

## What We Can Expect From Hillary Clinton on Israel/Palestine

Hillary Clinton has opposed UN measures to condemn Israeli settlement construction in the West Bank.



Secretary of State Hillary Rodham Clinton in a Press Conference in Jerusalem, Israel, on July 16, 2012. (Photo: [US Embassy Tel Aviv](http://US Embassy Tel Aviv))

Supporters of the international legal framework – which has, with mixed success, governed international affairs since the end of World War II – have long expressed concerns over the prospect of former senator and secretary of state Hillary Clinton becoming president. Her support for the US invasion of Iraq (a flagrant violation of the UN Charter), as well as her hostility toward the International Criminal Court, her support for international recognition of Morocco’s illegal annexation of occupied Western Sahara, and her attacks against the United Nations and a number of its key agencies raise concerns that her election would bring a return to the Bush administration’s neoconservative rejection of longstanding international legal principles.

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One of the big challenges regarding the application of international law is the Israeli-Palestinian conflict, which involves a foreign belligerent occupation, illegal colonization, war crimes committed by both the occupying power and at least one arm of the resistance, and scores of UN Security Council resolutions. As senator and subsequently, Hillary

Clinton has developed a reputation as one of the most right-wing Democrats on Israel/Palestine, repeatedly siding with Likud-led governments against Israeli progressives and moderates, and taking a dismissive attitude regarding the application of international law or any role for the United Nations.

As a senator, Clinton defended Israel's colonization efforts in the occupied West Bank and was highly critical of the United Nations for its efforts to uphold international humanitarian law, which forbids transferring civilian populations onto territories under foreign belligerent occupation. Clinton criticized the UN's enforcement of four UN Security Council resolutions calling on Israel to end the practice, and even took the time for a 2005 visit to a major Israeli settlement in the occupied West Bank in a show of support. She moderated that stance somewhat as secretary of state in expressing concerns over how the right-wing Israeli government's settlement policies harmed the overall climate of the peace process, but she has refused to acknowledge the illegality of the settlements or demand that Israel abide by international demands to stop building additional settlements. Subsequently, she has argued that the Obama administration pushed too hard in the early years of the administration to get Israel to suspend settlement construction.

In 2011, Clinton successfully pushed for a [US veto of a UN Security Council resolution](#) reiterating the illegality of the settlement drive and calling for a settlement freeze. The UN Security Council has traditionally been the vehicle for enforcing international law in territories under foreign belligerent occupation, but [Clinton noted](#), "We have consistently over many years said that the United Nations Security Council – and resolutions that would come before the Security Council – is not the right vehicle to advance the goal," despite the US failure to stop this colonization drive on its own.

Moreover, when the Netanyahu government reneged on an earlier promise of a temporary and limited freeze and announced massive subsidies for the construction of new settlements on the eve of her 2011 visit to Israel, Clinton spoke only of the need for peace talks to resume. She even equated Palestinians' legal right to have their state recognized by the United Nations with Israel's illegal settlements policy as undermining the peace process.

[Clinton has insisted](#), "We will not deal with nor in any way fund a Palestinian government that includes Hamas unless and until Hamas has renounced violence, recognized Israel and agreed to follow the previous obligations of the Palestinian Authority." However, Clinton has called for increasing US military aid and diplomatic support for Israel's right-wing government, which includes ministers from far right-wing parties who support violent settler militias that have repeatedly attacked Palestinian civilians, oppose recognition of a Palestinian state, and reject the Oslo agreement and subsequent agreements by the Israeli government.

More recently, Clinton has been making a series of excuses as to why Israel cannot make peace, despite the Showing Authority's acquiescence to virtually all the demands made by the Obama administration. For example, [The Washington Post](#)

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[noted](#) how she "appeared to blame the collapse of direct Israel-Palestinian talks on the wave of Mideast revolutions and unrest during the 2011 Arab Spring, although talks had broken off the previous year." Clinton has also said that Israelis cannot be expected to make peace until they "know what happens in Syria and whether Jordan will remain stable," which most observers recognize will take a very long time, thereby enabling Prime Minister Benjamin Netanyahu to further colonize the West Bank to the point where the establishment of a viable Palestinian state is impossible. What kind of peace settlement she envisions has not been made clear, but she did endorse former Israeli Prime Minister Ariel Sharon's 2004 ["Convergence Plan,"](#) which would have allowed Israel to annex large areas of Palestinian territory conquered by Israeli forces in the

1967 war, despite the longstanding principle in international law against any country expanding its territory by force and the fact that it would divide any future Palestinian state into a series of small, noncontiguous cantons surrounded by Israel.

She has vigorously defended Israel's wars on Gaza. As secretary of state, she took the lead in attempting to block any action by the United Nations in response to a [2009 report](#) by a UN Human Rights Council fact-finding mission – headed by the distinguished South African jurist Richard Goldstone (a Zionist Jew) – which documented war crimes by both Israel and Hamas. She has implied that the report [denied Israel's right to self-defense](#), when it in fact explicitly recognized Israel's right to do so. Since the report's only objections to Israeli conduct were in regard to attacks on civilian targets, not its military actions against extremist militias lobbing rockets into Israel, it appears that either she was deliberately misrepresenting the report, never bothered to read it before attacking it or believes killing civilians can constitute legitimate self-defense.

More recently, in response to concerns raised by Israeli and international human rights groups about the nearly 1,500 civilians killed by Israeli forces during the 2014 war on the Gaza Strip, [she insisted](#), “I think Israel did what it had to do to respond to Hamas rockets. Israel has a right to defend itself.”

When Israeli forces attacked a UN school housing refugees in the Gaza Strip in July 2014, killing dozens of civilians, the Obama administration issued a statement saying it was “appalled” by the “disgraceful” shelling. By contrast, Hillary Clinton – when pressed about it during an [interview with The Atlantic](#) – refused to criticize the massacre, saying, “[I]t's impossible to know what happens in the fog of war.” Though [investigators found no evidence](#) of Hamas equipment or military activity anywhere near the school, Clinton falsely alleged that they were firing rockets from an annex to the school. In any case, she argued, when Palestinian civilians die from Israeli attacks, “the ultimate responsibility has to rest on Hamas and the decisions it made.”

Though President Obama has provided more aid to Israel than any previous US administration and taken a number of other unprecedented steps in support of Israel, Clinton has criticized him for being too critical of Israel's right-wing government. In response to the chilly relationship between Obama and Netanyahu, [she has promised](#) to invite the right-wing Israeli prime minister to the White House within a month of coming to office. She has rejected taking a position of “tough love” advocated by Israeli moderates and liberals and says that any disagreements with Israeli policies should be only done “in private and behind, you know, closed doors” on the grounds that otherwise “it opens the door to everybody else to delegitimize Israel.” In Clinton's view, then, supporting Israeli moderates by publicly opposing efforts to undermine the peace process and ongoing violations of international humanitarian law by the country's right-wing government is the same as “delegitimizing” the nation itself. And since, under her leadership, the State Department formally listed efforts to “delegitimize” Israel as part of its [definition of anti-Semitism](#), it may give some indication as to how her administration would characterize those who do publicly raise concerns regarding certain Israeli policies.

[Clinton further argues](#) that it is illegitimate to use sanctions or other pressure to “dictate” that an allied occupying power like Israel should end its illegal colonization of occupied territory and withdraw to within its internationally recognized boundaries in accordance with UN resolutions and international law. Though there have been a number of successful efforts since the founding of the United Nations in 1945 in which the international community chose to “dictate” that occupying powers withdraw, she rejects any kind of “outside or unilateral actions” against such flagrant violations of international legal norms if the perpetrator is deemed to be a strategic ally of the United States. Though a series of UN Security Council resolutions, rulings by the World Court and longstanding international legal principles recognize the illegitimacy of any country expanding its borders by force and moving settlers into occupied territory, she insists that whether and to what extent Israel withdraws its occupation forces or its settlements should be solely based upon negotiations between Israel and

the Palestinian Authority, ignoring the gross asymmetry in power between the two parties. Disregarding how such unilateral Israeli actions such as the expansion of illegal settlements is imposing Israeli control over the occupied West Bank, Clinton has insisted that neither restrictions on Israel's colonization drive nor resolution of the conflict overall should be "imposed from the outside," such as through the United States or the United Nations. She is therefore rejecting initiatives like the parameters for a viable two-state solution outlined by her husband in December 2000 in what became known as the Clinton Plan, which the Palestinian Authority belatedly endorsed but successive Israeli governments have rejected.

Perhaps the single most revealing episode showing Clinton's rejection of international law as a basis for Israeli-Palestinian peace occurred in reaction to a landmark 2004 advisory opinion by the International Court of Justice.

### **The World Court**

The International Court of Justice (ICJ), or "World Court," has adjudicated disputes between nations since 1899. Since the founding of the United Nations in 1945, it has functioned essentially as the judicial arm of the UN system. Designed to better enable nations to settle their disputes nonviolently based upon the rule of law, the ICJ has been used by Washington on a number of occasions over the years to advance US foreign policy interests ranging from fishing disputes with Canada to the seizure of American hostages by Iran.

The [ICJ ruled](#) by a 14-1 vote (with only the US judge dissenting, largely on a technicality) that Israel, like every country, is obliged to abide by provisions of the Fourth Geneva Convention on the Laws of War, and that the international community – as in any other case in which ongoing violations are taking place – is obliged to ensure that international humanitarian law is enforced. At issue was the Israeli government's ongoing construction of a separation barrier deep inside the occupied West Bank, which the World Court recognized – as does the broad consensus of international legal scholarship – as a violation of international humanitarian law.

The ICJ ruled that Israel, like any country, had the right to build the barrier along its internationally recognized border for self-defense, but did not have the right to build it inside occupied territory as a means of effectively annexing Palestinian land. In an unprecedented congressional action, Hillary Clinton, then a US senator, immediately introduced a [resolution](#) to put the Senate on record "supporting the construction by Israel of a security fence" and "condemning the decision of the International Court of Justice on the legality of the security fence." In an effort to render the UN impotent in its enforcement of international law, her resolution (which even the then-Republican-controlled Senate failed to pass) also attempted to put the Senate on record "urging no further action by the United Nations to delay or prevent the construction of the security fence."

Clinton's resolution claimed that Israel had built a similar barrier "in Gaza [that] has proved effective at reducing the number of terrorist attacks." Also, according to the resolution, "The United States, Korea, and India have constructed security fences to separate such countries from territories or other countries for the security of their citizens." Such comparisons, however, fail to note – as did the World Court – that these other barriers were placed along internationally recognized borders and were therefore not the subject of legal challenge. Clinton's resolution also claimed that "the International Court of Justice is politicized and critical of Israel," ignoring that the World Court has actually been quite consistent in its rulings on such matters: In the only other two advisory opinions issued by the ICJ involving occupied territories – South African-occupied Namibia in 1971 and Moroccan-occupied Western Sahara in 1975 – the court also decided against the occupying powers.

In an apparent effort to misrepresent and discredit the United Nations, Clinton's resolution contended that the request by the UN General Assembly for a legal opinion by the ICJ referred to "the security fence being

constructed by Israel to prevent Palestinian terrorists from entering Israel.” In reality, the UN request said nothing regarding security measures preventing terrorists from entering Israel. Instead, the document refers only to the legal consequences arising from “the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory.” Moreover, the UN statement referred to the UN secretary general’s recently released report on the occupation, which reiterated the longstanding international consensus that occupied Palestinian territory refers only to the parts of Palestine seized by Israel in the 1967 war, not to any part of Israel itself.

The World Court decision explicitly upheld Israel’s right to build a separation barrier along its internationally recognized border, but noted that Israel could not legally build it deep inside territory recognized as under foreign belligerent occupation. Therefore, [Clinton’s claim](#) at a right-wing rally at the United Nations protesting the decision that “It makes no sense for the United Nations to vehemently oppose a fence which is a nonviolent response to terrorism rather than opposing terrorism itself” was false in that both the UN and the World Court were only objecting to the barrier being built beyond Israel’s borders. Indeed, in her resolution and elsewhere, she appeared to claim that opposition to the plan of illegally building a barrier in a serpentine fashion deep inside occupied territory as part of an effort to effectively annex illegal Israeli settlements and other large swathes of the West Bank into Israel was denying Israel’s its right to self-defense and therefore was proof of an “anti-Israel” bias.

The lengthy and nuanced ruling was quite consistent with longstanding international legal standards regarding the responsibility of the occupying power in territories under foreign belligerent occupation. Indeed, in the only other two advisory opinions issued by the ICJ involving occupied territories – South African-occupied Namibia in 1971 and Moroccan-occupied Western Sahara in 1975 – the court also decided against the occupying powers. In her effort to discredit the World Court, however, she nevertheless insisted that “the International Court of Justice is politicized and critical of Israel” and Israel should therefore ignore the ruling.

### **Human Rights Impact**

Amnesty International, Human Rights Watch, the International Red Cross and a number of Israeli human rights groups have documented the devastating impact of the separation barrier on the economic and social lives of Palestinians, including blocking access to schools, health care and employment. These findings were confirmed in the ICJ ruling. However, in an effort to discredit these reputable human rights groups along with the World Court, Clinton’s resolution contested their assertions that the route chosen for the wall has had such a negative impact, declaring that “the Government of Israel takes into account the need to minimize the confiscation of Palestinian land and the imposition of hardship on the Palestinian people.” Not long afterward, Senator Clinton took part in a photo opportunity at the illegal Israeli settlement of Gilo, in which she [claimed](#), while gazing over the massive wall bisecting what used to be a Palestinian vineyard, “This is not against the Palestinian people. This is against the terrorists.”

Ironically, despite these claims – along with her insistence that Israel’s barrier is a “proportional response to the campaign of terrorism by Palestinian militants” – the [Israeli Supreme Court](#) on several occasions subsequently has ordered the government to reroute sections of the wall bisecting some Palestinian towns, because the “relationship between the injury to the local inhabitants and the security benefit from the contraction of the Separation Fence along the route, as determined by the military officer, is not proportionate.”

The Fourth Geneva Convention forbids countries from transferring civilians onto territory seized by military force. No less than four UN Security Council resolutions, along with the World Court decision, have confirmed its applicability to the West Bank settlements. Senator Clinton, however, has long insisted that the Israeli settlements, the route of the wall and other matters of international law should not be matters for the United

Nations or the World Court to contend with, but should be left solely to negotiations between representatives of the Palestinians and the right-wing government of their Israeli occupiers, which has steadfastly refused to end its occupation or its colonization of the West Bank.

Clinton claims that the Palestinian decision to take the issue of the separation barrier to the World Court violates the 1993 Oslo agreement that none of the parties take any unilateral initiatives that would prejudice the outcome of the peace process. But she has been loath to criticize Israel for how its governments have prejudiced the outcome of the peace process through their ongoing construction of illegal settlements in the occupied territories and other unilateral initiatives.

Indeed, she must have recognized that the wording of her resolution and her related statements effectively constitute the legitimization of the expansion of a country's territory by force, a clear violation of the UN Charter. As a graduate of one of the top US law schools, Clinton surely recognized the significance of her insistence that the World Court somehow no longer had jurisdiction on matters related to international humanitarian law in territories legally recognized as under foreign belligerent occupation.

### **Broader Implications**

The World Court made a definitive ruling that member states of binding treaties, conventions and charters such as the Fourth Geneva Convention and the UN Charter are obliged to ensure that other member states live up to their legal obligations under those agreements. Specifically, the court insisted that every country that is party to the Fourth Geneva Convention must “ensure compliance by Israel with international humanitarian law as embodied in that Convention.”

This may be what disturbed Clinton so much. Any such strict and uniform application of international law would interfere with US policy objectives in the region, which rely heavily on the use of military force, including conquest and occupation. This is why any attempt to enforce international humanitarian law must be met by slander, condemnation and other attacks against the credibility of the international organizations daring to suggest that the United States and its allies are not somehow exempt from such legal obligations.

In its ruling, the ICJ also determined that “the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall.” As a result, Clinton's resolution specifically urges the administration “to vote against any further UN action that could delay or prevent the construction of the security fence and to engage in a diplomatic campaign to persuade other countries to do the same,” effectively saying that despite the nearly unanimous World Court decision to the contrary, parties to international agreements are not bound to abide by or enforce them.

Given that the World Court enjoined the United States and other signatories to “ensure compliance by Israel with international humanitarian law,” any refusal by the US government, which – as Israel's primary military, economic and diplomatic supporter – is in the best position to “ensure compliance,” places the United States in violation of the World Court, as is Israel. However, just as Hillary Clinton chose to ignore the UN Charter by voting to invade Iraq, she also believes the United States should be able to ignore the world's highest court.

The United Nations and the Fourth Geneva Convention came into being in part as a result of the efforts of Democratic presidents like Franklin D. Roosevelt and Harry S. Truman. That the Democratic Party may nominate someone who is willing to reject such basic tenets of international law is indicative of how far Democrats have gone in abandoning traditional liberal values.