

RESPONSIBILITY OF EU MEMBER STATES EMANATING FROM THE FINDINGS OF THE ICJ'S ADVISORY OPINION OF 19 JULY 2024

Main findings and policy recommendations

This document provides a preliminary assessment of the obligations of European Union (EU) member States emanating from the findings of the International Court of Justice (ICJ) in its Advisory Opinion of 19 July 2024 on the [*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*](#) and sets out concrete policy recommendations that EU member States should follow to comply with these obligations.

EU member States have an obligation:

- Not to recognise as legal the situation arising from the unlawful presence of Israel in the occupied Palestinian territory (oPt).
- Not to recognise any changes in the physical character or demographic composition, institutional structure, or status of the oPt.
- To distinguish in their dealings with Israel between the territory of Israel and the oPt, including by means of:
 - Abstaining from treaty relations with Israel in all cases in which it purports to act on behalf of the oPt or a part thereof on matters concerning the oPt or a part of its territory.
 - Abstaining from entering into economic or trade dealings with Israel concerning the oPt or parts thereof which may entrench its unlawful presence in the oPt.
 - Abstaining, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the oPt.
 - Taking steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the oPt.
- Not to render aid or assistance in maintaining the situation created by Israel's unlawful presence in the oPt.
- While respecting the United Nations (UN) Charter and international law, to ensure that any impediment resulting from the illegal presence of Israel in the oPt to the exercise of the Palestinian people's right to self-determination is brought to an end.

- To cooperate with the UN to put the modalities into effect to end Israel's unlawful presence in the oPt and fully realise the Palestinian people's right to self-determination.
- To ensure Israel's compliance with the provisions of international humanitarian law (IHL) enshrined in the Fourth Geneva Convention (GC IV).

Policy recommendations for EU member States to comply with these obligations:

- As a preliminary consideration, EU member States should:
 - Fully align their public positioning with the findings of the ICJ in the Advisory Opinion, including on the illegality of Israel's continued presence in the oPt and of its policies and practices implemented in the oPt.
 - Carry out a [detailed study](#) of the Advisory Opinion to ascertain if their relations with Israel are compatible with their obligations under international law.
 - Agree to a review, and potential suspension, of the [EU-Israel Association Agreement](#), in particular as regards compliance with Article 2 on respect for human rights and democratic principles, based on [similar action](#) taken in other contexts.
 - Carry out a review of relations with Israel for compliance with [Article 3\(5\) of the Treaty on European Union](#) (TEU) on the protection of human rights as well as the strict observance and development of international law, including respect for the principles of the United Nations Charter.
- Regarding the duties of non-recognition and distinction, EU member States should:
 - Recognise the State of Palestine as an affirmative recognition of the Palestinian people's right to self-determination.
 - Revisit existing agreements with Israel as to their scope of application and refrain from applying provisions of agreements in force or entering into new agreements that include the oPt in their scope of application. Ideally, agreements should contain a [clause](#) specifically [excluding](#) the West Bank, including East Jerusalem, and the Gaza Strip from the scope of application so as to remove any doubt or ambiguity.
 - Ban the importation of goods produced in settlements, the exportation of goods to settlements, as well as the provision of services to and investment in settlements in the oPt, based on the precedent of [Council Regulation \(EU\) 692/2014 of 23 June 2014](#) and [Council Regulation \(EU\) 1351/2014 of 18 December 2014](#), amongst others. Such a measure could likely be justified on the basis of [Article 27 of the Association Agreement](#), which allows parties to impose import and export restrictions on the grounds of public morality, public policy, or public security. By analogy, the Court of

Justice of the European Union (CJEU) has held in respect of intra-EU restrictions that lawful public policy derogations pursuant to [Article 36 of the Treaty on the Functioning of the European Union](#) (TFEU) may include the protection of fundamental rights and human dignity (see, e.g., [Eugen Schmidberger, Internationale Transporte und Planzüge](#) and [Omega Spielhallen- und Automatenaufstellungs-GmbH](#)).

- Set up a mechanism or procedure – beyond existing labelling requirements – to verify that only goods stemming from Israel are labelled as such and imported, with the requisite burden of proof being on the producer and exporter, not the importing State.
- Ban dealings with Israeli companies that engage in activities listed as high-risk pursuant to the [UN database on enterprises operating in the settlements](#), for example in the fields of defence, infrastructure, construction, and exploitation of natural resources.
- Refrain from purchasing directly from such companies, for example the Heron drone, which has [reportedly](#) been used in Gaza and which is produced by Israel Aerospace Industries (IAI), a majority State-owned Israeli company.
- [Consider mandating a suspension of joint ventures](#) with such companies, for example the [Eurospike joint venture](#) between Rheinmetall, Diehl Defence, and Rafael Advanced Defense Systems (Rafael), the latter being a majority State-owned Israeli company. Eurospike manufactures the Spike missile, which has [reportedly](#) been used in Gaza as well.
- Given that many Israeli [companies](#) operate also in the settlements, establish [explicit guidelines](#) as to which business relations with these companies assist in maintaining the illegal situation and set up an effective monitoring mechanism.
- Refrain from moving their diplomatic missions in Israel to West Jerusalem or to the West Bank, including East Jerusalem, and refrain from offering consular services to Israelis in the oPt.
- Refrain from taking any actions that would undermine the rights and protections of the Palestinian population in the oPt in line with the exception articulated in the [Namibia Advisory Opinion](#).
- Regarding the duty of non-assistance, EU member States should:
 - Suspend the transfer of arms and military equipment as well as other forms of assistance to Israel to the extent that they may be used to maintain the occupation. In case of doubt as to whether military and other forms of assistance will be used to

maintain the occupation, the presumption should be that they will be so used, and no such assistance should be provided.

- Set up an impartial, independent, and comprehensive post-delivery monitoring mechanism – beyond unilateral assurances that have been given or may be given in the future – to verify that military, economic, or other forms of assistance are not used to maintain the occupation.
- Regarding the duty to cooperate by lawful means, EU member States should:
 - Vote in favour of resolutions that concern follow-up action to implement the findings of the Court and faithfully carry out the decisions of UN bodies, especially the Security Council and the General Assembly.
 - Condemn violations of international law in public fora, such as the UN General Assembly and the UN Human Rights Council.
 - Set up international mechanisms, including a register of damage for the oPt (similar to the register of damage set up by the Council of Europe concerning [Ukraine](#)) and a follow-up mechanism to investigate the Court's finding of a violation of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), in accordance with [General Assembly resolution ES-10/24 of 18 September 2024](#).
 - Consider taking measures of retorsion (for example, cutting diplomatic ties with Israel or suspending voluntary assistance).
 - Consider adopting countermeasures (for example, imposing a trade embargo on Israel, suspending a bilateral treaty with Israel in violation of its provisions, or [freezing](#) assets belonging to the State).
 - Consider imposing 'Magnitsky-style' [targeted sanctions](#) and travel bans against high-level Israeli officials responsible for maintaining the occupation and directing or encouraging violations of international law.
 - Consider invoking Israel's international responsibility for violations of the erga omnes obligations identified by the Court, namely the Palestinian people's right to self-determination, the prohibition of the acquisition of territory by force, and certain of Israel's obligations under IHL and international human rights law (IHRL), for example before the ICJ. This is based on several precedents of EU member States instituting proceedings or intervening in cases concerning [Ukraine](#), [Myanmar](#), and [Syria](#).

- Regarding the duty to ensure respect for IHL, EU member States should:
 - Suspend the transfer of arms and other military equipment to Israel in case of a credible risk that they may be used to commit violations of IHL. This also emanates from States' obligations under the [Arms Trade Treaty](#) (ATT). In case of doubt as to whether arms and other military equipment will be used to commit violations of IHL, the presumption should be that they will be so used, and no such transfers should be made.
 - Set up an impartial, independent, and comprehensive post-delivery monitoring mechanism – beyond unilateral assurances that have been given or may be given in the future – to verify that arms and other military equipment exported to Israel are not used to commit violations of IHL.
 - Cooperate with the ongoing investigation of the International Criminal Court (ICC) into the [Situation in the State of Palestine](#), including by means of handing over suspects against whom arrest warrants are pending.
 - Condemn attacks on the ICC as an institution or attempts to [interfere](#) with its work.
 - Take steps to ensure that impartial humanitarian organisations present in the oPt can operate effectively, including by means of exerting pressure on Israel to reconsider the [denials](#) of work permits for Palestinian staff and visas for international staff.
 - Participate in the conference of the High Contracting Parties to the Geneva Conventions to be convened by [Switzerland](#) to discuss how to enforce the provisions of GC IV in the oPt.

List of further resources for consideration:

- [Yussef Al-Tamimi, Implications of the ICJ Advisory Opinion for the EU-Israel Association Agreement](#) (30 July 2024)
- [Amnesty International's calls on the European Union and member States in view of the International Court of Justice Advisory Opinion on the occupied Palestinian territory](#) (27 August 2024)
- [Recommendations by UN Special Procedures mandate holders](#) (18 September 2024)
- [Yussef Al Tamimi and Andreas Piperides, Third State obligations in the ICJ Advisory Opinion: Implications for the United Kingdom and Cyprus](#) (14 October 2024)
- [Matthias Goldmann, Non-Recognition and Non-Assistance: Consequences of the Palestine Advisory Opinion for Third States](#) (15 October 2024)

- [Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel](#) (18 October 2024)
- [Claudio Francavilla, International Court Rulings Require EU Action on Israel and Palestine: Sanctions, Trade Measures, Support for ICC Crucial to Comply with International Law](#) (24 October 2024)
- [Publications at Verfassungsblog](#)