

International Court of Justice

Legal Consequences arising from the Policies and Practices of Israel in the Occupied  
Palestinian Territory, including East Jerusalem

**Executive Summary of**  
Written Statement Submission by  
B'nai B'rith International  
B'nai B'rith Office of United Nations Affairs  
B'nai B'rith World Center in Jerusalem  
and B'nai Brith Canada

Representations Submitted in  
Accordance With The  
International Court of Justice  
Practice Direction XII

Respectfully Submitted By:

B'NAI B'RITH INTERNATIONAL  
B'NAI B'RITH OFFICE OF UNITED AFFAIRS  
B'NAI B'RITH WORLD CENTER IN JERUSALEM



Richard D. Heideman, Esq.\*  
Joseph H. Tipograph, Esq.  
Heideman Nudelman & Kalik, PC  
5335 Wisconsin Avenue, Suite 440  
Washington, DC 20015  
Telephone 202 463-1818  
Telefax 202 463-2999  
Email: [rdheideman@HNKlaw.com](mailto:rdheideman@HNKlaw.com)

David Matas, Esq.  
Counsel for B'nai Brith Canada

Counsel for B'nai B'rith International, B'nai B'rith Office of United Nations Affairs  
and the B'nai B'rith World Center in Jerusalem, Israel

\*Richard D. Heideman is Honorary President, B'nai B'rith International

## **Executive Summary**

B'nai B'rith International, B'nai Brith Canada and the B'nai B'rith World Center-Jerusalem have submitted to the International Court of Justice, under Practice Direction XII, written representations on the December 30, 2022 request by the United Nations General Assembly to the International Court of Justice for an advisory opinion. We invite all interested States, in their written initial and reply submissions and in their oral statements, insofar as they agree with any of the positions set out, to refer to these submissions.

The submission makes these arguments:

### **Jurisdiction**

The Court does not have the jurisdiction to answer the request for the advisory opinion. A request for an advisory opinion cannot be used to resolve a dispute between parties or states. This request asks the Court to address a myriad of disputes between Israel and the Palestinian Authority.

### **Independence**

The request for the advisory opinion does not respect the independence of the Court. The request is not neutral, but rather expresses a number of opinions which the General Assembly asks the Court to endorse. The judges of the Court are chosen by the General Assembly to nine year renewable terms.

### **Voting**

There were 106 state members of the United Nations that did not vote for the resolution, significantly more than a fifty percent majority of the nations seated at the UN. 87 states requested the advisory opinion. Further, of those that did vote in favor, many were non-democracies and/or do not recognize the State of Israel, highlighting the political nature of the request.

### **Opinions**

The resolution is rife with opinions. The GA referral constantly refers to Israeli victimization of Palestinian civilians. It says nothing about Palestinian victimization of Israeli citizens.

Given the nature of the resolution, it is also fair to conclude that what the supporters of the resolution want is a validation that the accusations of Israeli wrongdoing expressed in the resolution are correct, accepting as a given every unsubstantiated opinion expressed in the resolution, with, if possible, supporting additional arguments, despite

the lack of evidence.

### **Agreements, Standards and International Law**

The resolution ignores or misstates international law. Counter-terrorism efforts by Israel are characterized as violations of international law. Terrorism by anti-Zionist entities is referred to as militancy or armed conflict and not characterized as violations of international law. The resolution asks the Court to agree with the anti-Zionist political opinions stated in the resolution.

### **Sources and Recommendations**

Sources cited in the resolution, many of which were generated through UN bodies, are political, one-sided and ill informed. Many of the authors of the cited reports are persons who were appointed to their posts at least in part because of their demonstrative anti-Zionist history.

The authority granted by the UN Charter to the Court to answer requests for advisory opinions was meant to allow for the provision of answers to real questions, and not agreement with rhetorical, biased and political ones.

### **The Accusation of Illegal Occupation**

The repeated accusation that Israel illegally occupies the West Bank and Gaza ignores the Oslo Accords and the reality. The Palestinian Authority has its own security forces, quasi-governmental functions, ministers, and provides public services and functions. It is not controlled nor illegally occupied by Israel.

Before the 1967 war, the West Bank was under the control of Jordan and Gaza was under the control of Egypt. At that time, they were never labeled "Occupied Palestinian Territory." The notion that the territory transformed to "Occupied Palestinian Territory" the moment it shifted from two states to a third state is untenable.

### **Addressing Victimization**

The resolution identifies a real problem, the plight of Palestinians, but presents a wrong conclusion. Palestinians are victims, but their victimizer is not Israel. Their victimizers are anti-Zionist terrorist groups and political leaders who engineer the victimization of Palestinians and shift the blame to Israel in order to justify their outright hatred and complete rejection of Israel and Zionism, as well as to mask their own human rights abuses and other wrongdoings.

Terrorism victimizes Israelis initially, but also Palestinians directly through misfired rockets and their use as human shields. Actions which the resolution condemns are

Israeli legitimate responses to or precautions against terrorism committed by anti-Zionists.

### **The Security Council**

Because of the current Security Council engagement in Israeli-Palestinian issues, the General Assembly has no business getting involved. The Court, using the same criterion for the exercise of its discretion that it used in addressing the request from the General Assembly on the Israeli security barrier – Security Council activity – should exercise its discretion this time to decline to answer the questions asked by the General Assembly.

### **Peace**

Those who reject the very existence of Israel have pursued a variety of strategies to destroy the Jewish state – armed invasion, terrorism and delegitimization. Each strategy has its incitement counterpart – war propaganda, incitement to terrorism and demonization. The current resolution forms a part of this delegitimization/demonization strategy, which is inconsistent with the objective of seeing Jews and Arabs living side by side, securely in peaceful coexistence.

Demonization of the Jewish state victimizes Jews everywhere as actual or presumed supporters of this supposedly demon state and promotes hatred and acts of violence and antisemitism against the Jewish people spread throughout the world. Anti-Zionism is a form of antisemitism.

Litigation serves the purpose of anti-Zionists as an attempt to delegitimize the existence of the State of Israel. If the Court gives to anti-Zionists the legal opinion their resolution requests, that would make traversing the path to peace exceedingly difficult. Any victory the Court would give to anti-Zionists, in pursuing their strategy of delegitimization, would reinforce, to them, the value of that strategy and encourage them to continue on with it.

### **Discretion and propriety**

For the Court, answering a request for an advisory opinion is discretionary. The Court should exercise its discretion against answering the questions posed in the resolution for all the reasons given in our submissions. For the Court to answer the questions asked would not be judicially proper. Answering the questions asked would be positively harmful by circumventing negotiations and the peace process.