

Presentation by British law professor Ralph Wilde on behalf of the League of Arab States at the International Court of Justice on the topic of the illegality of Israel's ongoing military occupation of Palestine. 2/26/2024

<https://www.youtube.com/watch?v=fRn4qYAORAE>

FULL UNOFFICIAL TRANSCRIPT

Mr. President, distinguished members of the court, it's a great honor and privilege to appear before you and to represent the League of Arab States. The Palestinian people have been denied the exercise of their legal right to self-determination through the more than century-long violent, colonial, racist effort to establish a nation-state exclusively for the Jewish people in the land of mandatory Palestine. When this began after the First World War, the Jewish population of that land was 11 percent. Forcibly implementing Zionism in this demographic context has necessarily involved the extermination or forced displacement of some of the non-Jewish Palestinian population, the exercise of domination over and subjugation, dispossession, and immiseration of remaining non-Jewish Palestinians, the emigration to that land of Jewish people regardless of any direct personal link, and the denial of Palestinian refugees the right to return. All operating through a racist distinction privileging Jewish people over non-Jewish Palestinian people. This has necessitated serious violations of all the fundamental Jus Cogens and Erga Omni's norms of international law. The right of self-determination, the prohibitions on aggression, genocide, crimes against humanity, racial discrimination, apartheid, and torture, and the core protections of IHL.

Today I will address first violations of international law arising out of the regime of racial domination, apartheid, perpetrated against the Palestinian people across the entire land of historic Palestine, and then second the existential illegality of Israel's occupation of the Palestinian Gaza Strip and West Bank, including East Jerusalem, since 1967. As a necessary prerequisite, I must begin with this special right granted to the Palestinian people in the League Covenant.

The legal rights of self-determination of the Palestinian people originates in the sacred trust obligations of Article 22 of the League Covenant, part of the Versailles Treaty. Palestine, an A-class mandate under British colonial rule, was, after the First World War, supposed to have its existence as an independent state provisionally recognized. A sui generis right of self-determination. The UK and other members of the League Council attempted to bypass this, incorporating the 1917 Balfour Declaration commitment to establishing a national home for the Jewish people in Palestine into the instrument stipulating how the mandate would operate. However, the Council had no legal power to bypass the Covenant in this way. It acted ultra-vires, and the relevant provisions were legally void. There was and is no legal basis in that mandate instrument for either a specifically Jewish state in Palestine or the UK's failure to discharge the sacred trust obligation to implement Palestinian self-determination.

After the Second World War, a self-determination right applicable to colonial peoples generally crystallized in international law. For the Palestinian people, this essentially corresponded to and

supplemented the pre-existing Covenant right regarding the same single territory. The 1947 proposal to partition Palestine was contrary to this, the Arab rejection and affirmation of the legal status quo. In 1948, then, Palestine was legally a single territory with a single population enjoying a right of self-determination on a unitary basis. Despite this, a state of Israel specifically for Jewish people was proclaimed in 1948 by those controlling 78% more than three-quarters of Palestine, accompanied by the false displacement of a significant number of the non-Jewish Palestinian population, the Nakba catastrophe. This illegal secession was an egregious violation of Palestinian self-determination. Israel statehood was recognized and Israel admitted as a UN member despite this illegality. Israel is not the legal continuation or successor of the mandate. This violation of Palestinian self-determination is ongoing and unresolved. Two key elements are, first, Palestinian people not displaced from the land proclaimed to be of Israel in '48 and their descendants have been forced to live as citizens, presently they constitute 17.2%, of a state conceived to be of and for another racial group under the domination of that group, necessarily treated as second class because of their race. Second, Palestinian people displaced from that land and their descendants cannot return. These are serious breaches of the right of self-determination, the prohibitions of racial discrimination and apartheid and the right of return. They must end immediately.

As if this ongoing Nakba was not catastrophic enough. In 1967, Israel captured the remaining 22% of historic Palestine, the Gaza Strip and West Bank, including East Jerusalem, the Naxa. It's maintained that use of force to remain in control for the 57-year period since. For more than half a century then, a state defined to be of and for Jewish people exclusively has governed the entire land of historic Palestine and the Palestinian people there. And the regime of racial domination, apartheid and denying return has been extended throughout. In the case of Palestinians living in the occupied territory, this has involved the same serious violations of international law, supplemented by serious violations of norms applicable in occupied territory. Indeed, these people are subject to an even more extreme form of racist domination, as they aren't even citizens of the state exercising authority over them. Even in East Jerusalem, which Israel has purported to annex, the majority non-Jewish Palestinian residents don't have citizenship, whereas Jewish residents, including illegal settlers, are citizens. Just as in territorial Israel, in occupied territory, these serious violations concerning how Israel exercises authority over the Palestinian people must end immediately. However, here a more fundamental matter must also be addressed. The illegality of the exercise of authority itself.

The enduring Palestinian right of self-determination means that the Palestinian people and the state of Palestine, not Israel, are sovereign over the territory Israel captured in '67. For Israel, the land is extraterritorial and, given what I said about the mandate, territory over which it has no legal sovereign entitlement. Despite this, Israel has purported to annex East Jerusalem and taken various actions there and in the rest of the West Bank, constituting de jure and de facto purported annexation, including implanting settlements. It is Israeli policy that Israel should be not only the exclusive authority over the entire land between the river and the sea, but also the exclusive sovereign authority there. This constitutes a complete repudiation of Palestinian self-determination as a legal right, since it empties the right entirely of any territorial content. Realizing this through de facto and de jure purported annexation is, first, a serious violation of

Palestinian self-determination and, second, because it's enabled through the use of force, a violation of the prohibition on the purported acquisition of territory through the use of force in the law on the use of force. And so, an aggression. Serious violations of further areas of law regulating the conduct of the occupation are also being perpetrated, notably the prohibitions on implanting settlements and altering, unless absolutely prevented, the legal, political, social, and religious status quo. The occupation is, therefore, existentially illegal because of its use to actualize purported annexation. To end this serious illegality, it must be terminated. Israel must renounce all sovereignty claims, and all settlements must be removed immediately.

However, this is not the only basis on which the occupation's existential legality must be addressed. We need to delve deeper into both the law of self-determination and the law on the use of force. Beginning with self-determination, this right, when applied to the Palestinian people in the territory Israel captured in '67, is a right to be entirely self-governing, free from Israeli domination. Consequently, the Palestinian people have a legal right to the immediate end of the occupation. And Israel has a correlative legal duty to immediately terminate the occupation. This right exists and operates simply and exclusively because the Palestinian people are entitled to it. It does not depend on others agreeing to its realization. It is a right. It's a repudiation of trusteeship whereby colonial peoples were ostensibly to be granted freedom only if and when they were deemed ready because of their stage of development determined by the racist standard of civilization. The anti-colonial self-determination rule replaced this with a right based on the automatic immediate entitlement of all people to freedom without preconditions. In the words of General Assembly 1514, "inadequacy of preparedness should never serve as a pretext for delaying independence."

Some suggest that the Palestinian people were offered and rejected deals that could have ended the occupation. And therefore, Israel can maintain it pending a settlement. Even assuming arguendo the veracity of this account, the deals involved a further loss of the sovereign territory of the Palestinian people. Israel cannot lawfully demand concessions on Palestinian rights as the price for ending its impediment to Palestinian freedom. This would mean Israel using force to coerce the Palestinian people to give up some of their peremptory legal rights. Illegal in the law on the use of force and necessarily voiding the relevant terms of any agreement reached. The Palestinian people are legally entitled to reject a further loss of land over which they have an exclusive legal peremptory right. Any such rejection makes no difference to Israel's immediate legal obligation to end the occupation.

Turning to the law on the use of force, Israel's control over the Palestinian territory since '67 as a military occupation is an ongoing use of force. As such, its existential legality is determined by the law on the use of force as a general matter beyond the specific issue of annexation. Israel captured the Gaza Strip and West Bank from Egypt and Jordan in the war it launched against them and Syria. It claimed to be acting in self-defense, anticipating a non-immediately imminent attack. The war was over after six days. Peace treaties between Israel and Egypt and Jordan were subsequently adopted. Despite this, Israel maintained control of the territory, continuing the use of force enabling its capture. Israel's '67 war was illegal in the Yossa Balaam, even assuming arguendo, its claim of a feared attack. States can't lawfully use force in non-

immediately imminent anticipatory self-defense. Alternatively, assuming again *arguendo* that the war was lawful, the justification ended after six days. However, the *Yossa Balaam* requirements continued to apply to the occupation as itself a continuing use of force. In 1967, with self-determination well established in international law, states could not lawfully use force to retain control over a self-determination unit captured in war unless the legal test justifying the initial use of force also justified on the same basis the use of force in retaining control. Moreover, this justification would need to continue not only in the immediate aftermath but for more than half a century. Manifestly, this legal test has not been met. Israel's exercise of control over the Gaza Strip and West Bank through the use of force has been illegal in the *Yossa Balaam* since the capture of the territory or at least very soon afterwards. The occupation is therefore again existentially illegal in the law on the use of force and aggression, this time as a general matter beyond illegality specific to annexation. To terminate this serious violation, the occupation must likewise end immediately.

What of Israel's current military action in Gaza? This is not a war that began in October 2023. It's a drastic scaling up of the force exercised there and in the West Bank on a continual basis since '67. A justification for a new phase in an ongoing illegal use of force cannot be constructed solely out of the consequences of violent resistance to that illegal use of force. Otherwise, an illegal use of force would be rendered lawful because those subject to it violently resisted. Circular logic with a perverse outcome. More generally, Israel cannot lawfully use force to control the Palestinian territory for security purposes pending an agreement providing security guarantees. States can only lawfully use force outside their borders in extremely narrow circumstances. Beyond that, they must address security concerns non-forceably. The USA, UK, and Zambia suggested here that there is a *sui generis* applicable legal framework, an Israeli-Palestinian *lekspecialis*. This somehow supersedes the rules of international law determining whether the occupation is existentially lawful. Instead, we have a new rule justifying the occupation until there is a peace agreement meeting Israeli security needs. This is the law as these states would like it to be, not the law as it is. It has no basis in resolution 242, Oslo, or any other resolutions or agreements. Actually, you are being invited to do away with the very operation of some of the fundamental peremptory rules of international law itself. As a result, the matters these rules conceive as rights vested in the Palestinian people would be realized only if agreement is reached and only on the basis of such agreement. At best, if there is an agreement, this means one that need not be compatible with Palestinian peremptory legal rights determined only by the acute power imbalance in Israel's favor. At worst, if there is no agreement, this means that the indefinite continuation of Israeli rule over the Palestinian people in the OPT on the basis of racist supremacy and a claim to sovereignty would be lawful. This is an affront to the international rule of law, to the UN Charter imperative to settle disputes in conformity with international law, and to your judicial function as guardians of the international legal system.

A final potential basis sometimes invoked to justify continuing the occupation should be addressed. Occupation and human rights law, applicable to illegal and lawful occupations alike, oblige Israel to address security threats in occupied territory. However, they only regulate the conduct of an occupation when it exists. They don't also provide a legal basis for that existence

itself. Legal legality is determined by the law of self-determination and the *jus ad bellum* only. There is no backdoor legal basis for Israel to maintain the occupation through the imperatives of occupation and human rights law.

In sum, the occupation of the Palestinian Gaza Strip and West Bank, including East Jerusalem, is existentially illegal on two mutually reinforcing bases. First, the law on the use of force. Here the occupation is illegal both as a use of force without valid justification and because it's enabling an illegal purported annexation. As such, it is an aggression. Second, the law of self-determination. Here it's illegal again because of the association with illegal purported annexation and also more generally because it is quite simply an exercise of authority over the Palestinian people that by its very nature violates their right to freedom. This multifaceted existential illegality involving serious violations of peremptory norms has two key consequences. First, the occupation must end. Israel must renounce its claim to sovereignty over the Palestinian territory. All settlers must be removed immediately. This is required to end the illegality, to discharge the positive obligation to enable immediate Palestinian self-administration and because Israel lacks any legal entitlement to exercise authority. Second, in the absence of the occupation ending, necessarily everything Israel does in the Palestinian territory lacks a valid international legal basis and is therefore, subject to the Namibia exception, invalid. Not only those things violating the law regulating the conduct of the occupation. Those norms entitle and require Israel to do certain things but this doesn't alter the more fundamental position from the law on the use of force and self-determination that Israel lacks any valid authority to do anything. And whatever it does is illegal, even if compliant with or pursuant to the conduct regulatory rules.

I will close by quoting Palestinian academic and poet Rifat Alariya from his final poem posted 36 days before he was killed by Israel in Gaza on the 6th of December, 2023. If I must die, you must live to tell my story. If I must die, let it bring hope. Let it be a story. Thank you for your attention. God bless. God bless.