



Consequences of Prolonged Occupation of Palestine Towards Third States: Possible Approaches of ICJ

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Abstract

Introduction

A long time has passed since occupation of Palestinian territory by Israel. Yet, no solution has been rendered for the humanitarian and security crises by the world community. Occupation of Palestine embraces broad breaches of different principles and rules of international law including the right of self-determination and jus ad bellum. However, the continuation and prolongation of the occupation has led to doubts as to its illegitimacy. Besides any practical solutions that may be offered for this problem, analytical description of nature of the situation and its legitimacy might shed light on the feasible actions which need to be taken. In line with this purpose, The UN General Assembly has requested for an advisory opinion from ICJ on the effect of the ongoing violation of International Law resulting from the prolonged occupation of Palestine on legal nature of the occupation and its consequences towards third States. In this article, we are to analyze the nature and consequences of the prolonged occupation under international law and the possible approaches of the ICJ in this regard.

Literature Review

On January 17, 2023 UNGA under its resolution 77/247 on “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem” decided to request the ICJ in accordance with article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on “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... . And in the second question among others asked the court to determine “...the legal consequences that arise for all States and the United Nations from this status”. The court had already determined the responsibilities of the occupying power with regard to protecting and ensuring the human rights of all who live under its jurisdiction in its 2004 advisory opinion on the “legal consequences of construction of a wall in the occupied Palestinian territory”. Henceforth, the main difference between



these two advisory opinions will be on that in its 2004 opinion the court was only asked to render its opinion on a particular practice of Israel i.e the construction of a wall; while in the present question the court should answer to a general question on occupation and its legal consequences particularly with regard to third States.

Methodology

The methodology employed in this paper involves a comprehensive and analytical method to identify legal framework of the court and analyze provisions related to the occupation in international law in order to find the possible answers for the question about the situation of prolonged occupation of Palestinian territory. In an attempt to realize the court's point of view about the third state obligations, the methodology integrates a comparative study to assess the similarities of the current question asked by UN General assembly and the previous approaches taken by the court.

Conclusion

Given the illegal status of Israel's occupation of Palestinian territory, there remains no doubt that under several international treaties Israel is under obligation to give an end to violations of human rights of Palestinian people and respect their human dignity by recognizing their right to a decent life. The continued occupation will never transform it into a legitimate act, nor will it absolve the occupying power of the consequences of its disgraceful actions. In fact, prolonging the occupation may increase its responsibilities, especially if the temporary nature of the occupation is taken into account. In addition to the occupying power, the international community has obligations 1. To cooperate to bring an end to the breach of the obligation; 2. Not to recognize as lawful the illegal situation; 3. Not to render aid or assistance in maintaining the situation. Against the court's observations in 2004 opinion, in the pending one it is expected of the court to consider the critical situation of Palestinian people to render a clear-cut and decisive opinion which includes a series of positive obligations under the title of "cooperation for bringing the situation to an end" upon States, and other international actors. In the same vein, it is upon the international community to prove one's again as it did in Namibia case, it's strongest will to end the occupation situation in Palestine. Otherwise recognizing the obligations of the occupying power and invoking its international responsibility will have no use; neither can do non-recognition of the situation by the international community.

The serious breach of international human rights and humanitarian Law in recent months has increased the feasibility of the commission of genocide by Israel, and it is on international community to consider all capacities of international law for changing the situation in Palestine and realize Palestinian people's right to self-determination.

Keywords: Palestine, Prolonged Occupation, ICJ, International Law, Third-Party Obligations.

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