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EDITORIAL

SPECIAL ISSUE ADDRESSING ISSUES AND CONCERNS RAISED BY THE PUBLICATION OF THE 'GAZA MARINE ARTICLE'

Addressing issues and concerns raised by the publication of the 'Gaza Marine article'

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1. Introduction

We recognize the critical response occasioned by the publication of the article entitled 'Postwar Development of Offshore Energy Resources: Legal and Political Models for Developing the Gaza Marine Gas Field' (the 'Gaza Marine article'). We accept that much of the criticism is valid, and necessary, especially in light of the horrific, dehumanizing violence in Gaza. Even as we write this editorial, the World Health Organization is reporting that two million people are starving in Gaza.[1] This follows the relentless Israeli attack that had already, by January 2024, killed an estimated 25,700 Palestinians and injured a further 63,000, damaged or destroyed over 360,000 houses, and displaced over 1.7 million persons – figures quoted by the International Court of Justice as it determined, in effect, that what was taking place was plausibly described as genocide.[2] In the subsequent 18 months, these numbers have swelled unthinkably, yet in plain sight.[3]

At the *Leiden Journal of International Law* (LJIL), we are firmly committed to the fundamental principles of international law that annexation of territories is unlawful, and that the Palestinian people have the right to self-determination and the enjoyment of their natural resources. We apologize unreservedly to all who viewed the publication of this article as potentially contributing to normalizing the possibility of the annexation of Gaza.

In this editorial, we seek to offer a transparent account of how this publication came about, and the steps we have taken since. These include steps with respect to this particular article, culminating in this special issue. They also include steps towards modifying our editorial decision-making process. As we explain further below, whilst the article did undergo double-blind peer review, the final decision to publish, although made in accordance with our editorial decision-making policy, revealed weaknesses in our existing editorial process.

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[1]Report of the Director-General to Member States at the Seventy-Eighth World Health Assembly (19 May 2025), available at <www.who.int/director-general/speeches/detail/report-of-the-director-general-to-member-states-at-the-seventy-eighth-world-health-assembly-19-may-2025>.

[2]*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, [2024] ICJ Rep. 3, Paras. 46, 54.

[3]M. Aladam, 'Amnesty: Israel Committing "Livestreamed Genocide" in Gaza', *Middle East Eye*, 1 May 2025, available at <www.middleeasteye.net/news/amnesty-israel-committing-live-streamed-genocide-gaza> (quoting Amnesty International, The State of the World's Human Rights: Amnesty International Annual Report (April 2025), at 9).

2. Steps taken to address the article, post-publication

Turning first to the steps taken with respect to the article, our first action was to attach an Expression of Concern to the article. This action followed practices that are standard for Cambridge University Press journals, based on the guidelines adopted by the Committee on Publication Ethics (COPE). The Expression of Concern notified readers that we were investigating reports of significant errors and inaccuracies in the article with a view to identifying what future editorial action would be appropriate.

We next undertook a comprehensive internal review of the article. A five-member Working Group was established drawing on the relevant areas of expertise represented within our Board. The group produced a comprehensive report, which was also reviewed by us, and thereafter communicated to the authors in the form of the Internal Review Document (Review) that is appended to this editorial. In line with the Expression of Concern, the Review lists the omissions and inaccuracies of fact and law in the article, as well as aspects that we felt needed clarification or further reflection. The Review was a necessary step in determining the future of the article; including whether there were grounds for its retraction in accordance with the COPE Guidelines. It is an investigative measure, not a punitive one; it does not imply accusation or judgment of academic misconduct.

We shared the Review with the authors, asking them to respond. The authors engaged with the process openly and in good faith. From the outset, they expressed their desire to offer corrections and clarifications, particularly on the aspects of the article which had proved the most contentious. Following receipt of the Review, they prepared the Corrigendum and Reflections that are included in this special issue.

Thereafter, in deciding on the outcome, we carefully considered both possible options – that is, *either* appending author corrections and reflections to the article, *or* retracting the article. We were aware that the latter option was favoured by several of those who contacted us following the publication of the article, although others urged us to reflect on the precedential impact of our decision on the field of international legal scholarship, particularly as regards provocative, or outspoken scholarship. We also received clarification on Cambridge University Press rules on maintaining the integrity of the published record. Under these rules, even in situations where an article is retracted, its content is not removed from view – rather, a retraction notice is appended to it. The text remains accessible, and if the article is retracted following a 'First View' (advance access) publication, it still has to be assigned to a journal issue. Removal of the text is only possible where 'the article is defamatory, violates personal privacy or confidentiality laws, is the subject of a court order, or might pose a serious health risk to the general public'.[4]

We were clear that a decision to retract would be made only if we determined that the article had met the threshold for retraction under the COPE guidelines. That is, we would not seek to set any new, lower, threshold contrary to our advertised publication ethics – for that would not only unfairly prejudice authors' rights in the present case, it would also contribute to a climate of uncertainty as to the reliability of editorial acceptances that is already significantly affecting scholarship, in particular dissenting scholarship. We were especially conscious of the distinction that exists between the scope of editorial discretion available to journals *prior* to accepting an article for publication, and the obligations that accrue to us after its publication.

The COPE Retraction Guidelines envisage retraction in circumstances where an article's findings are unreliable as a result of a major error or fabrication or falsification of data, where there is significant plagiarism, where findings have previously been published elsewhere without this being disclosed to the journal or obtaining relevant permissions to republish, where material is used without authorization or in violation of intellectual property or other laws such as libel or privacy, where an article reports unethical research, where it is published solely on the basis of a compromised or manipulated peer review process, or where the author(s) fail to disclose a major

[4]Cambridge University Press, *Research Publishing Ethics Guidelines for Journals* (2023), at 16.

competing interest.[5] While this is not an exhaustive list, it is indicative of the overarching principle that retraction must be limited to situations where an article's flaws are incapable of correction and clarification; rightly, it is viewed as a last resort.

In our view, the threshold for retraction is not met in the present instance. We have been unable to establish that any of the specific circumstances listed above are relevant to the present case, or to conclude that the matter cannot be addressed via corrections and further author reflections – as we are, in fact, implementing in the present issue. As our Review highlights, there *are* flaws in the article. In their Corrigendum and Reflections, the authors acknowledge some of these flaws, while disputing others as a matter of misinterpretation rather than actual errors. They also seek to clarify the argument that they had advanced in relation to the possibility of illegal annexation of Gaza, and explain why the article had not taken into account the July 2024 Advisory Opinion of the International Court of Justice,[6] as well as reflecting on that Opinion's implications for some of the article's conclusions.

While we retain significant differences in viewpoint from the authors, including on the timeliness of a discussion around the 'post-war' development of the Gaza Marine gas field, we also recognize that the responsibility lay with us, the editors, to have raised such issues with the authors during the editorial process, prior to any decision to take the article forward for publication (we turn to our process next). The authors had engaged in good faith with the peer review and publication process as it was presented to them; and also took up the opportunity to add corrections, clarifications, and reflections. We hope that readers will engage with their article in the context of the surrounding material, including the Review, the authors' Corrigendum and Reflections, and also the external reply by three experts on Palestine and international law that closes out this issue (more on this below).

3. Steps taken in relation to our editorial process

We turn now to the matter of how the publication of this article came about in the first place, fully recognizing that may be in fact the question uppermost in the minds of many readers. The question was repeatedly raised both on social media and in direct communications with the journal. In answer to it, it is important that we firstly explain what have been LJIL's editorial decision-making processes and structures, and as such regarded as its strength – but in which this incident has also revealed vulnerabilities. We then outline the changes that we have now implemented to guard against similar situations in the future.

LJIL has for years operated on the basis of a decentralized editorial structure, whereby individual Board Members – assigned to one of the journal's five sections – retain decision-making on the articles in their docket, and sections develop their own curatorial policies. The full Board meets four times a year, with these plenary meetings used to discuss the dockets of the Journal's sections, as well as journal-wide issues, and the general strategic direction of the Journal.[7] The Editors-in-Chief oversee these matters of overall journal strategy, such as the recent switch to open access, and also fulfil a consultative role with respect to individual article decisions. Their final sign-off is not formally required, but when a Board Member encounters a difficult or sensitive piece, or for any other reason wishes to seek the input of the Editors-in-Chief, they are encouraged to do so.

This approach to decision-making does have precedents in the social sciences but is uncommon in international law; and a distinguishing feature of LJIL. Its strength has been in enabling the journal to serve, via the expansive curatorial abilities of the Board Members, as a

[5]Committee on Publication Ethics (COPE), *Retraction Guidelines* (2019), available at <www.publicationethics.org/guidance/guideline/retraction-guidelines>.

[6]*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024.

[7]E. De Brabandere and I. Venzke, 'The Leiden Journal of International Law at 30', (2017) 30(1) *Leiden Journal of International Law* 1, 4.

platform for new, distinctive, and heterodox lines of scholarship. The journal has been well regarded for its embrace of doctrinal *and* critical, theoretical *and* practical, historical *and* current scholarship, for promoting creative, interdisciplinary and experimental projects, and for its accessibility to early career scholars from around the world. Our ability to handle a very high volume of submissions with openness towards identifying and shepherding promising scholarship of all kinds has depended on our decentralized structure and ethos of collegial informality, in which individual editors have a sense of decisional ownership while proactively reporting on their dockets and seeking advice and assistance on difficult or challenging pieces.

Yet, the present incident has demonstrated a vulnerability in an approach that has usually worked smoothly, and which seemed well designed to respond to the challenges of rising workloads and diminishing resources, with journal work undertaken vocationally, without remuneration, and on top of other institutional demands and service commitments. It is deeply regrettable, that due to these very factors, the communication process failed in this instance. The assigned Board Member did take the article through double-blind peer review, maintaining regular communications with authors and reviewers, and overseeing revisions in response to reviewers' comments and recommendations. They did so in a timely and expeditious fashion. However, although recognizing the submission as a challenging one, they neither consulted with the Editors-in-Chief or other members of their section, nor reported at any of the relevant Board Meetings. Their failure here was all too human: caught in an exceptionally busy period, they relied on the reviewers' and their own judgment, and proceeded to acceptance without engaging any of our consultative channels, albeit informal. However, the failure was primarily ours, as we did not envisage the possibility that a piece could go through to a First View publication practically unnoticed, just due to omissions in reporting and consultation. Amidst the journal's usual chatter and buzz, we did not clock a silence.

Since the incident we have introduced changes in the journal's decision-making process. The most important of these is that rather than taking the call themselves, Board Members now recommend pieces for acceptance to the Editors-in-Chief, who now have the final sign-off. Such a recommendation, moreover, must come with *two* ticks – the Board Member who is overseeing a given article must obtain agreement on its suitability for publication from a second editor in their section (this used to be a convention, but formal confirmation of the second tick was not sought). The adoption of Editor-in-Chief sign-off brings the journal closer to the practice of other law journals, and safeguards against the kind of situation that led to the incident under discussion, but it does also represent a significant change in LJIL's practice. The challenge for the Journal now is not to lose the positive and progressive benefits of the editorial autonomy model, and to this end, we are committed to proceeding on the basis of a deference approach, whereby we would controvert acceptance recommendations only where absolutely necessary. We also maintain a record of cases in which we ultimately substituted our judgement for that of the relevant section editors, with a view to regularly reviewing our own practice in this respect.

We have also taken other steps to strengthen regular consultation and oversight of individual dockets. This includes diversifying the format of our quarterly meetings – intermixing plenary meetings of the full Board with meetings of the Editors-in-Chief with individual sections. Sections have also taken steps to regularize intra-section consultation. With these steps too, our challenge is to avoid replacing the ethos of collegial informality with a sapping bureaucratic process, and we intend to regularly review our practice in this respect as well.

4. Whose voices should LJIL champion?

A further, and very important, question for many readers may have been whether the publication of the article under discussion cuts against a commitment to regarding the varied contexts of academic production on the part of the journal. In view of the ongoing scholasticide in Gaza,

which is described by Avi Shlaim as one element of a 'multi-pronged attempt to eradicate the Palestinian identity in Gaza',[8] and is the subject of an appeal for solidarity and action issued by academics and administrators of Gaza universities[9]; in view of the censorship of Palestinian voices and viewpoints critical of Israel's actions;[10] and in view of the increasingly obvious if not uniformly acknowledged politics of international legal knowledge production, should journals like ours not accept a heightened responsibility to champion marginalized voices and perspectives?

We do agree that we have this responsibility, and that it has many different aspects. We accept that the responsibility demands consistent attention on our part to issues of framing, timing, and appropriateness in context, in the curation of scholarship in our pages, but it does not and cannot imply the exclusion of any article on the basis of identity alone of *any* author, as that would be unfair and discriminatory.[11] In addition, however, we do have the discretion and therefore the responsibility to highlight viewpoints and voices that are neglected or silenced, such as Palestinian viewpoints and voices. And indeed, this is something we have always recognized and followed as a policy of the journal, on the basis that this benefits the field itself, by enabling critical examination and expansion of its epistemological foundations.

It was in this spirit that, earlier last year – unconnected to and much before this incident – we had initiated plans to revive the 'LJIL Annual Lecture', inviting as speaker a distinguished Palestinian international law expert. Plans had been set for the event to take place on 15 May, but these were overset by the incident. We did not want the lecture to take place under the cloud of an ongoing review, and understandably the invited speaker was also keen to view the steps we had taken in deciding whether to proceed. We are now looking at alternative dates for this lecture, with the idea of hosting it in the next academic year. It is also in this spirit that, building on previous LJIL initiatives, such as the 'Periphery' series,[12] we have been looking into other ways of further supporting scholarship that is marginalized from international legal discourse, including Palestinian scholars, and scholarship addressing ignorance around Palestine.

In the same spirit, this issue closes with a commissioned reply authored by Mutaz M. Qafisheh, Jinan Bastaki, and Victor Kattan. We are grateful to the authors for accepting our invitation to write this piece, and we believe it makes an important contribution to understanding the status of the Gaza Marine under international law, illuminating both historical background and contemporary issues.

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We hope that we have been able to offer here both much needed clarity and reassurance about the journal and its processes going forward. We apologize again for our own mistakes, and are grateful to all, including the authors of the piece under discussion, and the authors of the commissioned reply, for engaging with us constructively. We urge everyone to read the issue as a whole, placing the article in the context of the internal review, the corrections and reflections offered by the authors, and the external reply. Amidst the ongoing horror, it is of utmost importance to us that there should be no possibility of doubt about the rights of Palestinian people to self-determination and the enjoyment of their natural resources.

[8]A. Shlaim, 'Scholasticide in Gaza', (2025) 13(1) *Journal of the British Academy* a16, at 7.

[9]'Unified Emergency Statement by Palestinian Academics and Administrators of Gaza Universities', 2024, available at <www.gazauniversities.org/call>.

[10]Global Threats to Freedom of Expression arising from the Conflict in Gaza – Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan, A/79/319 (23 August 2024).

[11]Committee on Publication Ethics (COPE), *Principles of Transparency and Best Practice in Scholarly Publishing* (2022).

[12]F. Johns, T. Skouteris, and W. Werner, 'Editors' Introduction: Alejandro Álvarez and the Launch of the Periphery Series', (2006) 19(4) *Leiden Journal of International Law* 875.

APPENDIX. Internal Review Document

Prepared by members of the LJIL Editorial Board

1. Introduction

This Internal Review Document ('Review') has been prepared pursuant to the Expression of Concern attached by the Editors-in-Chief to the article 'Postwar Development of Offshore Energy Resources: Legal and Political Models for Developing the Gaza Marine Gas Field'[1] published in the *Leiden Journal of International Law*.

The Review identifies certain omissions and inaccuracies relating to fact and law in the article. It was submitted to the authors to offer them the opportunity to adopt corrections themselves, and to add clarifications and reflections on their part. The omissions and inaccuracies identified include the contextual omission of the ongoing conflict in Gaza (Section 2); and substantive omissions and inaccuracies relating to references to Palestine's status (Section 3.1), to the question of a 'disputed area' (Section 3.2), the Oslo Accords (Section 3.3), the law of occupation (Section 3.4), the annexation scenario (Section 3.5), and the treatment of sources in general (Section 3.6).

2. Contextual omission: The ongoing conflict in Gaza

Before turning to our assessment of the legal arguments presented in the piece, it is important to situate the manuscript within the broader context, the ongoing events unfolding in Gaza, and the most recent legal developments, notably the International Court of Justice (ICJ) Advisory Opinion of 19 July 2024. Although the article was drafted before this Opinion was rendered, much of the court documentation was available and the wider context of the Israel–Palestine conflict well-known, hence the need to engage with these developments.

1. The framing and language used can be read as suggesting that the ongoing conflict may have positive repercussions on the exploitation of the Gaza Marine, as it presents the opportunity for overcoming the current legal deadlock over the gas deposit's exploitation ('the prospects for developing Gaza Marine may improve in the aftermath of the Israel-Hamas war'[2]). This comes across as poorly-timed and distasteful given the extent of the atrocities in Gaza. The conflict has claimed thousands of lives and has caused extensive suffering, trauma, and material destruction. The seriousness of the harm inflicted, and its potentially genocidal nature is reflected in the ICJ's indication of a series of provisional measures orders against the State of Israel pursuant to its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. Discussing future scenarios for the exploitation of Gaza's natural resources, including through Israel's unlawful annexation of part of the Strip and unlawful appropriation of the Palestinian people's natural resources, while the conflict is still raging, could be interpreted as normalizing or sanitizing exploitative extraction at a time when Palestinians in Gaza are experiencing extreme suffering, violence, and destruction.
2. The possibility that the article may be read in this way is also troubling given the findings of the ICJ Advisory Opinion of July 2024 in which the Court found that 'Israel's policies and practices amount to annexation of large parts of the Occupied Palestinian Territory'[3] and that 'Israel's policy of exploitation of natural resources in the Occupied Palestinian Territory is inconsistent with its obligation to respect the Palestinian people's right to permanent

[1] E. Rettig, S. Friedman, and B. Spanier, 'Postwar Development of Offshore Energy Resources: Legal and Political Models for Developing the Gaza Marine Gas Field', (2025) 38(1) *Leiden Journal of International Law* 13.

[2] Ibid., at 14.

[3] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, Para. 179.

sovereignty over natural resources'.[4] These are two practices through which Israel has – in the ICJ's words – impeded the right of the Palestinian people to self-determination.[5]

In its current form, the article does not give sufficient consideration to this wider context. Rather than the current formulation of presenting all projected scenarios on a par, the article should have considered how far certain options relating to marine resource extraction would be appropriate, as well as compatible with international law.

3. Substantive inaccuracies and omissions

In our assessment, the article contains certain inaccuracies and omissions of fact and law, the clearest example of which is the suggestion that there exist dilemmas about the status and future of the Gaza Marine gas field. In our assessment, no such dilemmas exist, as international law is conclusive on the various points where it is presented as debatable.

3.1 Inaccuracies in references to Palestine's status

The article does not take a position on Palestine's statehood,[6] and refers to the entitlements of the Palestinian Authority (PA) instead. However, the references to the PA are inaccurate in several instances.

1. The article incorrectly concludes that it was the PA that acceded to United Nations Convention on the Law of the Sea (UNCLOS)[7] or received the status of UN 'non-member observer state' in 2012.[8] In reality, it is the State of Palestine that was recognized as a non-member observer state by the UN General Assembly. Likewise, it is the State of Palestine that acceded to UNCLOS on 2 January 2015. These are facts and should be treated as such.
2. Under international law, the Occupied Palestinian Territory is recognized as a single territorial unit. Suggestions that the West Bank and Gaza are separate legal entities, or that the people of Gaza constitute a separate group are incorrect.[9] As reaffirmed by the ICJ, the West Bank, Gaza and East Jerusalem are a single territorial unit from a legal standpoint[10] and the Palestinian people are recognized under international law as one people.
3. Furthermore, on page 27, the article states that 'it is questionable whether the PA can be a party to a case' before the ICJ.[11] This is incorrect as it is not the PA, but the State of Palestine that would be a party to a case before the ICJ. This is reflected in the fact that the State of Palestine is currently, and has in the past, been a party to proceedings before the Court.
4. There are inaccuracies in the reference to entities, such as where PA is misleadingly used in place of either the State of Palestine or the Palestine Liberation Organization (PLO). For example, on page 21 it is incorrectly suggested that it was the PA that signed the Oslo Accords when it was in fact the PLO.[12]

[4]Ibid., Para. 133.
[5]Ibid., Paras. 239–40.
[6]See Rettig et al., *supra* note 1, at 14.
[7]Ibid., at the end of 18.
[8]Ibid., at note 35.
[9]See e.g., Ibid., at 20 and note 86.
[10]See Policies and Practices AO, *supra* note 3, Para. 78.
[11]See Rettig et al., *supra* note 1, at 27.
[12]Ibid., at 21.

3.2 Inaccuracies relating to the situation of the Gaza Marine gas fields as located in a 'disputed' area

The article develops four models for the exploitation of the Gaza Marine gas field. However, under international law there is only one model applicable to the situation that would be regarded as lawful, namely the Palestinian people's exercise of their right to self-determination and enjoyment of such natural resources.

1. On pages 20–22, the four models developed in the paper rest on the premise that the Gaza Marine is situated in a 'disputed' maritime area and that from 2007 to 2023 none 'of the relevant actors with respect to Gaza [the PA, Israel and Hamas] had entitlement to its maritime zones and the resources within these zones, creating a legal deadlock for all sides'.[13] This is not the case as Palestine's legal entitlement over the Gaza Marine gas field is not contentious. The Gaza Marine gas field is situated within Palestine's exclusive economic zone (EEZ) and continental shelf. The State of Palestine – not the PA – acceded to UNCLOS on 2 January 2015. It has also formally declared the extent of its EEZ and continental shelf. Therefore, the State of Palestine is the coastal state under UNCLOS, and has the ensuing rights to maritime zones and continental shelf.
2. On a similar point, the article wrongly equates the concept of 'coastal State' with concepts such as 'control' (see e.g.: '[s]ince the PA has no control over Gaza and arguably no sovereignty, it essentially loses the nexus to the maritime zones'; 'the PA has lost not only control, but also its sovereignty over Gaza'[14]), or representation and 'recognition', (e.g.: Hamas has not been recognized, has been designated as a terrorist organization and thus 'Hamas is not an entity with rights and obligations under the LOS framework and, consequently, is not entitled to Gaza's maritime zones'[15]). The sovereign rights over resources in the EEZ and continental shelf as provided under UNCLOS are premised only on the existence of the coastal State from whose baselines the maritime zones are measured (the land dominates the sea principle). The fact that statehood is or is not disputed, or by whom the state is represented, does not deprive a state which is a party to UNCLOS of entitlements to its maritime zones, contrary to the argument on page 18 of the article. The State of Palestine is included in the list of State Parties to UNCLOS and thus it has sovereign rights over the resources in its EEZ and continental shelf.
3. In the same vein, the related argument that the 'PA's' declarations made in 2015 and 2019 were unlawful and thus could be nullified[16] is incorrect. The discussion relating to whether the new Gazan leadership could be considered self-governing territory under Article 305 UNCLOS is irrelevant.
4. That Gaza is under belligerent occupation and continues to be notwithstanding Israel's disengagement in 2005,[17] does not turn it into a 'disputed area' and does not change Palestine's entitlements to maritime areas and the resources therein. International law is clear that a state has permanent sovereignty over its natural resources, and that in situations of belligerent occupation this right accrues to the occupied people.[18] See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, paragraph 244,[19] where the ICJ affirmed the importance of the principle of permanent

[13]Ibid., at 20.
[14]Ibid., at 19.
[15]Ibid., at 20.
[16]See Ibid., at 19–21.
[17]See Policies and Practices AO, *supra* note 3, Paras. 90–3.
[18]See Ibid., Paras. 133, 169.
[19]*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, [2005] ICJ Rep. 168, Para. 244.

sovereignty over natural resources under customary international law, even in situations of military occupation.

5. While the article was drafted and revised before the 2024 Advisory Opinion, it is important to reflect on the findings of that Opinion, given the Court's determination that Israel's policy of exploitation of natural resources in the Occupied Palestinian Territory is inconsistent with its obligation to respect the Palestinian people's right to permanent sovereignty over natural resources.[20] The article can be read as suggesting that Israel may have a right under international law to claim Palestine's maritime zones or develop the Gaza Marine gas field. However, such a scenario would not have a legal foundation and would undermine the Palestinian people's right to permanent sovereignty over their natural resources. Consequently, it is unclear why 'any model for Gaza's economic development should include co-operation and consultation with Israel', on the basis that it is 'a significant actor in the region that controls bordering maritime zones and resources'.[21]
6. The article claims that a putative dispute over the Gaza Marine gas field could not be settled by UNCLOS dispute settlement mechanisms, as the dispute would relate to sovereignty, territorial acquisition and belligerent occupation rather than delimitation of overlapping claims.[22] This point overlooks the fact that Israel is not a party to UNCLOS, which renders any discussion about UNCLOS dispute settlement mechanisms moot.

3.3 Omissions and inaccuracies relating to the Oslo Accords

Given the points raised about Gaza being a 'disputed area', it is important to highlight the following:

1. On page 18, the article states that Israel and the PLO consented to 'derogate' from UNCLOS when they signed the Oslo Accords.[23] However, when they concluded the Oslo Accords, neither Israel nor the PLO were parties to UNCLOS. As mentioned above, the State of Palestine acceded to UNCLOS on 2 January 2015. Israel is not (and has never been) a party to UNCLOS. Therefore, the Oslo Accords cannot fall within the meaning of Article 311(3) UNCLOS as argued by the authors since this provision specifically only envisions agreements made by '[t]wo or more States Parties'.[24]
2. The Oslo Accords, and specifically Article XIV of Annex I, do not grant 'Israel the right to prohibit transit in the maritime areas allocated to the PA'[25] nor do they give Israel a blanket right to 'approve or refuse activities in these zones if such an action is reasonably linked to security considerations'.[26] The relevant part of this article reads:

> As part of Israel's responsibilities for safety and security within the three Maritime Activity Zones, Israel Navy vessels may sail throughout these zones, as necessary and without limitations, and may take any measures necessary against vessels suspected of being used for terrorist activities or for smuggling arms, ammunition, drugs, goods, or for any other illegal activity. The Palestinian Police will be notified of such

[20]See Policies and Practices AO, *supra* note 3, Paras. 133, 169.
[21]See Rettig et al. *supra* note 1, at 28.
[22]See argument in Ibid., at 27.
[23]Ibid., at 18.
[24]1982 United Nations Convention on the Law of the Sea (UNCLOS), 1833 UNTS 3, Art. 311(3).
[25]See Rettig et al., *supra* note 1, at 18.
[26]Ibid.

> actions, and the ensuing procedures will be coordinated through the [Maritime Coordination and Cooperation Center].[27]

It follows that the power given to Israeli Navy Vessels is limited to enforcement power in relation to vessels engaged in certain activities. The exercise of enforcement jurisdiction within the EEZ and continental shelf is distinct from the sovereign rights of the coastal State over its resources in these maritime zones. Nowhere in this article is Israel granted the right to exercise sovereign rights over resources such as gas fields in the Gaza Marine even when there are security concerns. The enforcement power to Israel has a limited scope, and the provision even states that the ensuing procedures need to be coordinated with the Palestinian Coastal Police through the Maritime Coordination and Cooperation Center.

Similarly, paragraph (4) of Article XIV only gives Israel interim power over 'arrangements for entry and exit of vessels passengers and goods by sea, as well as licenses for vessels and crews sailing on international voyages in transit to the West Bank and the Gaza Strip'[28] via Israeli ports pending the construction of a port in the Gaza Strip. This right cannot be equated to sovereign rights of a coastal State over resources in the EEZ and continental shelf. Therefore, the conclusion that 'Israel's approval of the development of the Gaza Marine gas field is within its rights under the Oslo framework'[29] is not correct.

3. Moreover, in the *Policies and Practices* Advisory Opinion, the ICJ recalled that the Oslo Accords should be interpreted by taking into account Article 47 of the Geneva Convention IV, according to which the protected population shall not be deprived of the benefits of the Convention 'by any agreement concluded between the authorities of the occupied territories and the Occupying Power'.[30] The Court therefore concluded 'that the Oslo Accords cannot be understood to detract from Israel's obligations under the pertinent rules of international law applicable in the Occupied Palestinian Territory'.[31] Nor can the Oslo Accords be relied upon to grant Israel powers that are inconsistent with its obligations under the law of occupation.[32]

3.4 Omissions and inaccuracies concerning the law of occupation

In the second scenario, the article examines the legal implications of Israel's occupation of the Gaza Strip following the Israel–Hamas war. This analysis contains legal errors.

1. On page 22, the article accepts that 'Israel may decide to have its military remain indefinitely in Gaza in the aftermath of the 2023 war and establish an occupation regime, similar to the one that existed prior to its withdrawal from Gaza in 2005'.[33] As noted previously, in its 2024 Advisory Opinion the ICJ concluded that the Gaza Strip remains occupied despite Israel's disengagement, as Israel established its authority over the Strip (in 1967), and can still exercise it within the meaning of Article 42 of the Hague Regulations.[34]
2. Regarding the suggestion that occupation can continue indefinitely, the ICRC's authoritative commentary to the 1949 Geneva Conventions states that 'the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its

[27]1995 Interim Agreement on the West Bank and the Gaza Strip, Annex I, Art. XIV.
[28]Ibid., Art. XIV(4).
[29]See Rettig et al., *supra* note 1, at 18.
[30]See Policies and Practices AO, *supra* note 3, Para. 102.
[31]Ibid.
[32]Ibid., Para. 140.
[33]See Rettig et al., *supra* note 1, at 22.
[34]See Policies and Practices AO, *supra* note 3, Paras. 90–3.

rights'.[35] In the *Policies and Practices* Advisory Opinion, the Court identified fundamental problems with Israel's indefinite occupation regime, as being in breach of the right to self-determination of the Palestinian people, and of the prohibition of territorial acquisitions by force. The Court concluded that the continued presence of Israeli troops in the Occupied Palestinian Territory is illegal, and that Israel must end the occupation as rapidly as possible,[36] which the UN General Assembly has interpreted to mean by 17 September 2025.[37]

3.5 Omissions and inaccuracies on the issue of annexation

The article's discussion of annexation as a fourth option for post-war reconstruction is particularly problematic given several legal inaccuracies.

1. While the total or partial annexation of the Gaza Strip by Israel in a post-war period is factually possible, legally it would be a serious violation of one of the fundamental rules of the international legal order, namely the prohibition of territorial acquisitions by force. Such a scenario cannot be treated simply as a matter of fact without a clearer statement as to the illegality of annexation under international law.
2. Whilst the article states on the penultimate page that 'annexation is no longer an accepted way to acquire territory in international law',[38] nonetheless this being such a central aspect of the four options, the norm should have been stated much earlier in the article, perhaps in the introduction, and in an unequivocal way as reflecting a peremptory norm of international law.
3. Stating that in certain cases annexation could become lawful (i.e., where the international community tacitly accepts it) and that under the annexation scenario, 'ostensibly, the annexing state has an entitlement to the maritime zones offshore the annexed territory and sovereign rights to the marine resources within',[39] reflects an outdated view of international law which is no longer accurate. The article's conclusion on this point that 'Israel may claim the right to govern the development of the Gaza Marine fields and use the resources for its own interests if it is an offshore part of the annexed area',[40] is incorrect. Annexation cannot generate legal entitlements, as situations resulting from violations of peremptory norms are null and void in international law.
4. On page 26, the article states that, in the annexation scenario, the local population 'may either be expelled from the territory', or 'remain as residents with limited rights',[41] amongst others. Again, such outcomes would reflect serious breaches of international law, and amount to international crimes.
5. The article incorrectly states that Western Sahara was annexed by Morocco following the withdrawal of Portugal.[42] Spain was the withdrawing state. Moreover, all the examples of annexation discussed on page 26 are internationally wrongful acts, as discussed under point 3.5.1. above, and should have been referred to as such.
6. We would also reiterate that the methodology by which annexation is presented as one among several equally valid options belies the fact that such options cannot be treated alike under international law. Whilst such a methodology may be standard practice in other disciplines, in international law, the legal validity and wider questions of legitimacy will necessarily play a

[35] *1949 Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Commentary* (1958), at 275.
[36] See Policies and Practices AO, *supra* note 3, Para. 267.
[37] Resolution Adopted by the General Assembly on 18 September 2024, A/RES/ES-10/24 (19 September 2024).
[38] See Rettig et al., *supra* note 1, at 27.
[39] Ibid.
[40] Ibid.
[41] Ibid., at 26.
[42] Ibid.

central role in determining whether certain policy options are viable or not. The article treats legal and illegal options alike despite their vastly differing reception and consequences under international law. Given the contentious role of Israel in the Occupied Palestinian Territories the article should avoid the possibility of its methodology appearing to buttress unlawful Israeli claims to Palestinian natural resources.

3.6 General issues with the treatment of sources

While the article cannot have dealt with the 2024 Advisory Opinion of the ICJ at the time that it was submitted and revised, it does not mention the fact that the UN General Assembly requested an advisory opinion on that question in December 2022.[43] It also does not make use of many other publicly available additional sources, including UN reports and resolutions dealing with issues addressed in the article, not to mention the vast accompanying literature. On questions concerning Palestine's statehood or the legal status of the Gaza Strip, the article simply reiterates Israel's position and dismisses contrary positions as 'unorthodox'[44] rather than carefully analysing the legal validity of such positions.

[43]See e.g., Ibid., the text accompanying note 105.
[44]See e.g., Ibid., note 32.

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