

Making Apartheid Irreversible: Israel's Death Penalty Statutes and Third State Obligations

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When the Israeli Knesset voted to approve the [Death Penalty for Terrorists Bill on 30 March 2026](#), it made *irreversible* through state-administered killing what the International Court of Justice (ICJ) had found unlawful. In its [Advisory Opinion of 19 July 2024](#) (AO) on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory (OPT), including East Jerusalem*, the ICJ identified military courts operating on ethnic lines to maintain racial separation. The [Death Penalty for Terrorists Law \(unofficial translation\)](#) now makes that racially segregated court system administer execution.

Irreversibility matters because it eliminates the argument that third states supporting Israel can separate legitimate security facilitation from unlawful practices. Once you sustain an administration that kills through racially segregated courts, you cannot claim you only support the lawful parts.

This is where the state responsibility doctrine becomes critical. Because the ICJ characterised the right to self-determination as a peremptory norm ([paragraph 233 of the AO](#)), Israel's continued presence constitutes a serious breach engaging the customary duties codified in Article 41(2) of the [Articles on State Responsibility for Internationally Wrongful Acts](#) (ARSIWA): no state may recognise the resulting situation as lawful, nor render aid or assistance in maintaining it. The European Union's (EU) [Foreign Affairs Council's \(Council\) 21 April 2026 decision](#) not to suspend the [EU-Israel Association Agreement](#) is where these questions become concrete. This decision followed the EU's External Action Service [finding Israel in breach of the Agreement's human rights clause](#) (Article 2) and the enactment of the March statute.

How State Killing Makes the Apparatus Irreversible

To understand why irreversibility changes the legal calculus, it is necessary to examine what the ICJ found and how the statutes operationalise it. At [paragraph 229 of its AO](#), the Court identified a structure: Israel's laws "impose and serve to maintain a near-complete separation" between settlers and Palestinians, violating the prohibition on apartheid in Article 3 of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD).

The [Death Penalty for Terrorists Law](#) makes that bifurcation lethal through differential jurisdiction. Article 3 establishes mandatory death by military court for Palestinians who cause death in acts of terrorism, excluding Israeli citizens or residents. Israeli citizens face civilian courts where Article 6 imposes death only for killings to negate the existence of the State of Israel. [Human Rights Watch](#) and [Amnesty International](#) documented that Palestinian residents face mandatory death in military courts, whilst Israeli citizens face

death only for a narrowly defined intent that functionally excludes nationalist killings of Palestinians.

The military courts administering death operate with a [99.7% conviction rate](#), based largely on [torture-extracted confessions](#). These conviction rates matter because they demonstrate the courts are not impartial tribunals but components of the apparatus the ICJ found unlawful. When the United Nations' Committee on the Elimination of Racial Discrimination (CERD) stated that the law [perpetuates racial discrimination](#), it confirmed differential vulnerability to state killing along ethnic lines. Administrative detention was theoretically reversible. State-administered execution is not.

When Third State Support Breaches the Duty of Non-Assistance

The duty of non-assistance requires no proof of complicit intent. At [paragraph 278 of its AO](#), the Court held that the duty of distinguishing dealings with Israel between its own territory and the OPT encompasses, among other obligations, the duty “to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory,” and “to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation.” The Court’s phrase “may entrench” establishes a probabilistic standard. States need not prove their conduct caused a specific harm, only that it sustains Israel’s administrative capacity.

The Court found Israel’s entire presence unlawful. There is no lawful administration to sustain. Arms, intelligence, and preferential trade that sustain capacity therefore sustain the wrongful situation, within which a death regime operates.

Unlike complicity under [ARSIWA's Article 16](#), which requires that assistance be given with knowledge and with a view to facilitating the wrongful act, the [Article 41\(2\)](#) duty covers conduct after the fact that maintains the unlawful situation, with the International Law Commission considering it “hardly conceivable” that a state would lack notice of a serious breach. Any residual doubt about notice dissolved when the [CERD Committee called on States Parties](#) to ensure that their “resources are not used to enforce or support discriminatory policies and practices against Palestinians living in the Occupied Palestinian Territory.” When the EU’s External Action Service found Israel in breach of Article 2 of the Agreement, and the Council nonetheless decided not to suspend, the Union placed itself squarely within the conduct paragraph 278 prohibits. [Twenty UN experts](#) stated that suspension is “a legal imperative,” not a matter of political discretion.

What This Reveals About Metropolitan Responsibility

The Council’s decision reveals how the ICJ’s “may entrench” standard operates as burden inversion. The question is whether conduct sustains the apparatus through which apartheid is maintained and death administered, not whether governments intend to facilitate it. Once

the apparatus kills, separability collapses. The courts executing Palestinians are those that the ICJ found unlawful. International legal infrastructure has constituted [settler-colonial projects in Palestine](#), not merely recognised them.

Article 41(2) asks when metropolitan support becomes co-constitutive of the wrongful situation. The answer: when it sustains administrative capacity that kills through racially segregated courts. This tests whether the duty of non-assistance retains doctrinal content or serves merely as a rhetorical cover for sustaining colonial structures.