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On 8 December 2003, the General Assembly of the United Nations requested from the International Court of Justice to render an Advisory Opinion on the following question: 'What are the legal consequences arising from the construction of the wall being built by Israel, the Occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?' This required the World Court to pronounce itself on the obligations of Israel under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the United Nations Convention on the Rights of the Child. However, Israel denied that the ICCPR and the ICESCR, both of which it has ratified, are applicable to the occupied Palestinian territory.

In its Advisory Opinion of 9 July 2004 on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice answers as regards the International Covenant on Civil and Political Rights that "while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions. The constant practice of the Human Rights Committee is consistent with this. Thus, the Committee has found the Covenant applicable where the State exercises its jurisdiction on foreign territory" (para. 109). As regards the International Covenant on Economic, Social and Cultural Rights, the Court states: "The International Covenant on Economic, Social and Cultural Rights contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction" (para. 112).

These different wordings -- the reference to economic, social and cultural rights as "essentially territorial" and the reference, as regards the ICESCR, to the fact that it extends to situations where a State exercises "territorial jurisdiction", whereas "jurisdiction" simpliciter is evoked as regards the ICCPR --, suggests that the Court views economic, social and cultural rights as requiring that the State exercises quasi-sovereign powers, as an Occupying Power does. This makes sense intuitively: unless the State is in control of a territory, it would be difficult to imagine the State establishing schools or hospitals, or providing housing. However, is this distinction justified in principle? For instance, shouldn't "territorial control" also be required in order for a State to be under a duty to protect the right to life by establishing a police force that can protect individuals from violent crime? Conversely, if a State is not in "territorial control", is it not expected nevertheless to respect the right to health or the right to food, for instance when it provides medicines or food aid in situations of humanitarian disaster? Do you think the distinction drawn by the International Court of Justice is justified, insofar as it imposes stronger conditions for the applicability of the ICESCR beyond the national territory than it does for the ICCPR, or is that distinction based on an antiquated distinction between the two categories of rights?

INSTRUCTIONS: In responding to the above questions, **DO NOT click on 'New Post'**. Click on '**Show discussion**', and then, in the first discussion thread, called '**[2.1.1] Should territorial control have different consequences according to the category of rights?**', click on '**View discussion**' and then on '**Add a response**' to propose your views to the community. If you want to comment on a peer's opinions in that thread then click on '**Add a comment**' in his response. You can also watch the tutorial (<http://youtu.be/SINSJKdez6g>) (see also, the updated (<http://youtu.be/TNoOB8q19kQ>) version) in order to make the best use of the interface.

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