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PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

Public

Submissions under Rule 103 concerning the implementation of the Oslo Accords

Source: Lawyers for Palestinian Human Rights

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I. INTRODUCTION

1. These submissions are filed by Lawyers for Palestinian Human Rights (“LPHR”) pursuant to the 22 July 2024 decision of Pre-Trial Chamber I.¹ LPHR endorses the Prosecution position that, even if they have continued legal force, the Oslo Accords (“Accords”) do not affect this Court’s jurisdiction.² These submissions address a specific related question: the Accords’ *de facto* implementation. LPHR submits that in determining their relevance, the Court must take account of the extent to which the Accords are actually on foot. These submissions analyse that question regarding three core obligations, which are emblematic of the wider picture. Because the question before the Court concerns benefits purportedly conferred by the Accords on Israel, these submissions are focused on Israel’s compliance.

2. The Accords set out a framework for an interim period of administration, to apply pending permanent status negotiations between Israel and Palestine. The interim period was anticipated to run for five years, until 25 May 1999.³ The 1993 Declaration of Principles on Interim Self-Government Arrangements (“Oslo I”) recognised that permanent status negotiations would implement Security Council resolution 242, which (*inter alia*) called on Israel to withdraw from territories occupied in the 1967 conflict.⁴ The 1995 Interim Agreement on the West Bank and the Gaza Strip (“Oslo II”) provided that the West Bank and Gaza would form “a single territorial unit” under Palestine’s jurisdiction, the “integrity and status” of which would be preserved.⁵ Because the arrangement was interim, it was essential that neither party would “initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations”.⁶

II. KEY AREAS OF IMPLEMENTATION AND NON-IMPLEMENTATION

1. *Non-compliance: Transfer of civil powers in Area C*

Obligations under the Accords

3. Oslo II provided for the establishment of a Palestinian “Council” which would assume

¹ Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, [ICC-01/18-249](#), 22 July 2024.

² Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, [ICC-01/18-12](#), 22 January 2020, paras 183-188.

³ Oslo I, Article V(1). The period would begin from the Israeli withdrawal from Gaza and Jericho, which occurred on 25 May 1994.

⁴ Oslo I, Article I; UN [Security Council Resolution 242](#) (1967), para. 1(i).

⁵ Oslo I, Article IV; Oslo II, Article XI(1) and (2), Article XVII(1), Article XXXI (8).

⁶ Oslo II, Article XI(1).

responsibility for civil affairs in the West Bank from Israel.⁷ Article X provided for a 4-phase military “redeployment” of Israeli forces from the West Bank, alongside a graduated handover of civil functions to the Council.⁸

4. Phase 1 was to be completed by 22 days before Palestinian elections (by December 1995, as elections took place in January 1996). It involved full redeployment of Israeli military forces from “populated areas” - Areas A and B – which then comprised around 27% of the West Bank.⁹ During this phase, Article XI(2) required Israel to transfer to the Council civil authority over Areas A and B. The remaining territory was designated Area C, then around 73% of the West Bank.¹⁰ In Area C, phase 1 did not involve any military redeployment, and only certain civil powers “not relating to territory” were to be transferred to the Council during this phase.¹¹

5. Oslo II contained less detail about phases 2, 3, and 4. In respect of Area C, it required “further redeployments of Israeli military forces to specified military locations”¹² accompanied by the gradual transfer of civil powers “relating to territory”.¹³ Though imprecise, the instrument reiterated that by the end of phase 4, the West Bank would come under the “jurisdiction” of the Palestinian Council, with the exception of certain issues to be dealt with in the permanent status negotiations.¹⁴ It also mandated a clear timeframe: phases 2, 3, and 4 were to be six months each in duration, with phase 2 beginning after the Council’s inauguration, and phase 4 completed within 18 months (ultimately, by September 1997).¹⁵

Situation in fact

6. With some delay,¹⁶ the parties complied with their phase 1 obligations: Israeli troops were redeployed from Areas A and B, and substantial civil and administrative functions were transferred to the Palestinian Council in those areas.

⁷ Oslo II, Article I. Although East Jerusalem is geographically part of the West Bank, it was excluded from that term in the Accords as it was left for final status negotiations. For consistency with the approach used in the Accords, LPHR adopts that usage here but this does not reflect a view on East Jerusalem’s status.

⁸ Oslo II, Article X; Annex I.

⁹ Oslo II, Article X(1), Article XVII(8), and Annex I, Article I(1). Elections were held on 20 January 1996. Areas A and B were identified in Article XI(3).

¹⁰ Oslo II, Article XI(3).

¹¹ Oslo II, Article XI(2) and Annex III, Article IV(1).

¹² Oslo II, Article X(2). Article XI(6) and Annex I, Article I(10) stated that these locations to be determined subsequently, “in the further redeployment phases”.

¹³ Oslo II, Article XI(2)(e) and Annex III, Article IV(2). These powers included oil and gas exploration, quarries and mines, environmental protection, planning and zoning, surveying, land registration, and government and absentee land, among others: See Annex III, Appendix 1.

¹⁴ Oslo II, Article XI(2)(e), Article XVII(8).

¹⁵ Oslo II, Article X(2), Article XI(4) and (5), Article XVII(8); Annex I, Article I(9), Article V(3)(b)(8); and various articles in Annex III, Appendix 1. The Council was inaugurated on 7 March 1996.

¹⁶ G. Watson, *The Oslo Accords*, OUP, 2000, pp110-111.

7. However, implementation stalled at phase 2, with the two sides unable to agree on the scope of the required “further redeployments”. In October 1998, the parties signed the Wye River Memorandum, which sought to resolve that disagreement. It required that in phases 2 and 3, 13% of the land in Area C would be transferred to Areas A and B.¹⁷ However, Israel failed to comply with that requirement, and withdrew its military from only 7% of Area C in November 1998. In September 1999, the Sharm el-Sheikh Memorandum, provided that in phases 2 and 3 Israel would transfer 11% of Area C to Areas A and B.¹⁸ Israel again failed to meet that obligation, instead withdrawing its military from an additional 7% of Area C. The phased withdrawal from Area C has not been revived following Israel’s failure to comply with even the limited redeployment obligations set out in the two memoranda.

8. The consequence of Israel abandoning the military redeployment process has been that its accompanying obligation – to transfer civil powers “relating to territory” to the Palestinian Council – has also languished. Area C now comprises around 60% of the West Bank, and Palestinian civilian affairs in Area C remain under Israel’s control, a matter of enormous detriment to Palestinians.

9. One area of impact emerges from Israel’s ongoing control over planning. Israel has allowed Palestinian developments in only 1% of Area C.¹⁹ Of 2,550 applications for building permits in Area C filed by Palestinians between 2016 and 2020, Israel approved only 24. Over the same period, Israel issued 3,440 demolition orders for structures in Area C.²⁰ Palestinians in Area C are in a difficult position: they are vulnerable to having homes, schools, businesses and infrastructure destroyed for lacking permits that they could not expect to receive. Since 1 January 2009, more than 11,000 structures have been demolished in the West Bank,²¹ more than 900 of which were for water or sanitation.²² 910 structures have been demolished this year alone (including 66 for water or sanitation).²³ The demolition regime is swift (demolitions can occur within 96 hours of notice being given to owners) and restricts access to courts.²⁴ It has

¹⁷ Wye River Memorandum, para. I(A)(1).

¹⁸ Sharm El Sheikh Memorandum, para. 2.

¹⁹ B’Tselem, [Planning Policy in the West Bank](#), 11 November 2017 (updated 6 February 2019).

²⁰ Yesh Din, [Over the Border](#), October 2022, p 12.

²¹ UN OCHA, [Data on demolition and displacement in the West Bank](#) [accessed 5/8/2024].

²² *Ibid.*; On this issue see also: UN OHCHR, [Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem](#), A/HRC/48/43, 15 October 2021, paras 24, 42.

²³ UN OCHA, [Data on demolition and displacement in the West Bank](#) [accessed 5/8/2024].

²⁴ The speed of demolitions severely restricts the possibility of a judicial challenge: UN OCHA, [Peak in demolitions and confiscations amidst increasing denial of the right to justice](#), 8 December 2020. However, even before Military Order 1797, any access to judicial review for Palestinians was described as a “façade”: B’Tselem, [Israel lifts last veil disguising its West Bank planning policy](#), 14 June 2018.

been widely condemned, including by the UK government.²⁵

10. At the same time as strangling Palestinian infrastructure in Area C, Israel has expanded its own development in the West Bank to support settlement activity. Between 2016 and 2020, the same period considered at paragraph 9, Israel approved 9,157 building permits filed by settlers living in Area C.²⁶ These structures use up land in Area C, and prevent Palestinians from using adjacent areas. Segregated roads (for Israeli use only) are often built to encircle Palestinian towns, effectively limiting their growth and separating them from surrounding land.²⁷

11. The failure to implement even the limited transfer of powers required by Wye River and Sharm El Sheikh, and more fundamentally the failure to progress the redeployment and civil power transfer process past phase 2, represent a central derailment of the Accords. The result is Israel's ongoing control of civil affairs over the majority of the West Bank.

2. *Non-compliance: Safe passage between Gaza and the West Bank*

Obligations under the Accords

12. Essential to treating Gaza and the West Bank as a “single territorial unit” was the possibility for movement between them. Annex I to Oslo II required Israel to ensure safe passage of people, vehicles and goods between Gaza and the West Bank along two specified routes (marked on a map²⁸) which were to be open “during daylight hours... [and] in any event, not less than 10 hours a day”.²⁹

13. Annex I also set out administrative requirements, including regarding permits,³⁰ and addressed security. Israel was given the power to temporarily halt the operation of one safe passage route on security or safety grounds whilst ensuring that the other remained open.³¹ Additionally, Article X(2)(d) stated that “Israel may deny the use of its territory for safe passage by persons who have seriously or repeatedly violated the safe passage provisions detailed in this Article”. Article X(2)(e) provided that these persons would be escorted by Israeli police on shuttle buses operating from 7am to 2pm at least two days per week. The parties returned to safe passage in later agreements in the Oslo II process, notably in the October 1999 Protocol Concerning Safe Passage between the West Bank and the Gaza Strip.

14. As well as requiring routes for transit by land, Oslo II contained specific provisions

²⁵ UK Government, [Diplomatic Missions condemn demolitions in South Hebron](#), 1 July 2024.

²⁶ Yesh Din, [Over the Border](#), October 2022, p 12.

²⁷ Breaking the Silence, [Highway to Annexation](#), December 2020, p. 12.

²⁸ Oslo II, Annex I, Article X(1)(d) and Map No. 6.

²⁹ Oslo II, Annex I, Article X(1)(b).

³⁰ Oslo II, Annex I, Article X(2).

³¹ Oslo II, Annex I, Article X(4)(c).

regarding air travel, including between the West Bank and Gaza.³² The parties concluded a protocol on the establishment of an international airport in Gaza.³³

In practice

15. In the first four years after Oslo II, safe passage was not implemented at all.³⁴ Safe passage was only finally enabled after the conclusion of the protocol in October 1999.³⁵ Even then, only one of the two mandated routes between Gaza and the West Bank was opened.³⁶ This partial compliance lasted for less than one year. When the second intifada broke out in September 2000, Israel ended safe passage.³⁷ It has never been restarted. In 2001 Israel bombed and destroyed the Gaza airport, built pursuant to the Accords with international aid, and which had been operational only since 1998.³⁸ Air travel between Gaza and the West Bank has been impossible since then.

16. Instead of supporting safe passage between Gaza and the West Bank, with exceptions on security grounds, Israel actively limits such movement. A presumptive prohibition applies. Permits can only be sought for a small range of permitted travel purposes and many are refused, particularly for residents of Gaza.³⁹ Israel also prevents Gaza's residents from entering the West Bank via Jordan.⁴⁰ Since 7 October 2023, travel between Gaza and the West Bank has been virtually impossible.

17. Despite the Accords' clear requirement to enable Palestinian transit through Israeli territory, Israel takes the position that "a Palestinian resident has no vested right to enter

³² Oslo II, Annex I, Article XIII (especially paragraphs (11)-(13)).

³³ Protocol Regarding the Establishment and Operation of the International Airport in the Gaza Strip During the Interim Period: The Wye River Memorandum, Palestine Yearbook of International Law, Vol.X, 1998/99, p269.

³⁴ On this initial period of complete non-implementation, see: B'Tselem, [Divide and Rule](#), May 1998, pp9-11.

³⁵ B'Tselem and HaMoked, [One Big Prison](#), March 2005, p10; D. Sontag, [Link Opens West Bank to Gaza's Job Hunters](#), New York Times, 26 October 1999; I. Prusher, [Palestinians queue to use safe route to West Bank](#), The Guardian, 26 October 1999.

³⁶ B'Tselem and HaMoked, [One Big Prison](#), March 2005, p10. A difference of interpretation also became apparent as to whether Oslo II and the Safe Passage Protocol enabled Israel to prevent some persons from any use of the safe passage (including by escorted bus): G. Watson, *The Oslo Accords*, OUP, 2000, pp147-147. It is reported that in the first six months, 17% of those who sought to travel were denied permission: B'Tselem and HaMoked, [One Big Prison](#), March 2005, p10, footnote 10. See also Sontag, [Link Opens West Bank to Gaza's Job Hunters](#), New York Times, 26 October 1999, citing a slightly lower figure at the date of the route's opening.

³⁷ B'Tselem and HaMoked, [One Big Prison](#), March 2005, p10.

³⁸ [Israel bombs Gaza airport control tower](#), Irish Times, 12 December 2001; Mohammed Omer, [Gaza airport: hopes that dreams will be a reality again](#), Middle East Eye, 12 February 2015; [20 years after its opening, destroyed Gaza airport embodies grounded peace hopes](#), The Times of Israel, 12 September 2018.

³⁹ Gisha, [Disengagement Danger](#), February 2006; Gisha, [Area G](#), June 2020, p8; [Does the closure of Gaza constitute the crime against humanity of persecution?](#), 5 December 2022, paras 79-86; 95-11; 238-242.

⁴⁰ Gisha, [Disengagement Danger](#), February 2006, p2; Gisha, [Area G](#), June 2020, p3.

Israel.”⁴¹ There are indications, although no clear public information, that Israel has actively adopted a “Separation Policy” intended to isolate the West Bank and Gaza from each other.⁴²

18. In this respect there is no question that the Accords’ requirements for safe passage, and for treating Gaza and the West Bank as a single territorial unit, are not being implemented.

3. *Selective implementation: Water management in the West Bank*

19. The West Bank has two main sources of water. One is the “Mountain Aquifer”.⁴³ The Aquifer is largely fed by rainfall and snowmelt within the West Bank, but parts of it flow westward into Israel and are able to be tapped there. The other, in principle, is the Jordan River. However Israel, Jordan and Syria are heavy upstream users of the river, leaving minimal usable water for the West Bank.⁴⁴

*Obligations under the Accords*⁴⁵

20. Oslo II “recognize[d]” Palestinian water rights, but left elaboration of their content and scope for permanent status negotiations.⁴⁶ During the interim period, water powers “related solely to Palestinians” would be transferred immediately to the Council.⁴⁷ Other water issues would be handled by a Joint Water Committee (“JWC”).

21. Oslo II set out a division of existing water resources from the Mountain Aquifer:⁴⁸ 483 MCM/year for Israel and 118 MCM/year for Palestinians.⁴⁹ However, it also recognised this was insufficient for Palestinian needs and allocated an additional 28.6 MCM/year during the interim period, with each side required to develop certain infrastructure to achieve that provision.⁵⁰ 28.6 MCM/year was only a fraction of the estimated “future needs” of Palestinians, agreed by the parties at 70-80 MCM/year.⁵¹ The remaining amount was to be developed by the

⁴¹ [Status of Authorizations for entry of Palestinians into Israel; for their passage from Judea and Samaria into the Gaza Strip; and for their departure abroad](#), 8 February 2022, (published online by Gisha), p. 3, para. F. See also, *Muslem et al. v. Commander of the Military Forces in the West Bank et al.*, HCJ 2748/12, Preliminary Response on behalf of the Respondents, 10 April 2012, quoted in HaMoked and B’Tselem, [So Near and Yet So Far](#), January 2014, p. 9: “Residents of the Gaza Strip, like all other foreign nationals, have no legal right to enter Israel for any need whatsoever.”

⁴² See [Does the closure of Gaza constitute the crime against humanity of persecution?](#), 5 December 2022, paras 37, 86, 98, 241; Gisha, [Area G](#), June 2020, pp4-5 and annex.

⁴³ The “Mountain Aquifer” is distinct from the “Coastal Aquifer” which lies under Gaza.

⁴⁴ J. Selby, *Cooperation, Domination and Colonisation: The Israeli-Palestinian Joint Water Committee*, Water Alternatives, Vol. 6, No. 1, 2013, p5.

⁴⁵ A useful summary can be found in: World Bank, [Assessment of Restrictions on Palestinian Water Sector Development](#), April 2009, paras 23-29.

⁴⁶ Oslo II, Annex III, Appendix 1, Article 40(1), also Article 40(5).

⁴⁷ Oslo II, Annex III, Appendix 1, Article 40(4).

⁴⁸ Oslo II refers to the “Western Aquifer”, “North-Eastern Aquifer” and the “Eastern Aquifer”. They are all sub-aquifers of the Mountain Aquifer.

⁴⁹ Oslo II, Annex III, Schedule 8, Article 1 and Schedule 10.

⁵⁰ Oslo II, Annex III, Appendix 1, Article 40(7).

⁵¹ Oslo II, Annex III, Appendix 1, Article 40(6).

Palestinians.⁵² Oslo II also provided that where one party purchased water from the other, “the full real cost” would be paid, including of production and conveyance.⁵³

22. The JWC was to be responsible for West Bank water coordination in the interim period.⁵⁴ It would ensure Oslo II’s allocation of existing resources⁵⁵ and the additional 28.6 MCM/year for Palestinians.⁵⁶ Beyond those agreed amounts, any steps toward accessing or piping additional water in the West Bank would require JWC approval.⁵⁷ The JWC was to be composed of an equal number of members from each side, and take decisions by consensus.⁵⁸

23. These provisions related only to water from the Mountain Aquifer. Rights to water from the Jordan River were implicitly among those issues left for permanent status negotiations.

In practice

24. At least as a matter of form, this is an area of some implementation. Despite cases of unilateral action outside the framework by both sides,⁵⁹ many aspects of the JWC have operated,⁶⁰ except for a stalemate from 2010-2016. Israel quickly took a *quid pro quo* approach in the JWC: approval of Palestinian proposals was (sometimes implicitly) conditional on agreement for Israel’s settlement-related projects.⁶¹ In 2010, the Palestinian members stopped approving settlement water projects. The Israelis then vetoed all Palestinian water projects. This impasse lasted six years, during which nearly 100 water projects were unable to proceed.⁶²

25. From the outset, geography dictated that a JWC stalemate harms Israel far less than Palestinians. Israel has other natural water sources, including the Jordan River. Moreover, the Mountain Aquifer flows westward, and Israel can access it through wells on its own territory, which do not require JWC approval.⁶³ That discrepancy between the sides’ need for JWC

⁵² Oslo II, Annex III, Appendix 1, Article 40(7)(b)(6).

⁵³ Oslo II, Annex III, Appendix 1, Article 40(18).

⁵⁴ Oslo II, Annex III, Appendix 1, Article 40(11)-(15); Schedule 8.

⁵⁵ Oslo II, Annex III, Appendix 1, Schedule 8, Article 1.

⁵⁶ Oslo II, Annex III, Appendix 1, Schedule 8, Article 1(c).

⁵⁷ Oslo II, Annex III, Appendix 1, Schedule 8, Article 1(a) and (b).

⁵⁸ Oslo II, Annex III, Appendix 1, Article 40(13) and (14).

⁵⁹ J. Selby, Cooperation, Domination and Colonisation, Water Alternatives, Vol. 6, No. 1, 2013, p17.

⁶⁰ See J. Selby, Cooperation, Domination and Colonisation, Water Alternatives, Vol. 6, No. 1, 2013, pp7-8.

However, the Joint Supervision and Enforcement Teams, which were to operate under the JWC have mostly not functioned: J. Selby, Cooperation, Domination and Colonisation, Water Alternatives, Vol. 6, No. 1, 2013, p8.

⁶¹ J. Selby, Cooperation, Domination and Colonisation, Water Alternatives, Vol. 6, No. 1, 2013, p17; B’Tselem, [Parched](#), April 2023, p15.

⁶² J. Selby, [Renewing cooperation on water](#), Open Democracy, 26 January 2017; B’Tselem, [Parched](#), April 2023, p15.

⁶³ World Bank, [Assessment of Restrictions on Palestinian Water Sector Development](#), April 2009, para. 9 and pp 33-35.

approvals has increased since Oslo II. The West Bank population has grown,⁶⁴ increasing Palestinian water needs. On the Israeli side, reliance on the Mountain Aquifer has diminished. Israel now produces more fresh water by desalination and reuse than it takes from natural sources.⁶⁵ The JWC's power over Israel is therefore confined to water infrastructure for settlements. In contrast, for Palestinians, the JWC controls access to any additional water from the West Bank's only available source.

26. Israel's power over West Bank water access goes beyond JWC vetoes. Water projects usually need to cross land in Area C. Because Israel maintains planning control there, even where the JWC has approved a project, it can still be blocked by Israel. Israel also controls imports of construction materials into the West Bank. These means give Israel enormous power over Palestinian water infrastructure in the West Bank. An analysis of JWC records from 1995-2008 found that virtually all Israeli applications had been approved, while between 33-70% of Palestinian well applications were rejected.⁶⁶ Many more are then blocked in Israeli planning processes.⁶⁷ This may occur, for example, where the proposed water infrastructure is close to settlements or Israeli roads. As discussed above (paragraph 9), structures built without a permit, including water infrastructure, are vulnerable to demolition.⁶⁸

27. In January 2017, after six years of stalemate, the Palestinian Authority reached an agreement with Israel to revive the JWC. It modified the JWC's mandate so that approval is only needed for wells, not pipes that move existing water resources.⁶⁹ As the settlements mostly function on water piped from Israel, this has removed their water supplies from JWC oversight. NGO tracking shows that planning and tenders for settlement construction have increased considerably since the new agreement.⁷⁰

28. Meanwhile, the West Bank continues to struggle to meet its water needs.⁷¹ Some of the shortfall is met by purchasing water which is piped from Israel and paid for at full cost (even if sourced from the Mountain Aquifer).⁷² However, water shortages continue, with devastating

⁶⁴ The Palestinian Central Bureau of Statistics estimates the West Bank population as 1.8m in 1997, and 3.1m in 2021: PCBS, [Estimated Population in Palestine Mid Year by Governorate, 1997-2021](#) [accessed 3/8/2024].

⁶⁵ WRAP, [From Water Stressed to Water Secure](#), 2022, p7.

⁶⁶ J. Selby, Cooperation, Domination and Colonisation, *Water Alternatives*, Vol. 6, No. 1, 2013, pp12-13.

⁶⁷ World Bank, [Assessment of Restrictions on Palestinian Water Sector Development](#), April 2009, pp53-55; J. Selby, Cooperation, Domination and Colonisation, *Water Alternatives*, Vol. 6, No. 1, 2013, p13.

⁶⁸ B'Tselem, [Parched](#), April 2023, p21; Norwegian Refugee Council, [Helping Palestinians stand up to the forces of displacement](#) and sources in footnote 22 above.

⁶⁹ J. Selby, [Renewing cooperation on water](#), Open Democracy, 26 January 2017.

⁷⁰ Peace Now, [Settlements data: Construction](#), [accessed 4/8/2024].

⁷¹ UN OHCHR, [Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem](#), A/HRC/48/43, 15 October 2021, para. 26.

⁷² *Ibid.*, para. 30.

impacts for health, the environment, the economy and the everyday lives of residents.⁷³

29. In short, water mechanisms for the West Bank operate largely according to the letter of the Accords. Israel (in whose favour the water regime operates) and international donors have insisted on the use of the JWC, even when the Palestinian Authority sought to derail it.

30. At the same time, Israel has used the water regime to expand settlements in the West Bank. It has been able to ensure that water supply is available for existing and new settlements; while also using settlements and settlement-related infrastructure, such as roads, to block Palestinian water projects. Even if strictly compliant with the Accords, the water regime has been instrumentalised to undermine one of Oslo II's central principles, preservation of the integrity and status of the West Bank.

III. OBSERVATIONS

31. These are three examples among many. Other unimplemented aspects of the Accords include the promised Gaza seaport and Palestinian rights over the sea and continental shelf (including gas fields) adjacent to Gaza.⁷⁴ A system of committees was established, almost none of which function.⁷⁵ And most centrally: the Accords established a *temporary* arrangement. They were not intended to operate for decades.

32. Beyond the failure to meet many Oslo II obligations, Israel is simultaneously taking active steps to defeat the core premises underpinning the interim arrangement (that the “integrity and status” of the West Bank and Gaza will be preserved, and that permanent status negotiations will be pursued, resulting in Israel's withdrawal from those territories).⁷⁶ For example:

- (a) Since 1998, Israel has seized nearly 50 sq. km of land in Area C and declared it “state property” within Israel's exclusive control.⁷⁷ 23.7 sq. km has been seized this year alone.⁷⁸
- (b) Israel invests heavily in West Bank settlements located in Area C,⁷⁹ and incentivises Israelis to live in them: between 1995 (when Oslo II was agreed) and 2022, the number of

⁷³ World Bank, [Assessment of Restrictions on Palestinian Water Sector Development](#), April 2009, pp21-27; [Report of the Independent International Commission of Inquiry on the OPT, including East Jerusalem, and Israel](#), A/77/328, 14 September 2022, paras 70-74; B'Tselem, [Parched](#), April 2023, pp18-24.

⁷⁴ Oslo II, Annex I, Article XI; UNCTAD, [The Economic Costs of the Israeli Occupation for the Palestinian People](#), 2019, pp20-23; Gisha, [Closing in](#), August 2018, pp12-14 (on sea access); A. Ashar and J. Singer, [A Palestinian Outlet to the World, A Path towards Peace?](#), Cairo Review of Global Affairs, Summer 2022.

⁷⁵ In 2009 the World Bank reported that only 2 of 26 committees remained functional: World Bank, [Assessment of Restrictions on Palestinian Water Sector Development](#), April 2009, para. 29. See also UNSCO, [Report to the Ad Hoc Liaison Committee](#), 15 September 2023, pp2, 3.

⁷⁶ See above at paragraph 2.

⁷⁷ Peace Now, [The Government Declares 12,000 Dunams in the Jordan Valley as State Lands](#), 3 July 2024..

⁷⁸ BBC, [“Israel settlements drive heightens Palestinian land angst”](#), 5 July 2024.

⁷⁹ Peace Now, [The Israeli Government's Annexation Agenda](#), June 2024, p 5. Israel committed an additional 1bn NIS for settlement security, and an additional 7bn NIS for roads.

settlers in the West Bank rose from 134,000 to 478,000.⁸⁰

- (c) In February 2023, Israel transferred responsibility for West Bank civil affairs from the military to the Israeli civil service,⁸¹ a striking departure from Oslo II, which anticipated the transfer of control directly from the Israel's military to the Palestinian Council.⁸²
- (d) Last month, Israel extended its civil powers in the West Bank into Area B, assuming for itself planning powers there to enable demolitions.⁸³ Planning powers in Areas A and B had been transferred to the Palestinian Authority in phase 1 of the Oslo II redeployment, and held by them throughout the decades since.⁸⁴

33. Such actions cannot be ascribed simply to security concerns or reciprocity in respect of Palestinian non-compliance. Rather, they reflect a policy of annexation,⁸⁵ engineered to frustrate the possibility of permanent status negotiations resulting in Palestinian control of Area C (as contemplated by the Accords and Security Council resolution 242).

34. These submissions do not afford space to address legal consequences.⁸⁶ However, it is clear that, in practice, Israel has decisively turned its back on Oslo II. In light of its moves to permanently undermine the very basis of Oslo II, selective adherence to beneficial provisions – such as in relation to water – cannot be interpreted as commitment to Oslo II. The Chamber may ask whether Israel should benefit from a treaty which it is not implementing in good faith; any attempt by its leaders to use it as a shield against criminal jurisdiction would be made without “clean hands”.⁸⁷

Respectfully submitted,

Tareq Shrourou

Tareq Shrourou

Director and Principal Lawyer, Lawyers for Palestinian Human Rights

Dated this 6th day of August 2024, at London

⁸⁰Peace Now, [Settlements data: Population](#), [accessed 5/8/2024].

⁸¹Peace Now, [The Israeli Government's Annexation Agenda](#), June 2024, pp 3-4.

⁸²Oslo II, Article I(5); Annex I, Article I(5).

⁸³Peace Now, [Israeli Government Assumes Authorities of the Palestinian Authority in Area B](#), 19 July 2024.

⁸⁴Oslo II, Annex III, Appendix 1, Article 27(1).

⁸⁵Now recognised as such by the International Court of Justice (“ICJ”): [Advisory Opinion of 19 July 2024](#), paras especially 157-179, paras 173, 179; See also LPHR, [LPHR briefing for parliamentary debate on human rights protections for Palestinians](#), April 2023.

⁸⁶We note that in the ICJ's recent advisory opinion, three judges opined that the Accords “have not ceased to be in force” (Advisory Opinion of 19 July 2024, [Joint Opinion of Judges Tomka, Abraham and Aurescu](#), para. 43). However they did not analyse the Accords' implementation, or the potential legal consequences thereof.

⁸⁷See for example the view of Judge Van den Wyngaert sitting in the ICJ: Arrest Warrant of 11 April 2000 (DRC v Belgium), [Dissenting Opinion of Judge ad hoc Van den Wyngaert](#), p161.