com/knesset-votes-overwhelmingly-against-palestinian-statehood-days-before-pms-us-trip/>.

CONCLUSION: NO MORE AVOIDING CORE CONTRADICTIONS IN EU POLICY

EU support for a two-state solution, expressed mainly through financial aid to the PA and close relations with Israel, has become increasingly untenable. In the 1990s, it was premised on the existence of a peace process. In the 2000s, after the peace process collapsed, it was defensible as a way of keeping the possibility of future talks alive. But with no peace and no process, the credibility of the EU's two-state policy is eroding.

While Russia's illegal occupation of parts of Ukraine has resulted in sanctions as well as condemnations, Israel's illegal occupation has not. Much of the world sees the EU and the US as employing double standards in these cases. Inaction is a choice with consequences.

After years of an outwardly deceptively stable status quo, the war in Gaza that started in October 2023 underlines the urgent need for a political solution. The EU and practically the entire international community remain committed to a two-state solution – a solution that the Israeli government rejects. Meanwhile, the status quo of Israeli occupation is untenable and has been judged illegal by the ICJ.

The UNGA vote affirming the ICJ Advisory Opinion (124 in favour) as well as the May 2024 vote admitting Palestine as a UN member, which was backed by 143 states, give an indication of global opinion. Within the EU, the Gaza war has shifted states towards affirming Palestinian rights, with increasing talk of applying pressure on Israel. However, divisions remain, precluding joint positions on the matter.

There is no progress towards a two-state solution, nor is there willingness to consider other options, making both staying put and moving forward difficult. They both come at a price.

Openly abandoning the framework of international law is unthinkable for most if not all EU member states. However, the ICJ Advisory Opinion, the complete lack of a peace process, Israel's annexationist government, and the Gaza war have made it harder than ever to paper over the cracks between idealistic rhetoric and inaction. Continuing on this path invites accusations of double standards and will erode credibility.

At the same time, exerting meaningful pressure on Israel as the occupying power – as has been done with Russia – remains unpalatable for some member states. Nevertheless, the illegality of the occupation suggests that this is precisely what needs to be done.

It seems likely that Donald Trump's new administration in the United States will not share this view. If this is indeed the case, it might shield Israel from outside pressure in the short term. Nevertheless, the underlying issues of illegal occupation, lack of self-determination for Palestinians and the future of the rules-based order will remain.

The basic choice lies between rallying to apply meaningful pressure on Israel in the face of member state divisions, or attempting to avoid the immediate political stalemate by playing for time. However, the latter option risks jeopardizing the two-state solution itself, as well as the credibility of the EU's commitment to international law. /