

“PALESTINE” AND THE INTERNATIONAL COURT OF JUSTICE (ICJ)

Andrew Tucker

thinc. European
Summit

2nd July 2024



International Courts in The Hague

- **International Criminal Court (ICC)**

- “Situation in Palestine”
- Crimes on territory of the “State of Palestine” since 2014
- Investigation of Israeli leaders for Rome Statute crimes
- Arrest warrants

- **International Court of Justice (ICJ) (“The World Court”)**

- 15 judges
- Contentious cases
 - Genocide cases
 - Palestine vs USA
- Advisory Opinions
 - 2004 “Wall” Advisory Opinion
 - 2022 UNGA request for Advisory Opinion

“The Situation in the State of Palestine”

- Palestine is a state
- Palestinian Territory – all of occupied territories
- settlements are war crimes
- Netanyahu and Gallant have committed crimes in Gaza since 7th October 2023



ICJ Advisory Opinion- Israeli occupation of Palestinian territory

- General Assembly
- 77/247 (2022) – 87 states
- 52 states at ICJ
- 3 international organisations
 - Arab States
 - Islamic States
 - African Union
- Israel not participating



UNGA Res 77/247 (30th Dec 2022)

“The General Assembly,

.....

18. *Decides*, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:

(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

Sponsors

Algeria, Brunei, Cuba, Egypt, Iraq, Jordan, Lebanon, Mauritania, Namibia, Qatar, Saudi Arabia, Senegal, Tunisia, Palestine.

Co-sponsors: Djibouti, Kuwait, Pakistan, Somalia, Venezuela, and Yemen.

Vote	States
<div>Approve</div>	<div>87</div> <div>Algeria, Angola, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Bolivia, Botswana, Brunei Darussalam, Cambodia, Chile, People's Republic of China, Colombia, Cuba, Democratic People's Republic of Korea, Djibouti, Egypt, El Salvador, Gabon, Grenada, Guinea, Guinea-Bissau, Guyana, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Jamaica, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Libya, Luxembourg, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Namibia, Nicaragua, Nigeria, Oman, Pakistan, Paraguay, Peru, Poland, Portugal, Qatar, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Sierra Leone, Singapore, Slovenia, Somalia, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Tunisia, Türkiye, Turkmenistan, Uganda, United Arab Emirates, Viet Nam, Yemen, Zambia, Zimbabwe</div>
<div>Against</div>	<div>26</div> <div>Albania, Australia, Austria, Canada, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Estonia, Germany, Guatemala, Hungary, Israel, Italy, Kenya, Liberia, Lithuania, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Romania, Togo, United Kingdom, United States</div>
<div>Abstain</div>	<div>53</div> <div>Andorra, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Côte d'Ivoire, Cyprus, Denmark, Dominican Republic, Ecuador, Eritrea, Ethiopia, Fiji, Finland, France, Georgia, Ghana, Greece, Haiti, Honduras, Iceland, India, Japan, Kiribati, Latvia, Liechtenstein, Malawi, Monaco, Montenegro, Myanmar, Netherlands, New Zealand, Norway, Panama, Philippines, Republic of Korea, Republic of Moldova, Rwanda, Samoa, San Marino, Serbia, Slovakia, Solomon Islands, South Sudan, Spain, Sweden, Switzerland, Thailand, Tanzania, Uruguay, Vanuatu</div>
<div>Absent</div>	<div>27</div> <div>Afghanistan, Antigua and Barbuda, Benin, Bhutan, Burkina Faso, Cabo Verde, Central African Republic, Chad, Comoros, Congo, Dominica, Equatorial Guinea, Eswatini, Gambia, Madagascar, Nepal, Niger, North Macedonia, São Tomé and Príncipe, Seychelles, Suriname, Timor-Leste, Tonga, Tuvalu, Ukraine, Uzbekistan, Venezuela</div>
<div>Total</div>	<div>193</div>

Item 47 - A/77/400 DR I

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East



AFGHANISTAN	✗ CAMEROON	✗ FINLAND	✗ KUWAIT	NEPAL	✗ SAUDI ARABIA	UKRAINE
✗ ALBANIA	✗ CANADA	✗ FRANCE	✗ KYRGYZSTAN	✗ NETHERLANDS	✗ SENEGAL	✗ UNITED ARAB EMIR...
✗ ALGERIA	CENTRAL AFR REP....	✗ GABON	✗ LAO PDR	✗ NEW ZEALAND	✗ SERBIA	✗ UNITED KINGDOM
✗ ANDORRA	CHAD	GAMBIA	✗ LATVIA	✗ NICARAGUA	SEYCHELLES	✗ UNITED REP TANZA...
✗ ANGOLA	✗ CHILE	✗ GEORGIA	✗ LEBANON	NIGER	✗ SIERRA LEONE	✗ UNITED STATES
ANTIGUA-BARBUDA	✗ CHINA	✗ GERMANY	✗ LESOTHO	✗ NIGERIA	✗ SINGAPORE	✗ URUGUAY
✗ ARGENTINA	✗ COLOMBIA	✗ GHANA	✗ LIBERIA	NORTH MACEDONIA	✗ SLOVAKIA	UZBEKISTAN
✗ ARMENIA	COMOROS	✗ GREECE	✗ LIBYA	✗ NORWAY	✗ SLOVENIA	✗ VANUATU
✗ AUSTRALIA	CONGO	✗ GRENADA	✗ LIECHTENSTEIN	✗ OMAN	✗ SOLOMON ISLANDS	VENEZUELA
✗ AUSTRIA	✗ COSTA RICA	✗ GUATEMALA	✗ LITHUANIA	✗ PAKISTAN	✗ SOMALIA	✗ VIET NAM
✗ AZERBAIJAN	✗ COTE D'IVOIRE	✗ GUINEA	✗ LUXEMBOURG	✗ PALAU	✗ SOUTH AFRICA	✗ YEMEN
✗ BAHAMAS	✗ CROATIA	✗ GUINEA-BISSAU	MADAGASCAR	✗ PANAMA	✗ SOUTH SUDAN	✗ ZAMBIA
✗ BAHRAIN	✗ CUBA	✗ GUYANA	✗ MALAWI	✗ PAPUA NEW GUINEA	✗ SPAIN	✗ ZIMBABWE
✗ BANGLADESH	✗ CYPRUS	✗ HAITI	✗ MALAYSIA	✗ PARAGUAY	✗ SRI LANKA	
✗ BARBADOS	✗ CZECHIA	✗ HONDURAS	✗ MALDIVES	✗ PERU	✗ SUDAN	
✗ BELARUS	✗ DEM PR OF KOREA	✗ HUNGARY	✗ MALI	✗ PHILIPPINES	SURINAME	
✗ BELGIUM	✗ DEM REP OF THE CO...	✗ ICELAND	✗ MALTA	✗ POLAND	✗ SWEDEN	
✗ BELIZE	✗ DENMARK	✗ INDIA	✗ MARSHALL ISLANDS	✗ PORTUGAL	✗ SWITZERLAND	
BENIN	✗ DJIBOUTI	✗ INDONESIA	✗ MAURITANIA	✗ QATAR	✗ SYRIAN ARAB REP...	
BHUTAN	DOMINICA	✗ IRAN (ISLAMIC REP...	✗ MAURITIUS	✗ REP OF KOREA	✗ TAJIKISTAN	
✗ BOLIVIA	✗ DOMINICAN REP...	✗ IRAQ	✗ MEXICO	✗ REP OF MOLDOVA	✗ THAILAND	
✗ BOSNIA-HERZEGOVINA	✗ ECUADOR	✗ IRELAND	✗ MICRONESIA (FS)	✗ ROMANIA	TIMOR-LESTE	
✗ BOTSWANA	✗ EGYPT	✗ ISRAEL	✗ MONACO	✗ RUSSIAN FED...	✗ TOGO	
✗ BRAZIL	✗ EL SALVADOR	✗ ITALY	✗ MONGOLIA	✗ RWANDA	TONGA	
✗ BRUNEI DARUSSALAM	EQUATORIAL GUINEA	✗ JAMAICA	✗ MONTENEGRO	✗ SAINT KITTS-NEVIS	✗ TRINIDAD-TOBAGO	
✗ BULGARIA	✗ ERITREA	✗ JAPAN	✗ MOROCCO	✗ SAINT LUCIA	✗ TUNISIA	
BURKINA FASO	✗ ESTONIA	✗ JORDAN	✗ MOZAMBIQUE	✗ SAINT VINCENT-GRE...	✗ TURKIYE	
✗ BURUNDI	ESWATINI	✗ KAZAKHSTAN	✗ MYANMAR	✗ SAMOA	✗ TURKMENISTAN	
CABO VERDE	✗ ETHIOPIA	✗ KENYA	✗ NAMIBIA	✗ SAN MARINO	TUVALU	
✗ CAMBODIA	✗ FIJI	✗ KIRIBATI	✗ NAURU	SAO TOME-PRINCIPE	✗ UGANDA	



IN FAVOUR:87



AGAINST:26



ABSTENTION:53

Information and arguments presented to the court

- United Nations reports
- 52 states
- 3 international organisations
 - Arab States
 - Islamic States
 - African Union
- Israel not participating
- Other organisations excluded
- No *amicus curiae*

“The State of Palestine”

- Palestinian right to self-determination on Palestinian Territory
- Occupation of Palestinian Territory
- “settlements” and “annexation”
- Discrimination



Palestinian *demands*

- “total, immediate and unconditional” end to the occupation
- Recognition of Palestinian right to statehood
- Third states are obliged to pressure Israel to comply – boycotts, divestment and sanctions



League of Arab States (LAS) and African Union (AU)

- 22 member states + 55 member states
- Khartoum 1967: "**The Three No's**":
No peace with Israel, no recognition of Israel, no negotiations with Israel.
- Establishment of Jewish national home is **illegal**
- Jewish State of Israel is **illegitimate**
- **ALL** of Palestine belongs to the Palestinians – **from the River to the Sea**
- **Total, unconditional and immediate end to the occupation**



Organisation of Islamic Cooperation (OIC)

- 57 member states
- Al Quds
- All of Palestine
- Occupation



Palestinian/Arab/Islamic/African position

- Palestinian right to self-determination is absolute
- All of Mandate Palestine territory belongs to the Palestinians
- Israel's occupation of Palestinian territory has become illegal
- Israel's discriminatory practices and policies are illegal
- Oslo Accords irrelevant

Israel's position

- Israel complies with the humanitarian provisions of the law of occupation, but the West Bank is not occupied *de jure*
- Sovereignty over the West Bank and the Gaza Strip is currently in abeyance
- The Palestinians have a right to self-determination but the Palestinian entity does not meet the established criteria for statehood under general international law.
- Oslo Accords remain applicable

States *supporting Israel* include:

- USA
- Hungary
- Czech Republic
- United Kingdom
- France
- Zambia
- Togo
- Fiji



The Republic of Fiji

Main arguments –

- Oslo Accords
- Peace process / negotiations
- One-sided questions *ignore* legal and factual realities:
 - Withdrawal/security
 - Territory
 - Self-determination





FOUNDATIONS OF ISRAEL UNDER INTERNATIONAL LAW (1917-1948)

COVENANT LEAGUE OF NATIONS

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

....

The Mandate for Palestine 22 July 1922

“The Council of the League of Nations:

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favor of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

“recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country” ...

The Mandate for Palestine

1. “Jewish national home”
2. Close settlement of the land
3. Jewish immigration
4. Protection of civil and religious rights of all inhabitants of Palestine



*SAN REMO, MANDATE FOR
PALESTINE AND TREATY OF
LAUSANNE*

1920 – 1923

”... in 1945, Professor Hersch Lauterpacht wrote that “self-determination is an enlightened and beneficent ideal to which the formation of States must conform if both justice and the peace of the world are to be secured”. That is the beating heart of self-determination. The idea that a people must be able to determine for themselves their lives and their futures. And Hersch Lauterpacht personally knew of what he spoke and we know that he was right. Israel’s actions, as you have heard already today, and will hear in the coming days, are manifest, grave and continuing violations of the right of which Lauterpacht spoke and we invite this Court to so declare, to help bring to an end this affront, **to allow the Palestinian people to determine the conditions under which they will live, in their territory, under their government, under the law, and to do so fully and to do so forthwith. That is what international law requires, no more and no less.”**



Prof. Hirsch Lauterpacht

- human rights
- the need for accountability by reference to new international crimes
- an effective system of international courts.





THE UNIVERSAL DECLARATION OF Human Rights

Article 1 Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Article 2 Everyone has certain rights and freedoms without distinction of race, religion or national origin. All human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Article 3 It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Article 4 It is essential to promote the development of friendly relations among nations.

Article 5 The peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have

determined to promote social progress and better standards of life in larger freedom.

Article 6 Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Article 7 A common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

THE COMMON PLEDGE

WHEREAS this Universal Declaration of Human Rights is a common standard of achievement for all peoples and all nations, in that each individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1 All human beings are born free and equal in rights and dignity. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.

Article 3 Everyone has the right to life, liberty and security of the person. No one shall be subjected to arbitrary arrest, detention or exile.

Article 4 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 5 No one shall be subjected to arbitrary arrest, detention or exile.

Article 6 Everyone has the right to recognition as a person before the law.

Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.

Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 Everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11 Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to the law. A trial shall be held in his presence, and he shall be entitled to defend himself.

Article 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13 Everyone has the right to freedom of movement and residence within the frontiers of each state.

Article 14 Everyone has the right to leave any country, including his own, and to return to his country.

Article 15 Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality.

Article 16 Everyone has the right to marry and to found a family, which shall be protected by society.

Article 17 Everyone has the right to own property alone as well as in association with others.

Article 18 Everyone has the right to freedom of thought, conscience and religion. No one shall be subjected to coercion in the exercise of these rights.

Article 19 Everyone has the right to freedom of opinion and expression. No one shall be subjected to interference with his right to hold opinions and to receive and impart information and ideas without restriction of any kind.

Article 20 Everyone has the right to peaceful assembly and association. No one shall be subjected to interference with his right to hold meetings and to associate with others.

Article 21 Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Article 22 Everyone has the right to social security. No one shall be subjected to deprivation of his right to social security.

Article 23 Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to education.

Article 26 Education shall be free, at least in the elementary and fundamental stages. Education shall promote understanding, peace, tolerance, friendship and solidarity among all nations, racial groups and peoples.

Article 27 Everyone has the right to the highest attainable standard of physical, mental and social well-being.

Article 28 Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29 Everyone has the duty to the community in which alone the free and full development of his personality is possible.

Article 30 Nothing in this Declaration shall be interpreted as authorizing any state, group or person to engage in any activity aimed at the destruction of the rights and freedoms set forth in this Declaration.

DECLARATION OF INDEPENDENCE OF THE STATE OF ISRAEL

The Land of Israel was the birthplace of the Jewish people. Here their spiritual, religious and national identity was formed. Here they achieved independence and created a culture of national and universal significance. Here they wrote and gave the Bible to the world.

Exiled from Palestine, the Jewish people remained faithful to it in all the countries of their dispersion, never ceasing to pray and hope for their return and restoration of their national freedom.

Impelled by this historic association, Jews, across throughout the centuries to go back to the land of their fathers and regain a national life. In recent decades, they returned in their masses. They reclaimed a wilderness, revived their language, built cities and villages, and established a vigorous and ever-growing community with its own economic and cultural life. They sought peace, yet were ever prepared to defend themselves. They brought blessings of progress to all inhabitants of the country.

In the year 1947 the first Zionist Congress, inspired by Theodor Herzl's vision of a Jewish State, proclaimed the right of the Jewish people to a national revival in their own country.

This right was acknowledged by the Balfour Declaration of November 2, 1917, and reaffirmed by the Mandate of the League of Nations, which gave explicit international recognition to the historic connection of the Jewish people with Palestine and their right to reconstitute their National Home.

The Nazi holocaust which engulfed millions of Jews in Europe proved, under the urgency of the reestablishment of the Jewish State, which would solve the problem of Jewish homelessness by opening the gates to all Jews and lifting the Jewish people to equality in the family of nations.

Survivors of the European catastrophe, as well as Jews from other lands, claiming their right to a life of dignity, freedom and labor, and undeterred by hazards, hardships and obstacles, have tried unceasingly to enter Palestine.

In the second World War, the Jewish people in Palestine made a full contribution in the struggle of freedom-loving nations against the Nazi evil. The sacrifices of their soldiers and efforts of their workers gained them title to stand with the people who founded the United Nations. On November 29, 1947, the General Assembly of the United Nations adopted a resolution for reestablishment of an independent Jewish State in Palestine and called upon inhabitants of the country to take such steps as may be necessary on their part to put the plan into effect.

This recognition by the United Nations of the right of the Jewish people to establish their independent state may not be needed. It is, moreover, the self-evident right of the Jewish people to be a nation, as all other nations, in its own sovereign state.

Accordingly, we, the members of the National Council, representing the Jewish people in Palestine and the Zionist movement of the world, met together in solemn assembly by virtue of the natural and historic right of the Jewish people and of the resolution of the General Assembly of the United Nations, hereby proclaim the establishment of the Jewish State in Palestine, to be called Israel.

We hereby declare that as from the termination of the Mandate at midnight this night of the 14th to 15th of May, 1948, and until the setting up of duly elected bodies of the State in accordance with a Constitution to be drawn up by a Constituent Assembly not later than the first day of October, 1948, the present National Council shall act as the Provisional State Council, and its executive organ, the National Administration, shall constitute the Provisional Government of the State of Israel.

The State of Israel will promote the development of the country for the benefit of all its inhabitants; will be based on principles of liberty, justice and peace; will guarantee full freedom of conscience, worship, education and culture; will safeguard the sanctity and inviolability of shrines and holy places of all religions; and will dedicate itself to the principles of the Charter of the United Nations.

The State of Israel will be ready to cooperate with the organs and representatives of the United Nations in the implementation of the resolution of November 29, 1947, and will take steps to bring about an economic union with the whole of Palestine.

We appeal to the United Nations to assist the Jewish people in the building of its state and admit Israel into the family of nations.

In the midst of unrelenting oppression we call upon the Arab inhabitants of the State of Israel to return to the ways of peace and play their part in the development of the state, with full and equal citizenship and due representation in all its bodies and institutions, provisional or permanent.

We offer peace and amity to all neighboring states and their peoples, and invite them to cooperate with the independent Jewish nation for the common good of all. The State of Israel is ready to contribute its full share to the peaceful progress and reconstitution of the Middle East. Our call goes out to the Jewish people all over the world to rally to our side in the task of immigration and development, and to stand by us in the great struggle for the fulfillment of the dream of generations — the redemption of Israel.

With trust in Almighty God, we set our hands to this declaration at this session of the Provisional State Council in the city of Tel Aviv this Sabbath eve, the fifth day of Nisan, 5708, the fourteenth day of May, 1948.

Yehuda
Yehuda

Yehuda
Yehuda

Yehuda
Yehuda

Yehuda
Yehuda

UNITED NATIONS



Gr. Brit. Colonial Office.

PALESTINE

Termination of the Mandate
15th May, 1948

Statement prepared for public information
by the Colonial Office and Foreign Office

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“We hereby declare the establishment of a
Jewish State in Eretz-Israel, to be known as the
State of Israel.”

Continuing relevance of the Mandate for Palestine

- *‘Uti possidetis juris’*
- *Article 80 UN Charter*

Security Council Resolution 242 (22 November 1967)

The Security Council,

Expressing its continuing concern with the situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. *Affirms* that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. *Affirms further* the necessity -

- a) For guaranteeing freedom of navigation through international waterways in the area;
- b) For achieving a just settlement of the refugee problem;
- c) For guaranteeing the territorial inviolability and political independence of every state in the area, through measures including the establishment of demilitarized zones ...



- The **PLO** agreed to divide the West Bank into three areas (A, B and C).
 - The **PLO** agreed Israel would retain exclusive control over Area C (approx. 60% of West Bank).
- The **PLO** agreed Israeli settlements could remain, pending permanent status negotiations.
- The **PLO/PA** obtained no rights to statehood or self-determination.

Oslo Accords (1993-1995)

WHY IS THE UNGA REQUEST PROBLEMATIC?

1. The UN/Palestinian claims rewrite legal history of Jewish people and the land
2. A Palestinian state will be a failed state
3. Palestinians have consistently rejected two-state solutions
4. The international courts are becoming involved in politics - not legal jurisdiction
5. The proceedings are unfair and imbalanced
6. The Palestinians are by-passing the internationally-sanctioned solution for this conflict: negotiations
7. The UN/Palestinian/Arab/Islamic legal claims distort International law



ICJ: What next?

- **When will the court make a decision?**
- **Discretion to issue an opinion**
- **The legal and factual issues**
 - Palestinian right to self-determination / statehood
 - Territorial sovereignty
 - Israeli annexation / settlements
 - Occupation / withdrawal
 - Discrimination / apartheid
 - “The Holy City of Jerusalem”