Israeli Settlements in the West Bank: A Breach of Public International Law?

Exploring the Arguments, Reactions & Consequences

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CONTENTS

EXECUTIVE SUMMARY

International law plays a crucial role in shaping the nature of conflicts. Particularly so for Israeli settlements in the West Bank, where Jewish Israelis are incentivised to settle in order to prevent political unity amongst Palestinians. The International Court of Justice's 2004 Advisory Opinion on the *Legal Consequences of The Construction of a Wall in The Occupied Palestinian Territory* found that the settlements violate art 49(6) of the *Fourth Geneva Convention*, which forms a principle of customary international law binding all states. Article 49(6) provides that 'the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.' Despite several United National Resolutions affirming Israel's violations, little is being done to halt their settlement activity. It is, ultimately, a matter of power politics where states such as the United States of America hold significant influence over the resolution of a conflict and actively prevent action through their veto on the United Nations Security Council. With the International Criminal Court currently investigating whether Israel's breaches are serious enough to constitute war crimes, it is imperative that states reconsider their stances. It is only through collective action addressing Israel's flagrant breaches of international law that lasting peace can be achieved and the settlement activity halted.

INTRODUCTION

Given the continued erection of settlements inhabited by individuals of Jewish ethnicity in the Israeli-occupied West Bank, it is imperative that the settlements' legality, alongside the international community's reaction to them, be analysed. For this reason, this paper explores the application of international law to the Israeli settlements in the West Bank and determines whether international law is indeed breached by the erection of the settlements. Importantly, the scope of this paper does not extend beyond the Israeli settlements in the West Bank. Moreover, the examination of the settlements under international law relates solely to public international law, as opposed to private international law. Upon arriving at an answer as to whether there is an identifiable breach of international law, this paper analyses the international response to the Israeli settlements, as well as Israel's domestic stance on the matter.

The paper is structured as follows: the first section defines the concept of public international law and describes the sources of such law, as well as describing who enforces international law and its relationship with domestic law. The second section provides a factual background of the Israeli settlements in the West Bank. This background is formed by considering who controls the settlements, what their legal status is domestically and by providing an outlook as to what the future might entail. The third section of this paper analyses the position of the Israeli settlements under international law. The section is developed by first determining whether the settlements do indeed breach international law - an answer which is to be arrived at by considering the responses of states internationally, as well as by Israel itself. Subsequently, historical comparisons are drawn with conflicts such as the Kosovo War in order to better comprehend the rationale behind state responses regarding the Israeli settlements. The adequacy of the international response is considered, alongside an exploration of the repercussions which may follow from a breach of international law, assuming that such a breach exists. Lastly, a conclusion summarising all of the paper's findings is provided.

I UNDERSTANDING PUBLIC INTERNATIONAL LAW

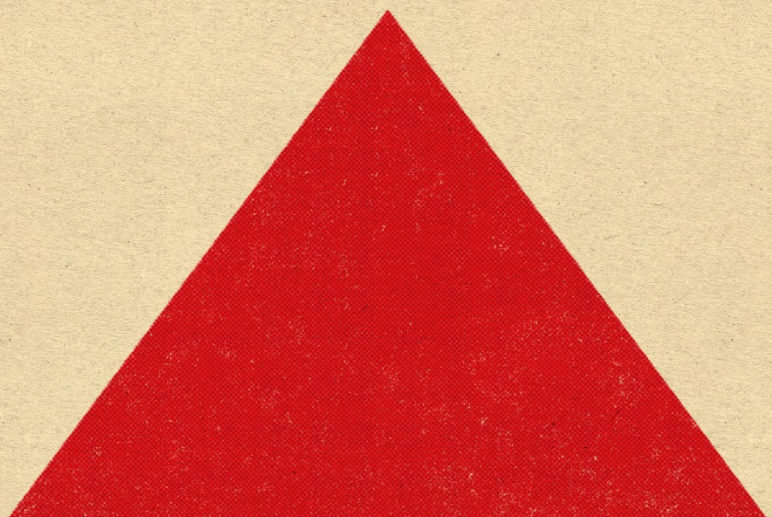
A *What Is Public International Law?*

International law, generally speaking, can be thought of as a set of standards that govern the relations between different states (Hannum, 2022). Those standards seek to reflect the relations generally accepted by all of humanity; with politically autonomous communities - states - being represented by their governments on the world stage (Allott, 1999, p. 37).

When speaking of international law, it is important to distinguish public from private international law. Private international law concerns itself with the application of legal principles between private entities, ordinarily relating to agreements entered into by the entities. Public international law, on the other hand, refers to the field of international law concerning the regulation of international society by determining the rules applicable between states (Allott, 1999, p. 37). This report is only concerned with public international law. As such, it is important to recognise where such law comes from.

B *Sources of International Law*

There is a general consensus that the sources of international law are those listed in art 38 of the *Statute of the International Court of Justice* (Wood, 2011, p. 213). The sources are (a) international conventions, (b) international custom, (c) the general principles of law, (d) judicial decisions and 'the teachings of the most highly qualified publicists of the various nations' (United Nations, 1945, art 38). The sources contained in (d) are recognised as 'subsidiary means' for ascertaining the law, though they do not actually create the law itself (United Nations, 1945, art 38; Greenwood, 2008, p. 4).

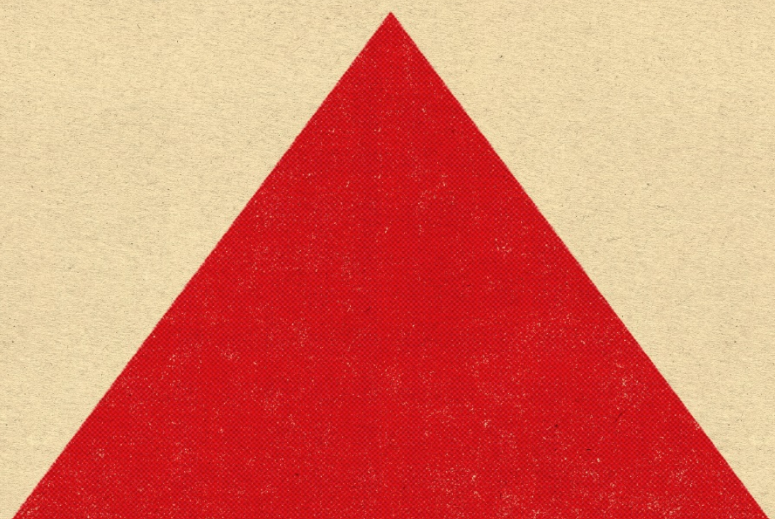


A treaty is defined in the *Vienna Convention on the Law of Treaties* as 'an international agreement concluded between States in written form and governed by international law...' (United Nations, 1969, art 2(1)(a)). A mere signature is insufficient to render a state party to a treaty; rather, ratification is required (United Nations, 2011, p. 1). Treaties bind the parties thereto by reason of the principle of *pacta sunt servanda*, which holds that agreements must be kept (Greenwood, 2008, p. 2). The principle is generally considered customary international law (*'CIL'*) (Greenwood, 2008, p. 2).

The general principles of law '[sic] recognized by civilized nations' (United Nations, 1945, art 38(c)) are those principles that are generally recognised within national jurisprudence; for example, the principle that a corporation bears a separate legal personality (Greenwood, 2008, p. 3).

The judicial decisions described in art 38(1)(d) are not said to be exclusively from national, nor international courts (United Nations, 1945, p. art 38(1)(d); Greenwood, 2008, p. 4). Nevertheless, the decisions of international courts are generally viewed as more authoritative (Greenwood, 2008, p. 4). Within the United Nations (*'UN'*), the General Assembly cannot legislate, though, under art 25 of the *United Nations Charter*, the decisions of the Security Council (*'UNSC'*) are legally binding on all states (Greenwood, 2008, pp. 4-5).

CIL, as described in art 38(b) arises from widespread state practices (United Nations, 1945, art 38(b)). A rule of *CIL* can only be recognised if it is supported by state practice and *opinio juris* - their assent and belief in the rule (Allott, 1999, pp. 38-39; Greenwood, 2008, pp. 1-2). As regards state practice, it is not necessary that a state never breach a certain rule, so long as its practices are generally consistent with it (International Court of Justice, 1986, p. 6). Though many principles of *CIL* bind states under treaties which have enshrined those rules, *CIL* remains relevant to those states not party to certain treaties (Allott, 1999, p. 42). The *Vienna Convention on the Law of Treaties*, for instance, is seen as codifying *CIL*, meaning that its provisions apply equally to non-party states (Greenwood, 2008, pp. 2-3). *CIL* binds all states, however there exists an exception for 'persistent objectors' who persistently object to a rule so as to deny its application (Greenwood, 2008, p. 2).



C *Enforcement and Administration of Public International Law*

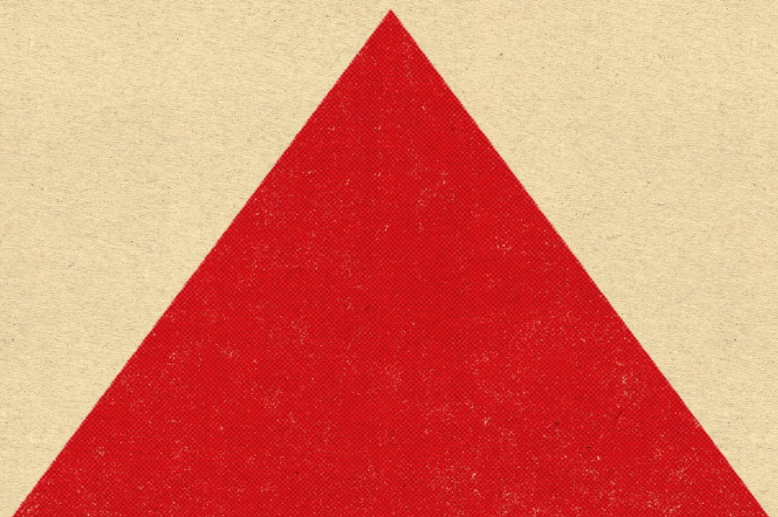
There is no enforcement agency for international law (Greenwood, 2008, p. 1). The main bodies responsible for serving justice in instances of international law breaches are international courts and tribunals, such as the International Court of Justice (*'ICJ'*), however their jurisdiction is dependent upon states' consent (United Nations, 2011, p. 2). It is thus ordinarily up to the states themselves to ensure compliance (Hannum, 2022). As states need to consent to being brought to a proceeding by the ICJ, the UN conferred upon the court the power to provide Advisory Opinions on serious matters, including the Israel-Palestine conflict, (Slomanson, 2011, p. 12) as discussed in the third section of this paper.

The primary manner of enforcing international law is through states imposing restrictions or using force upon other states (United Nations, 2011, p. 2). Under Chapter VII of the *United Nations Charter*, the UNSC can adopt such measures (United Nations, 2011, p. 2). Per art 39 of the Charter, the UNSC is to determine the existence of any threat to, inter alia, peace and shall decide what measures to take against it (United Nations, 1945, art 39). The measures may include sanctions, such as an interruption of economic relations (United Nations, 1945, art 41) or the use of force if the peaceful measures are inadequate (United Nations, 1945, art 42).

In the absence of a dedicated enforcement body, consideration ought to be given to the relationship between a state's domestic law and international law.

D *Does Public International Law Reign Supreme Over Domestic Law?*

When considering the relationship between international law and domestic law, it must be recognised at the outset that there is no definitive answer as to its nature. The application of international law clearly depends on state consent, whether it be expressed or implied (Bethlehem, 2016). Yet, once a state has consented to, say, a treaty, it cannot excuse its non-performance by reason of its internal law, which provides otherwise (Bethlehem, 2016). Article 27 of the *Vienna Convention on the Law of Treaties* enshrines this principle (Bethlehem, 2016; United Nations, 1969, art 27). It can therefore be said that international law is superior to a state's domestic law.



This view is also supported by international courts and tribunals, which have not, to date, accepted any opposing argument (Nollkaemper, 2010, p. 73). In the perspective of Austrian legal philosopher Hans Kelsen, international law confers sovereignty upon the state, which enables the state to exercise that sovereignty in the creation of its internal laws, though they must remain consistent with the obligations imposed by international law (Bethlehem, 2016). Indeed, the law of treaties relies on the supremacy of international law (Nollkaemper, 2010, p. 66). It can perhaps be said there are different hierarchies and it is not always clear cut whether international law would prevail (Nollkaemper, 2010, pp. 82-83). Especially so, because of international law's dependence on state consent. International law should therefore be seen as a law of coordination, as opposed to subordination (Nollkaemper, 2010, pp. 82-83).

With a general understanding of international law, it is appropriate that an overview of Israeli settlements in the West Bank be provided, so as to make sense of why they are problematic.

II ISRAELI SETTLEMENTS IN THE WEST BANK: AN OVERVIEW

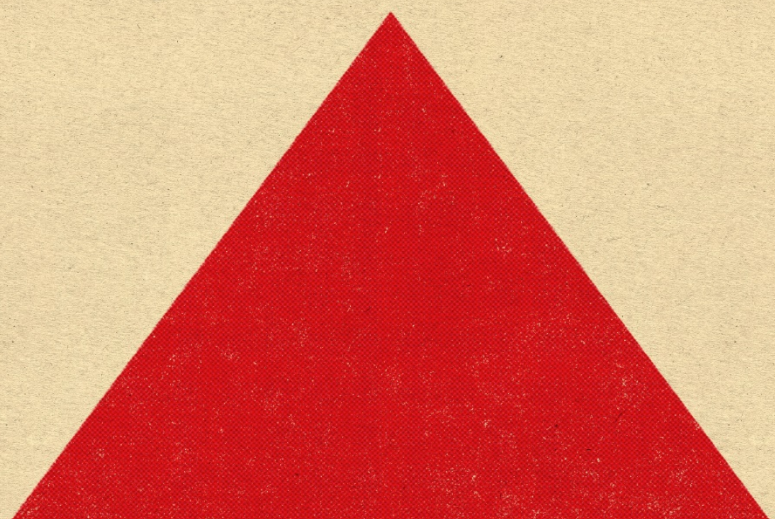
In the West Bank, there are approximately 2.78 million Palestinians and 620,000 Israeli settlers across 138 officially recognised settlements and 150 unofficial outposts, which require governmental approval (Waxman, 2020; Adem, 2019, p. 31; Al Jazeera, 2022; B'Tselem, 2019). Of the settlers, the majority live in the West Bank due to economic reasons, such as the Israeli government's incentivisation and investment in making their cost of living lower (Waxman, 2020; Poissonnier & David, 2020, p. 14). The settlements began following the Six-Day War of 1967, when Israeli civilians moved into areas that had been home to a Jewish minority, living amongst Palestinians, prior to the founding of Israel in 1948 (Waxman, 2020; Sela, 1994, p. 63).

The rationale behind the settlements can be best understood by making reference to the 'Master Plan for the Development of Settlements in Judea and Samaria 1979-1983' - commonly known as the Drobless Plan - which was prepared by the government-funded World Zionist Organization's Settlement Division in 1980 (Human Rights Watch, 2021, p. 68). The Plan recommended that settlements be erected so as to make it difficult for Palestinians to develop 'territorial and political continuity' (United Nations, 1981). In 2014, Yariv Levin, a member of the Knesset (Israel's unicameral parliament (The Knesset, n.d.)) stated that the correct policy is to attempt to hold the 'maximum amount of territory' whilst 'keeping the Arab population... to a minimum' (Human Rights Watch, 2021, p. 71). The entry of Gaza residents into the West Bank has been effectively prohibited, save for exceptional humanitarian cases - a position affirmed by Israeli army documents (Human Rights Watch, 2021, p. 75). Between 2009 and 2017, only six such applications were granted following petitions to the Supreme Court (Human Rights Watch, 2021, p. 76). On the other hand, between 2011 and 2014, fifty-eight applications were approved for West Bank residents to relocate to Gaza so long as they pledged not to return (Human Rights Watch, 2021, p. 76). The push by the Israeli government to vacate Palestinian-held land in the West Bank is apparent.

Israel's High Court of Justice has considered that the settlements are non-justiciable - that is, they cannot be legally examined by the courts (Sfard, 2021). The reasons provided by President Meir Shamgar in *Bargil v Government of Israel* justify this position by stating that the settlements are 'a question of policy' for the other branches of government (Israel High Court of Justice, 1993, p. 5). President Shamgar continues by holding that the issue of the settlements is 'blatantly political' (Israel High Court of Justice, 1993, p. 5). With the courts unwilling to touch them, the settlements stand with no apparent prospect of being eliminated.

Palestinians are generally forbidden from entering them, except as workers with permits (Human Rights Watch, 2021, p. 81). Settlements not only violate Palestinians' property rights, but they also affect natural resources found in the West Bank, as Israeli companies gather them (Sfard, 2021). Palestinians' freedom of movement is also impeded, as Israeli law forbids movement across areas allocated to settlements (Sfard, 2021). With the settlements and outposts, violence has also arrived at the Palestinians' doorsteps, whereby the settlers are often militant and nationalist, leading to violent confrontations (Sfard, 2021).

Since 2011, the government has continuously declared any land which is not privately owned as state land and then approved the construction of outposts retroactively (Sfard, 2021). On occasion, land privately owned by Palestinians, including farmland, has also been declared state land, thus permitting the construction of outposts (Human Rights Watch, 2021, p. 91; Sfard, 2021). This is an approach that encourages greater criminal behaviour and further harms the livelihoods of Palestinians affected by the outposts' existence (Human Rights Watch, 2021, p. 91). As of November 2021, reports indicate that the Israeli government plans to construct a further 3000 housing units in the West Bank, whilst retroactively legalising several outposts (United Nations, 2021). Non-governmental organisations, such as the Israel-based PeaceNow, have occasionally succeeded in petitioning the Israeli High Court of Justice to order the demolition of certain outposts (Sfard, 2021).



Though the outlook is bleak, the so-called 'demographic problem' may lead to a change in Israel's settlement activity. The demographic problem posits that by virtue of the differing fertility rates, whereby Israel has a population growth of 1.15%, while the West Bank has a growth of 2.99% and Gaza has 3.66% (Harms & Ferry, 2008, p. 195), some fifteen years from now, the Israeli Government may be placed into such a position where the Jewish population between the Jordan River and the Mediterranean Sea would be a minority (Harms & Ferry, 2008, p. 195). Such a disparity in the demographics would make it burdensome or undesirable for Israelis to establish further settlements (Harms & Ferry, 2008, p. 195).

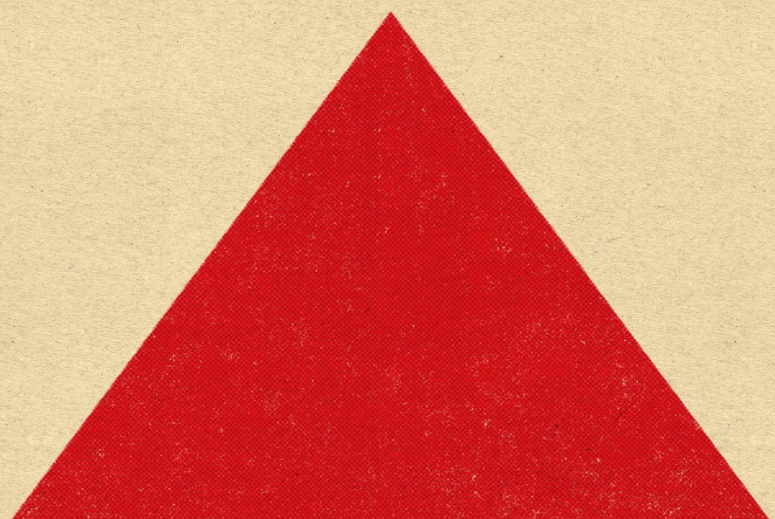
Israeli law has been described as being 'infected' in terms of its contribution in shaping settlement activity (Geva, 2016, p. 10). Nevertheless, if it can be 'infected', it can be 'pure' (Geva, 2016, p. 10) - separated from political interests and open to providing just circumstances, which would, arguably, recognise settlement-building as an illegal activity negatively impacting the livelihoods of those owning private land adjacent to, or at the place of, the settlements and outposts. Would a 'pure' law recognise the settlements as illegal? To answer this question, it is imperative that the applicable international law be examined.

III ISRAELI SETTLEMENTS IN THE WEST BANK: A BREACH OF INTERNATIONAL LAW?

A *Is There a Breach of International Law?*

When it comes to the West Bank settlements and international law, it is appropriate to begin by looking at *Ayub v Minister of Defence* (The *Beth El Case*) - a seminal Israeli case. In the *Beth El Case*, the Israeli High Court of Justice ruled on the validity of establishing settlements on privately-owned Palestinian land, which had been requisitioned by the Israeli military for military needs (International Committee of the Red Cross, 1979, p. 1). As regards the application of the Fourth Geneva Convention (*'FGC'*), the Court stated that the petitioners could not rely upon art 49(6) (International Committee of the Red Cross, 1979, pp. 6-7). Article 49(6) states 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies' (International Committee of the Red Cross, 1949, art 49(6)). The Court's reasoning was that since Israel, like Australia and the United Kingdom, is a dualistic state, any Convention's provisions must be enshrined in domestic law to be examinable in a domestic court (International Court of Justice, 2004, pp. 211-212). This is so, despite Israel having ratified the Convention (International Court of Justice, 2004, p. 173). The only exception to that rule is *CIL*, which need not have been codified internally (International Court of Justice, 2004, p. 173). Upon an examination of the *FGC*, the Court found that the principles contained therein do not form *CIL*, nor are they enshrined in Israeli domestic law (International Court of Justice, 2004, p. 173).

The precedent set by the *Beth El Case* was in direct conflict with the subsequent Advisory Opinion on the 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' (*'the Advisory Opinion'*) handed down by the ICJ in 2004 (International Court of Justice, 2004, p. 136).



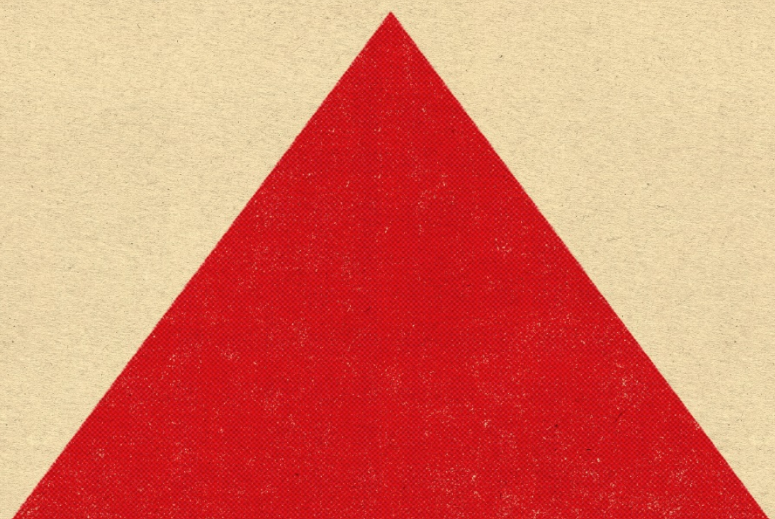
The Advisory Opinion was adopted by the UNGA by a vote of 150-6 on 20 July 2004 (Friedman, 2005, p. 715). The votes against came from Israel, the United States of America ('US'), Australia, the Marshall Islands, Micronesia and Palau (Friedman, 2005, p. 715).

The ICJ found that, since 1967, Israel had been the occupying power of the West Bank and acknowledged that the issue of the constructed wall was part of a greater issue (International Court of Justice, 2004, p. 160). The wall was approved in October of 2003 by the Israeli Cabinet (International Court of Justice, 2004, p. 176). It was to span 720km through the West Bank (International Court of Justice, 2004, p. 176). Though the Advisory Opinion concerned the construction of the wall itself, the settlements were seen as a connected issue (Friedman, 2005, pp. 718-719) The Court was of the view that the settlements are in breach of art 49(6) of the *FGC* (Friedman, 2005, pp. 718-719). It is the Israeli Government's view that the settlements cannot be in violation of art 49(6) of the *FGC* since there was no forcible transfer of settlers (Israel Ministry of Foreign Affairs , 2021). Nor, the government states, can they amount to a serious violation of art 49(6) so as to constitute a war crime as discussed in the following section (Israel Ministry of Foreign Affairs , 2021).

Article 49(6) was drafted in order to prevent the transfer of an occupying power's population into the occupied territory for political, racial or colonisation related reasons (Poissonnier & David, 2020, p. 2). Voluntary immigration by nationals of the occupying power is not prohibited, however, it is forbidden for the power to organise or provide indirect or direct support (Poissonnier & David, 2020, p. 3). This is contrary to the argument put forward by Israel that the article does not apply where the immigration is voluntary, regardless of state support (Sfard, 2021). Direct support can be the adoption of settlement-creation, construction or development plans (Poissonnier & David, 2020, pp. 7-8). Indirect, on the other hand, can include policies that facilitate the process of settling by confiscating land or settler incentivisation through mechanisms such as tax breaks or subsidies (Poissonnier & David, 2020, pp. 7-8). As the ICJ found, Israel had initiated a policy and practices which established settlements in Palestine in breach of art 49(6) (International Court of Justice, 2004, p. 183).

Contrary to the *Beth El Case*, the Court implicatively deemed the provisions of the *FGC* as forming rules of *CIL* (International Court of Justice, 2004, pp. 171-174). The Israeli government had further argued that the *FGC* does not apply to the settlements, since the occupied areas were seized from Jordan, which were never the rightful sovereigns (Sfard, 2021). Regardless of whether Jordan was in fact the sovereign, the Convention applied since the areas were seized following an armed conflict (International Court of Justice, 2004, p. 174; Sfard, 2021). Article 2 of the *FGC* states that it 'shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them' (International Committee of the Red Cross, 1949, art 2). It also applies 'even if the said occupation meets with no armed resistance' (International Committee of the Red Cross, 1949, art 2). As such, Israel could not avoid a finding that it had flagrantly breached international law through its settlement activity and construction of a wall through the West Bank.

When it came to consequences arising from the Advisory Opinion, the Court stated that Israel must comply with the international obligation breached by the construction of the wall (International Court of Justice, 2004, p. 197). It must respect the Palestinians' right to self-determination and the applicable international humanitarian law (International Court of Justice, 2004, p. 197). The Court held that the obligations breached by Israel were *erga omens* - rules of *CIL* to be observed by all - such that *all* states are under an obligation not to recognise the 'illegal situation' arising from the construction of the wall (International Court of Justice, 2004, p. 199). The Advisory Opinion, though not binding on the parties, was an authoritative interpretation of the international law's application to the settlements (Friedman, 2005, p. 723). Indeed, an interpretation that would assumably persuade Israel's domestic judicature to highlight the apparent breaches and ask that the government remedy them (Friedman, 2005, p. 723). Historically, Advisory Opinions have been the driving force behind sanctions imposed against states breaching international law (Heywood-Smith, 2014, p. 62).

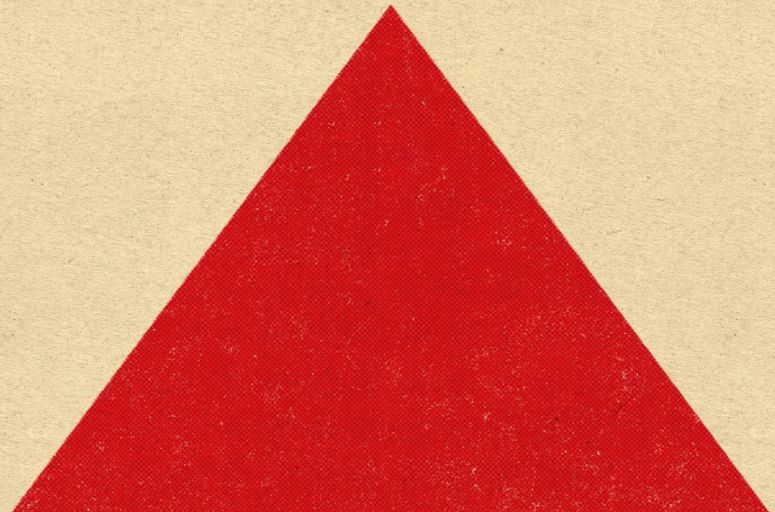


Some critique the Advisory Opinion on the basis that it offered no practical solution, however that is attributable to the US' UNSC veto, which prevents the authorisation of any sanctions against Israel (Heywood-Smith, 2014, p. 68).

There are two particularly significant UN Resolutions relating to Israeli settlements in the West Bank. UNSC Resolution S/RES/446 from 1979 affirmed that the *FGC* applies to the territories occupied by Israel and determined that the settlements 'have no legal validity' and obstruct the aim of achieving a 'just and lasting peace' (United Nations Security Council, 1979). More recently, in 2016, the UNSC Resolution S/RES/2334 reaffirmed Israel's violation of international law and obligation to abide by the Geneva Conventions and recalled the ICJ's Advisory Opinion (United Nations Security Council, 2016).

1 The International Criminal Court and the Settlements

Eleven years after the ICJ's Advisory Opinion, on the 16th of January 2015, the ICC's Office of the Prosecutor opened an examination into the 'situtation in Palestine', alleging that war crimes may have been committed in Occupied Palestine (Poissonnier & David, 2020, p. 1; International Criminal Court, 2021, p. 2). The relevant crimes referred to were 'the transfer, directly or indirectly, by the occupying Power of parts of its own civilian population into the territory it occupies' (United Nations, 1998,art 8(2)(b)(viii)). Crucially, under art 8(2) of the *Rome Statute of the International Criminal Court* (*'Rome Statute'*) a 'war crime' is a serious violation of certain provisions of the Geneva Conventions (United Nations, 1998, art 8(1)-(2)). The investigation was launched as a result of Palestine's declaration that it accepts the ICC's jurisdiction per art 12(3) of the *Rome Statute* (International Criminal Court, 2021, p. 2). Art 12(3) provides that '[A state which is not party to the Statute may] by declaration... accept the exercise of jurisdiction by the Court with respect to the crime in question' (United Nations, 1998, art 12(3)). It was Israel's contention that Palestine is not a 'state' for the purposes of the Statute (State of Israel Office of the Attorney General, 2019, p. 1). In 2012, the UNGA Resolution A/RES/67/19 granted Palestine 'non-member observer State' status, which allowed it to be considered a state under the *Rome Statute*, despite Israel's opposing views (United Nations General Assembly, 2012).



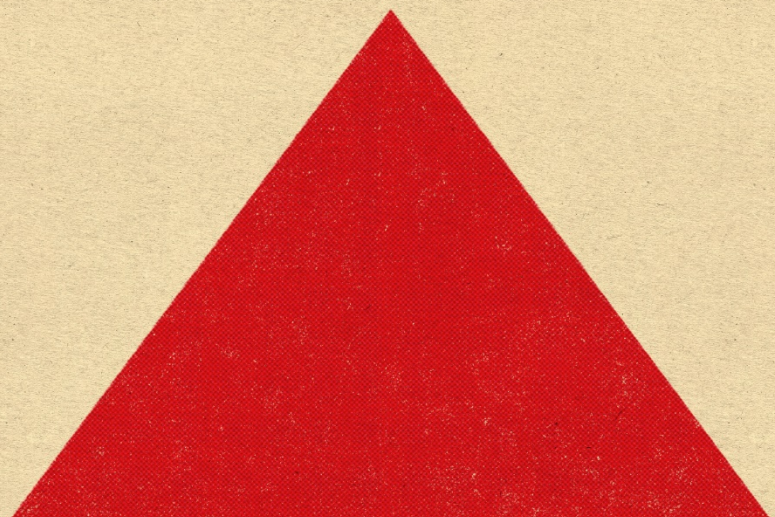
This is so, because, as the ICC elaborated, the *Rome Statute* adopts the 'all States' formula under which a UNGA determination that a certain entity is a state renders it a state under the *Rome Statute* (International Criminal Court, 2021, pp. 41-42). On 5 February 2021, the ICC decided that the Court can exercise its criminal jurisdiction with respect to the Israel-Palestine conflict, with it extending to Gaza and the West Bank (Office of the Prosecutor | International Criminal Court, 2021). The Court further stated that it was solely determining whether the Court's territorial jurisdiction extends to Palestine under the *Rome Statute*, rather than whether Palestine is a state under public international law (Office of the Prosecutor | International Criminal Court, 2021). The Israel Ministry of Foreign Affairs stated that it perceives the ICC as being politicised, particularly given the inclusion of settlement activity as a war crime (Israel Ministry of Foreign Affairs, 1998).

The ICC is focused on punishing those who orchestrated the given crimes, as opposed to those individuals who carried out the harm (Adem, 2019, p. 192) - the settlers in this instance. The Court plays an important role in consolidating verified facts (Adem, 2019, p. 192). Once its final findings are released, it can be expected that they would have implications for the international response to the settlements, particularly if it is found that Israel has committed war crimes.

B *The International Response*

The international response to the West Bank settlements has been mixed. While some states have condemned Israel for breaching international law, there has been little action that would push Israel towards halting its settlement activity, let alone remedying it.

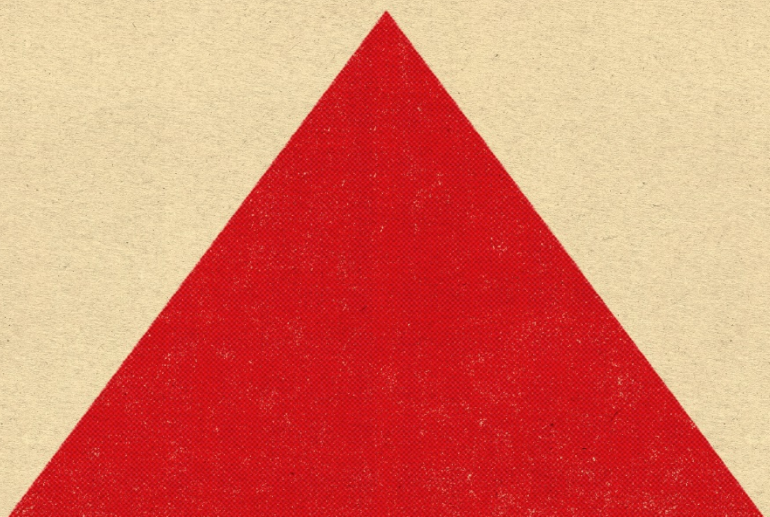
In November 2019, US Secretary of State Mike Pompeo reversed the US' previous stance on the West Bank settlements, stating that they do not violate international law (Waxman, 2020; BBC, 2019). Up until that point, the US stance was that the settlements are 'illegitimate', though not explicitly said to be 'illegal' since the Reagan Administration in 1981 (BBC, 2019). There had, nevertheless, been a State Department legal opinion from 1978 stating that the settlements are inconsistent with international law, which had not been reversed prior to Pompeo's statement (Jakes & Halbfinger, 2019).



More recently, in October 2021, US Spokesman Ned Price stated that the Biden Administration is 'deeply concerned' about the Israeli government's plan to allow the erection of further settlements (Tandon, 2021). The EU has maintained that the settlements are illegal and that they diminish prospects for lasting peace (Reuters, 2019). Successive Australian governments have supported Israel, which some argue is a result of Australia's position as a 'puppet' of the US (Heywood-Smith, 2014, pp. 106-108). In 2014, Foreign Minister Julie Bishop stated in an interview that she 'would like to see which international law has declared [Israeli settlements] illegal' (Browning, 2014). Australia's support of Israel on its settlements is rather illogical, since it likely gives the country a bad international image, whilst making no substantial political gains (Australian Institute of International Affairs, 2017).

1 Historical Comparisons

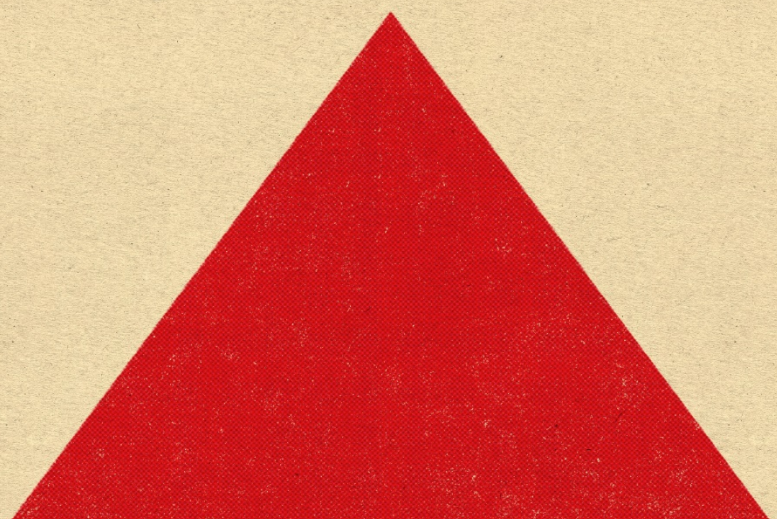
There are two relevant historical comparisons to be made in order to better understand the absence of a sufficient international response to Israel's breach of international law in relation to the West Bank settlements. The first of which is that of Kosovo and its fight for independence from Serbia - an independence which has been recognised by 117 states (Republic of Kosovo Ministry of Foreign Affairs and Diaspora, n.d.). Serbians see Kosovo as the 'cradle of their national identity' where Serbians constituted a majority of the population until the late 1800s when it became a majority ethnic Albanian territory (Grossman, 2011). In the 1990s, the Serbian government settled some Serbian war refugees in Kosovo, a move which was condemned by the US Government as seeking to alter the population's demographic (Grossman, 2011). Since 1999, a Serbian enclave in the North of Kosovo has repeatedly attempted to re-join Serbia, which has generated instability in the region (Grossman, 2011). Both Serbia and Israel send similar messages to the Western world - they argue that their occupations aim to prevent a repetition of the genocides which occurred during World War II (Grossman, 2011). Yet, the Israeli lobby in the US is far more powerful than the Serbian (Grossman, 2011). Indeed, there was far greater media attention given to the ethnic cleansings of Kosovar Albanians than to Israel's land grabbing and settlement building (Grossman, 2011).



Save for Israel, the US is alone in supporting Kosovo, whilst concurrently not supporting Palestine as a state (Grossman, 2011). International support for Israel and Kosovo is in large part attributable to the US' stances (Ukshini, n.d.). The Kosovo situation highlights hypocrisy by the US, one which likely impedes the calls of other states to eliminate Israeli settlements in the West Bank.

As stated, the imposition of sanctions is by far the most common mechanism of enforcing international law (Chipanga & Mude, 2015, p. 291). A case study of Zimbabwe, however, demonstrates that there is a need for unity in order for sanctions to be effective.

Between 2000 and 2003 Zimbabwe faced a number of sanctions from the European Union, the US, New Zealand and Australia due to its policy of land requisition from predominantly Caucasian farmers, which resulted in a number of human rights abuses and a disregard for property rights (Chipanga & Mude, 2015, p. 292; 298). The sanctions included, inter alia, asset freezes and travel bans (Chipanga & Mude, 2015, p. 292). The ruling party, the Zimbabwe African National Union – Patriotic Front (*'ZANU-PF'*), blamed the sanctions on the EU and US' resentment of their land reform initiative (Chipanga & Mude, 2015, p. 298). However, Zimbabwe argued the move was done in order to restore rightful ownership of the land (Chipanga & Mude, 2015, p. 298). The land in question had, in fact, been taken from the majority-black population in the 1890s (Chipanga & Mude, 2015, p. 292). Notwithstanding the sanctions, land requisition continued with no sign of the *ZANU-PF* stopping (Chipanga & Mude, 2015, p. 302). It was the continued support by the African Union and Southern African Development Community which rendered the sanctions imposed by other states ineffective (Chipanga & Mude, 2015, p. 303). The effectiveness of any sanctions is thus largely dependent on the power politics at play (Chipanga & Mude, 2015, p. 294). Based on this case, it would seem that sanctions are generally ineffective, but that is largely due to the absence of a uniform condemnation by all, or the vast majority of, states (Chipanga & Mude, 2015, p. 307). It is ultimately power, not law, that will determine the future of any conflict (Shehadeh & Al-Haq, 2019, p. 18).



Both of these cases demonstrate that it is not in any way novel to sanction settlement and land requisition activity. Though the gravity of each case will vary, there are common international law breaches across all cases, yet only some of them are effectively punished and remedied. It is a matter of the politics at play.

2 Final Observations on the International Response

It is always a matter of breaking down the structures which enabled the breaches of international law for there to be a lasting peace (Adem, 2019, p. 201). Currently, there is little action taken against the Israeli agencies continuously committing flagrant international law breaches. The UNSC can, under Chapter VII of the UN Charter, declare the Israel-Palestine conflict a threat to the international peace (Adem, 2019, p. 213) - an unlikely prospect given the US' permanent membership (United Nations, 1945, art 23(1)). Notwithstanding majority support for the recognition of Palestine as an independent state which should be free of Israeli settlements, in the absence of greater unity, it would appear that a lasting peace would be difficult to achieve. States such as Australia which either stand on the sidelines or lean towards questioning the illegality of the West Bank settlements should reconsider their stances and come to a grounded and just stance. However many Advisory Opinions and UNGA Resolutions be passed, absent of sufficient action, it is unlikely that Israel's settlement activity would be halted and remedied.

IV CONCLUSION

There is clearly a breach of international law - particularly the *FGC*, as affirmed by the ICJ and reaffirmed by the UN on multiple occasions. That breach may well be of such severity as to constitute a war crime - something which the ICC is yet to determine. Despite Israel being a dualist state, the *FGC* is *CIL*, such that it needs to be observed. Notwithstanding the ICJ's Advisory Opinion there is little action against Israel so as to encourage them to halt their settlement activity, which they currently incentivise. There is no body to enforce international law; it is up to the states themselves to impose sanctions or take other necessary measures. The main reason Israel cannot be compelled to act is due to the US' veto in the UNSC. The case study of Zimbabwe, in particular, shows that in order for sanctions to be effective, there needs to be unity in their implementation and enforcement.

This report highlights the significance of US foreign policy in shaping conflicts; not only in relation to the Israel-Palestine conflict, as the case studies of the Kosovo war and Zimbabwean land requisition demonstrate. It is ultimately power and political interests which drive the conflict and the absence of effective measures to compel Israel to act. As such, it is imperative that states such as the US and Australia, among others, reconsider their stance on the West Bank settlements in light of the evidence that Israel is committing significant breaches of international law. The only way to achieve lasting peace is by recognising the situation for what it is - an unjust and illegal policy of settlement building intended to impede political unity amongst the people of Palestine.

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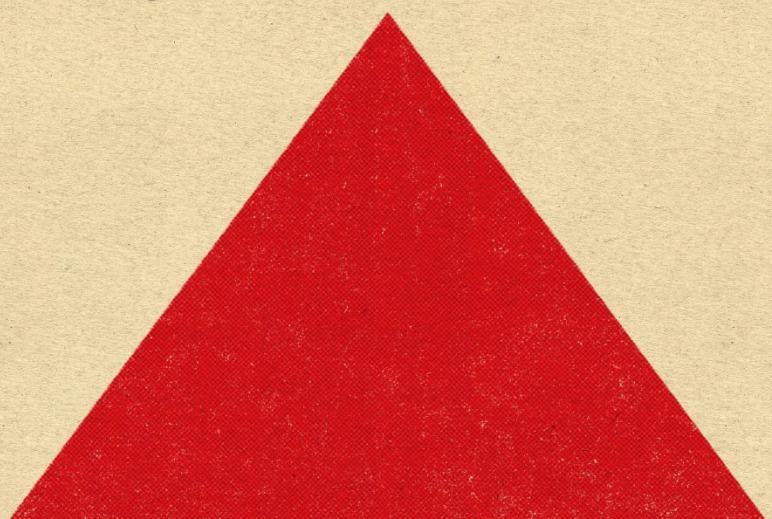

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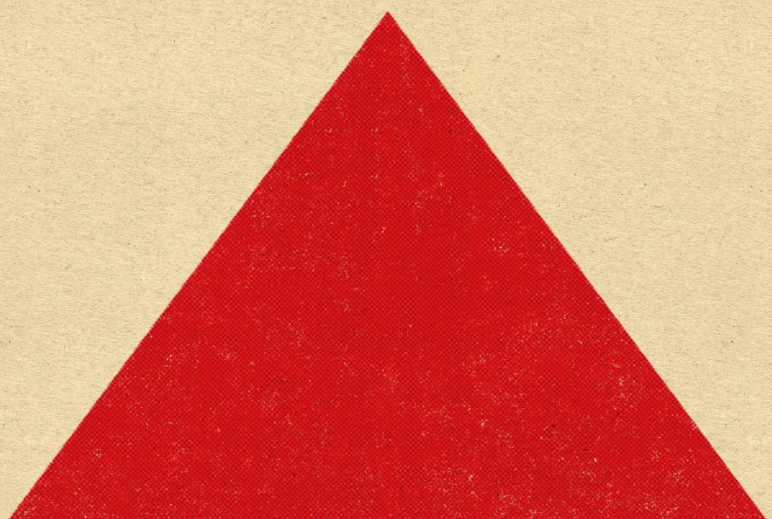

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