**The Demographic Battle for Palestine in the Settler-Colonial Project and the Promise and Peril of International Law**

**A Review *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* by Ardi Imseis**

## **Abstract**

Israel’s atrocities in Gaza and the West Bank represent the peak of long-lasting settler colonial demographic engineering strategies, which have fragmented Palestine’s social and territorial continuity and systematically undermined the right of the Palestinians to self-determination, with the aim of permanently annexing the occupied territories and subduing them to Israeli sovereignty. In his book ‘The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity’, Ardi Imseis critiques the enduring failure of international law to secure justice for Palestine, which remains a ‘subaltern legal subject’ within the international legal order. He illuminates the origins of the Zionist idea of securing a Jewish demographic majority in historically Palestinian lands, laying the foundations for the latest genocidal campaign. This review contextualizes the book in light of the most recent developments on the ground, as well as the 2024 ICJ Advisory Opinion on Israel’s policies and practices, reflecting on the counter hegemonic potential of international law.

## **Keywords:**

Legal Subalternity; Settler-colonialism; Self-determination; Demographic Engineering; Palestine; United Nations

## **Introduction**

*« If we want everything to remain the same, everything must change »* declares Tancredi, the young nephew of the Prince of Salina, in Giuseppe Tomasi di Lampedusa’s book *The Leopard*.[[1]](#footnote-2) If the old aristocracy wants to survive the transition from the feudal Bourbon regime to the Kingdom of Italy and preserve its ingrained privileges, it must adapt to the new political reality and embrace the forces of revolution. This is the paradox of ‘transformism’ — the strategy of adapting to change while preserving the underlying *status quo*. As with Tomasi’s *Leopard*, in the world of international law, too, the more things change, the more they stay the same. Legal developments and diplomatic shifts appearing to herald progress are often doomed to perpetuate the same dynamics owing to the inherent structural inequalities the system purports to challenge.

Ardi Imseis’ book uncovers a similar trajectory in the United Nations’ (UN) engagement with the so-called ‘question of Palestine’: despite the many legal and diplomatic developments over the decades, the foundational flaws and imbalances in international law remain intact, ensuring the continued dominance of great powers and the marginalization of Palestinian rights.[[2]](#footnote-3) Yet, he does not yield to nihilism but preserves an optimistic outlook on the counter-hegemonic potential of international law and the position of Palestine within the international legal order.

In the sections that follow, this review-essay explores the central arguments of Imseis’ work, examining the theoretical framework underpinning the book and its historical-empirical methodology. The following section outlines the structure of the book and provides an overview of Imseis’ account of the key historical milestones in the UN’s involvement with Palestine. The essay then turns to discussing more in detail some aspects of the Palestinian question, in particular Israel’s ‘demographic engineering’[[3]](#footnote-4) as a deliberate strategy to undermine the right of the Palestinian people to self-determination,[[4]](#footnote-5) which renders the prolonged occupation unlawful under international law. These themes not only emerge from the book’s historical recollection but are also underscored by recent developments in the field and on the ground, including Israel’s ongoing atrocities against Palestinians and proceedings before the International Court of Justice (ICJ). The conclusion interrogates the possibility of a counter-hegemonic, emancipatory role for international law in the future of Palestine and the Palestinians.

## **International law and legal subalternity**

The book’s central thesis is that while the UN has positioned itself as the principal advocate for international law and justice, particularly in its role as the guardian of the post-World War II legal order, its actions (or lack thereof) in relation to Palestine have often deviated from the very legal principles it purports to uphold. This divergence has created what the author terms Palestine’s ‘international legal subalternity’,[[5]](#footnote-6) a condition in which the promise of justice through international law is repeatedly proffered, yet never fully realized, leaving Palestinians in a perpetual state of legal marginalization and unfulfilled self-determination.

Imseis draws the terminology of ‘subalternity’ from the work of the Italian Marxist philosopher Antonio Gramsci, who developed a theory of the ‘subaltern’ in his *Prison Notebooks*.[[6]](#footnote-7) With this term, Gramsci refers to oppressed social classes and marginalized groups within a society.[[7]](#footnote-8) Building on the tradition of postcolonial Subaltern Studies,[[8]](#footnote-9) Imseis applies this category not only to the Palestinian people but also, and importantly, to the state of Palestine as an internationally subaltern subject. He does not limit the discussion to economic, political, and social subalternity but develops a concept of ‘legal subalternity’ within the international legal order. The international community, he argues, has historically treated Palestine as a subaltern entity – subordinate, contingent, and without full legal recognition.

The book effectively critiques the inability of the UN and its predecessor, the League of Nations, to reconcile their approach to Palestine with international law, emphasizing how their decisions often reflect great power interests and Eurocentric views of the world and international law, rather than a sincere commitment to justice.[[9]](#footnote-10) The author not only critiques the UN’s failure to respect the full range of international legal norms in its handling of Palestine but also persuasively demonstrates how the UN’s actions have, over time, actively contributed to the marginalization of the Palestinian people. For example, to this day, the UN continues to dogmatically insist that the Palestinian question can only be resolved by negotiations between the Palestinian leadership and Israel – a ‘wrongdoing state that continues to enjoy the benefits of its wrongful conduct’ – rather than applying well-established international legal norms.[[10]](#footnote-11)

The Eurocentric and Orientalist perspective of powerful actors has meant that Palestinians are often not perceived as deserving ‘the benefit of the full range of international law applied to them on account of some perceived worldview projected upon them from on high.’[[11]](#footnote-12) This ‘rule by law’ process underpins the paradox that international law — instead of promoting justice and equality — has often been used to reinforce the power dynamics that exacerbate Palestine’s subalternity. More generally, the book uncovers Eurocentricity as a structural component of international law beyond the question of Palestine.[[12]](#footnote-13) ‘Third World’ countries have been relegated to a structurally limited ‘quasi-sovereignty’ which maintains their international legal subalternity in the world order.[[13]](#footnote-14)

The book develops this argument by looking at key moments in the history of the UN’s engagement with the question of Palestine. The author’s analysis of such history is explicitly informed by the theoretical frameworks of Third World Approaches to International Law (TWAIL), which explore the imperial roots of international law and critically interrogate the ways in which international legal norms often sustain the dominance of powerful states, perpetuating the existing geopolitical order rather than promoting justice, equality, or the rights of marginalized peoples.[[14]](#footnote-15) In particular, the book applies a post-colonial lens to Palestine’s historical subordination and contingent position within international law and diplomacy.

The author’s positionality is also an important aspect of the book. His identity as a Palestinian-Canadian and his professional experience with UN agencies, particularly his role as Legal Counsel and Senior Policy Advisor at the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) from 2002 to 2014, would have informed his interest in and approach to the Palestinian question. At the same time, the book demonstrates great methodological rigour and loyalty to historical sources. The TWAILer theoretical framework is combined with thorough empirical research, and the critique is anchored in an analysis of historical facts, official reports, and key diplomatic statements which reveal how the international legal system has consistently failed to uphold the rights of the Palestinians. Although the range of sources and the breadth of materials may seem ambitious, Imseis effectively organizes them into a coherent analysis in five substantive chapters, each of which focuses on a historical milestone of the UN’s engagement with the question of Palestine.

## **A brief history of the United Nations’ engagement with the Question of Palestine and its milestones**

The examination of the Palestinian question within the international legal framework starts with a historical survey of Palestine’s marginalized status, tracing its origins to British secret diplomacy and treaty-making in the interwar period (Chapter 2).[[15]](#footnote-16) The author examines how the League of Nations institutionalized this status, reflecting the Eurocentric nature of international law at the time. The mandate system was based on the idea of a ‘sacred trust of civilization’, yet it justified continued imperial control under the guise of guiding territories to self-rule in the best interests of colonized populations.[[16]](#footnote-17) The chapter contrasts the late-imperial norms of ‘rule by law’ — a legacy of European imperialism — with the emerging post-World War II liberal discourse, revealing the deep-seated structural inequalities that laid the groundwork for Palestine’s continued subjugation within the international system.

This was institutionalized through a series of agreements and secret decisions that disregarded or betrayed the rights of Palestinian Arabs: the Hussein-McMahon Correspondence (1915-1916), the Sykes-Picot Agreement (1916), the Balfour Declaration (1917), and the Mandate for Palestine (1922–1947). The rule by law codified in the British Mandate, in particular, prioritized Zionist interests, granting significant political and economic power to the Zionist Organization and its settler-colonial project,[[17]](#footnote-18) while Palestinians were excluded from the decision-making process. Jews anti-Zionist voices were also ignored.[[18]](#footnote-19) The mandate promoted Jewish immigration, settlement, and self-governance, disregarding the rights of the large indigenous Arab population. In Imseis’ analysis, this demonstrates that Zionism structurally relies on European colonialism and imperialism.[[19]](#footnote-20)

The third Chapter focuses on UN General Assembly Resolution 181(II) of 1947 and the partition plan recommended by the UN Special Committee on Palestine (UNSCOP).[[20]](#footnote-21) The Resolution provided for the division of Palestine into an Arab state and a Jewish state in economic union, with the city of Jerusalem and its environs established as a *corpus separatum* under a special international regime administered by the UN Trusteeship Council.[[21]](#footnote-22) The chapter contends that Resolution 181(II) was not procedurally illegitimate but was illegal under international law in its substantive content.[[22]](#footnote-23) This is because by recommending the partition of Palestine against the will of the indigenous Arab majority, the Resolution failed to uphold the principle of self-determination applicable to all class A mandates under the UN Charter.[[23]](#footnote-24) Since the Arab majority demanded a unitary democratic state based on proportional representation, and partition would not be legal without the freely expressed consent of the governed,[[24]](#footnote-25) Palestine should have been ‘granted’ immediate independence or converted into a UN trusteeship.[[25]](#footnote-26) Instead, the Jewish settler minority was accorded ‘a right to self-determination justifying the partition of the country against the will of its majority’.[[26]](#footnote-27)

The partition plan was thus expression of a double-standard in applying principles of democracy and self-determination, as explicitly admitted by UNSCOP itself and its members.[[27]](#footnote-28) It undermined the rights of the subaltern Palestinian Arabs in favour of a purely European interest in resolving ‘Europe’s Jewish question’, especially after the horrors of the Holocaust and the Second World War, by creating a ‘Jewish National Home’ as a reparation for Nazi crimes.[[28]](#footnote-29) Resolution 181(II) thus represented ‘an abuse of UN legal authority’ and ‘an embodiment of the international rule by law.’[[29]](#footnote-30) This notwithstanding, the Palestinian Liberation Organization (PLO) – the Palestinians’ official representative – was, according to Imseis, later ‘compelled’ to recognize the Resolution.[[30]](#footnote-31) Today, the self-determination unit of the Palestinian people recognized by the UN is limited to the Gaza Strip and the West Bank (including East Jerusalem).[[31]](#footnote-32)

Resolution 181(II) also laid the foundation for the Palestinians’ displacement during the Nakba.[[32]](#footnote-33) This is the subject of the fourth Chapter, which explains how the fallout from the partition plan and the subsequent 1948 Arab Israeli war led to the displacement of hundreds of thousands of Palestinians, creating one of the world’s longest-standing refugee crises.[[33]](#footnote-34) The Chapter then turns to showing how the ethnic cleansing of the Palestinians was further entrenched by a series of laws and policies enacted by Israel in the aftermath of its establishment.[[34]](#footnote-35) This legal framework, which include the Israeli cabinet decision of 16 June 1948, the *Emergency Regulations (Absentees’ Property)* of 2 December 1948, the *Law of Return* of 5 July 1950, and the *Citizenship Law* of 1 April 1952, enabled any Jews worldwide to immigrate to Israel while preventing displaced Palestinians from returning, ensuring the seizure of their vacated homes and properties, and rendering them stateless. Collectively, the legal framework aimed to consolidate a demographic shift towards the creation of a Jewish majority – a goal foundational to Zionist settler-colonial ambitions.[[35]](#footnote-36)

The Chapter then examines the UN’s response to the Palestinian refugee crisis following the Nakba. The UN General Assembly Resolution 194(III), adopted on 11 December 1948, called for the repatriation ‘at the earliest practicable date’ of refugees wishing to return to their homes and live at peace with their neighbours, along with compensation for those choosing not to return or for property lost or damaged.[[36]](#footnote-37) The Resolution, however, remained unimplemented and the UN created a distinctive regime for Palestinian refugees, managed by the UN Conciliation Commission for Palestine (1948-1952) and UNRWA (1949-today). In the chapter, Imseis contrasts this regime with the broader international framework overseen by the UN High Commissioner for Refugees (UNHCR). It argues that the special regime did not protect Palestinian refugee rights under international law but created a persistent ‘protection gap’ which continues to constitute an enduring anomaly in international law and maintains Palestine’s legal subordination.[[37]](#footnote-38)

Imseis dedicates a detailed discussion to UNRWA’s limitations. The combination of its geographically and temporally restricted mandate and the narrow definition of a ‘Palestine refugee’ excludes several groups of Palestinian refugees, such as descendants of refugees through the maternal line, refugees who fled to areas outside of UNRWA’s scope of operation, and those displaced by the 1967 war.[[38]](#footnote-39) In addition, UNRWA was tasked with providing humanitarian aid and relief and lacks a mandate to seek durable solutions. In turn, the UNHCR’s ability to address the plight of Palestinian refugees is curtailed by the provisions of Article 1D of the 1951 *Refugee Convention*,[[39]](#footnote-40) which is often interpreted as excluding from the benefits of the Convention those receiving assistance or protection by UNRWA, under the assumption that they are already covered by another UN body. While UNHCR has issued interpretive notes to clarify that the cessation of either protection or assistance should trigger inclusion under the *Refugee Convention*,[[40]](#footnote-41) these guidelines have not been universally adopted or understood, leaving Palestinian refugees in a precarious legal limbo.[[41]](#footnote-42) In any event – Imseis argues – the UN has consistently sought to address Palestine’s refugee problem, and the Palestinian question more generally, through negotiation instead of enforcing international legal obligations such as the right to return, institutionalizing a lack of progress toward a just resolution of the issue.[[42]](#footnote-43)

The fifth Chapter shifts focus to another landmark moment and explores the UN’s approach to Israel’s occupation of Gaza and the West Bank since 1967. Under international law, occupation is meant to be temporary, yet Israel has pursued *de facto* permanent annexation.[[43]](#footnote-44) The author engages in a detailed legal analysis of Israel’s prolonged occupation of Palestinian territories in violation of peremptory norms of international law, namely the prohibition on the acquisition of territory through the threat or use of force, the obligation to the respect the right of peoples to self-determination, and the obligation to refrain from imposing regimes of alien subjugation, domination, and exploitation inimical to humankind, including racial discrimination and apartheid.[[44]](#footnote-45) He observes that Israel’s actions, particularly the ongoing occupation and violation of self-determination, constitute internationally wrongful acts violating the rules on state responsibility that have been progressively developed and codified in the *Articles on Responsibility of States for Internationally Wrongful Acts*.[[45]](#footnote-46)

The chapter argues that the UN’s reluctance to consistently and clearly identify Israel’s prolonged occupation as unlawful perpetuates Palestine’s subaltern status, even as it nominally acknowledges Palestinian self-determination.[[46]](#footnote-47) The main problem is identified in the UN’s focus on documenting individual violations of international humanitarian law rather than addressing the illegality of the occupation as a whole.[[47]](#footnote-48) Privileging humanitarianism over a remedial or emancipatory approach has led to a twofold consequence. On the one hand, it fuels the unrealistic expectation, among Palestinian officials and civil society, that adherence to international humanitarian norms will eventually deliver the end of the occupation.[[48]](#footnote-49) On the other hand, it simultaneously normalizes and, hence, legitimizes Israel’s continued presence in the occupied territories.[[49]](#footnote-50) Without a principled application of international norms, however, ‘the international system would be vulnerable to a complete collapse under the spectre of a return to the age of total war and the legitimation of territorial aggrandizement through conquest.’[[50]](#footnote-51)

In the last substantial Chapter, the author details Palestine’s bid for full UN membership between 2011 and 2012. Imseis identifies ‘a large corpus of resolutions demonstrative of widespread state practice and opinio juris supportive of Palestinian legal subjectivity and rights.’[[51]](#footnote-52) He analyzes extensively the legal criteria for statehood under Article 1 of the *Montevideo Convention*,[[52]](#footnote-53) and the criteria for membership in the UN in accordance with Article 4(1) of the UN Charter,[[53]](#footnote-54) illustrating how Palestine fulfils such requirements. Nonetheless, despite the principle of the universality of the UN’s membership,[[54]](#footnote-55) and the significant progress in state-building and recognition by the vast majority of UN members,[[55]](#footnote-56) Palestine’s application was effectively blocked due to the spectre of a veto by the United States in the Security Council[[56]](#footnote-57) (the United States vetoed Palestine’s most recent request for full UN membership in April 2024).[[57]](#footnote-58) The chapter contrasts this outcome with the General Assembly’s upgrade of Palestine’s status to a non-Member Observer State the following year,[[58]](#footnote-59) highlighting the UN’s inconsistent application of international law. Imseis also compares Palestine’s exclusion with the recognition of Israel’s statehood and its admission to the UN in 1949, where the criteria were applied far more leniently than they were for Palestine in 2011. The chapter concludes that this episode reflects the ‘exercise of hegemonic interest and abuse’ in application of the ‘rule by law’ principle, where political power — rather than legal norms — determines outcomes.[[59]](#footnote-60)

## **Settler-colonialism and the demographic struggle**

This analysis demonstrates that even before the establishment of the state of Israel, the history of Palestine has been characterized by a deliberate strategy of demographic engineering, aimed at creating a Jewish majority in prevalently Palestinian territories.[[60]](#footnote-61) This strategy, which intensified with the organized implantation of settlers and the forced displacement of Palestinians during the Nakba as a material manifestation of the Zionist ideology, has continued until today through policies and legal frameworks that violate foundational principles of international law such as self-determination.[[61]](#footnote-62)

Throughout the history of Zionism, there have always been significant anti-Zionist factions within Jewish communities worldwide. Many Jews, including religious groups and secular intellectuals, opposed the Zionist project on moral, political, or theological grounds.[[62]](#footnote-63) As early as 1919, at the final session of the First Jewish Labour Congress in New York – a national gathering of representatives from Jewish-led unions claiming to represent 500,000 workers – the delegates debated Zionism and passed a measure that explicitly rejected the idea of a Jewish state in Palestine.[[63]](#footnote-64) The Congress noted that ‘[a]t present the Jews compose one-tenth of the population in Palestine’ and called for the establishment of ‘a free republic in Palestine where Jews will have no more rights than any other people’ (although with the caveat ‘until, by immigration or otherwise, they become the majority’).[[64]](#footnote-65) Despite these objections, the Zionist leadership ultimately prevailed, leveraging support from imperial powers seeking to ‘resolve’ the ‘Jews question’ in European states.[[65]](#footnote-66)

The core dilemma faced by the Zionist movement and UNSCOP remained the demographic reality of Palestine in the mid-20th century. Palestinians constituted a commanding majority of the population, and Zionist leaders, cognizant of this disparity, sought to delay the application of self-determination on creating an independent state until immigration could tip the demographic scales in their favour.[[66]](#footnote-67) On 8 July 1947, the Jewish Agency leadership, giving evidence before UNSCOP, affirmed that there could not be a successful Jewish state until the Jews became ‘a demographic majority in Palestine’.[[67]](#footnote-68) UNSCOP, on the other hand, proposed partition as a means to immediately circumvent this issue. Drawing from the idea behind the Peel Commission’s 1937 partition proposal,[[68]](#footnote-69) the 1947 partition plan proposed two states with racially gerrymandered boundaries, allotting 57% of the land to the proposed Jewish state, even though Jews comprised only 33% of the population by then.[[69]](#footnote-70)

However, while the proposed Arab state would include a clear majority of approximately 725,000 Arabs to 10,000 Jews according to UNSCOP’s estimations,[[70]](#footnote-71) the proposed Jewish state would contain a total population of 1,080,800, consisting of a slight Arab majority (including Bedouins) of 509,780 *versus* 499,020 Jews.[[71]](#footnote-72) A ‘demographically preponderant Jewish State’ was thus to be secured through the displacement of Palestine’s indigenous population.[[72]](#footnote-73) This ‘seismic demographic shift’ was achieved with the Palestinian Nakba of 1948, which ‘fundamentally alter[ed] the demographic and political landscape of the country’.[[73]](#footnote-74) At the end of the Arab–Israeli conflict, started after the Declaration of the Establishment of the State of Israel (or Declaration of Independence) on 14 May 1948, the territory of Israel comprised around 78% of mandate Palestine (21% more than the territory allocated under the partition plan). In addition, as a result of the Nakba started on 15 May 1948, approximately 80% of the Arab population in such territory was forcibly exiled, amounting to over 750,000 refugees.[[74]](#footnote-75) The ethnic cleansing was carried out through acts of systematic violence, including the destruction of between 392 and 418 Palestinian villages, massacres, sieges and bombardments, and the deliberate use of psychological terror campaigns aimed at inducing mass flight due to fear of violence.[[75]](#footnote-76) It can be argued that the forced displacement of Palestinians during the Nakba was not only a result of widespread violent attacks but also part of a systematic strategy of demographic engineering.

The legal infrastructure of the newly formed state of Israel was then devoted to entrench the establishment of a sustainable Jewish majority.[[76]](#footnote-77) The cabinet decision of 16 June 1948 introducing a ‘blanket bar’ on the return of Palestinian refugees (but not on the Jews displaced during the fighting)[[77]](#footnote-78) disregarded the resolve of the UN General Assembly Resolution 194(III) of 11 December 1948 that ‘refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date’.[[78]](#footnote-79) The following *Emergency Regulations (Absentees’ Property)* of 2 December 1948 facilitated the seizure of Palestinian property by declaring any individual who left their home after 29 November 1947 an ‘absentee’ and thereby allowing Israel to confiscate their assets, effectively targeting Palestinian refugees who had fled their homes during and after the 1948 war. In the following decades, Israel would continue to oppose the right of Palestinians displacees to return, arguing for the need to ensure stability and avoid the ‘minority problem’ of a potential Palestinian fifth column in Israel.[[79]](#footnote-80) Such principle of ‘demographic homogeneity’ reflects the outdated view – prevalent in the first half of the XX century – that modern sovereign states should be homogeneous because internal ethnic pluralism leads to political instability.[[80]](#footnote-81)

Simultaneously, the *Law of Return* of 5 July 1950 granted any Jew the automatic right to immigrate to Israel, receive citizenship, and settle on vacated lands.[[81]](#footnote-82) This discriminatory law that gives Jews worldwide the right to settle in Israel is still foundational in Israeli policy, while the right to return of Palestinian refugees continues to be denied.[[82]](#footnote-83) The *Entry into Israel Law* of 5 September applies a temporary residency status to Palestinians in Jerusalem and which will be revoked if they fail to continually prove that their centre of life is Jerusalem.[[83]](#footnote-84) The *Citizenship Law* of 1 April 1952 further exacerbated this situation by restricting citizenship acquisition to Jews, effectively barring Palestinian refugees from ever becoming citizens, even if they had resided in Israel before or after the state’s creation.[[84]](#footnote-85) The law also retroactively revoked the citizenship of Palestinian refugees, rendering them stateless and denying them their national identity,[[85]](#footnote-86) in violation of the customary international law principle that nationality should follow a change in sovereignty.

The Nakba fabricated an entitlement to self-determination for the Jewish settler minority, justifying the partition of Palestine against the will of its indigenous majority. The very rationale of creating two ‘democratic’ states was predicated on negating the democratic and self-determination rights of Palestinians. In 1947–1948, the United Kingdom applied the principle of self-determination to contiguous majority groups of Hindus and Muslims in British India, but the UN denied this very right to the Palestinians.[[86]](#footnote-87) This structural bias did not end in 1948 and continues to inform international responses to the Palestinian question. Today, Palestinians still live in the reality shaped by the UN’s actions and inactions and the imperialistic imprint of international law. As all settler-colonial projects, as described by Patrick Wolfe, the Nakba is not an isolated event, but a structure underpinned by a ‘logic of elimination’.[[87]](#footnote-88) As Eghbariah puts it, the violence of conquest, dispossession, and displacement unfolded with the 1948 Nakba evolved into a ‘brutally sophisticated regime of oppression.’[[88]](#footnote-89) The Palestinians’ right to self-determination has been continuously deferred, while the settler-colonial framework legitimized and not restrained by partition has been normalized within the international system and continues to underlie ongoing displacement through settlement expansion in the West Bank and atrocities in Gaza.

Since Israel’s unlawful occupation of Palestine’s West Bank, the Gaza Strip, the Sinai Peninsula (returned to Egypt in 1982), and the Syrian Golan Heights in 1967, Israel began establishing settlements in these territories, arguing that these areas were of historical and religious significance to the Jewish people. By 1993, there were more than 280,000 people living in settlements (130,000 if East Jerusalem is excluded); between 1992 and 2020, Israel established a mere seven new settlements, but massively expanded the existing ones, including in East Jerusalem, and over 100 illegal outposts emerged in the West Bank, constructed without the approval but tolerated and often retroactively legalized by the Israeli government.[[89]](#footnote-90) Settlements in the West Bank and demolitions of Palestinian properties have further proliferated under the Netanyahu administration,[[90]](#footnote-91) which established a new Minister vested with the power of expediting new settlements in the West Bank.[[91]](#footnote-92) In 2023, the UN High Commissioner for Human Rights Volker Türk reported to the Human Rights Council that 700,000 Israeli settlers were living illegally in the occupied West Bank.[[92]](#footnote-93) Settlements in the West Bank have further expanded after the escalation of the conflict in Gaza following 7 October 2023.[[93]](#footnote-94) In July 2024, Israel approved ‘the largest (single) seizure of land in the occupied West Bank in over three decades’, approving the appropriation of 12.7 square kilometres of land in the Jordan Valley.[[94]](#footnote-95)

In addition, amidst the dramatic escalation of hostilities following 7 October 2023, Israeli public figures have started to discuss the permanent expulsion of Gazans and the re-establishment of Israeli settlements in Gaza.[[95]](#footnote-96) A ‘position paper’ published by a senior member of the ruling Likud party on 17 October 2023 advocated for the evacuation of the whole Gaza Strip,[[96]](#footnote-97) and a separate plan for the ethnic cleansing of Gaza was reportedly leaked a few days later.[[97]](#footnote-98) Members of the government also participated to a *Conference for the Victory of Israel – Settlement Brings Security: Returning to the Gaza Strip and Northern Samaria* in January 2024. Meanwhile, the Israel Defense Forces are engaged in an ongoing war, allegedly against the military group Hamas, but conducting widespread and systematic attacks against the civilian population in Gaza and, more recently, Lebanon and Syria. This situation has prompted the International Criminal Court to issue arrest warrants against Israel’s standing Prime Minister and the former Minister for Defence for alleged war crimes and crimes against humanity,[[98]](#footnote-99) and others are likely in the pipeline. The ICJ has also issued provisional measures against Israel, finding plausible the claim that Palestinians in Gaza have the ‘right… to be protected from acts of genocide and related prohibited acts’.[[99]](#footnote-100)

The latest atrocities are the culmination of a structural settler-colonial project fruit of the subaltern role Palestine has been relegated to since the start of the XX century. The ‘Arab demographic threat’ has long been and continues to be a central preoccupation for Israeli policymakers, driven by the fear that Palestinians might outnumber Jews in Israel.[[100]](#footnote-101) In 1988, Israeli demographer Arnon Soffer published a pamphlet about the Palestinian demographic threats to Israel, warning that Arabs would exceed Jews in Israel and the occupied territories by around 2010.[[101]](#footnote-102) It is reportedly in response to this that Yasser Arafat, the then Palestinian leader, stated that the womb of a Palestinian woman is his people’s greatest weapon.[[102]](#footnote-103) In recent years, Arnon Soffer and the Israeli army admitted that more Palestinians than Jews lived between the Jordan River and the Mediterranean Sea.[[103]](#footnote-104)

Soffer’s work is deemed to have influenced greatly the thought of Israeli politicians. This includes current Prime Minister Benjamin Netanyahu and Ariel Sharon’s view that the 2005 disengagement from Gaza was necessary for the survival of a democratic Jewish state because a unified state encompassing both Israelis and Palestinians would result in a Palestinian majority.[[104]](#footnote-105) Similarly, later discussions about withdrawing from the occupied territories of the West Bank were premised on concerns that Arabs would outnumber Jews, threatening the existence of Israel as a Jewish state.[[105]](#footnote-106) According to Ian Lustick, some Israeli politicians, such as former diplomat Yoram Ettinger, even engaged in a systematic manipulation of demographic data as part of a campaign to change perceptions of who is winning the ‘demographic battle’ and justify annexationist plans for the West Bank.[[106]](#footnote-107) This can be defined as a tactic of ‘virtual demographic engineering’.

Having abandoned any cautionary approach, contemporary Israeli leaders openly discuss extending sovereignty over the entire territory of historic Palestine, including the West Bank and Gaza, and expelling or eliminating the Palestinians as a definitive solution to maintain a Jewish demographic dominance.[[107]](#footnote-108) The attitude of Israeli authorities towards settlements and unauthorized outposts in the West Bank further demonstrates that, behind the veil of self-defence against terrorist security threats, the state is ultimately pursuing a policy of territorial annexation. The ongoing atrocities in Gaza represent the peak of Israel’s long-lasting demographic engineering strategy, which has fragmented Palestine’s territorial continuity and social fabric and has systematically undermined the right of the Palestinians to self-determination with the aim to permanently annex the occupied territories and subdue them to Israeli sovereignty.[[108]](#footnote-109) This context, as Imseis reminds us, renders the occupation unlawful under international law. Israel’s presence in Palestine constitutes an ongoing internationally wrongful act.

## **The counter-hegemonic potential of international law**

Despite the profound criticism owed to the international legal setting and its relationship with Palestine, Imseis remains hopeful about the counter-hegemonic potential of international law. His legal analysis shows that positive international law has never been clearer on the right of the Palestinian people to self-determination, the illegality of Israel’s occupation, and the obligations of other states and international organizations.[[109]](#footnote-110) Notwithstanding their colonial origins, Imseis does not surrender to scepticism about international law and international legal institutions. He envisions a future for the state of Palestine within which the Palestinians would find emancipation through the respect of well-established international legal norms.

Perhaps Imseis’ cautious optimism lies in the increasing multipolarity and pluralisation of voices in the international legal order which can affect the political thermometer within the UN and its organs. In the book, he argues that both the General Assembly and the ICJ could be fora for the definitive establishment of the illegality of the occupation and the legal consequences of such finding.[[110]](#footnote-111) This intuition has since materialized (Imseis himself played an active role in the activities and proceedings that led to these developments). 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*,[[111]](#footnote-112) issued upon request of the General Assembly,[[112]](#footnote-113) the ICJ found that Israel’s policies and practices, as well as the occupation *per se*, violate peremptory norms of international law. Settlement expansion, land confiscation, acts of annexation, and related discriminatory legislation and measures violate international law.[[113]](#footnote-114) Israel’s settlement policy, which involves transferring its civilian population into the occupied territories, breaches international humanitarian law, in particular Article 49(6) of the Fourth Geneva Convention, which prohibits the transfer of the occupying power’s civilians to the occupied territories.[[114]](#footnote-115) The Court also found that the prolonged character of these actions aggravates the violation of the Palestinian people’s right to self-determination and obstructs its exercise in the future.[[115]](#footnote-116)

In addition, the ICJ found that Israel’s prolonged occupation, characterised by the expansion of settlements and the construction of infrastructure to consolidate its control, amounted to annexation, which violates the prohibition on acquiring territory by force and undermines the temporary nature of military occupation under international law.[[116]](#footnote-117) The Court found the sustained abuses by Israel of its position as an occupying power through annexation, assertion of sovereignty and permanent control over the occupied territories, and the continued frustration of the right of the Palestinian people to self-determination, violate fundamental principles and *erga omnes* obligations of international law and render Israel’s presence in Palestine unlawful.[[117]](#footnote-118)

The operative part of the Advisory Opinion rules that Israel must halt all settlement activities and dismantle existing settlements, return confiscated land and cultural property to the Palestinians, and provide reparations for the harm caused by its illegal occupation.[[118]](#footnote-119) This is in addition to the continuing obligation to respect Palestinian self-determination and to comply with its duties under international humanitarian and human rights law.[[119]](#footnote-120) The Court clarified that other states and international organisations, including the UN, have a legal responsibility not to recognize the legality of Israel’s internationally wrongful acts in the occupied territories, and from rendering aid or assistance in maintaining the situation created by Israel’s illegal presence.[[120]](#footnote-121) In particular, they should not recognize any changes in the physical character or demographic composition, institutional structure, or status of the occupied territories, except as agreed by the parties to the conflict through negotiations.[[121]](#footnote-122) They must actively work to ensure Israel’s compliance with international humanitarian law as well as the realization of Palestinian self-determination, and continue to take steps to ensure the end of the illegal occupation.[[122]](#footnote-123)

The ICJ’s Advisory Opinion was followed-up by the UN General Assembly with Resolution ES-10/24, adopted on 18 September 2024,[[123]](#footnote-124) demanding the end of the occupation within twelve months (i.e. by September 2025), the withdrawal of Israeli military forces, and the ceasing of settlement activities in the territories.[[124]](#footnote-125) The Resolution also called upon Israel to return seized lands and assets, allow displaced Palestinians to return to their homes, and make reparations for damages caused during the occupation.[[125]](#footnote-126) It urged other States not to recognize Israel’s occupation as lawful or to provide any assistance that would perpetuate the unlawful situation, and advocated for the imposition of sanctions and the halting of trade, investment, or treaty relations that could reinforce Israel’s presence in the occupied territories.

Additionally, the Resolution emphasizes that Israel should not impede ‘the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory.’[[126]](#footnote-127) The Resolution reinforces the principle that self-determination must encompass the entirety of Palestine, as the core territorial foundation for a contiguous and functional State. Territorial continuity is a fundamental aspect of the Palestinian people’s right to self-determination, as it underpins the viability of establishing an independent and sovereign state. Fragmentation through settlements, barriers, and other measures severely undermines the capacity of the Palestinian people to exercise effective governance and economic integration.

For some, the invocation of territorial continuity for the Palestinian people raises questions of justice and historical redress that extend beyond the borders of the territories occupied in 1967 to include the entirety of the territory between the Jordan River and the Mediterranean Sea.[[127]](#footnote-128) In this perspective, the establishment of the state of Israel in 1948 and its continued existence as such today constitute an ongoing occupation or colonization of historically Arab land.[[128]](#footnote-129) The ICJ and, consequently, Resolution ES-10/24, did not address the events of 1948-1949.[[129]](#footnote-130) This was probably a strategic decision to focus on more recent facts and more uncontroversial violations of international law. This reflects a broader issue: while the UN record extensively documents Israel’s treatment of occupied territories post-1967, it is less robust on the events surrounding 1948. Moreover, bringing such questions to the ICJ through the General Assembly would have been challenging and politically controversial, hence potentially frustrating the prospectives for a positive outcome.

## **Conclusion**

The legal developments of 2024 have confirmed Imseis’ faith in the counter-hegemonic potential of international law, at least on the paper. The challenge lies in building on these legal gains and bringing them to enforcement while confronting the root causes and systemic obstacles that have stalled justice for the Palestinians. Critical legal scholars have long questioned why to engage with international law at all given its inherent systemic servitude to big powers.[[130]](#footnote-131) They have long argued that ‘international law will not save us’ and engaging with it is nothing but legitimising and strengthening oppressive legal structures.[[131]](#footnote-132) International law’s inevitable indeterminacy and the perennial risk of it fading into irrelevance amid geopolitical realities regularly induce other scholars, too, to reasonably ponder the futility of the system.

Whether necessitated by the lack of alternatives or inspired by the creative power of strategic optimism, like other Palestinians[[132]](#footnote-133) Ardi Imseis does not succumb to nihilist temptations. In his view, international law and the multilateral order, despite their flaws, remain vital tools for advancing Palestinian rights. Legitimate criticism may illuminate the Eurocentric origins of international law or its susceptibility to state interests, but these limitations do not render it irrelevant or useless. On the contrary, Palestinians have skilfully used international law to affirm their rights, often countering hegemonic power structures. Their very presence in Palestine and their tenacity in resisting displacement in the face of systematic and multi-dimensional Israeli pressure to leave represents a core component of Palestinian national liberation,[[133]](#footnote-134) affirming the population’s stable territorial presence in the state of Palestine and the continuity of self-determination claims.[[134]](#footnote-135)

Imseis maintains that the UN has a permanent responsibility towards the Palestinians until their plight is resolved in accordance with international norms.[[135]](#footnote-136) The tools of international law and the UN system, though imperfect, have been instrumental in establishing the fundamental principles of self-determination and the illegitimacy of territorial conquest. These mechanisms should continue to be used strategically to challenge subalternity and injustice, build new material realities, and reimagine more just international legal futures.

1. Giuseppe Tomasi di Lampedusa, *The Leopard* (Feltrinelli, 1958). [↑](#footnote-ref-2)
2. Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge University Press, 2023). See e.g. pp. 28-29: ‘Despite the League’s ostensibly revolutionary principles aimed at non-annexation and self-determination of colonial territories, a subaltern reading suggests something equally if not more plausible: that League machinery effectively institutionalized an international rule by law, through which imperial rule over the globe continued under a discursive cloak of internationalism. In short, the more things changed, the more they remained the same.’ [↑](#footnote-ref-3)
3. See e.g. Milica Z. Bookman, *The Demographic Struggle for Power: The Political Economy of Demographic Engineering in the Modern World* (Frank Cass & Co 1997); John McGarry, ‘Demographic engineering: the state-directed movement of ethnic groups as a technique of conflict regulation’ (1998) 21 Ethnic and Racial Studies 613-638; Paul Morland, *Demographic Engineering: Population Strategies in Ethnic Conflict* (Ashgate 2014). [↑](#footnote-ref-4)
4. Article 1.2 of the Charter of the United Nations, 26 June 1945; common Articles 1.1 and 1.3 of the International Covenant on Civil and Political Rights, 999 UNTS 171 (1976), and of the International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (1976) adopted by UNGA Resolution 2200A (XXI) of 16 December 1966; Principle VI of UNGA Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 24 October 1970 (Declaration on Friendly Relations). For legal literature on self-determination, inter multis, see Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995); Joshua Castellino, *International Law and Self-Determination The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial ‘National’ Identity* (Brill 2000); Milena Sterio, *The Right to Self-Determination under International Law. “Selfistans,” secession, and the rule of the great powers* (Routledge 2013). [↑](#footnote-ref-5)
5. Imseis (2023), p. 30. [↑](#footnote-ref-6)
6. Antonio Gramsci, *Prison Notebooks, Notebook 25:* *At the margins of history (History of subaltern social groups)* (1934). Gramsci’s thought on the subaltern can also be traced in of *Notebook 3: Miscellaneous* (1930), Note 14: ‘History of the dominant class and history of the subaltern classes’. [↑](#footnote-ref-7)
7. The Gramscian category of subaltern is more diverse and inclusive than the traditional Marxist concepts of ‘the proletariat’ and ‘the working class’, as it applies to the relations of force and power beyond the terrain of socio-economic relations (see Guido Liguori, ‘Conceptions of Subalternity in Gramsci’ in Mark McNally (ed), *Antonio Gramsci* (University of Southampton 2015) pp. 118-133). [↑](#footnote-ref-8)
8. Gayatri Chakravorty Spivak, ‘Can the Subaltern Speak?’ in Patrick Williams and Laura Chrisman (eds), *Colonial Discourse and Post-Colonial Theory: A Reader* (Routledge 1994) pp. 66-111 (first published as Gayatri Chakravorty Spivak, ‘Can the Subaltern Speak?’ in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (Palgrave Macmillan 1988) pp. 271-313); Ranajit Guha and Gayatri Chakravorty Spivak (eds), *Selected Subaltern Studies* (Oxford University Press USA 1988). On Palestine, see e.g. Nur Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (Bloomsbury Publishing 2012); Lori Allen, ‘Subaltern Critique and the History of Palestine’ in Didier Fassin and Bernard E. Harcourt (eds), *A Time for Critique* (Columbia University Press 2019) pp. 153-173; Sandra Pogodda and Oliver P. Richmond, ‘Palestinian Unity and Everyday State Formation: Subaltern “Ungovernmentality” versus Elite Interests’ (2015) 36(5) *Third World Quarterly*, pp. 890-907. [↑](#footnote-ref-9)
9. Imseis (2023), p. 30. [↑](#footnote-ref-10)
10. Id., pp. 157, 186, 209. [↑](#footnote-ref-11)
11. Id., p. 169. [↑](#footnote-ref-12)
12. See e.g. Jean Allain, ‘Orientalism and International Law: the Middle East as Underclass of the International Legal Order’ (2004) 17 Leiden Journal of International Law, pp. 391–404. [↑](#footnote-ref-13)
13. Imseis (2023), p. 172. See, for example, Christina Wrapp’s TWAIL analysis of the role of the international legal order, as a creation of the United Nations and the United States, in perpetuating the power imbalances of colonialism and developing and maintaining the stalemate in the question of Western Sahara: Christina Wrapp, ‘The Right to Resistance and the Western Sahara: A TWAIL Analysis of the International Legal Order and its Constraints on Decolonization’ (2024) 34(307) Duke Journal of Comparative & International Law, pp. 307-345. [↑](#footnote-ref-14)
14. The main texts cited by the author are the following: Antony Anghie, Bhupinder S. Chimni, Karin Mickelson and Obiora C. Okafor (eds), *The Third World and International Legal Order* (Brill 2003); Bhupinder S. Chimni, ‘A Just World Under Law: A View from the South’ (2007) 22(2) *American University International Law Review*, pp. 199-220; Michael Fakhri, ‘Law as the Interplay of Ideas, Institutions, and Interests: Using Polyani (and Foucault) to Ask TWAIL Questions’ (2008) 10(4) *International Community Law Review*, pp. 455-465; James T. Gathii, ‘Alternative and Critical: The Contribution of Research and Scholarship on Developing Countries to International Legal Theory’ (2000) 41(2) *Harvard International Law Journal*, pp. 263-275; James T. Gathii, ‘Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy’ (2000) 98(6) *Michigan Law Review*, pp. 1996-2055; Makau Mutua, ‘What Is TWAIL?’ (2000) 94 *American Society of International Law Proceedings*, pp. 31-38; Obiora C. Okafor, ‘Critical Third World Approaches to International Law (TWAIL): Theory, Methodology or Both?’ (2010) 10 *International Community Law Review*, pp. 371-378; Balakrishnan Rajagopal, ‘From Resistance to Renewal: The Third World, Social Movements and the Expansion of International Institutions’ (2000) 41(2) *Harvard International Law Journal*, pp. 529-556. [↑](#footnote-ref-15)
15. Imseis (2023), p. 50. See also Victor Kattan, ‘The Empire Departs: The Partitions of British India, Mandate Palestine, and the Dawn of Self-Determination in the Third World’ (2018) 12(3) *Asian Journal of Middle Eastern and Islamic Studies*, pp. 304-327; Ralph Wilde, ‘Tears of the Olive Trees: Mandatory Palestine, the UK, and Reparations for Colonialism in International Law’ (2021) 25 *Journal of the History of International Law*, pp. 387–428. [↑](#footnote-ref-16)
16. Imseis (2023), pp. 28-29. [↑](#footnote-ref-17)
17. Id., p. 50. On the origin of political Zionism, see: Theodor Herzl, *The Jewish state. Attempt at a modern solution to the Jewish question* (M. Breitenstein 1896). He conceived the idea of a Jewish state in Palestine and became the first president of the World Zionist Organization. On settler-colonialism as a theoretical and epistemological framework, see: Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassell 1999); Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8 *Journal of Genocide Research*, pp. 387-409; Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave Macmillan 2010). [↑](#footnote-ref-18)
18. Historically, there has been a large segment of anti-Zionists within the Jewish population in the diaspora and in the Middle East. For instance, see statement of the First Jewish Labour Congress in New York in 1919 (below). The creation of a Jewish state was also opposed by Jewish intellectuals and prominent figures, such as finance tycoon and philanthropist Baron Edmond de Rothschild, who believed that the project would have exposed the diaspora to allegations of anti-patriotism in their respective countries (Naomi Pasachoff, *Great Jewish Thinkers: Their Lives and Work* (Behrman House1992) p. 97). Pasachoff also explains that Herzl’s Zionist proposal was initially opposed by most Rabbis, and by Herzl’s own newspaper publisher. Contemporaneous Jewish intellectuals like Sir Charles Waldstein also expressed scepticism about the formation of a Jewish nation-state (see Charles Waldstein, *The Jewish Question and the Mission of the Jews* (Harper 1894)). See also Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict*, 1891–1949 (Pluto Press 2009), pp. 16-21 and pp. 71-77. He points out, for example, that Edwin Montagu (the only Jewish member of the war cabinet that issued the Balfour Declaration in 1917) was opposed to Zionism. [↑](#footnote-ref-19)
19. Imseis (2023), p. 32. See also Kattan (2009), pp. 8-37; cf. Victor Kattan and Amit Ranjan (eds), *The Breakup of India and Palestine: The Causes and Legacies of Partition* (Manchester University Press 2023) (especially chapters 1, 2, and 4). For a discussion on the relationship between Zionism and colonialism, see Penslar, contending that ‘[c]olonial and anticolonial elements coexisted in the Zionist project’ and that ‘the Zionist political elite was eager to appeal to the interests of the Great Powers’ (Dereck J. Penslar, ‘Is Zionism a Colonial Movement?’ in Ethan B. Katz, Lisa Moses Leff and Maud S. Mandel (eds), *Colonialism and the Jews* (Indiana University Press 2017) pp. 275–300). [↑](#footnote-ref-20)
20. UN General Assembly, Resolution 181(II), *Future Government of Palestine*, 29 November 1947, A/RES/181(II). Imseis also analyses the intrinsic biases in UNSCOP’s composition and terms of reference. For example: ‘UNSCOP’s membership empirically reflected a continuation of the ‘civilized’ Eurocentricity of international law’ (Imseis (2023), p. 77); ‘The chief concern of the Arab states, therefore, was that the General Assembly was furnishing UNSCOP with terms of reference that were biased in favour of what its majority European and settler-colonial bloc wished to impose on the natives of Palestine; namely the establishment of a Jewish State in their country and at their expense, in contravention of what prevailing international law required.’ (Imseis (2023), p. 81). [↑](#footnote-ref-21)
21. Resolution 181(II), Part I, point 3; Part III (City of Jerusalem, Special Regime). On the special status of Jerusalem, see Antonio Cassese, ‘Legal Considerations on the International Status of Jerusalem’ (1986) 3 Palestine Yearbook of International Law, pp. 13–39. [↑](#footnote-ref-22)
22. Imseis (2023), p. 70. See also Kattan (2009), pp. 146-168. [↑](#footnote-ref-23)
23. *Charter of the United Nations*, 26 June 1945, entered into force 24 October 1945, 1 UNTS XVI. See Imseis (2023), p. 92. [↑](#footnote-ref-24)
24. Imseis (2023), p. 68. [↑](#footnote-ref-25)
25. Id., pp. 65, 100. [↑](#footnote-ref-26)
26. Id., p. 98. [↑](#footnote-ref-27)
27. ‘An ignorant majority should not be allowed to impose its will.’ (Statement of Guatemalan representative to UNSCOP, Mr. Garcia Granados, Ad Hoc Committee on the Palestinian Question, Summary Records of Meetings 25 September – 25 November 1947, UN GAOR, 2nd Session, 10th Meeting, 10 October 1947, p. 58). ‘With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the “A” Mandates, it was not applied to Palestine, obviously because of the intention to make possible the creation of the Jewish National Home there. Actually, it may well be said that the Jewish National Home and the sui generis Mandate for Palestine run counter to that principle.’ (UNSCOP, Report to the General Assembly, 2nd Sess, Vol I, A/364, supplement 11, 3 September 1947, at 35). [↑](#footnote-ref-28)
28. Imseis (2023), p. 82. See also Kattan (2009), pp. 8-37. [↑](#footnote-ref-29)
29. Imseis (2023), p. 65. [↑](#footnote-ref-30)
30. Id., p. 182. [↑](#footnote-ref-31)
31. Id., p. 182. [↑](#footnote-ref-32)
32. On the root causes of the Palestinian refugee question and the responsibilities of the United Kingdom and other actors, see inter alia: Francesca P. Albanese, ‘The Palestinian Refugee Question: Root Causes and Breaking the Impasse’ (2019) 62 *Forced Migration Review*, pp. 82-84; Iain Scobbie, ‘The Responsibility of Great Britain in Respect of the Creation of the Palestine Refugee Question’ (2003) 11 *Yearbook of Islamic and Middle Eastern Law*, pp. 39–58. [↑](#footnote-ref-33)
33. According to UNRWA Commissioner General Philippe Lazzarini ‘[t]he plight of Palestine Refugees remains the longest unresolved refugee crisis in the world.’ See UNRWA, UN Event to Mark 75 years on Nakba, Message from UNRWA Commissioner General Philippe Lazzarini, at <https://www.unrwa.org/newsroom/videos/un-event-mark-75-years-nakba-message-unrwa-commissioner-general-philippe-lazzarini>. [↑](#footnote-ref-34)
34. Imseis (2023), pp. 128-131. [↑](#footnote-ref-35)
35. See Article 2, Constitution of the World Zionist Organization and the Regulations for its Implementation (Updated November 2019): ‘the aim of Zionism is to create for the Jewish people a home in Eretz Israel secured by public law.’ On the settler-colonial setting of the legal and constitutional framework of contemporary’s Israel and its aim to establish ‘settler sovereignty’ by eliminating the native population from the polity, see Mazen Masri, *The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State* (Bloomsbury 2017); Mazen Masri, ‘Colonial Imprints: Settler-Colonialism as a Fundamental Feature of Israeli Constitutional Law’ (2017) 13 *International Journal of Law in Context*, pp. 388-407. [↑](#footnote-ref-36)
36. UN General Assembly, Resolution 194(III), *Palestine-Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194(III), para. 11. In 2021, the General Assembly ‘Note[d] with regret that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly resolution 194 (III), has not yet been effected, and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern…’ (UN General Assembly, Resolution 76/77, *Assistance to Palestine Refugees*, 9 December 2021, A/RES/76/77, para. 1). According to a 1988 article by Donald Nefif, even the United States attempted (unsuccessfully) to put pressure on Israel for the repatriation of Palestinian refugees in 1948-1949 (Donald Neff, ‘U.S. Policy and the Palestinian Refugees’ (1988) 18(1) Journal of Palestine Studies, pp. 96-111). [↑](#footnote-ref-37)
37. Imseis (2023), p. 137 and ff. [↑](#footnote-ref-38)
38. UNRWA, Consolidated Eligibility and Registration Instructions (CERI), 14 October 2009, at [www.unrwa.org/resources/strategy-policy/consolidated-eligibility-and-registration-instructions](http://www.unrwa.org/resources/strategy-policy/consolidated-eligibility-and-registration-instructions). See also Francesca P. Albanese and Lex Takkenberg, *Palestinian Refugees in International Law* (Oxford 2020) p. 91. [↑](#footnote-ref-39)
39. *Convention Relating to the Status of Refugees*, 28 July 1951, entered into force 22 April 1954, 189 UNTS 137, Article 1D. [↑](#footnote-ref-40)
40. E.g. UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees* (December 2017), available at <https://www.unhcr.org/uk/media/guidelines-international-protection-no-13-applicability-article-1d-1951-convention-relating>. [↑](#footnote-ref-41)
41. Albanese and Takkenberg (2020), p. 85. For scholarship on the interpretation and application of Article 1D, see: Brenda Goddard, ‘UNHCR and the International Protection of Palestinian Refugees’ (2009) 28 *Refugee Survey Quarterly*, pp. 475-510; Paul James Cardwell, ‘Determining Refugee Status Under Directive 2004/83: Comment on Bolbol (C-31/09)’ (2011) 36(1) *European Law Review*, pp. 135-145; Marguerite Perin, ‘European and International Law and Palestinian Refugees: Bolbol, el Kott and the Application of Article 1D of the Geneva Convention’ (2014) 3 *UCL Journal of Law and Jurisprudence*, pp. 87-114; Kate Ogg, ‘New Directions in Article 1D Jurisprudence: Greater Barriers for Palestinian Refugees Seeking the Benefits of the Refugee Convention’ in Satvinder Singh Juss (ed), *Research Handbook on International Refugee Law* (Edward Elgar Publishing 2019) pp. 358-373; Bríd Ní Ghráinne, *Internally Displaced Persons and International Refugee Law* (Oxford University Press 2022) particularly chapter 6: ‘Article 1D of the 1951 Refugee Convention and Internally Displaced Persons’ pp. 156-181; Chiara Raucea, ‘Fifty Shades of Non-Refoulement: The CJEU’s Distorting Reading of Article 1D Refugee Convention for Refugees of Palestinian Origin’ (2024) *AdimBlog*, pp. 1-7; Hasan Basri Bülbül, ‘Recognising Palestinian Refugees: Applicability of Article 1D of the 1951 Refugee Convention in Turkey’ (2024) 43(3) *Refugee Survey Quarterly*, pp. 280-300. For a reflection on the role of UNRWA today and its future, as well as the implications for general refugee law, see Itamar Mann, 'Palestinian Refugees and the Future of Asylum' (*Ejil:Talk!*, 19 November 2024) at <https://www.ejiltalk.org/palestinian-refugees-and-the-future-of-asylum/>. [↑](#footnote-ref-42)
42. Imseis (2023), pp. 154, 157. [↑](#footnote-ref-43)
43. Cf. ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (2004) ICJ Rep 136, para. 121. [↑](#footnote-ref-44)
44. Imseis (2023), p. 215. The ICJ has confirmed some of these arguments in 2024 – see below. On the status of ‘prolonged occupation’ in international law, see Nada Kiswanson and Susan Power (eds), *Prolonged Occupation and International Law* (Brill 2024). On the applicability of the law on apartheid to occupied territory, see Marco Longobardo, ‘Applicability of Apartheid to Situations of Occupation: At the Crossroad between International Humanitarian Law, International Criminal Law, and International Human Rights Law’ (2024) 24 *Anuario Mexicano de Derecho Internacional*, pp. 3-36. [↑](#footnote-ref-45)
45. International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) UN Doc A/56/10. See Imseis (2023), p. 137. [↑](#footnote-ref-46)
46. Imseis (2023), pp. 173, 181. [↑](#footnote-ref-47)
47. For Imseis’ analysis of the application of international humanitarian law to occupied Palestine, see Ardi Imseis, ‘On the Fourth Geneva Convention and the Occupied Palestinian Territory’ (2003) 44 Harvard International Law Journal, 65–138 499 16. On the point of the illegality of prolonged occupation under international law, with different perspectives, see inter alia: Adam Roberts, ‘Prolonged Military Occupation: The Israeli-occupied Territories Since 1967’ (1990) 84 *American Journal of International Law*, pp. 44–103; Orna Ben-Naftali, Aeyal M Gross, and Keren Michaeli, ‘Illegal Occupation: Framing the Occupied Palestinian Territory’ (2005) 23(3) Berkeley Journal of International Law, pp. 551–614; Yaël Ronen, ‘Forty Years after 1967: Reappraising the Role and Limits of the Legal Discourse on Occupation in the Israeli-Palestinian Context’ (2008) 41 *Israel Law Review*, pp. 201-245; Ariel Zemach, ‘Can Occupation Resulting from a War of Self-Defense Become Illegal’ (2015) 24(1) *Minnesota Journal of International Law*, pp. 313-350; Aeyal M Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge University Press 2017); Ardi Imseis, ‘Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020’ (2020) 31 *European Journal of International Law*, pp. 1055-1085; David Hughes, ‘Of Tactics, Illegal Occupation and the Boundaries of Legal Capability: A Reply to Ardi Imseis’ (2020) 31(3) *European Journal of International Law*, pp. 1087-1103; Ata R. Hindi, ‘Unlawful Occupations? Assessing the Legality of Occupations, including for Serious Breaches of Peremptory Norms’ (2023) 4 *Third World Approaches to International Law Review*, pp. 1-34; Vito Todeschini, ‘Chapter 2 Out of Time: On the (Il)legality of Israel’s Prolonged Occupation of the West Bank’ in Kiswanson and Power (2024) pp. 31-51. See also UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, *Study on the Legality of the Israeli Occupation of the Occupied Palestinian Territory, Including East Jerusalem* (2023) at <https://www.un.org/unispal/document/ceirpp-legal-study2023/>. [↑](#footnote-ref-48)
48. Imseis (2023), pp. 184-185. [↑](#footnote-ref-49)
49. Id., p. 185. [↑](#footnote-ref-50)
50. Id., p. 209. [↑](#footnote-ref-51)
51. Id., p. 179. [↑](#footnote-ref-52)
52. *Convention on the Rights and Duties of States Adopted by the Seventh International Conference of American States, Montevideo*, 26 December 1933, 165 LNTS 19. According to Article 1, the criteria for statehood are: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states. [↑](#footnote-ref-53)
53. According to Article 4(1) UN Charter, ‘Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.’ [↑](#footnote-ref-54)
54. See the following resolutions of the UN General Assembly: A/RES/197B(III), 8 December 1948; A/RES/506A(VI), 1 February 1952; and A/ RES/718(VIII), 23 October 1953; see also Imseis’ review of state practice regarding admission to the UN (pp. 223-228). [↑](#footnote-ref-55)
55. In 2023, Imseis identified ‘more than 130 countries’; at the time of writing, 149 states recognize the state of Palestine (including the Holy See). [↑](#footnote-ref-56)
56. The Security Council’s Committee indicated in its report on Palestine’s admission that it ‘was unable to make a unanimous recommendation’ (Report of the Committee on the Admission of New Members Concerning the Application of Palestine for Admission to Membership in the United Nations, 11 November 2011, S/2011/705). [↑](#footnote-ref-57)
57. UN Security Council, 9609th Meeting, 18 April 2024, SC/15670. [↑](#footnote-ref-58)
58. UN General Assembly, Resolution 67/19, *Status of Palestine in the United Nations*, 29 November 2012, A/RES/67/19. [↑](#footnote-ref-59)
59. Imseis (2023), pp. 217, 220. [↑](#footnote-ref-60)
60. Cf. Kattan (2009), pp. 8-37. [↑](#footnote-ref-61)
61. Cf. Rabea Eghbariah, ‘Toward Nakba as a Legal Concept’ (2024) 124(4) *Columbia Law Review*, at <https://columbialawreview.org/content/toward-nakba-as-a-legal-concept/>. [↑](#footnote-ref-62)
62. See Charles Glass, ‘Jews against Zion: Israeli Jewish Anti-Zionism’ (1975-76) 5(1/2) *Journal of Palestine Studies*, pp. 56-81; Kattan (2009), pp. 71-75. See also *supra*, footnote 18. [↑](#footnote-ref-63)
63. *Oppose a Jewish Republic: Labor Congress Favours Equal Rights of All Inhabitants of Palestine* (New York Times, 20 January 1919). [↑](#footnote-ref-64)
64. Id. [↑](#footnote-ref-65)
65. See *supra*, footnote 19. [↑](#footnote-ref-66)
66. Kattan (2009), pp. 117-145. [↑](#footnote-ref-67)
67. Imseis (2023), p. 90. [↑](#footnote-ref-68)
68. Kattan (2009), pp. 94-95. [↑](#footnote-ref-69)
69. Imseis (2023), p. 60. Jews also received the land of best quality (p. 63). [↑](#footnote-ref-70)
70. Id. [↑](#footnote-ref-71)
71. Ad Hoc Committee on the Palestinian Question, Summary Records of Meetings 25 September – 25 November 1947, UN GAOR, 2nd Sess, Annex 25, Report of Sub-Committee 2, A/AC.14/32 and Add.1 at 291. See also Imseis (2023), p. 93. [↑](#footnote-ref-72)
72. Imseis (2023), p. 161. [↑](#footnote-ref-73)
73. Id., p. 103. [↑](#footnote-ref-74)
74. This is a conservative estimation. For a discussion on the different figures, see Imseis (2023), p. 124. [↑](#footnote-ref-75)
75. Id., pp. 126-127. [↑](#footnote-ref-76)
76. For the preoccupations about the higher birth rate of the Arab population, see Imseis (2023), p. 92. [↑](#footnote-ref-77)
77. Kattan (2009), p. 211. [↑](#footnote-ref-78)
78. UN General Assembly, Resolution 194(III), *Palestine-Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194(III), para. 11. In 2021, the General Assembly ‘Note[d] with regret that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly resolution 194 (III), has not yet been effected, and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern…’ (UN General Assembly, Resolution 76/77, *Assistance to Palestine Refugees*, 9 December 2021, A/RES/76/77, para. 1). [↑](#footnote-ref-79)
79. Imseis (2023), p. 151. [↑](#footnote-ref-80)
80. Cf. Anthony Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge University Press 2021) p. 332. On expulsion of ‘fifth column’ minorities, see Meghan Garrity, ‘Disorderly And Inhumane: Explaining Government-Sponsored Mass Expulsion, 1900-2020’ (2022) Publicly Accessible Penn Dissertations. [↑](#footnote-ref-81)
81. The law was passed by the Knesset on 5 July 1950 (20 Tammuz 5710) and published in *Sefer Ha-Chukkim* No. 51 on 5 July 1950 (21 Tammuz 5710), p. 159. It was later amended by the *Law of Return (Amendment) 5714-1954*, passed by the Knesset on 23 August 1954 (24 Av 5714) and published in *Sefer Ha-Chukkim* No. 163 on 1 September 1954 (3 Elul 5714), p. 174, and by the *Law of Return (Amendment No. 2), 5730-1970*, passed by the Knesset on 10 March 1970 (2 Adar Bet 5730) and published in *Sefer Ha-Chukkim* No. 586 on 19 March 1970 (11 Adar Bet 5730), p. 34. See Masri (2017). [↑](#footnote-ref-82)
82. CCPR, *General Comment No. 27: Article 12 (Freedom of Movement)* (2 November 1999) CCPR/C/21/Rev.1/Add.9, para. 19. See John Quigley, ‘Displaced Palestinians and a Right of Return’ (1998) 39(1) *Harvard International Law Journal*, pp. 171-229; Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Clarendon Press 1999); Naseer Hasan Aruri (ed), *Palestinian Refugees: The Right of Return* (Pluto Press 2001); Tomer Levinger, ‘Denying the Right of Return as a Crime Against Humanity’ (2021) 54(2) Israel Law Review, pp. 205-235; John Quigley, ‘Prohibition of Palestine Arab Return to Israel as a Crime Against Humanity’ (2023) 34 *Criminal Law Forum*, pp. 1-41. [↑](#footnote-ref-83)
83. *Entry into Israel Law*, 5712-1952, Article 1(b). [↑](#footnote-ref-84)
84. See a discussion (referring to Israel’s *Nationality Law*) in Lauren Banko, The invention of Palestinian citizenship, 1918–1947 (Edinburgh University Press, 2016), pp. 210211. See also

    Yossi Harpaz and Ben Herzog, ‘Report on Citizenship Law: Israel’, Country Report 2018/02, Global Citizenship Observatory (GLOBALCIT) (2018), pp. 4-5. For a discussion of the settler-colonial nature of the more recent Nation-State Law, see Nadia Ben-Youssef and Sandra Samaan Tamari, ‘Enshrining Discrimination: Israel’s Nation-State Law’ (2018) 48(1) Journal of Palestine Studies, pp. 73-87. [↑](#footnote-ref-85)
85. See on the point Victor Kattan, ‘The Nationality of Denationalized Palestinians’ (2005) 74 *Nordic Journal of International Law*, 67–102. [↑](#footnote-ref-86)
86. Kattan (2023), pp. 159-192. [↑](#footnote-ref-87)
87. Wolfe (2006). For a description of settler-colonial structures in the context of Israel-Palestine, see Masri (2017) and Kattan (2009) pp. 21- 37. [↑](#footnote-ref-88)
88. Eghbariah (2024). [↑](#footnote-ref-89)
89. These data are taken from the American NGO Israel Policy Forum: ‘West Bank Settlements’, at <https://israelpolicyforum.org/west-bank-settlements-explained/>. [↑](#footnote-ref-90)
90. See the yearly reports of the Office of the European Union Representative (West Bank and Gaza Strip, UNRWA): ‘Report on Israeli settlements in the occupied West Bank, including East Jerusalem Reporting period January-December 2023’ (2 August 2024), at <https://www.un.org/unispal/wp-content/uploads/2024/08/One-Year-Report-on-Israeli-Settlements-in-the-occupied-West-Bank-including-East-Jerusalem-Reporting-period-January-December-2023.pdf>; ‘Report on Israeli settlements in the occupied West Bank, including East Jerusalem Reporting period - January-December 2022’ (15 May 2023), at <https://www.eeas.europa.eu/sites/default/files/documents/2023/One-Year%20Report%20on%20Israeli%20Settlements%20in%20the%20occupied%20West%20Bank%2C%20including%20East%20Jerusalem%20%28Reporting%20period%20January%20-%20December%202022%29.pdf>; ‘2021 Report on Israeli settlements in the occupied West Bank, including East Jerusalem Reporting period - January-December 2021’ (20 July 2022), at <https://www.eeas.europa.eu/sites/default/files/documents/EU%20Settlement%20Report%202021.pdf>. On demolitions of Palestinian properties, see e.g. the latest report: ‘One Year Report on Demolitions and Seizures in the West Bank, including East Jerusalem Reporting Period: 1 January 31 December 2023’ (20 November 2024), at <https://www.eeas.europa.eu/sites/default/files/documents/2024/One%20Year%20Report%20on%20Demolitions%20and%20Seizures%20in%20the%20West%20Bank%20including%20East%20Jerusalem%20-%201%20January%20%2031%20December%202023.pdf>. [↑](#footnote-ref-91)
91. Memorandum of Understanding and Division of Powers and Responsibilities between the Minister of Defence and the Additional Minister in the Ministry of Defence. See on the point Human Rights Council, *Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights*, 1 February 2024, A/HRC/55/72. [↑](#footnote-ref-92)
92. Human Rights Council Hears that 700,000 Israeli Settlers are Living Illegally in the Occupied West Bank – Meeting Summary (Excerpts), 28 March 2023, at <https://www.un.org/unispal/document/human-rights-council-hears-that-700000-israeli-settlers-are-living-illegally-in-the-occupied-west-bank-meeting-summary-excerpts/>. See also the last report of the (former) Special Rapporteur Mr. Michael Lynk (2022) on ‘the creation of 300 civilian settlements, with 700,000 Jewish settlers’ (HRC, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 35). [↑](#footnote-ref-93)
93. Jason Burke, ‘Revealed: Israel has sped up settlement-building in East Jerusalem since Gaza war began’ (*The Guardian*, 17 April 2024) at <https://www.theguardian.com/world/2024/apr/17/revealed-israel-has-sped-up-settlement-building-in-east-jerusalem-since-gaza-war-began>; ––, ‘Gallant declares support for new city in Samaria’ (*JNS*, 10 May 2024) at <https://www.jns.org/gallant-declares-support-for-new-city-in-samaria/>; ––, ‘Defense minister says he envisions new city in West Bank as settler numbers grow’ (*Times of Israel*, 9 May 2024) at <https://www.timesofisrael.com/defense-minister-says-he-envisions-new-city-in-west-bank-as-settler-numbers-grow/>. See also the Reports of the European Union Representative in Palestine, *supra*, footnote 90. [↑](#footnote-ref-94)
94. # Julia Frankel, ‘Israel turbocharges West Bank settlement expansion with largest land grab in decades’ (*AP News*, 3 July 2024) at <https://apnews.com/article/israel-palestinians-hamas-war-news-07-03-2024-033deab379a16efdf9989de8d6eaf0f8?taid=6685324f30fb670001894c1a&utm_campaign=TrueAnthem&utm_medium=AP&utm_source=Twitter>.

    [↑](#footnote-ref-95)
95. E.g. Yasmeen Serhan, ‘Why Palestinians Fear Permanent Displacement From Gaza’ (*Time*, 2 November 2023) at <https://time.com/6330904/palestinians-gaza-fear-permanent-expulsion/>; ––, ‘Talk of Re-establishing Jewish Settlements in Gaza Strip Damages Israeli Legitimacy, Western Diplomats Warn’ (*Haaretz,* 8 November 2023) at <https://www.haaretz.com/israel-news/2023-11-08/ty-article/.premium/western-diplomats-warn-talk-of-returning-settlements-in-gaza-damages-israeli-legitimacy/0000018b-abaa-da30-a38b-ffaf56170000>. See also collection of statements in: Law4Palestine, ‘Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide’, at <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>. [↑](#footnote-ref-96)
96. Amir Whitman, ‘A plan for resettlement and final rehabilitation in Egypt of the entire population of Gaza: economic aspects’ (*Mondoweiss*, 17 October 2023) at <https://mondoweiss.net/wp-content/uploads/2023/10/misgav-institute-ethnic-cleansing-report.pdf>. [↑](#footnote-ref-97)
97. Jonathan Ofir, ‘Israeli think tank lays out a blueprint for the complete ethnic cleansing of Gaza’ (*Mondoweiss*, 23 October 2023) (updated on 24 October 2023) at <https://mondoweiss.net/2023/10/israeli-think-tank-lays-out-a-blueprint-for-the-complete-ethnic-cleansing-of-gaza/>. [↑](#footnote-ref-98)
98. The warrant is not publicly available as of today. A summary can be accessed at: ICC, Press Release: ‘Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant’ (21 November 2024) at <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>. [↑](#footnote-ref-99)
99. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order, 26 January 2024, para. 54. [↑](#footnote-ref-100)
100. E.g. Roberta Seid, Michael L. Wise and Bennett Zimmerman, ‘Voodoo Demographics’ (2006) 25 *Azure*: ‘the existential threat posed to the State of Israel by the specter of an Arab majority has resulted in a decisive policy shift on the part of the Jews.’ [↑](#footnote-ref-101)
101. See: Ruthie Blum, ‘ONE on ONE: It’s the Demography, Stupid! An interview with geographer/demographer Arnon Soffer’ (*The Jerusalem Post*, 20 May 2004) available at <https://www.larevuedesressources.org/IMG/pdf/One_on_One.pdf> or <https://www.proquest.com/docview/319432672?sourcetype=Newspapers> (unofficial repository). [↑](#footnote-ref-102)
102. While Arafat is often quoted as having said such statement (see e.g. Noorulain Khawaja, ‘The Politics of Demography in the Israeli-Palestinian Conflict’ (2018) Journal of International Affairs), specific details about when and where he made this remark are not readily available in the public domain. The quote has been referenced in various discussions and articles, but without precise sourcing. [↑](#footnote-ref-103)
103. ToI Staff, ‘Jews Now a 47% Minority in Israel and the Territories, Demographer Says’ (*Times of Israel*, 30 August 2022) at <https://www.timesofisrael.com/jews-now-a-minority-in-israel-and-the-territories-demographer-says/>; Victor Kattan, ‘Apartheid or Systemic Discrimination?: A Connotative Reading of the ICJ’s Advisory Opinion’ (*Verfassungsblog*, 17 October 2024) at <https://verfassungsblog.de/apartheid-or-systemic-discrimination/>. [↑](#footnote-ref-104)
104. Other Israeli politicians had expressed such concerns before Sharon, e.g. trade and industry minister and former Prime Minister Ehud Olmert. See Jonathan Spyer, ‘Israel's demographic timebomb’ (*The Guardian*, 14 January 2004) at <https://www.theguardian.com/world/2004/jan/14/comment>; David Landau, ‘Maximum Jews, Minimum Palestinians’ (*Haaretz*, 13 November 2003) at <https://www.haaretz.com/2003-11-13/ty-article/maximum-jews-minimum-palestinians/0000017f-ed37-ddba-a37f-ef7fefd10000>. See also United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP), ‘Study on the Legality of the Israeli Occupation of the Occupied Palestinian Territory, Including East Jerusalem’ (2023), at <https://www.un.org/unispal/document/ceirpp-legal-study2023/>, p. 75. [↑](#footnote-ref-105)
105. Dan Perry and Karin Laub, ‘In Israel, the “Demographic Issue” Gains Resonance’ (*The Times of Israel,* 20 February 2014) at <https://www.timesofisrael.com/in-israel-the-demographic-issue-gains-resonance/>. [↑](#footnote-ref-106)
106. Ian S. Lustick, ‘What Counts is the Counting: Statistical Manipulation as a Solution to Israel’s “Demographic Problem”’ (2013) 67 *Middle East Journal*, pp.185-205. [↑](#footnote-ref-107)
107. See statements collected in the Law for Palestine’s Database, *supra*, footnote 95. [↑](#footnote-ref-108)
108. See Michael Lynk’s 2022 report: ‘the establishment of designed-to-be irreversible “facts-on-the-ground”’ (including settlements) were ‘meant to demographically engineer an unlawful sovereignty claim through the annexation of the occupied territory while simultaneously thwarting the Palestinians’ right to self determination.’ (A/HRC/49/87, para. 35; cf. para. 47). [↑](#footnote-ref-109)
109. See Imseis, Chapter 5. [↑](#footnote-ref-110)
110. Id., p. 210. [↑](#footnote-ref-111)
111. ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024 (*Israel’s Policies and Practices in the OPT*). [↑](#footnote-ref-112)
112. UN General Assembly, Resolution 77/247, *Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem*, 30 December 2022 UN Doc A/RES/77/247. [↑](#footnote-ref-113)
113. ICJ, *Israel’s Policies and Practices in the OPT*, paras. 120-141. [↑](#footnote-ref-114)
114. *Geneva Convention relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (Fourth Geneva Convention), supplementary to the rules contained in Sections II and III of the *Hague Regulations Respecting the Laws and Customs of War on Land annexed to the Convention.* ICJ, *Israel’s Policies and Practices*, paras. 155-156. [↑](#footnote-ref-115)
115. ICJ, *Israel’s Policies and Practices in the OPT*, paras. 230-243. [↑](#footnote-ref-116)
116. Id., paras. 157-179. [↑](#footnote-ref-117)
117. Id., paras. 259-264. [↑](#footnote-ref-118)
118. Id., paras. 267-272. [↑](#footnote-ref-119)
119. Cf. Ilias Bantekas and Safaa S. Jaber, ‘The human rights obligations of belligerent occupiers: Israel and the Gazan population’ (2025) *Journal of Conflict & Security Law*, 1–18. [↑](#footnote-ref-120)
120. ICJ, *Israel’s Policies and Practices in the OPT*, paras. 273-279; 280-283. [↑](#footnote-ref-121)
121. Id. [↑](#footnote-ref-122)
122. Id. [↑](#footnote-ref-123)
123. UN General Assembly, *Advisory Opinion of the International Court of Justice on the Legal Consequences Arising from Israel’s Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem, and from the Illegality of Israel’s Continued Presence in the Occupied Palestinian Territory*, 18 September 2024, A/ES-10/L.31/Rev.1. [↑](#footnote-ref-124)
124. Id., para 2. [↑](#footnote-ref-125)
125. Id., para 3(c). [↑](#footnote-ref-126)
126. Id., para 3(g). [↑](#footnote-ref-127)
127. E.g. Kattan (2009). [↑](#footnote-ref-128)
128. Id., Chapter 9 at pp. 232-247; epilogue at p. 254. [↑](#footnote-ref-129)
129. However, the ICJ referred to the British defence emergency regulations (1945) when considering Israeli courts’ basis for legal authority for punitive demolition (ICJ, *Israel’s Policies and Practices in the OPT*, para. 209). [↑](#footnote-ref-130)
130. E.g. Robert Knox, ‘Imperialism, Hypocrisy and the Politics of International Law’ (2022) 3 *TWAIL Review*, pp. 25-67. [↑](#footnote-ref-131)
131. Cf. Nora Jaber, ‘The Biggest Lie Known to History’ (2024) 12(2) *London Review of International Law*. To be sure, critical legal scholars often oscillate between pessimism and optimism, driven by sporadic encouraging developments in the field that sometimes offer hope. The maxim ‘international law won’t save us’ is typically associated with legal Marxist Robert Knox, but his views on international law have not always been so bleak. In the past, he suggested that international law’s content is open to progressive reinterpretations, although its form and mechanisms often limit its ability to address systemic or structural issues. He believed that international law might still play a transformative role in certain exceptional circumstances. More recently, Knox seems to have reverted to optimism after the International Criminal Court issued arrest warrants for two Israeli leaders. Knox stated on the social platform BlueSky that international law will, in fact, ‘save us’. (See Robert Knox, 'Marxism, International Law, and Political Strategy' (2009) 22(3) *Leiden Journal of International Law*, pp. 413–436). [↑](#footnote-ref-132)
132. See Knox (2009)’s concept of ‘principled opportunism’ in international law applied to the Palestinians in Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford University Press 2019) p. 4. [↑](#footnote-ref-133)
133. Mann (2024). [↑](#footnote-ref-134)
134. See criteria for statehood (*Montevideo Convention*, Article 1), as discussed above. [↑](#footnote-ref-135)
135. Ardi Imseis, *The Nakba and the UN’s Permanent Responsibility for the Question of Palestine* (2024) remarks delivered at the United Nations Headquarters, New York, 17 May 2024, during the panel discussion ‘1948-2024: The Ongoing Palestinian Nakba’, convened by the Committee on the Exercise of the Inalienable Rights of the Palestinian People in the Economic and Social Council (ECOSOC) Chamber, at <https://www.un.org/unispal/document/the-nakba-and-the-uns-permanent-responsibility-for-the-question-of-palestine-ardi-imseis-2024/>. [↑](#footnote-ref-136)