



A Palestinian "victory" in the international arena: the UN votes to ask the International Court of Justice for a legal opinion regarding Israel's practices in the territories.

January 2, 2023

Overview

- ▶ On the night of December 30, 2022, the UN General Assembly voted in favor of a Palestinian resolution calling for a legal opinion from the International Court of Justice (ICJ)¹ regarding "Israeli practices...[in] the occupied territories... including measures aimed at altering the demographic composition, character and status of ...Jerusalem, and its...related discriminatory legislation and measures."
- ▶ Israeli Prime Minister Benjamin Netanyahu called the General Assembly vote "despicable," adding that Israel was not bound by it. Israel has not yet decided whether to cooperate with or boycott the investigatory committee. **The Palestinians were pleased with the vote, regarding it as another international "victory for Palestinian diplomacy" which will open the door to additional "achievements."** Hamas welcomed the vote, but there were those who belittled its importance.
- ▶ Even if the vote has no immediate consequence, it is a significant achievement for the Palestinian Authority (PA) in the international arena and its smear and lawfare campaigns against Israel. In all probability, it will encourage the PA to continue slandering and libeling Israel while pursuing its efforts to upgrade its global status. And ICJ acceptance of the Palestinian claims is liable to lead to more initiatives to boycott Israel and influence the decision of the International Criminal Court (ICC) regarding the "Palestinian file."² **So far it is difficult to hypothesize as to whether or not the decision will have practical consequences. It may, however, have a negative influence on Israeli-Palestinian security coordination and restrict the IDF's freedom of action in Judea and Samaria.**

¹ The International Court of Justice (ICJ) is one of the six principal organs of the United Nations. It settles disputes between states in accordance with international law and gives advisory opinions on international legal issues. The ICJ is the only international court whose rulings and opinions serving as primary sources of international law. It was established in 1945 and its offices are in The Hague.

² On March 3, 2021, Fatou Bensouda, the ICC's general prosecutor, announced she would begin an investigation into Israel, accused of war crimes in the "Palestinian file." The investigation related to "crimes" Israel has allegedly committed in Judea, Samaria and the Gaza Strip since June 13, 2014. For further information see the March 7, 2022 bulletin, "Palestinian responses to the International Criminal Court's opening an investigation of Israel."

► It would not be the first time the ICJ discussed Israel. However, as opposed to the previous instance (2004), when the specific issue of the border security fence was under discussion, this time the issue is broader and related to Israel's control over Judea, Samaria and east Jerusalem.

Specifics

The General Assembly vote

► On the night of December 30, 2022, the UN General Assembly voted to "ask the ICJ...to render its opinion on the legal consequences arising from Israel's ongoing violation of the right of the Palestinian people to self-determination [sic], its prolonged occupation, settlement and annexation of the Palestinian territory... including measures [to alter] the demographic composition, character and status of ...Jerusalem, and its adoption of discriminatory legislation and measures [sic]...In its report...presented on 27 October, 2022 the Commission found there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law...to annex parts of the land de facto and de jure. The Commission recommended that the General Assembly urgently request an advisory opinion from the International Court of Justice on the legal consequences of the continued refusal on the part of Israel to end its occupation [sic] of Palestinian Territory... and of the refusal [sic] on the part of Israel to respect the right of the Palestinian people to self-determination, and on the obligations of third States and the UN to ensure respect for international law."³

► Eighty-seven countries voted in favor of the Palestinian resolution, 26 opposed, 53 abstained and 12 were absent when the vote was taken. The draft resolution was passed in November 2022. Several countries changed their votes in the interim and more were absent when the vote was taken, four on November 11, 2022, and 12 on December 30, 2022.

³ <https://www.ohchr.org/en/press-releases/2022/12/commission-inquiry-welcomes-general-assembly-resolution-requesting-icj>

all the states which had sided with "the rights of the Palestinian people," adding that an appeal to international institutions was a Palestinian right and they would continue working to join international organizations and institutions (Wafa, December 31, 2022).

► **PA Prime Minister Muhammad Shtayyeh** claimed the UN vote was a "new victory" for the Palestinian people and its cause. He added that the vote was "exceptionally important" because of its timing, issued just as Israel's "extremist religious" government was being sworn in (Muhammad Shtayyeh's Facebook page, December 31, 2022). **Hussein al-Sheikh, general secretary of the PLO's Executive Committee**, thanked everyone who had supported the issue, also calling the vote a victory for "Palestinian diplomacy" and especially for Mahmoud Abbas, who was pressured to recall or delay it (Hussein al-Sheikh's Twitter account, December 31, 2022). The **Fatah movement** welcomed the UN vote, claiming it would have important consequences for the Palestinian cause and make it possible to prosecute Israel (al-Quds al-Arabi, December 31, 2022).

► **Palestinian foreign minister Riyad al-Maliki** called the decision a historic achievement on the Palestinians' road to realizing their rights, claiming it was a "new failure" for Israel. He claimed it proved the entire world [sic] supported the Palestinian people and their "indisputable historical rights." He said the time had come for Israel to obey the law and take responsibility for its [alleged] "ongoing crimes" against the Palestinian people. The world, he asserted, had to take responsibility and implement "legitimate" international decisions (PA foreign ministry website, December 31, 2022). Briefing the Council of Arab Ambassadors at a meeting in Brazil, he praised the decision and thanked the states which had voted for it, despite the pressure exerted on them by Europe and the United States. He called for a committee of Arab foreign ministers to be appointed to assist the Palestinian cause at the international level in the coming months, until they achieved full UN membership (Wafa, January 1, 2023).

► **Palestinian political commentator Jamal Zaqout** was slightly less enthusiastic, writing that while the decision should not be disparaged, European states which in the past had voted for resolutions favoring the Palestinians, either abstained or voted against it this time. He called that "avoiding responsibility" (al-Ghad, December 31, 2022).

► **Hamas** praised the decision, calling it an achievement and an important step towards getting rid of the "occupation." Hamas noted its esteem for the states which voted in favor, and called for promoting other measures in the international arena to prosecute Israel for its

"ongoing crimes" against the Palestinians (Hamas website, December 31, 2022). **Hamas figure Bassem Na'im** said it was an important step towards isolating Israel (al-Ghad TV, December 31, 2022). **Nafez al-Madhoun, who lectures on international law** in the Gaza Strip, said the decision was important because it set a precedent (al-Ghad, December 31, 2022).

► However, there were also people in Hamas who belittled the resolution. **Hamas spokesman Hazem Qassem** said the PA's diplomatic search for a UN resolution was the result of its inability to genuinely "resist" the "occupation" and the weakness of its plan of action. He claimed the resolution was just another in the series of international resolutions regarding the Palestinian cause which had never once been implemented on a practical level. He said that as long as the United States worked in full cooperation with Israel ("the occupation") and provided it with a cover for its actions, all the resolutions and declarations issued by all the various forums would remain words on paper (Hazem Qassem's Telegram channel, December 31, 2022).

The significance

► **Even if the resolution has no immediate practical consequences, it is nevertheless a significant achievement for the PA in the international arena in general and its smear and lawfare campaigns in particular.** It will most likely encourage the PA to continue libeling and slandering Israel while making efforts to secure additional international recognition. The PA will continue seeking and perhaps achieve full-member status in the UN and other international organizations, upgrade its legations, etc.

► If the ICJ's advisory opinion does in fact accept the Palestinian claims, it could make other countries accept the claim that Israel de-facto annexed the Palestinian territories in 1967 despite the fact that the world never specifically declared it. It is also liable to increase the number of boycott initiatives against Israel. Accepting the Palestinians claims may also influence the decisions of the ICC's general prosecutor regarding the "Palestinian file."

► So far it is difficult to assess what the practical influence of the decision on the ground will be, if any. However, it may damage security coordination between Israel and the PA, and restrict the IDF's freedom of action in Judea and Samaria.

The ICJ and Israel

- ▶ It was not the first time the ICJ dealt with issues related to Israel. However, as opposed to the previous instance, which dealt with a specific issue, this time the topic was broader and concerned Israel's control of Judea, Samaria and east Jerusalem.
- ▶ In December 2003 the UN General Assembly voted to ask for an advisory opinion from the ICJ regarding the legal considerations of Israel's constructing the border security fence. Written statements were taken from various countries and verbal arguments were heard. Israel, which does not recognize the Court's authority to adjudicate the issue, presented only written arguments, most of which dealt with the Court's authority to deliberate what was an internal Israeli matter. The Court's deliberations completely ignored the fence's security aspects. The advisory opinion was given in 2004, passed by a vote of 14 to one. The dissenting voice was heard from an American judge who, while criticizing Israel's actions, argued that the Court's findings did not rest on a sufficiently factual basis and it was preferable not to deliberate the issue.