

Fact Checker: Trump's "Madman Theory" approach does not legalise the illegal

President Donald Trump has inundated the international community and media with extreme statements regarding the future of Gaza and of Palestinians in general. His statements ranged from suggestions that neighbouring countries should "take on more" Palestinians from Gaza to an outright call for the forced displacement of Palestinians and U.S control over the territory.¹

Regardless of whether Trump's remarks are political theatrics designed to pressure neighbouring states, a negotiating tactic to extract greater concessions, or carry genuine intent, it is crucial that they are legally examined. In this article, ICJP will address how the so-called "Madman theory"—a strategy which has been frequently employed by Trump—must not be used to normalise the illegal forced displacement and population transfer of the Palestinian people.

The Madman theory suggests that a leader who appears unpredictable—and is deemed capable of taking extreme or irrational actions—can pressure global actors into making concessions they would not otherwise consider.² This strategy was notably used by U.S. President Richard Nixon during the Vietnam War, when he sought to convince the North Vietnamese that he was willing to go to extraordinary lengths, even deploying nuclear weapons, to end the conflict on his own terms.³ Trump has repeatedly applied this approach, and it appears to be utilised again in his latest swathe of statements on Gaza.

Analysing this rhetoric through the lens of the Madman theory, one interpretation suggests that Trump is signalling his willingness to pursue drastic measures—such as direct U.S. control over Gaza—if a forced displacement of Palestinians is not accepted. Alternatively, his remarks may suggest that Palestinians will face expulsion unless they "voluntarily" relocate under the pretence of a temporary arrangement.

¹ Donald Trump Meets Israeli Prime Minister Benjamin Netanyahu' *NBC News* (23 February 2025) <https://www.nbcnews.com/politics/white-house/donald-trump-israeli-prime-minister-benjamin-netanyahu-meeting-rcna190449>

² **US Department of State, Office of the Historian**, 'Memorandum from Secretary of Defense Laird to President Nixon, Washington, January 26, 1972' in *Foreign Relations of the United States, 1969–1976, Volume XXXIV, National Security Policy, 1969–1972* (Government Printing Office, 2011) <https://history.state.gov/historicaldocuments/frus1969-76v34/d59#:~:text=According%20to%20H.R.,an%20end%20to%20the%20war.>

³ Ibid.

Regardless of the political calculus behind Trump's words, one fact remains unchanged: the Madman approach cannot be used to normalise the illegal. It cannot disguise forced displacement as a benevolent solution, nor can it obscure the clear and long-standing prohibition of forced population transfer under international law—a prohibition that persists despite attempts, including within Israeli legal scholarship, to argue otherwise.⁴ In the following sections, we will define deportation and population transfer and examine their prohibition under international law whilst linking it to Trump's most recent statements.

The Definition of Deportation and Population Transfer

Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War ("GCIV"), clearly states that deportations and transfers of protected persons from occupied territories are prohibited, regardless of the motive.⁵ The International Committee of the Red Cross (ICRC) has consolidated the prohibition further by revoking all but one exception: in the context of evacuation at the time of hostilities. Article 49 instructs the occupying power not to move the protected persons outside the boundaries of the occupied territory except when for material reasons it is impossible to avoid such displacement. It also emphasises the temporary nature of transfers, obligating occupying forces to return them to their original homes upon the end of hostilities.⁶

Additionally, the forced displacement of a population is classified as both a crime against humanity and a war crime under Article 7(1)(d) and Article (8)(2)(a)(vii), respectively, of the Rome Statute of the International Criminal Court (ICC).⁷ For an act to qualify as a crime against humanity, it must be committed as "part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Notably, the term "attack" in this context is not limited to military action; it does not require armed hostilities, military forces, or even physical violence.⁸ In light of these legal principles, Trump's statements on deportation and forced transfer remain unequivocally illegal. The criteria set out in the Rome Statute are met in the context of Gaza, where the International Court of Justice (ICJ) has already ruled that it is plausible that Israel's acts in Gaza could violate the rights of the

⁴ See Yoram Dinstein, *The International Law of Belligerent Occupation* (2nd edn, Cambridge University Press 2019) <https://www.cambridge.org/core/product/identifier/9781108671477/type/book>

⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)(adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 49 <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>

⁶ Ibid.

⁷ Rome Statute, Art 7(1)(d), (1998) <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> ; Rome Statute, Art 8(2)(2)(vii), (1998) <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)(adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 49 <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>

protected Palestinian population under the Genocide Convention. Trump's attempt to justify forced displacement under the guise of improving Palestinian lives—framing it as a humanitarian measure—amounts to little more than the idiom 'putting lipstick on a pig'.⁹

Following the global outcry over Trump's remarks, the White House attempted to contain the diplomatic and legal fallout. White House spokeswoman Karoline Leavitt sought to clarify the Administration's position, stating that the U.S. had not committed to putting "boots on the ground" in Gaza, but she also declined to rule out the use of US troops there.¹⁰

However, these marginally watered down points do nothing to change the illegality of Trump's proposal. Following The Rome statute, the absence of U.S. troops on the ground does not negate the unlawful nature of forced displacement. Further attempts at damage control came from Secretary of State Marco Rubio, who referred to Trump's proposal not as a "hostile" act but rather a "very generous" offer, presenting U.S. involvement as a commitment to Gaza's reconstruction.¹¹ He suggested that Gazans would leave "temporarily" while debris was cleared, and rebuilding took place. Yet, no matter how much these statements attempt to soften the language, the core legal issue remains unchanged: Article 49 of the GCIV categorically prohibits the transfer of protected persons outside occupied territory into other countries, even under the pretext of security or humanitarian concerns.¹²

International law is not only clear on the illegality of forcibly transferring populations out of their lands—it also explicitly prohibits the transfer of the occupying power's population into occupied territory. Any efforts to "expand" Israel's control over Gaza or the West Bank would constitute a blatant violation of international law, particularly of Article 49(6) of the Fourth Geneva Convention (GCIV).¹³

Moreover, Trump's apparent dissatisfaction with Israel's borders should not serve to normalise his reversal of the previous Administration's sanctions against violent Israeli settlers. Nor should it set a precedent for accepting illegal settlement expansion. Both

⁹ OHCHR, 'Gaza: ICJ Ruling Offers Hope of Protection for Civilians Enduring "Apocalyptic" Conditions – Türk' (26 January 2024) <https://www.ohchr.org/en/press-releases/2024/01/gaza-icj-ruling-offers-hope-protection-civilians-enduring-apocalyptic>

¹⁰ Jeff Mason and others, 'Trump Aides Defend Gaza Takeover Proposal but Walk Back Some Elements' Reuters (5 February 2025) <https://www.reuters.com/world/middle-east/hamas-official-says-trumps-remarks-about-taking-over-gaza-are-could-ignite-2025-02-05/>

¹¹ 'US officials now say Trump only wants to displace Palestinians from Gaza temporarily' APNews (6 February 2025) <https://www.yahoo.com/news/guatemala-strikes-deal-rubio-accept-180708587.html>

¹² Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)(adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 49 <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>

¹³ Ibid.

customary international law and the ICJ Advisory Opinions in 2004 and 2024 have reaffirmed that Israeli settlements are unlawful.¹⁴

It is no secret that Israeli politicians in Netanyahu's cabinet are intent on realising a 'Greater Israel'. Such ambitions are not merely confined to Gaza, Israeli Finance Minister Bezalel Smotrich said as recently as October 2024 that ""it is written that the future of Jerusalem is to expand to Damascus."¹⁵ In this context, the Trump Administration's comments, taken together, reflect a pattern of endorsing policies that violate international law.

Trump's proposals regarding the forced deportation of Palestinians in Gaza cannot be legitimised by framing them as temporary. The law is clear and precise: forced displacement is illegal, regardless of how it's done or how it's politically packaged. The so-called "Madman theory" approach cannot be used to manipulate legal principles, nor can international law be twisted to serve the agenda of any decision-maker at the negotiations.

¹⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) (2004) ICJ Rep 136, <https://www.icj-cij.org/node/204176>. And see also: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136 <https://www.icj-cij.org/case/131>.

¹⁵ 'Smotrich Calls for Israel's Borders to Extend to Damascus' Middle East Eye (11 October 2024) <https://www.middleeasteye.net/news/smotrich-calls-israels-borders-extend-damascus>