

# **The future of the “Occupied Palestinian Territory”: Will common sense return to the United Nations?**

A Legal and Policy Analysis of UNGA Resolutions ES-10/24  
and A/79 L/23 on the Israeli-Palestinian conflict.



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## EXECUTIVE SUMMARY

This Briefing Paper examines the legal and policy implications of the recent UNGA Resolutions ES-10/24 and A/79 L/23 in the context of the situation in the West Bank and Gaza Strip, and the current geostrategic developments in the region.

Seen together, these UN resolutions, partly relying on ICJ Advisory Opinions, seek to compel Israel to withdraw its military and civilian presence from the “Occupied Palestinian Territory”, and to effectuate the speedy realization of a Palestinian state in fulfilment of the “two state solution”. They call on all member states to support these demands by applying pressure on Israel through legal, diplomatic and economic measures. Resolution A/79 L/23 calls for an international conference to implement the “two states solution” in New York in June 2025.

These are politically-driven resolutions that totally ignore the massive problem presented by extreme Islamist terrorism—not only for Israel, but for regional and global stability and security. They also proceed from a number of false legal assumptions: that the Palestinian people have an automatic and unconditional right to statehood, that the 1949 Armistice Lines represent secure borders, and that Israel’s status in East Jerusalem, the West Bank and Gaza Strip is no more than that of an occupying power. And they ignore the culture of corruption and the influence of radical Islamism within the Palestinian institutions – including the Palestinian Authority.

Accordingly, this paper outlines the three main issues that UN member states should take into account when determining how to respond to these resolutions, which are:

- the security problems that will be unleashed by Israeli withdrawal from these strategically significant territories in the absence of eliminating Hamas and all other threats of radical Islamist entities committed to Israel’s destruction ,
- the fact that these resolutions undermine Israel’s UN Charter rights to secure borders, political independence and territorial integrity, and
- the necessity of a fundamental reform of Palestinian political culture and institutions of government as a precondition for statehood.

## Key Findings:

### 1. The content of the Resolutions

- **Resolution ES-10/24** (September 18, 2024) demands an unconditional Israeli civil and military withdrawal from East Jerusalem, the West Bank and Gaza Strip within 12 months, relying on the International Court of Justice (ICJ) Advisory Opinion of July 2024.
- **Resolution A/79 L/23** (November 25, 2024) calls for a high-level international conference in June 2025 to address the peaceful settlement of the question of Palestine.

### 2. Geostrategic Context

These resolutions must be seen in the context of the volatile geostrategic trends in the region, especially -

- **Iran's Influence:** Notwithstanding Israel's recent successful campaigns, the revolutionary regime in Iran remains a destabilizing actor in the region, including the West Bank and Gaza Strip, funding and arming proxies like Hamas and Hezbollah. Its influence extends globally, including threats in Europe, North and Latin America.
- **Syria and Jihadist Threats:** The collapse of the Assad regime has led to the resurgence of groups like ISIS and Hay'at Tahrir al-Sham (HTS), with Turkey's involvement further complicating the security landscape. The absence of the Syrian Democratic Forces (SDF) as a stabilizing force exacerbates these risks, with potential spillover effects on Israel's borders as the SDF face the Syrian National Army (SNA), controlled by Turkey, which is attacking the Kurds.
- **Qatar's Role:** While Qatar has positioned itself as a mediator in regional conflicts, including the Israeli-Hamas war, its close ties to Hamas and Iran raise questions about its neutrality and long-term commitment to peace.
- **Palestinian Governance:** The Palestinian Authority (PA) continues to struggle with corruption, inefficiency, and an inability to curb extremist groups, raising concerns about the viability of a future Palestinian state existing side-by-side with Israel in peace.
- **Provisional Ceasefire in Gaza:** a ceasefire between Hamas and Israel is currently in effect in Gaza, accompanied by the weekly release of Israeli hostages that began on January 19.

While this development provides a temporary respite, there is much uncertainty about the medium- to long-term security dynamics and the durability of the agreement.

- **President Trump's Proposal on Gaza:** It is difficult to ascertain whether President Trump's recent proposal on Gaza—consisting of a transfer of Gazan civilians to safe locations outside the Gaza Strip—risks collapsing the current ceasefire and impeding the release of the remaining Israeli hostages. Trump has not clarified whether the transfer would be temporary or definitive. He also called on Jordan and Egypt to host Gazans. The proposal outlines a framework for post-war governance in Gaza, which contrasts sharply with UNGA Resolution ES-10/24. Trump asserted that Gaza would be put under United States “ownership” but has not provided details.

### 3. Legal Implications

- The ICJ Advisory Opinion and Resolution ES-10/24 misapply international law on occupation, territorial sovereignty and statehood. Requiring unconditional Israeli withdrawal behind the 1949 Armistice Lines is a fundamental infringement of the Oslo Accords and UNSC Resolution 242 (1967), which the parties and the Security Council have accepted as the foundation for a negotiated settlement based on mutual security and recognition.
- Unlike ES-10/24, Resolution A/79 L/23 omits any specific reference to the latter resolution, and avoids setting a deadline for Israel's withdrawal. It seems to recognize the continuing legality of the Oslo Accords and UNSC Resolution 242 as frameworks for negotiations, thus allowing broader diplomatic engagement on final status issues such as borders and security.
- In fact, under the Oslo Accords, Palestinian self-determination is inextricably tied to Israel's right to secure and defensible borders.
- It specifically requires all parties involved to ensure “full compliance” with the agreements. This stipulation underscores that key issues related to “final status” under the Oslo Accords—such as final borders, including Israel's legitimate sovereign claims over territories in the West Bank under the principle of *uti possidetis juris*, settlements, and refugees—must exclusively be resolved through direct negotiations between the conflicting parties.



- Omitting specific deadlines and references to ES-10/24 opens the door for more pragmatic and inclusive diplomacy. However, UN member states must be vigilant to ensure that UN intervention does not undermine the rights and obligations of the parties (Israel and the PLO) under the Oslo Agreements and international law.

#### **4. Security Implications**

- Both resolutions disregard the role of state and non-state actors in the Middle East promoting international terrorism.
- An unconditional Israeli withdrawal would create a security vacuum, heightening risks from Iranian proxies and jihadist groups. It could also jeopardize religious freedoms in Jerusalem, with implications for global stability.

#### **5. Palestinian Reforms as Precondition to Statehood**

- In refusing to amend the PLO Charter and other measures, the Palestinian leadership has shown that its true goal is an Arab majority state in all of the territories of the former British Mandate—not to establish a peace-loving Arab state adjacent to Israel.
- The Palestinian political culture remains entrenched in resistance and extremism, often driven by the ideology of Islamist groups like Hamas.
- The Palestinian people must develop a stable, independent government that respects the rule of law, as a precondition to third state recognition of Palestinian statehood.
- Hamas must be uprooted. By failing to hold Hamas accountable, UNGA Resolution ES-10/24 will reinforce the cycle of violence. Hamas's ultimate goal is the elimination of Israel. As long as Hamas exists there can be no peace.
- UNRWA must be dismantled. The failure of UNRWA, which has been infiltrated by Hamas, exacerbates the crisis by undermining the agency's role in providing civil services and perpetuating extremism. Instead of aiding reform, the agency has become part of the problem.

## 6. Latest Developments and Potential Consequences

- The previously discussed Trump proposal on Gaza—while not yet official U.S. policy—has significantly altered the geostrategic landscape in the Middle East. President Trump is disrupting conventional frameworks of thinking about the Israeli-Palestinian conflict. He has yet to make any statements regarding his policies on the West Bank.
- In this context, the Gaza ceasefire remains fragile and is at risk of collapse. Given the volatile nature of the situation, predicting every possible outcome remains challenging.
- Hamas has threatened to delay the release of the remaining hostages. If the ceasefire collapses and war resumes in Gaza, the potential consequences could be grave. Israel may then consider the following options:
  - i. **Terminate the Oslo Accords** due to the persistent inability of the Palestinian Authority (PA) to exercise effective control of the territories of the West Bank and Gaza Strip transferred by Israel. This includes its blatant failure to fulfil its primary obligation of combating and preventing terrorist threats and violence originating from these territories. Hamas's failure to release all the remaining hostages taken on October 7 may lead Israel and the United States to take more drastic actions.
  - ii. **Proceed with a forcible (temporary) transfer** of Gazan civilian population to safe locations outside the Gaza Strip. This measure would be largely justified by military necessity, namely, depriving Hamas of human shields to protect themselves from IDF operations.
- **Reassessing the Palestinians' right to self-determination:** Hamas's failure to release all of the remaining hostages taken on October 7 might lead the international community to reassess the Palestinians' right to self-determination. Like all rights in international law, self-determination is not absolute. In this case, self-determination is conditioned on Israel's right to secure and defensible borders. Moreover, since 1948, Palestinians have consistently rejected opportunities to establish their own state, choosing instead to prioritize the destruction of a neighboring state. This prolonged refusal to exercise their right to self-determination, combined with a focus on undermining Israel, must lead the international community to reassess this right. The evolving geopolitical landscape should prompt reassessment of the Palestinian claims to self-determination due to sustained rejectionism and engagement in terror, especially when it threatens regional stability and security.



## 7. Conclusions:

- Implementing Resolution ES-10/24 in its current form compromises Israel's legal rights to territorial integrity, secure borders, and political independence. It poses existential security risks to Israel and undermines regional and global security.
- The international conference to be organized pursuant to Resolution A/79 L/23 provides an opportunity to revive meaningful negotiations. However, in participating in such a conference, UN member states must adopt balanced policies that respect the rights and obligations of the parties to the Oslo Accords, and address the legal, security and governance challenges critical to achieving lasting peace.

## 8. Recommendations:

UN member states should:

- **Reject the terms of Resolution ES-10/24** calling for an immediate and unconditional Israeli withdrawal of military and civilian presence from East Jerusalem, the West Bank and Gaza Strip.
- **Prioritize the imperative of neutralizing internationally-sponsored terrorism** and jihadist threats over Palestinian demands for immediate statehood recognition.
- **Leverage Resolution A/79 L/23** to encourage pragmatic diplomacy and negotiations rooted in the Oslo Accords and UNSC Resolution 242.
- **Ensure reforms of Palestinian governance** to establish the foundations for a viable state, while recognizing Israel's sovereign claims and maintaining Israel's right to control of the West Bank as a security buffer until such time as a negotiated agreement is reached satisfying Israel's need for secure borders.
- **Recognize Israel's right to secure borders, its sovereignty over East Jerusalem, and its superior sovereignty claims to the territories of the West Bank and Gaza Strip** under international law.
- **Ensure that Hamas and other Islamist jihad groups in Gaza and the West Bank are uprooted.** By failing to hold Hamas accountable, these UNGA Resolutions

reinforces the cycle of violence. Hamas's ultimate goal is the elimination of Israel. As long as Hamas exists there can be no peace.

- **Ensure that UNRWA is dismantled.** The failure of UNRWA, which has been infiltrated by Hamas, exacerbates the crisis by undermining the agency's role in providing civil services and perpetuating extremism. Instead of aiding reform, the agency has become part of the problem.
- **Propose the establishment of an international peacekeeping force in the Gaza Strip** led by Israel and the United States, consisting of countries that signed the Abraham Accords and other peace-loving nations from regions such as Latin America and Africa, possibly followed by an innovative modern trusteeship, to foster long-term stability and peace.
- **Advocate for the creation of an arbitration mechanism** or claims commission to compensate refugees who fled their homes in 1949: Palestinians who left the territories of the State of Israel on or around that date and Jews that left the territory of Arab states and the territories of Mandate Palestine that were seized by Jordan—in line with UNSC Resolution 242's call for a “just settlement of the refugee problem”.

## 1. PURPOSE OF THIS BRIEFING

The purpose of this Briefing is to examine UNGA Resolutions ES-10/24 and A/79 L/23, assessing their legal and policy implications within the context of the West Bank, Gaza Strip, and broader regional dynamics. It is intended to serve as a resource for policymakers, combining legal analysis with geostrategic insights to support balanced decision-making.<sup>1</sup>

Resolution ES-10/24, adopted in September 2024, demands Israel's unconditional withdrawal from East Jerusalem, the West Bank and Gaza Strip, aiming to implement the International Court of Justice

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<sup>1</sup> Resolution adopted by the General Assembly on 18 September 2024. **ES-10/24** “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”. Also, Resolution adopted by the General Assembly on 25 November 2024. **A/79 L/23** “Peaceful Settlement of the Question of Palestine”.

(ICJ) Advisory Opinion of July 2024.<sup>2</sup> The resolution has drawn criticism for disregarding Israel's sovereign claims and security concerns.

Resolution A/79 L/23, passed in November 2024, proposes a high-level international conference on the peaceful resolution of the Israeli-Palestinian conflict in June 2025. Unlike ES-10/24, it does not impose a withdrawal deadline, instead reviving the Oslo Accords and UNSC Resolution 242 (1967) as frameworks for negotiation, potentially enabling more pragmatic diplomacy.

### **Geostrategic Considerations**

The passage of these resolutions must be analyzed against broader regional developments. Iran continues to exert destabilizing influence, funding and arming allies and proxies like Hamas and Hezbollah,<sup>3</sup> while also expanding its reach beyond the Middle East, including into Latin America.<sup>4</sup> The collapse of the Assad regime in Syria has led to the resurgence of jihadist factions such as Hay'at Tahrir al-Sham (HTS) and ISIS,<sup>5</sup> further complicating the regional security landscape. Additionally, Turkey's growing role in the region, particularly through support for various armed factions, poses further challenges.<sup>6</sup> Meanwhile, Qatar, despite positioning itself as a mediator, maintains close ties with Hamas and Iran, raising doubts about its neutrality in regional conflicts.<sup>7</sup>

The Palestinian Authority (PA) remains plagued by corruption and inefficiency, failing to curb extremism or establish the governance structures necessary for a viable state.<sup>8</sup> Given these realities, the immediate implementation of Resolution ES-10/24 could create a security vacuum, empowering terrorist organizations and further destabilizing the region.<sup>9</sup>

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<sup>2</sup> International Court of Justice (ICJ) Advisory Opinion of July 19, 2024, "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem".

<sup>3</sup> "The Only Way to Stop Hamas Is to Stop Iran from Rebuilding It", Matthew Levit, Michael Singh, The Washington Institute for Near East Policy, January 31, 2024.

<sup>4</sup> "Iran Beyond Asia: Latin America", Lucas Martin, Atalayar Reports, December 6, 2024.

<sup>5</sup> "The Fall of Bashar al-Assad and Syria's Unfinished Business", Alexander Patterson, Royal United Services Institute (RUSI), December 9, 2024.

<sup>6</sup> "Turkey has emerged as a winner in Syria but must now use its influence to help build peace", Galip Dalay, Chatham House, December 13, 2024.

<sup>7</sup> "Qatar plays key role in Israel-Hamas ceasefire deal", The Economist Intelligence Unit, January 31, 2025.

<sup>8</sup> "Corruption in Palestinian Authority", Transparency International, February 11, 2024.

<sup>9</sup> "A comprehensive reference guide to the Palestinian security and justice sectors", Eman Rodman, Roland Eckman, Geneva Centre for Security Sector Governance, 2023.

Recent developments, such as the fragile Gaza ceasefire, have provided a temporary respite in the conflict.<sup>10</sup> However, Hamas's threats to delay the release of the remaining Israeli hostages could have severe consequences. Meanwhile, Trump's bold proposal regarding Gaza has shaken the geopolitical landscape in the region and beyond.<sup>11</sup>

### **Legal and Security Concerns**

From a legal standpoint, Resolution ES-10/24 misapplies international law by ignoring Israel's right to secure and defensible borders. It disregards the Oslo Accords and UNSC Resolution 242, which emphasize negotiated settlements rather than unilateral withdrawals. The resolution also fails to acknowledge that Palestinian statehood is contingent on political and institutional reforms, not an automatic right under international law.

Security considerations are equally critical. An unconditional Israeli withdrawal would increase the risk of a security vacuum, allowing Iran-backed groups and jihadist factions to expand their influence. The continued presence of Hamas in Gaza and Hezbollah in Lebanon underscores the existential threats Israel faces.<sup>12</sup> Without effective governance mechanisms in place, the withdrawal demanded by ES-10/24 could lead to further regional instability, endangering both Israel and its neighbors.

### **Our Assessment**

This Briefing contends that UNGA Resolution ES-10/24 should not be implemented due to its flawed legal basis and significant security risks. Our assessment underscores that international efforts should prioritize defeating international jihadist terrorism, ensuring regional stability, and fostering diplomatic solutions grounded in the Oslo Accords and UNSC Resolution 242.<sup>13</sup> While Resolution A/79 L/23 presents an opportunity for renewed dialogue, it must be approached with caution to ensure that negotiations address the fundamental security and governance challenges required for lasting peace.

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<sup>10</sup> "Inside fragile and furious negotiations as Gaza ceasefire is pushed to brink of collapse", Bell Trew, *The Independent*, February 15, 2025.

<sup>11</sup> "What is Trump's Proposal for Gaza?", American Jewish Committee (AJC), February 12, 2025.

<sup>12</sup> "Hamas And Hezbollah: Existential Threats to Israel", Dr. Jim Eckman, *Issues in Perspective*, August 17, 2024.

## 2. UNGA RESOLUTION ES-10/24

UNGA Resolution ES-10/24 was intended to implement and give effect to the ICJ Advisory Opinion issued on July 19, 2024. The Resolution explicitly aligned with the ICJ's conclusion that Israel's continued presence in the "Occupied Palestinian Territory" (OPT), including East Jerusalem, is unlawful and must end "as rapidly as possible".<sup>14</sup> The Resolution demands that Israel "bring to an end its unlawful presence in the Occupied Palestinian Territory ... and do so no later than 12 months since the adoption of the present resolution". Initially, a 6-month withdrawal period was proposed in the draft resolution, but this was later extended to 12 months. The Resolution also calls for the "evacuation of settlements" and mandates that Israel "make reparations for the damage caused to all natural and legal persons concerned in the Occupied Palestinian Territory".

Additionally, it calls on third states to fulfill their legal obligations as outlined in the Advisory Opinion, recognizing the Palestinian people's right to self-determination as an *erga omnes* and *peremptory* right. Third states are also required to ensure that their nationals, or companies or entities under their jurisdiction, refrain from any actions that might imply recognition of, or contribute aid or assistance to maintaining, the situation created by "Israel's illegal presence in the Occupied Palestinian Territory".

Furthermore, to add more pressure on Israel to proceed with an unconditional withdrawal, the Resolution calls on third states to impose arms embargoes on Israel, and sanctions against Israeli nationals allegedly involved in human rights violations against Palestinian residents in the West Bank (the so-called "settler violence").

This threatens to unleash a global wave of BDS-type boycotts, seeking to deter international corporations from engaging in business related to Israel's civilian or military presence in the disputed territories.

Notably, the Resolution fails to explicitly mention UN Security Council Resolution 242 (1967), which provides the foundational legal framework for the resolution of the conflict and affirms the mutual interdependence between Israel's obligation to withdraw from some of the territories seized in June 1967 and its right to territorial integrity and secure and defensible borders (the "land for peace"

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<sup>14</sup> International Court of Justice (ICJ) Advisory Opinion of July 19, 2024, "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem", Advisory Opinion, majority, para. 267.

formula). Instead, it prominently references UNSC Resolution 2334, which declares the illegality of settlements. This selective emphasis demonstrates how one-sided the Resolution is, and reveals its intent to rewrite the applicable rules of international law and replace them with a recurrent anti-Israel narrative that ignores the failure of the Palestinian leadership to fulfil its obligations under international law and agreements with Israel.

Further, the Resolution fails to address—let alone condemn—terrorism, including Hamas’s October 7 attack on Israel, or demand the release of the hostages, alive or dead.

The Court’s (and therefore UNGA’s) reasoning depends on a particular interpretation and application of the law of belligerent occupation (part of international humanitarian law) and self-determination (human rights law) in such a way as to ignore or dismiss other relevant legal principles and policy concerns. In particular, the Court and the General Assembly attach insufficient weight to two issues. First, the crisis of terror and violence in the region, fueled primarily by Iran’s revolutionary regime, which actively sponsors militant groups and destabilizes the Middle East. Second, the failure of the Palestinian leadership to establish stable and effective government in the Palestinian-controlled areas.

Quite simply: it is a misapplication of international human rights and humanitarian law to require Israel to abandon control of **territory** over which it has valid sovereignty claims unless and until Islamist **terror** has been eradicated from the region, and the **tyranny** of the current Palestinian Authority leadership has been reformed in accordance with international law and accepted standards of good governance.

### 3. LEGAL FLAWS OF UNGA RESOLUTION ES-10/24

As discussed, Resolution ES-10/24 seeks to give effect to the ICJ Advisory Opinion of July 19, 2024. The inherent flaws in the Opinion logically undermine the legitimacy of the Resolution.

As judges Tomka, Abraham and Aurescu stated in their joint opinion, the biased and one-sided questions posed by UNGA Resolution 77/247 to the Court in December 2022 caused the Advisory Opinion to be characterized by an overly selective approach that rewrites history and law:

*“The Court chose to portray the Israeli-Palestinian conflict in a biased and one-sided manner, which disregards its legal and historical complexity. It gives little weight to the successive resolutions by which, from 1967 to present, the Security Council established and*



*endorsed the legal framework for resolving the conflict based on the coexistence of two States and on the right of each of the two peoples to live in peace and security. When it does not ignore these resolutions, it makes a selective reading of them.”<sup>15</sup>*

This one-sided approach led to four main legal deficiencies in the Court’s Opinion (and therefore also in Resolution E-10/24):

1. *Occupation, annexation and sovereignty*: The Court’s failure to properly analyze the territorial sovereignty of this territory has led to an incorrect legal analysis;
2. *Illegality of Israel’s practices and policies vs. illegality of Israel’s presence*: the Court made a fundamental mistake by concluding that Israel’s presence in the territories is illegal;
3. *Self-determination and security*: The Court failed to properly consider the security aspects of the occupied territories, including the correct interdependence between the Palestinian and Jewish rights to self-determination and their respective rights to security;
4. *UNSC Res 242, Oslo Accords and negotiations*: The Court failed to take account of the Oslo Accords and the peace process sanctioned by the Security Council based on negotiated settlement of the conflict.

This section briefly addresses each of these issues:

### **Israel’s right to territorial integrity and secure borders**

According to the Court, the status of the territory known as “the Occupied Palestinian Territory” is to be ascertained by reference to the customary law of occupation, as reflected in Article 42 of the Regulations Respecting the Laws and Customs of Law on land annexed to the Fourth Hague Convention (1907), pursuant to which “territory is considered occupied when it is actually placed under the authority of the hostile army”.

The Court makes a fundamental error by assessing the legal status of the territories that were occupied by Egypt and Jordan between 1948 and 1967 solely under the law of belligerent occupation. The law of occupation is part of the law of armed conflict. It assumes that territory that is occupied does not belong to the Occupying Power. However, the law of occupation in itself neither determines nor alters

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<sup>15</sup> Joint Opinion of Judges Tomka, Abraham and Aurescu, para. 6.

the underlying title to territory at the time the occupation began.<sup>16</sup> Furthermore, it is strongly arguable that if the Occupying Power has prior and superior title to the relevant territory, the law of occupation does not apply at all.<sup>17</sup>

The status of the territory occupied by Egypt and Jordan between 1948 and 1967 must be ascertained by reference to the Mandate for Palestine, which was created further to the decision of the Principal Allied Powers in April 1920 and approved by the League of Nations in 1922 in order to reconstitute “a Jewish homeland in Palestine”. According to the Mandate, the Jewish people obtained legal right to settle in Palestine, which included the Gaza Strip and what has later become known as the “West Bank”, including Jerusalem.

The State of Israel was established on May 14, 1948 upon the withdrawal of the Mandatory Power and the termination of the Mandate. The principle of *uti possidetis iuris* dictates that the borders of new states emerging from mandates or colonies should be based on the territorial frontiers that existed at the time of their independence. Applying this principle, the State of Israel had a legitimate claim to sovereignty over the totality of the territories defined by the Palestine Mandate as of May 1948, when Israel declared its independence.<sup>18</sup> This includes Jerusalem, the “West Bank” and the Gaza Strip.

Neither the Jordanian and Egyptian occupation between 1948 and 1967, nor the Armistice Lines agreed between Israel and those states in 1949, affect the sovereign status of the territory. The Advisory Opinion and the Resolution unjustifiably considered the 1949 Armistice Lines—never formally accepted as borders by any party to the Armistice Agreements—as the *de facto* boundaries of the State of Israel and of a Palestinian state. This flawed reasoning ultimately leads to the erroneous conclusion that Israel has conquered and annexed foreign territory by force.

In fact, as Vice President Sebutinde affirms, “*borders, sovereignty, and precise scope of territorial claims of the State of Israel cannot be presumed,*” and the Court, as a result of the biased and selective

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<sup>16</sup> “Two States for Two Peoples?” Wolfgang Bock, Gregory Rose, and Andrew Tucker, Sallux Publishing, October 9, 2023, p. 24.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

questions posed to it, was not provided with arguments or evidence on this critical matter. Instead, both the Court and Resolution ES-10/24 rely on **unproven assumptions**, namely that:

- “(1) all the territories held during the Jordanian and Egyptian occupation within the 1949 Armistice Lines between 1948 and 1967 are automatically the sovereign territories of Palestine, and thus not of Israel;*
- (2) Israel’s presence in the West Bank, the Gaza Strip, and Jerusalem is without any legal justification;*
- (3) Israel’s presence in these areas violates Palestinian rights;*
- (4) this territory is ‘Palestinian’; and*
- (5) Israel’s policies and practices are annexational and necessarily ‘aimed at altering the demographic composition, character, and status of... Jerusalem.’”<sup>19</sup>*

The Court failed to “unpack, test, and verify”<sup>20</sup> these assumptions, omitting essential evaluations of evidence as to whether Palestinian claims to territorial sovereignty align with the legal rights of the State of Israel to East Jerusalem, the West Bank and Gaza Strip resulting from the Mandate, the historical assertions made by the PLO in other forums, and the security threats emanating from the OPTs (Occupied Palestinian Territories) and the broader region that influence Israel’s security concerns. The absence of this analysis undermines the Court’s obligation to objectively assess the context and claims involved. Without clarifying the respective territorial claims of Israel and Palestine, the Court, as Judge Sebutinde states, could not meaningfully address the scope of Palestinian self-determination or Israel’s withdrawal from the so-called “Occupied Territories” as it “does not address any of the above issues and frankly does not have before it sufficient information to even make an educated guess.”<sup>21</sup>

### **The supposed illegality of the occupation**

Judge Sebutinde noted that in June 1967, it was almost uncontested among the international community that Israel lawfully seized the territories within the framework of its right to self-defense in response to an imminent attack by its Arab neighbors, who sought to annihilate the Jewish state.

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<sup>19</sup> Dissenting Opinion of Vice-President Sebutinde, para. 68, page 26. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-02-enc.pdf>

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

Then, she observed: “... it is difficult to ascertain, at what point in history, and pending a negotiated settlement, Israel’s presence in and control of the disputed territories transitioned into an illegal occupation, as suggested by the majority.”<sup>22</sup>

This observation underscores a critical flaw in the Court majority’s reasoning: the failure to distinguish between the act of occupation itself, which relates to a state’s right to use force under the framework of *ius ad bellum* (the law governing the justification to enter war), and the legal obligations of an occupying power under *ius in bello* (international humanitarian law). The former evaluates whether the occupation arose out of a lawful or unlawful use of force, while the latter pertains to the practices and policies of the occupying power during the occupation.

Judges Abraham, Tomka and Aurescu also highlighted this conflation in their separate opinion, criticizing the majority for failing to properly analyze these distinct legal frameworks. This pertains to the issue of illegality of Israel’s practices and policies vs. illegality of Israel’s presence. While they held that Israel’s policies in the West Bank violate international law and Palestinian rights, they emphasized that such violations do not necessarily render the Occupation itself illegal. They accordingly stated: “we are of the view that ‘Israel’s policies and practices’ in the Occupied Palestinian Territory do not affect the ‘legal status of the occupation’, if this encompasses, as the Opinion states (para. 82), the legality of Israel’s presence in this territory as an occupying Power.”<sup>23</sup>

In sum, they did not find that Israel’s occupation itself was illegal.<sup>24</sup> Attributing illegality to Israel’s occupation without a clear legal basis undermines the integrity of the advisory process and introduces subjectivity into the interpretation of international law.

### **The right to self-determination is not absolute**

Furthermore, the Opinion and the Resolution fundamentally misconstrue the right to Palestinian self-determination, elevating it to a *ius cogens* norm that allegedly implies an absolute right to statehood. However, this interpretation completely overlooks the inherently relative nature of this right, which, in this context, can only be achieved through good-faith negotiations that fully respect Israel’s

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<sup>22</sup> Ibid., page 35, para. 87.

<sup>23</sup> Joint Opinion of Judges Tomka, Abraham and Aurescu, para. 27.

<sup>24</sup> Ibid., para. 25.

territorial integrity and legitimate security interests. Additionally, the resolution blatantly disregards the Oslo Accords, thereby undermining the binding commitments of the states that witnessed and guaranteed these agreements. It also conspicuously fails to provide any credible legal basis to assert that Israel's presence in these territories is unlawful.

On this very point, Judge Sebutinde points out that:

*“Whilst there is no doubt that the right to self-determination is a right erga omnes, to which the Palestinian people are entitled, in the present context, that question raises issues of the territorial borders and the safety and security of both the prospective independent Palestinian State and the Israeli State coexisting side by side. These issues, including the proposed frontiers of the two States, territorial inviolability, and legitimate security concerns of both peoples, have not been addressed by the Advisory Opinion. **By asking the Court to examine the policies and practices of one of the parties**, while ignoring the policies and practices of the other party or those of interested third States, such as the Arab neighbours, and by asking the Court to determine the legal consequences of Israel's policies and practices, **the Court cannot arrive at a balanced view that is in keeping with its judicial function and character.** The practical and realistic solution is a consensual one, jointly arrived at by both parties to the conflict through good faith negotiations within the existing negotiation framework and implementation of existing Security Council resolutions.”<sup>25</sup> (bold added)*

### **Sovereign status of the Territories, negotiations and “Land for Peace”**

Judge Sebutinde's analysis, which disagrees with the majority, underscores the unresolved sovereign status of East Jerusalem, the West Bank and the Gaza Strip. She notes:

*“General Assembly resolution 77/247 refers to the West Bank, the eastern part of Jerusalem, and the Gaza Strip as ‘Palestinian territory’. The resolution appears to assume that sovereign rights to this area rest exclusively with the Palestinian people. It disregards any potential claims the State of Israel and the Jewish people may have with respect to some of these areas. **In law and in fact, for over a century, sovereign legal title over the West Bank (and indeed the Gaza Strip) has been, and continues to be, indeterminate, or in abeyance.** This has been*

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<sup>25</sup> Dissenting Opinion of Vice-President Sebutinde, §80, p. 33. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-02-enc.pdf>

*the legal position under international law since the end of World War I, when Turkey (as the successor to the Ottoman Empire) ceded sovereignty of the areas outside of its current borders. No agreement, instrument, judgment, opinion, or event with legal effect has changed this status since, as reflected – and explicitly stated – in agreements between the interested parties, and particularly agreements between the Israeli and Palestinian authorities. Under these agreements, the question of the final disposition of these areas shall be determined only by negotiation.*”<sup>26</sup> (bold added)

This principle of negotiated settlement forms the bedrock of the Israeli-Palestinian peace process. Yet, the Advisory Opinion and (by corollary) UNGA Resolution ES-10/24 disregard this legal and diplomatic framework by assuming exclusive Palestinian sovereignty and sidestepping Israel’s legitimate claims.

Judge Sebutinde further clarifies on the matter of borders and *uti possidetis iuris*:

*“Thus, it would appear that uti possidetis juris dictates recognition of the borders of Israel as coinciding with the borders of the Mandate as of 1948, rather than the 1967 borders, unless and until the parties to the conflict agree otherwise.”*<sup>27</sup>

We align with Sebutinde’s position: Israel has never waived its territorial claims.<sup>28</sup> In 1967, Israel chose to implement a military administration in the West Bank and Gaza Strip to maintain peace and public order and ensure Israel’s security, rather than extend its law and jurisdiction in a manner amounting to full assertion of sovereignty as it did in the case of Jerusalem. Nevertheless, governments of Israel have since proclaimed long-standing Israeli territorial claims to the West Bank and Gaza Strip, sovereignty over which (in Israel’s view) is “in abeyance” until an agreement is

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<sup>26</sup> Dissenting Opinion of Vice-President Sebutinde, §69, p. 27. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-02-enc.pdf>

<sup>27</sup> Ibid., para. 77.

<sup>28</sup> “The Two-State Solution: Objections under International Law”, Dr. István László Mészáros, Attorney at Law, Budapest, The Hague Initiative for International Cooperation (thinc.), January 17, 2020.



reached. Israel's claims of sovereign title to the West Bank and Gaza Strip are juridically better supported than any other claimant (including the Palestinian people).<sup>29</sup>

It should also be recalled, as Judge Sebutinde pointed out, that the British Mandate did not provide for any further partition beyond the separation of Transjordan, which occurred in 1920.<sup>30</sup> Transjordan, constituting 77% of the total territory of the British Mandate, was allocated exclusively for the Arab population of Palestine, and later became the Hashemite Kingdom of Jordan in 1946.<sup>31</sup> Despite this significant territorial concession, the British failed to fulfill the Mandate's primary aim of securing a Jewish homeland in the remaining 23% of the territory. This notable failure by the British, mainly due to their desire to maintain access to oil resources across the Middle East, has profoundly shaped subsequent developments in the region, continuing to affect the region to this day.<sup>32</sup>

Israel, however, has demonstrated a willingness to make territorial concessions from the land seized in 1967, provided these concessions do not compromise its rights to secure and defensible borders—a principle underpinning the “Land for Peace” principle.

This principle, first articulated in UNSC Resolution 242, has shaped every peace negotiation framework since, including the Oslo Accords and the Roadmap for Peace. The core notion is that Israel's relinquishment of territorial claims over these areas would lead to peaceful relations, security guarantees, and recognition of Israel's right to exist. Definitive borders would be mutually agreed between the parties at a final status stage.

**Therefore, Israel's territorial claims over the West Bank (Judea and Samaria) and the Gaza Strip are not based on acquisition by force during the “Six Day” war in 1967, but rather on *uti possidetis juris*, grounded in the territorial boundaries defined by the British Mandate of 1922, which obviously predates the 1967 war.** In any event, if Israel were to be considered an occupier of East Jerusalem, the West Bank, and Gaza Strip—which we explicitly deny—it would still hold legitimate sovereign claims over that land.

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<sup>29</sup> “Two States for Two Peoples?” Wolfgang Bock, Gregory Rose, and Andrew Tucker, Sallux Publishing, October 9, 2023, p. 24. See also the legal opinion of the Attorney General regarding the ICC's lack of jurisdiction (2019), for example paras. 6 and 30: <https://www.gov.il/en/pages/statement-the-attorney-general>

<sup>30</sup> Dissenting Opinion of Vice-President Sebutinde, para. 79.

<sup>31</sup> “Two States for Two Peoples”, Wolfgang Bock, Gregory Rose, and Andrew Tucker, p. 24.

<sup>32</sup> “Transjordan Memorandum”, British Government, 1923.

By sidelining the tenets of “Land for Peace” and “mutually agreed-upon borders”, as required by the Security Council and agreed by the parties in the Oslo Accords, the ICJ Advisory Opinion and Resolution ES-10/24 pose new disruptive elements to peace negotiations between the parties.

The Resolution entirely overlooks the unmet statehood criteria under international law, as well as Israel’s inalienable right to secure and recognized borders, as reaffirmed in UNSC Resolution 242.

Instead of genuinely fostering progress, UNGA Resolution ES-10/24 regrettably perpetuates a one-sided narrative that completely ignores the necessity of genuine negotiations, as outlined in the UNSC Resolution 242 (1967), the Oslo Accords and the Roadmap for Peace (explicitly endorsed by UNSC Resolution 1515 (2003)). In the next section we will discuss the non-binding status of ICJ advisory opinions and UNGA resolutions.

#### **4. NON-BINDING STATUS OF ICJ ADVISORY OPINIONS AND UNGA RESOLUTIONS**

It is particularly important to emphasize that ICJ advisory opinions, as their name clearly suggests, are non-binding: they are advisory and consultative in nature and lack *res iudicata* effect.

There are two kinds of proceedings before the ICJ: Advisory proceedings before the ICJ provide non-binding legal opinions at the request of UN organs or specialized agencies. In contrast, contentious proceedings resolve disputes between states through binding judgments with *res iudicata* effect and require the explicit consent of the states involved to the Court’s jurisdiction.

This critical distinction is emphasized by Judge Nolte’s separate opinion:

*“In cases involving very broad requests, such as the present one, the function of advisory opinions to provide guidance to the requesting organ justifies a particularly broad and merely illustrative approach to the factual assessment. However, this broad focus, together with the principle of consent to jurisdiction, precludes such assessment from having the conclusive*

*effect attributed to factual assessments for the purpose of determining State responsibility in contentious proceedings.”<sup>33</sup>*

Judge Nolte elaborates further on this distinction:

*“In contentious proceedings, the Court ‘decide[s] . . . disputes’ in a binding and final manner. These proceedings are retrospective: their contribution to the peaceful settlement of disputes consists in ending a dispute by making a binding determination that is endowed with legal certainty and finality, the res judicata effect. In contrast, advisory proceedings are consultative and prospective: the Court gives an advisory opinion on a legal question to provide guidance for the requesting organ’s future conduct. The conclusions of the Court in advisory opinions are not the end but the beginning of a process that seeks to establish and maintain peace through law. Indeed, ‘the requesting organ remains formally free to consider the consequences to be drawn from the Court’s opinion’. Therefore, the conclusions made in advisory proceedings complement and facilitate, but can never replace, other procedures for the peaceful settlement of disputes. Indeed, this Court has emphasized that ‘the legal position of the State which has refused its consent to the present proceedings is not ‘in any way compromised by the answers that the Court may give to the questions put to it.’”<sup>34</sup> (bold added)*

Here, the ICJ did not have the judicial mandate to define the international borders of Israel and a future Palestinian state. This was not a typical border dispute where states have consented to ICJ jurisdiction in contentious proceedings, allowing the Court to pass judgment with *res iudicata* effect. The majority vote, therefore, has resulted in an abuse of the advisory process.

Similarly, while UNGA resolutions reflect international opinion, they are also non-binding in nature.

The bottom line is that UNGA Resolution ES-10/24 is merely a recommendation to implement an advisory or consultative opinion. Advisory opinions are not meant to resolve legal disputes definitively and do not hold the force of *res judicata*.

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<sup>33</sup> Separate Opinion of Judge Nolte, para 5. <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-08-en.pdf>

<sup>34</sup> Ibid., para. 4.

Neither the ICJ advisory opinion nor the UNGA resolution alters the current sovereign status of the West Bank and Gaza Strip, which has been in abeyance since the end of World War I, as discussed below.

## **5. THE OSLO ACCORDS AND UNSC RESOLUTION 242 CONTINUE TO PROVIDE THE LEGAL FRAMEWORK FOR THE ISRAELI-PALESTINIAN CONFLICT**

To ensure balanced policy decisions in the future, it is important to emphasize that despite the limited and selective treatment of the Oslo Accords and UNSC Resolution 242 (1967) in the Advisory Opinion, as well as their complete omission in UNGA Resolution ES-10/24, these instruments continue to serve as the foundational legal framework for addressing the Israeli-Palestinian conflict.

In this regard, Judges Tomca, Abraham, and Aurescu observed:

*“Thus, it is regrettable that the Opinion dismissed the Oslo Accords as being quasi-irrelevant. This approach is wrong for several reasons. First, the Oslo Accords, the relevance of which was emphasized by many participants to these proceedings, are the main instruments of the Israeli-Palestinian relationship. They have not ceased to be in force. Second, from a legal standpoint, the two Oslo Accords, in particular Oslo II, continue to be applicable to almost all aspects of daily life in Palestine, and are intended to govern the multidimensional relationship between Israel and Palestine. Despite their initial temporary purpose, they created a certain sense of stability. This stability based on having a clear set of rules in place may explain why neither of the parties has denounced the Accords.”<sup>35</sup>*

*“But, most importantly, the 1993/1995 Oslo Accords formally adopted, between Israel and Palestine, the package ‘right to self-determination — right to security’, based on the Security Council resolutions 242 (1967) and 338 (1973), with direct impact on the conditions for ending the occupation of the Occupied Palestinian Territory, as well as the framework for*

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<sup>35</sup> Joint Opinion Tomca, Abraham, and Aurescu, para. 43.

*negotiations ultimately leading to the ‘two-State solution’ — which again will signify the end of the occupation.”<sup>36</sup>*

The Oslo Accords, in effect, remain the governing legal documents between the Israelis and the Palestinians, with the status of a Treaty under Article 3 of the Vienna Convention. The Accords expressly permit the occupation and the settlements to continue until such time as the permanent status issues are resolved. The Accords, however, do not contain any promise of Palestinian statehood. Even if self-determination is now deemed *erga omnes*, that does not mean the Palestinians are automatically entitled to self-determination by a particular deadline. Instead, it only means self-determination would be the end result of the Oslo process once the remaining permanent status issues (Jerusalem, borders, security, refugees, etc.) are resolved via negotiation between the two parties.

For its part, UN Security Council Resolution 242 remains in effect today. Both the Arab Peace Initiative and the Oslo Accords expressly incorporate Resolution 242. The most logical reading of Resolution 242 is that it requires *both* land for peace *and* peace for land. It recognizes the right of every state in the area to “*live in peace within secure and recognized boundaries free from threats or acts of force*”. The Resolution is applicable to all states involved, not just those who participated in the June 1967 war. Therefore, because Iran is committing aggression against Israel directly, and via regional proxies, including proxies in Iraq, Lebanon, Yemen, the West Bank and Gaza Strip, Israel is under *no* obligation to withdraw from the so-called occupied territories until the aggression—and threats of aggression—come to a complete and permanent halt.

## 6. ISRAEL’S UNCONDITIONAL WITHDRAWAL—AN EXISTENTIAL THREAT

An unconditional withdrawal of Israel’s military presence from East Jerusalem, the West Bank and Gaza Strip by September 2025—as mandated by the Resolution—would pose an existential threat to Israel and a major threat to global security. There are two main reasons for this:

**Firstly**, Iran is deeply embedded not only in Gaza but increasingly throughout the West Bank. According to the Foundation for the Defense of Democracies (FDD), there are currently 28 terror

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<sup>36</sup> Ibid., para. 44.

groups in the West Bank, all vying for power, many of them receiving Iranian arms and funding.<sup>37</sup> The Palestinian Authority has failed to prevent, and has even been complicit in terror against Israeli citizens.<sup>38</sup>

In addition to Iran and its IRGC, as discussed, new security threats come from Syria with jihadist factions like HTS in power, and the grave menace posed by Turkey to the Kurds in the area. Turkey is the emergent new key player in Syria, and its potential alignment with jihadist factions embedded with Muslim Brotherhood ideology may well turn out against Israel in the medium to long term.

Israel's unconditional withdrawal from the West Bank would create a power vacuum that Iranian-backed terrorists could quickly fill. Israel's lowlands would immediately face [attacks](#) from the highlands of Judea and Samaria, with Tel Aviv and Ben Gurion International Airport within range of short-range artillery—placing Israel on the verge of collapse.<sup>39</sup> While the Iron Dome has proven effective, it would face significant challenges in countering massive, coordinated rocket attacks from multiple directions.

Modern short-range artillery encompasses weapon systems designed to deliver munitions over relatively short distances, generally up to 30 kilometers.<sup>40</sup> These systems include various types of howitzers, rockets, and other artillery pieces that can provide rapid and accurate fire support in combat situations. Their short range allows for quick deployment and responsiveness on the battlefield, making them vital for tactical operations. Let us consider that the distance from Samaria to Tel Aviv is approximately 16 kilometers (10 miles), while Ben Gurion International Airport is roughly 20 kilometers (12 miles) southeast of Tel Aviv. Hezbollah has launched barrages from Lebanon capable of striking these areas, highlighting the range and capability of these threats compared to what would be feasible from the West Bank using short-range artillery.

Furthermore, handing over the Old City of Jerusalem—including the Temple Mount, Western Wall, and other Jewish Holy Sites—to the Palestinian Authority without a comprehensive peace agreement,

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<sup>37</sup> “Interactive visual: Profiles of 28 Iran-backed terrorist groups and branches in the West Bank”, Joe Truzman, *FFD's Long War Journal*, Foundations for Democracy FFD, September 9, 2024.

<sup>38</sup> See for example “PA's ‘Pay-for-Slay’ Payments to Rise by \$1.3 Million Per Month”, Itamar Marcus, *The Algemeiner*, January 11, 2024.

<sup>39</sup> “An Overview of Types of Short-Range Artillery in Modern Warfare”, *Total Military Insight*, [posted](#) on July 10, 2024.

<sup>40</sup> *Ibid.*



including security guarantees and protections for rights of worship and movement, would rip the spiritual and political heart out of the Jewish State.

**Secondly**, the Palestinian leadership—not just extreme groups like Hamas and Palestinian Islamic Jihad, but also the so-called moderate factions within the PLO, PA, and Fatah—has shown that its [true goal](#) is an Arab majority state in all of the territories of the former British Mandate—not to establish a peace-loving Arab state adjacent to Israel. In its Written Statement to the International Court of Justice in 2023, the “State of Palestine” argued that the establishment of the Jewish homeland as envisaged by the Balfour Declaration and the Mandate for Palestine was a breach of the rights of the Palestinian people under international law, and that the right of the Palestinian people to sovereignty and independence extends to the whole of the territory of Mandatory Palestine.<sup>41</sup> Moreover, in his [speech](#) on September 26, 2024 at the UN General Assembly, Mahmoud Abbas claimed that Israel should be removed from the United Nations.

The campaign to establish a Palestinian state has been driven by the PLO, which was created by the Arab League in 1964 to destroy Israel. It was taken over by Yasser Arafat’s Fatah organization in the early 1970s. To this day, the PLO Charter envisions the liberation, by means of violence, of *all of Palestine* from the Jews, “from the river to the sea”. The current “State of Palestine” is effectively the PLO acting under another name. It is fiction. Its President, Mahmoud Abbas is also head of the PLO and its largest faction, Fatah. Under Abbas, the PLO and PA have no control in Gaza, and enjoy little authority in the West Bank. Therefore, it fails one of the essential criteria of statehood, i.e. well-functioning government.

The result is that Israel simply does not have a partner for peace, and the Palestinians do not have a stable, independent government that respects the rule of law.

In consideration of (i) jihadist terrorism and (ii) a weakened and corrupted Palestinian Authority, the likelihood is very high that a Palestinian State in the West Bank would quickly degenerate into a terrorist state under Hamas control, much like the Gaza Strip.

### **Global threat to religious freedom**

There is another reason why Israel should not be required to unilaterally abandon the territories: If Israel withdraws from East Jerusalem without adequate safeguards, there is a significant risk that

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<sup>41</sup> <https://www.icj-cij.org/sites/default/files/case-related/186/186-20230724-wri-12-00-en.pdf> (pp. 3-4).

jihadist factions will seize control of the area. Under such control, Jews would be denied access to their Holy Sites, resulting in a gross violation of the right to religious freedom as enshrined in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Additionally, it is conceivable that Christian pilgrims from around the world would face restrictions when visiting their sacred places in the city, which would configure another unprecedented violation of religious freedom in modern times.<sup>42</sup>

Jews were already cut off from access to the Western Wall and other sacred places in Judea and Samaria from 1948 to 1967, when Jordan occupied Judea, Samaria and East Jerusalem. While the Palestinian Authority may offer assurances to the international community that access to these religious sites will remain open, such promises will prove empty when jihadi terrorist groups such as Hamas and Palestinian Islamic Jihad (PIJ) take control, as seen in Gaza. Hamas is an offshoot of the Muslim Brotherhood, whose core ideology embraces Nazi-inspired racism and antisemitism. In fact, the Muslim Brotherhood's longtime spiritual leader, Yusuf al-Qaradawi, showed throughout his life an admiration for the Nazi and fascist ideology, citing the shared vision of a world "purified of the Jews".<sup>43</sup> Hamas and the other Islamic jihad groups vying for power in the West Bank cannot be considered trustworthy guardians of the non-Muslim (Jewish and Christian) sacred places in East Jerusalem and the West Bank. These terror groups are defined by their radical and exclusionary conception of Islam.

Western nations, many of which currently advocate for militant secularism, nonetheless bear a crucial responsibility to ensure that citizens of all faiths retain unhindered access to their Holy Sites in the city.

## 7. THE BIGGER GEOSTRATEGIC PICTURE

UNGA Resolution ES-10/24 fails to address Iran's central role in the Israeli-Palestinian conflict, let alone its impact on broader geopolitical dynamics. Israel's confrontation with Iran and its proxies, including Hezbollah in Lebanon, must be understood as part of a broader global struggle.

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<sup>42</sup> "The Two-State Solution: objections under International Law", Dr. István László Mészáros, Attorney at Law, Budapest, The Hague Initiative for International Cooperation (thinc.), January 17, 2020.

<sup>43</sup> David Patterson, *Judaism, Antisemitism, and Holocaust Making the Connections*, Cambridge University Press 2022, pp. 165–184.

Israel, in self-defense, has recently launched missiles at strategic military assets on Iranian soil and decimated Hezbollah's leadership in Lebanon in the short term. These circumstances, according to PM Benjamin Netanyahu, greatly contributed to the weakening and collapse of Assad's regime in Syria.<sup>44</sup> He also announced that Israel has deployed troops to the buffer zone between Israel and Syria, where they will remain for the foreseeable future.<sup>45</sup>

The Iranian foreign minister, Abbas Araghchi, appeared visibly tense in Doha on December 7, 2024, as he met with envoys from Russia, Turkey, Saudi Arabia, Iraq, Egypt, Jordan, and Qatar to discuss Syria.<sup>46</sup> The latter representatives decided that Bashar al-Assad could not remain in power, and the Iranian readily consented to this, reinforcing the view that Iran had opted for a strategic withdrawal from Syria rather than giving protracted battle.<sup>47</sup>

This shift in Iran's strategy in Syria comes after two important events that had marked a new global landscape: Russia's invasion of Ukraine in February 2022, and Hamas's attack on Israel on October 7, 2023. Iran's involvement in both events illustrates its continued influence in shaping global and regional conflicts, even as it has significantly recalibrated its posture in Syria.<sup>48</sup>

An implicit alliance between Iran, Russia, and China has been in place. Iran supplied missiles and drones to Russia for its war in Ukraine, while also supplying oil to China at prices traditionally below market, using the proceeds to keep its war machine going. In return, Russia provides intelligence to the Houthis, Iran's proxy in Yemen, to assist in targeting Western ships in the Red Sea and threatening to shut down this vital route for supplying oil and gas to Western countries.<sup>49</sup>

Israel effectively remains at war with Iran, a player in the strategic triangle alongside Russia and China, both of which remain influential stakeholders in the Middle East. Russia lost influence in Syria after the collapse of its protegee Bashar al-Assad. Nevertheless, Russia will attempt to retain its naval

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<sup>44</sup> [“Israeli PM Netanyahu Claims Credit For Fall Of Al-Assad ...” You Tube, December 9, 2024.](#)

<sup>45</sup> “Netanyahu says Israeli troops will occupy a buffer zone inside Syria for the foreseeable future”, AP, December 18, 2014.

<sup>46</sup> “Syria after Assad”, Robin Wright, *The New Yorker*, December 15, 2024.

<sup>47</sup> Ibid.

<sup>48</sup> “Israel's actions against Hezbollah in Lebanon: Part of a global confrontation”, Yaakov Lappin, *Jerusalem Strategic Tribune*, October 2024.

<sup>49</sup> Ibid.

base in Tartus as a crucial geostrategic objective, ensuring access to the warm waters of the Mediterranean.<sup>50</sup>

This alignment continues to carry significant geopolitical implications, reshaping power dynamics in the region and beyond. It suggests that Russia is unwilling—and perhaps even unable—to maintain the two war fronts simultaneously in Ukraine and Syria. It seems that Russia has set a geostrategic priority on the former.<sup>51</sup>

Another critical aspect of Israel’s confrontation with Iran is the threat posed by Tehran’s nuclear weapons program and its potential for nuclear proliferation, which further exacerbates Israel’s security concerns.<sup>52</sup>

### **The new US administration**

The new U.S. administration, led by President Trump, may disrupt one of that triangle’s foundations by reimposing (and rigorously enforcing) secondary sanctions on China if it persists in purchasing oil from Iran.<sup>53</sup> It is conceivable that the Trump administration will revive the “maximum pressure” strategy on Iran to disrupt its financing lifelines and delay its nuclear program, thereby avoiding a direct military confrontation. Additionally, Trump, as president elect, had issued a stern warning to Hamas to release Israeli hostages in Gaza before his inauguration on January 20, 2024.<sup>54</sup>

However, the geopolitical landscape has shifted significantly since Trump’s first term. It remains to be seen whether America can restore its geopolitical muscle and credibility across the region after the

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<sup>50</sup> “Will Russia be able to keep its bases in Syria?” Mark N. Katz, *The Atlantic Council*, December 18, 2024.

<sup>51</sup> “How the fall of the Assad regime in Syria may impact Russia”, Michel Martin, NPR, December 10, 2024.

<sup>52</sup> “Iran Is at a Strategic Crossroads”, Emissary, Nicole Grajewsky, *Carnegie Endowment for International Peace*, October 3, 2024.

<sup>53</sup> “Beyond ‘Maximum Pressure’ in US Policy on Iran: Leveraging Regional Partners to Contain Iran’s Actions and Shape its Future Choices”, Brian Katulis, Alex Vatanka, Patricia Karam. Middle East Institute, January 30, 2025.

<sup>54</sup> “Trump and Netanyahu discuss Gaza hostages and Syria, Israeli PM says”, Reuters, December 15, 2024. Also, on January 8, Trump posted in his Facebook account that if Israeli hostages were not released by January 20 “All hell will break out in the Middle East”. <https://www.facebook.com/watch/?v=1140619127417376>

devious policies of the Biden-Harris era.<sup>55</sup> Achieving this will require a nuanced strategy that combines economic pressure, military deterrence and innovative diplomacy.

The Trump administration is also likely to renew its efforts to expand the Abraham Accords, with Saudi Arabia as a key focus.<sup>56</sup> While recent setbacks for Iran may lessen Riyadh's immediate urgency to secure a comprehensive defense pact with the United States, Saudi interests extend beyond countering Iranian aggression. Deepening ties with Israel and ensuring U.S. support for its broader regional aspirations remain pivotal. Moreover, the strategic void left by the collapse of Assad's regime in Syria could reshape regional alliances, creating new opportunities for cooperation or friction between key players like Saudi Arabia, Israel and Turkey.

### **Trump's proposal on Gaza**

We have already discussed President Trump's bold proposal on Gaza, which stands in stark contrast with the main findings and contents of UNGA Resolution ES-10/24, dismantling the paradigm of the two-state solution and placing Gaza under United States "ownership".<sup>57</sup> Although its contours are not yet defined and it is not official U.S. foreign policy, the proposal compels the Arab world, including Saudi Arabia, to provide a workable and realistic solution to the Israeli-Palestinian conflict. In this sense, it can be said that the proposal has definitively changed the paradigm for future negotiations.

### **New landscape in Syria**

As discussed, with the collapse of the Syrian regime Iran lost a key transit and operational hub for its proxies and its broader "axis of resistance". Nevertheless, Iran has reportedly managed to redeploy its regular and Islamic Revolutionary Guard Corps (IRGC) battalions almost intact from Syria to Lebanon and Iraq.<sup>58</sup> This move would allow Iran to maintain its capability to rebuild Hezbollah with advanced weaponry, including missiles, drones, and other military systems in the medium term (3-4

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<sup>55</sup> "Four years of tectonic shifts that redrew the Middle East", [Paul Salem](#), [Brian Katulis](#), [Charles Lister](#), [Nadwa Al-Dawsari](#), [Alex Vatanka](#), [Khaled Elgindy](#), [Nimrod Goren](#), [Fadi Nicholas Nassar](#), [Mirette F. Mabrouk](#), [Gönül Tol](#), [Gerald M. Feierstein](#), [Robert S. Ford](#), [Intissar Fakir](#), [Iulia-Sabina Joja](#), [Marvin G. Weinbaum](#), Middle East Institute, December 17, 2024.

<sup>56</sup> "Trump inauguration: Saudi Arabia comes into focus", Valentina Pasquali, *Arabian Gulf Business Insight*, January 20, 2025.

<sup>57</sup> "Trump says Israel will hand over Gaza to US after fighting ends", Tinshui Yeung, BBC, February 6, 2025.

<sup>58</sup> Interestingly, this IRCG redeployment started some months before the collapse of Assad's regime in December 2024. See for example: "Iran's Revolutionary Guards pull officers from Syria after Israeli strikes: Sources", Alaribiya News, February 1, 2024. Also, "Irán ¿El Fin del Eje de la Resistencia?" ("Iran, the End of the Resistance Axis?"), Jorge Alejandro Saponaro, *La Polis*, Argentina, December 14, 2024.

years).<sup>59</sup> Iran also remains committed to supporting Hamas in Gaza and fostering insurgent terrorist groups in the West Bank. For many, this is seen as merely a temporary withdrawal by Iran and its IRGC to renew their forces.<sup>60</sup>

These developments highlight the evolving and adaptive nature of the security threats posed by Iran's regime and its proxies, which persist as an ongoing challenge to Israel's security. As Hezbollah has been impaired in Lebanon, Iran has increased the use of its Yemeni Houthi proxies to launch missile attacks on Israel.<sup>61</sup>

Meanwhile, Hamas has welcomed the new predominant rebel faction in power in Syria, Hayat Tahrir al-Sham (HTS), noting their shared adherence to the ideological principles of the Muslim Brotherhood, which may strengthen ideological and operational ties in future.<sup>62</sup> HTS, initially an offshoot of al Qaeda, has since evolved into a major faction in Syria. Many believe that HTS may eventually pave the way for a new Taliban-style regime in Syria, further complicating the already fragile regional balance.<sup>63</sup>

While Iran and its ally Russia have lost influence in Syria, Turkey emerges with renewed strength and has intensified its attacks on the Kurd-predominant areas.<sup>64</sup> The Druze minority, historically aligned with Israel's interests, may play a significant role in shaping the post-Assad political landscape, given their strategic positioning and influence in southern Syria.<sup>65</sup>

Many believe that Turkey's Erdogan will attempt to revive the grandeur of the Ottoman Empire.<sup>66</sup> It has been reported that Hamas leadership has moved from Qatar to Turkey, for they are no longer

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<sup>59</sup> "How Iran Is Explaining Away Its Syrian Absence", Jerusalem Center for Security and Foreign Affairs, December 15, 2024.

<sup>60</sup> "Irán ¿El Fin del Eje de la Resistencia?" ("Iran, the End of the Resistance Axis?"), Jorge Alejandro Saponaro, *La Polis*, Argentina, December 14, 2024 (in Spanish).

<sup>61</sup> "Israel launches deadly air raids against Yemen after missile attack", *The Guardian*, December 19, 2024.

<sup>62</sup> "Islamist groups from across the world congratulate HTS on victory in Syria", Jason Burk, *The Guardian*, December 11, 2024.

<sup>63</sup> Ibid.

<sup>64</sup> "Turkish-orchestrated attacks on Kurds also threaten Israeli interests", Yaakov Lappin, *JNS*, December 16, 2024.

<sup>65</sup> "Druze Leaders in Syria Request Their Settlements Be Annexed to Israel", Davis Nagy, *Hungarian Conservative*, December 16, 2024.

<sup>66</sup> "Turkey shows plans to re-form the Ottoman Empire", Andrea Polidura, *Atalayar*, February 24, 2021.



welcome in the former.<sup>67</sup> Turkey is also a full member of NATO, and it is interesting to see how it navigates these two seemingly dissonant roles.

In this evolving world scenario, any UN attempts to address the Israeli-Palestinian conflict in isolation—such as UNGA Resolution ES-10/24 aims to do—are bound to fail. The UN’s continued fixation on condemning Israel overlooks the broader geopolitical dynamics, particularly the involvement of state and non-state actors within the region that perpetuate or tolerate terrorism. The full implications for Israel’s security remain uncertain as the situation evolves.<sup>68</sup> The shifting relationships in the region, such as Iran’s historical enmity with Hamas which has shifted into a strategic partnership, exemplify how alliances in the Middle East are not fixed but evolve rapidly.

## **8. EFFECTIVE PALESTINIAN GOVERNANCE IS A PRECONDITION FOR PALESTINIAN STATEHOOD**

UNGA Resolution ES-10/24 notoriously failed to call on the Palestinian Authority (PA) to improve and achieve acceptable governance standards.

The PA has consistently failed to establish stable and effective governance in the territories under its control. Rather than serving as a reliable administration, it has become a symbol of corruption and inefficiency, which undermines its legitimacy. This has left the PA unable to meet the needs of its people or maintain order, increasing the risk of the West Bank descending into a Hamas-controlled terrorist entity, similar to the Gaza Strip. Recently, the Palestinian Authority has made some efforts to restore its image,<sup>69</sup> but it appears that these attempts have yet to yield substantial results. Decades of corruption and misdeeds cannot be undone overnight.

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<sup>67</sup> “Hamas political office has not moved to Turkey from Qatar, Turkish source says”, Reuters, November 18, 2024.

<sup>68</sup> “Israel is reshaping the Middle East as Assad regime crumbles – opinion”, Zina Rakhamilova, *The Jerusalem Post*, December 11, 2024.

<sup>69</sup> “PA Reform Is Key to West Bank Stability – And Possible Rule in Gaza”, Noemi Neumann, The Washington Institute for Near East Policy, January 17, 2025.

In fact, in recent weeks the PA has lost its grip on major towns such as Jenin and Tulkarem, where Hamas and other terrorists have challenged the PA's primacy.<sup>70</sup> If the PA can't govern those two towns, how can it be relied upon to govern the remainder of the West Bank and Gaza Strip in a manner that will not threaten Israel?

### **Structural failures of the Palestinian Authority**

#### **Widespread corruption**

Corruption is one of the most glaring issues undermining the PA's governance. Allegations of embezzlement, misuse of public funds, and nepotism have become commonplace, severely damaging public trust. Making matters worse, the last elections were held in 2005, leaving the PA leadership completely out of touch with its people. This absence of democratic accountability has allowed an insulated elite to dominate the system, prioritizing self-preservation over meaningful reform. Moreover, internal divisions between Fatah and Hamas have deepened the dysfunction. Rather than focusing on cooperation to strengthen governance, these rival factions remain locked in a power struggle, further fragmenting the PA. Consequently, its ability to govern effectively has been all but paralyzed, leaving the Palestinian population to bear the brunt of the failure.

#### **Inability to prevent terrorism**

Equally concerning is the PA's failure to prevent terrorism, despite its obligations under international law, particularly UN Security Council Resolution 1373. On the contrary, the PA has been accused of actively perpetuating violence through policies like "pay-for-slay," which financially rewards individuals who carry out attacks and guarantees the income of their families in case they die or become imprisoned.<sup>71</sup> In addition, the glorification of violence in PA-sponsored media and education systems perpetuates a hostile environment that directly undermines peace efforts. As a result of these policies, the PA has been unable to curb the influence of extremist groups such as Hamas and Palestinian Islamic Jihad.<sup>72</sup> These factions have exploited the PA's weaknesses, creating a dangerous

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<sup>70</sup> "Palestinian Authority suppresses criticism of Jenin operation in West Bank", Mat Nashed, Al Jazeera, January 5, 2025.

<sup>71</sup> See for example "PA's 'Pay-for-Slay' Payments to Rise by \$1.3 Million Per Month", Itamar Marcus, *The Algemeiner*, January 11, 2024.

<sup>72</sup> Joint Opinion Tomca, Abraham, and Aureescu, para. 15.

power vacuum. Over time, this failure has not only destabilized the West Bank but also jeopardized broader regional security.

### **Current security situation in the West Bank**

The Israel Security Agency (ISA) estimates that around 15 battalions from Hamas, Palestinian Islamic Jihad and other Palestinian factions are actively operating in the West Bank. Over the past year, the ISA recorded 1,245 attacks originating from the northern half of the West Bank, with 255 of these classified as “significant”. Additionally, 435 attacks were directed at IDF targets.<sup>73</sup>

In 2022, Israeli Security Forces (ISF) reported 305 shooting attacks from the West Bank, more than triple the 91 attacks in 2021, highlighting a significant rise in violence.<sup>74</sup>

### **Absence of a culture of peace**

In addition to these flaws, the PA has failed to foster a culture of peace, which is essential for building stability. Institutions such as UNRWA, which could play a pivotal role in promoting peace in the education system, have perpetuated one-sided narratives of the conflict, and incited hatred and violence.<sup>75</sup> This has left young Palestinians vulnerable to extremist ideologies, ensuring that the cycle of violence continues. Rather than addressing these issues, the PA has chosen to focus on political and ideological battles, leaving little room for genuine reform.

### **Risk of a failed or rogue state**

The lack of effective governance, combined with interference from external actors, including Iran, poses a grave threat to the West Bank’s future. Iran’s IRGC has provided significant support to groups like Hamas and Palestinian Islamic Jihad, further weakening the PA’s already fragile authority.<sup>76</sup> This influence has only grown since the attacks of October 7, 2023, emboldening militant factions and

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<sup>73</sup> <https://www.washingtoninstitute.org/policy-analysis/prioritizing-west-bank-amid-escalation-and-deterioration>

<sup>74</sup> <https://www.state.gov/reports/country-reports-on-terrorism-2022/israel-west-bank-and-gaza/#:~:text=ISF%20reported%20305%20shooting%20attacks,several%20attacks%20against%20Israeli%20civilians>

<sup>75</sup> “United Nations’ Bigotry Towards Israel: UNRWA Anti-semitism Poisons Palestinian Jews”, Jonathan Schanzer, Foundation for the Defense of Democracies (FFD), November 8, 2023.

<sup>76</sup> Ibid.

diminishing the PA's ability to maintain control. Under these conditions, a Palestinian state in the West Bank risks being a failed or rogue state, dominated by extremist groups and fueled by foreign interference. Such a scenario would not only destabilize the region but also make any prospects for peaceful coexistence impossible.

### **The Road Map for Peace (2003) and the need for “Palestinian institution-building”**

The Road Map for Peace (2003) emphasized the need for “Palestinian institution-building” as a transitional step to create the foundations of a viable Palestinian state. This was seen as essential for establishing a Palestinian state under the existing political and legal framework. The European Union (EU) was increasingly involved in peace efforts, especially after the breakdown of peace talks at Camp David in 2000 and the start of the Second Intifada. By 2002-2003, the EU clearly supported the establishment of a democratic and sovereign Palestinian state, advocating for the end of Israel's alleged occupation of Palestinian territories. As the EU pushed for Palestinian statehood, it also became clear that justice—defined as addressing Palestinian demands for statehood—needed to be balanced with Israeli security concerns. Yet, as noted by Judge Cleveland in the Advisory Opinion, Israel's right to self-determination was often overlooked, especially in the context of judicial decisions related to the conflict.<sup>77</sup>

### **Political preconditions for Palestinian statehood**

The political preconditions for Palestinian statehood are rooted in the principles of the rule of law, security, and a culture of peace. In the broader Middle East, statehood has often been shaped by tribal dynamics, where authority rests with powerful groups rather than legal institutions.<sup>78</sup> In many countries, including those within the Middle East and North Africa (MENA) region, these political structures struggle to guarantee equal rights or uphold the rule of law for all citizens, contributing to regional instability. The political environment in the MENA region is fragmented, divided into groups often driven by extremist ideologies that challenge democratic values.<sup>79</sup> Countries like Israel, Egypt, Jordan, and Saudi Arabia represent one camp focused on stability and security, while others, including

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<sup>77</sup> Separate Opinion of Judge Cleveland, para. 2.

<sup>78</sup> “The political environment in the MENA region is fragmented, divided into groups often driven by extremist ideologies that challenge democratic values”, edited by Amin Saikal and Albrecht Schnabel, United Nations University Press 2003, p. 26.

<sup>79</sup> Ibid.

Iran, Turkey, and extremist groups such as ISIS and Al Qaeda, complicate the landscape with their rejection of peace and democratic principles. These latter factions seek to draw Palestine into their orbit of aggression and violence.

The mere existence of a state is insufficient to guarantee peace or equal rights for all citizens. For a state to be viable, it must be founded on a legal framework that ensures freedom, security, and equality. This framework is lacking in the territories controlled by the PA.

While changes in the region, such as the rise of educated youth, shifting gender roles, and increasing access to technology, may contribute to gradual, but meaningful, changes toward self-governance it remains uncertain whether these shifts will foster a political culture in Palestine that respects the rule of law and the rights of all its citizens. For now, the development of a viable, democratic and peaceful Palestinian state is being undermined by internal divisions, and the lack of a cohesive, democratic political structure.

### **Security, governance, and the right to self-defense**

While the Palestinian people's right to self-determination is universally acknowledged, it is not an unlimited right: it must be balanced with the sovereignty of existing states, including Israel's right to territorial integrity and to defend its borders. This is especially pertinent given the existential threats Israel faces, as highlighted by the devastating Hamas attack on October 7, 2023.

As already discussed, in her dissenting opinion, Judge Sebutinde, as well as Judges Tomka, Abraham, and Aurescu in their joint opinion, emphasize that self-determination and security are inextricably linked.<sup>80</sup> More specifically, Judge Sebutinde pointed out that the rights of Palestinians to self-determination must be considered alongside Israel's security, as both peoples' safety depends on resolving issues such as borders and the security of both states.<sup>81</sup> The threat posed by hostile actors who openly seek Israel's destruction further underscores the importance of addressing security concerns in any discussions about statehood. Judge Cleveland stressed that Israel's right to self-

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<sup>80</sup> Joint Opinion Judges Tomka, Abraham, and Aurescu, para 36.

<sup>81</sup> Dissident Opinion Judge Sebutinde.

determination—including its territorial integrity and right to live in peace within recognized borders—has been violated by ongoing attacks, and by the refusal of some states to recognize Israel’s legitimacy.<sup>82</sup> Yet, the majority opinion failed to adequately address these concerns, undermining Israel’s right to self-determination in that broader sense.<sup>83</sup>

The principle of *uti possidetis juris*, which dictates that Israel’s borders should be respected as defined in 1948, aligns with the region’s historical and legal realities. Negotiations over borders and security should respect these principles, with the understanding that peace must be built on both nations’ right to secure, recognized borders. We will revisit the complex issues of border and the “land for peace principle” later.

### **The need for a culture of peace and real leadership**

For a lasting peace to emerge, both self-determination and security must be addressed through good-faith negotiations. The Palestinian political culture, however, remains entrenched in resistance and extremism, often driven by the ideology of groups like Hamas, whose ultimate goal is the elimination of Israel. This has created a cycle of violence and instability that undermines efforts for peace. While there are Palestinian voices that reject extremism and seek peaceful coexistence, these voices are almost always suppressed or threatened. Meanwhile, the EU and other international actors must acknowledge that economic cooperation and peace efforts cannot succeed if they do not address the deep-rooted ideologies driving violence. The international community’s focus should be on finding real leadership in Palestine—leaders who can move beyond entrenched narratives and work towards a future that respects the rights and security of both peoples. By failing to hold Hamas accountable, UNGA Resolution ES-10/24 risks reinforcing the cycle of violence. It is crucial that any peace efforts not only advocate for a Palestinian state but also address the ideological and political forces that fuel terrorism. A genuine, lasting peace can only be achieved if both sides are led by those who are willing to negotiate in good faith, with respect for each other’s rights and security.

### **Urgent reforms and the role of external actors**

For Palestinian self-reform to succeed, external support is crucial. Historical evidence shows that the necessary changes cannot be achieved independently. Despite extensive financial aid and the efforts

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<sup>82</sup> Separate Opinion Judge Cleveland, para. 2

<sup>83</sup> “Fatally Flawed”, The Hague for International Cooperation (thinc.), September 5, 2024.

of UN agencies, the PA has failed to create a sustainable framework for reform. A coordinated initiative, led by the U.S. and supported by moderate Arab states, is essential to fostering meaningful change. This effort must be grounded in societal acceptance within Palestinian communities, as reform cannot succeed without local backing.

The failure of UNRWA, which has been infiltrated by Hamas operatives, further exacerbates the crisis by undermining the agency's role in providing services and perpetuating extremism. Instead of aiding reform, the agency has become part of the problem, contributing to the cycle of violence.<sup>84</sup> Additionally, international funds intended for the PA often end up in the hands of Hamas, strengthening the terrorist organization and weakening the Palestinian Authority's governance.<sup>85</sup> Effective reform must address these deep-rooted issues, focusing on dismantling Hamas's control and influence over Palestinian society.

The U.S. administration has a critical role to play in this transformation. Building on the success of the Abraham Accords, the U.S. can unite moderate Arab nations in a coordinated approach to peace that balances Palestinian governance with Israel's security concerns. This regional cooperation, along with a comprehensive reform plan, can help pave the way for a secure Israel and a prosperous Palestinian state. Addressing the root causes of extremism is key to establishing lasting peace and making Palestinian statehood a realistic goal.

## 9. IRAN'S DESTABILIZING FORCE IN THE MIDDLE EAST AND GLOBALLY

The Advisory Opinion and the Resolution failed to acknowledge that other state and non-state actors in the region play a determinative strategic role in the Israeli-Palestinian conflict. In her dissenting opinion, Judge Sebutinde, Vice-President of the ICJ, observed:

*“Without information regarding the policies and practices of Israel’s adversaries, the Court is limited in its opinion regarding the various complex issues behind the Israeli-Palestinian*

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<sup>84</sup> Ibid., footnote 84.

<sup>85</sup> “EU NGO Funding for the West Bank and Gaza in 2022”, NGO Monitor, September 12, 2023.



*conflict and has, as feared, resorted to imposing obligations on Israel, whilst disregarding her legitimate security concerns and the obligations of Israel's Arab neighbors.”<sup>86</sup>*

Among these adversaries, Iran's revolutionary regime stands out as a significant destabilizing force, nonetheless the collapse of the Assad regime in Syria. Indeed, Iran continues to play a central role in the Israeli-Palestinian conflict. Recently, on social media networks, Iran's Supreme Leader Ali Khamenei expressed his desire for the Jewish State to be erased from the territories of the former British Mandate:

*“The two-state solution, which has been proposed in the guise of ‘accepting the Palestinian state as a member of the United Nations,’ is nothing but giving in to the Zionists’ wishes. Any plan of action must be based on the principle, ‘**All Palestine for all Palestinians.**’” (bold added)<sup>87</sup>*

Since its inception in the 1980s, Iran's revolutionary regime has wielded terrorism as a tool to advance its foreign policy aims, destabilize the Middle East, and promote the Islamization of the world. For decades, Iran has fueled regional terror and instability, supporting Hamas and Palestinian Islamic Jihad (PIJ) in Gaza, Hezbollah in Lebanon, and other proxy forces across Syria, Iraq, and Yemen, including the Houthis. Primarily through the Islamic Revolutionary Guard Corps (IRGC) and its Quds Force, Iran promotes terrorism both regionally and globally. Iran's sustained backing of these terrorist factions involved in the Israeli-Palestinian conflict undermines any discourse on Palestinian statehood by perpetuating violence and obstructing peace efforts.

A recent U.S. criminal complaint directly links Iran with Hamas's attack of October 7. In September 2024, the United States unsealed a criminal complaint, originally filed by the Department of Justice (DOJ) on February 1, 2024, against Ismael Haniyeh, the now-deceased leader of Hamas.<sup>88</sup> The complaint charged him with numerous acts of terrorism, including orchestrating the October 7 attack on Israel, which resulted in the deaths of 49 U.S. nationals, alongside approximately 1,200 Israeli citizens and victims from other countries. This unsealed complaint evidences a direct link between the IRGC and Hamas's operations, demonstrating that the attack was part of a larger Iranian strategy

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<sup>86</sup> Dissenting Opinion, Vice-President Sebutinde, para. 42.

<sup>87</sup> Published on Khamenei's [X account](#), November 29, 2024.

<sup>88</sup> “Justice Department Announces Terrorism Charges Against Senior Leaders of Hamas”, Department of Justice (DOJ), [posted](#) on September 3, 2014.

to destabilize Israel and further Iran’s objectives. The transcription of the following passages of the complaint is compelling:

*“Throughout Hamas’s existence, the Government of Iran, particularly the Islamic Revolutionary Guard Corps (“IRGC”) and its Qods Force (“IRGC-QF”)—the element of the IRGC responsible for conducting external terrorism operations and providing support to terrorist groups, and whose very name translates from Farsi as “Jerusalem Force”—has supported, supplied, and trained Hamas. Through that relationship, Hamas has played a significant role in the Government of Iran’s regional and global campaign of supporting terrorism to further the Government of Iran’s objectives, including damaging, weakening, and ultimately destroying both the United States and Israel.”<sup>89</sup>*

Further, the unsealed complaint emphasizes the IRGC’s critical material support that enabled Hamas to execute the October 7 attack. It states:

*“The IRGC has provided Hamas, among other things, rockets and technical assistance necessary to build rockets, and tens of millions of dollars in annual funding for Hamas’s terror wing, including through cryptocurrency payments. Leaders of the Iranian regime and the IRGC have publicly praised and supported the October 7 Hamas Massacres and Hamas’s continued holding of more than 100 hostages as of the date of this Complaint.”<sup>90</sup>*

This DOJ complaint places Iran and the IRGC at the heart of the Israeli-Palestinian confrontation. The DOJ complaint also underscores Qatar’s role in providing safe heaven to Hamas leaders, such as Ismael Haniyeh, and amplifying Hamas’s calls for the annihilation of the Jewish state through its government-owned media.

### **Iran’s global jihad agenda**

As is well known,<sup>91</sup> Iran’s jihadist agenda today extends far beyond its support for Hamas in Gaza and Hezbollah in Lebanon and Syria, although its influence in the latter has significantly diminished following Assad’s regime collapse. As previously discussed, Iran supplies Russia with [missiles](#) and drones critical to sustaining Russia’s war efforts in Ukraine, while simultaneously launching missile

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<sup>89</sup> US criminal complaint, p. 8.

<sup>90</sup> Ibid., p. 9.

<sup>91</sup> See, for example, “Hezbollah: The Global Footprint of Lebanon’s Party of God”, Matthew Levitt, Georgetown University Press (2024).

strikes from its own territory at Israel. These are the same types of missiles and drones used in attacks on Ukraine.<sup>92</sup>

The IRGC has also threatened Europe, targeting both Iranian dissidents and Jewish sites such as synagogues.<sup>93</sup> Recently, the EU Council’s legal services have determined that the legal requirements for [designating](#) the IRGC as a terrorist organization have been met.<sup>94</sup> Now, achieving the designation is a matter of building political consensus among the 27 EU member states.

In Latin America, Hezbollah and the IRGC have orchestrated two horrific [attacks](#) on Jewish targets in Buenos Aires, Argentina—the bombing of the Israeli embassy in Buenos Aires (1992) and the Jewish Community Building known as AMIA (1994).<sup>95</sup> Hezbollah attained a significant stronghold in Venezuela under the protection of Nicolas Maduro’s regime. The Argentine Minister of Security, Patricia Bullrich, [revealed](#) the identity of the suspected Hezbollah’s operational leader in Latin America, Hussein Ahmad Karaki, linking him to those terrorist attacks in Argentina.<sup>96</sup> Karaki was granted Venezuelan citizenship and passport. Hezbollah has sought strategic alliances, for example with the powerful drug cartel “Cartel de los Soles” in Venezuela which is linked to the Maduro regime.<sup>97</sup> In 2022, the detention of a suspicious Venezuelan-owned cargo plane in Buenos Aires, with five Iranian crew members, including an ex-IRGC commander and four IRGC-Quds officers, highlights deepening ties between Caracas and the IRGC.<sup>98</sup> In light of the ongoing Israel-Palestine conflict, this strengthened Tehran-Hezbollah-Caracas axis now presents a major security threat for

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<sup>92</sup> “Ukraine updates: EU says Iran likely sent missiles to Russia”, *DW*, September 9, 2024.

<sup>93</sup> See, for example, “Why the IRGC must be placed on the EU terrorist list”, The Hague Initiative for International Cooperation (thinc), [posted](#) on July 1, 2024.

<sup>94</sup> “The EU has found a legal way to label Iran's Revolutionary Guard as terrorist group”, *EuroNews*, October 10, 2024.

<sup>95</sup> “Argentine court blames Iran for 1999s terror attacks, on Israel embassy, AMIA center”, *The Times of Israel*, April 12, 2024.

<sup>96</sup> “El gobierno argentino reveló la identidad y una imagen del jefe operativo de Hezbollah en América Latina”, *Infobae*, October 24, 2024.

<sup>97</sup> “Maduro ally linked to Hezbollah and Hamas charged with narco-terrorism in New York”, Aaron Katersky. ABC News, May 28, 2020.

<sup>98</sup> [“It's Time to Designate Venezuela as a State Sponsor of Terrorism” | RAND](#), August 22, 2024.

the Latin American and Caribbean region.<sup>99</sup> Hezbollah and IRGC operatives are also known to be active in other countries across the region, including Brazil<sup>100</sup> and Peru.<sup>101</sup>

In the United States, IRGC members have been charged with conspiring to assassinate prominent political figures, including former National Security Adviser, John Bolton.<sup>102</sup>

Furthermore, on November 8, 2024, the DOJ announced federal charges in a thwarted Iranian plot to kill [Donald Trump](#) before the presidential election.<sup>103</sup> According to court documents, IRGC officials asked an individual named Farhad Shakeri to focus on surveilling, and ultimately assassinating, Mr. Trump. The DOJ reported that Shakeri is still at large in Iran. Attorney General Merrick Garland stated: “*The Justice Department has charged an asset of the Iranian regime who was tasked by the regime to direct a network of criminal associates to further Iran’s assassination plots against its targets, including President-elect Donald Trump.*”<sup>104</sup>

The Department of State designated the IRGC as a foreign terrorist organization (FTO) in 2019.<sup>105</sup> Canada did the same more recently, in 2024.<sup>106</sup>

In the Middle East, as discussed, Iran has alarmingly [escalated](#) its support for Hamas and other radical factions carrying out terrorist activities in the West Bank through the IRGC and its proxy, Hezbollah.<sup>107</sup> Additionally, Iran is reportedly seeking to [destabilize](#) Jordan to create a territorial corridor to Israel, which would facilitate attacks and arms smuggling into the West Bank.<sup>108</sup>

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<sup>99</sup> Ibid.

<sup>100</sup> “Brazil and the Rising Hezbollah Concern in Latin America” Dialogo Américas, January 16, 2024.

<sup>101</sup> “Hezbollah, Entrenched in Latin America”, Dialogo Américas, March 15, 2024.

<sup>102</sup> “Legal Conditions for the Inclusion of the Islamic Revolutionary Guard Corps (IRGC) on the European Union Terror List”, The Hague Initiative for International Cooperation (thinc.), p. 15 para. 31, [posted](#) on July 1, 2024.

<sup>103</sup> “DOJ announces charges in Iranian plot to kill Donald Trump”, Hannah Rabinowitz, CNN, November 9, 2024.

<sup>104</sup> Ibid.

<sup>105</sup> DOJ announces designation of the IRGC as a FTO, [posted](#) on April 8, 2019.

<sup>106</sup> Government of Canada lists the IRGC as a terrorist organization, [posted](#) on June 19, 2024.

<sup>107</sup> <https://www.state.gov/reports/country-reports-on-terrorism-2022/israel-west-bank-and-gaza/#:~:text=ISF%20reported%20305%20shooting%20attacks,several%20attacks%20against%20Israeli%20civilians>

<sup>108</sup> “A new front emerges with Iran’s growing threat to Israel and Jordan”, *Jerusalem Post*, October 22, 2024.

Iran has commandeered the Israeli-Palestinian conflict as part of its strategic efforts to encircle Israel with a “ring of fire”. As explained in Section 7 above, Iran’s influence has waned following Israel’s decimation of Hezbollah leadership in Lebanon and the ousting of Bashar al-Assad in Syria. These developments have temporarily diminished the security threat posed by that “ring of fire” and the “axis of resistance”.<sup>109</sup> Nevertheless, Iran reportedly managed to redeploy its forces from there to Lebanon and Iraq. Analysts suggest that Tehran intends to increase its already significant presence in Iraq, a country with a large Shiite population,<sup>110</sup> with the goal of ultimately establishing a puppet regime in Bagdad. The conflict is not confined to Israel and Hamas: it is fought on several synchronized fronts, and continues to be coordinated by Iran and driven by Islamist political ideology, despite its setback in Syria.<sup>111</sup>

Iran’s capacity to rebuild its destructive capacity cannot be underestimated. To counter this threat, it is essential to disrupt its financial lifelines, particularly its export of oil and gas to China and other countries. Iran is a rogue state, a serial violator of UNSC Resolution 1373 (2001) on the prevention and punishment of international terrorism. The international community cannot allow Iran to attain nuclear weapons of mass distraction.

In sum, while developments in Syria temporarily weakened Iran’s regional reach, its extensive network of proxies and strategic alliances across multiple continents underscore its enduring role as a central actor in global terrorism. Iran continues to present a multifaceted security threat not only to Israel and the Middle East but also to Europe, the Americas, and beyond.

## **10. THE PROBLEMATIC ROLE OF QATAR IN THE CONFLICT AND THE MIDDLE EAST**

Resolution ES-10/24 failed to address the ongoing and protracted armed conflict between Israel and Hamas in Gaza—a central issue within the Israeli-Palestinian conflict, with significant geostrategic implications. Here, we address Qatar’s quite complex involvement in attempting to mediate a truce

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<sup>109</sup> “Iran’s Ring of Fire Strategy in Ruins”, Joe Varner, *Real Clear Defense*, December 31, 2024.

<sup>110</sup> “Irán ¿El Fin del Eje de la Resistencia?” (“Iran, the End of the Resistance Axis?”), Jorge Alejandro Saponaro, *La Polis*, Argentina, December 14, 2024.

<sup>111</sup> “Two State Solution Temporarily Closed for Renovation”, Koby Huberman, *The Jerusalem Strategic Tribune*, October 2024.

between Israel and Hamas and in securing the release of Israeli hostages. Many contend that Qatar's dual role—as both a purported mediator and a backer of Hamas—complicates the path to achieving sustainable peace.

Qatar has intended to play a good offices role in the Israeli-Palestinian conflict; however, many justifiably distrust its ability to be considered an honest peace broker in the region. Qatar historically offered safe haven to senior Hamas leaders, allowing the terrorist organization to operate freely within its borders.<sup>112</sup> This support has made Qatar a critical ally for Hamas. While Qatar claims to advocate for peace and stability, its backing of Hamas undermines these assertions, particularly given Hamas's designation as a terrorist organization by many countries, including the United States and the European Union.

Nonetheless, Qatar has succeeded in establishing itself as a heavyweight mediator in conflicts—a role that has made it a valuable ally to an unlikely array of states. Doha has brokered negotiations between the United States and the Taliban, Rwanda and the Democratic Republic of Congo, and Sudan's military and the Rapid Support Group, among many others. Even though Qatar's mediation efforts have not always succeeded, they have helped the Gulf state gain the international prestige essential to its survival among its larger and more powerful neighbors, Saudi Arabia and Iran.<sup>113</sup>

In January 2022, U.S. President Biden declared Qatar a “major non-NATO ally” following a massive \$20 billion deal between Qatar and Boeing for new civil aircrafts, and a \$26 billion acquisition of U.S. military equipment.<sup>114</sup>

At the same time, Qatar maintains a cordial relationship with Iran, viewing it as a strategic ally in a region dominated by Sunni powers, particularly Saudi Arabia. This relationship allows Iran to exert influence on Qatar, which can complicate Qatar's ability to act as an honest mediator. Although Qatar sometimes positions itself as a facilitator of dialogue between Hamas and other factions, its close ties with Iran raise questions about its neutrality and commitment to genuine peace efforts.

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<sup>112</sup> “Qatar's Balancing Act in Gaza”, Joel Guzanski, *Foreign Affairs*, January 5, 2024.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

On November 10, 2024, only a few days after the U.S. elections, Qatar’s Ministry of Foreign Affairs announced that it would halt its mediation efforts between Israel and Hamas until both parties showed a “sincere willingness” to return to the negotiation table. A senior U.S. official told Reuters that Hamas leaders “*should no longer be welcome in the capitals of any American partner*” after the terror organization rejected repeated proposals to release the hostages.<sup>115</sup>

Senior U.S. officials praised Qatari Prime Minister Mohammed bin Abdulrahman bin Jassim Al Thani for his “tireless effort” to strike a truce in Gaza and secure the release of Israeli hostages. However, the Department of Justice (DOJ) in September unsealed a criminal complaint against former Hamas leader Ismail Haniyeh, implicating Qatar in providing sanctuary to Hamas leaders and spreading messages of Israel’s annihilation through its government-owned media networks.<sup>116</sup>

### **Mediation efforts between Israel and Hamas**

In November 2024, Qatar gave notice to Israel and Hamas that it had ceased its mediation effort. Qatar expressed frustration due to both parties’ refusal to negotiate in good faith, making it impossible to broker an agreement on a ceasefire and the release of the hostages.<sup>117</sup> Egypt remained as the primary mediator in the conflict. Simultaneously, Qatar officials stated there was no longer reason for Hamas’s leadership to remain in Qatar, and it appears that they have relocated to Turkey. Qatari diplomats mentioned, “off the record”, that Qatar took that decision in April, but they reconsidered it after Biden’s request to re-engage in the mediation. They blamed Israel for its stance of only agreeing to a ceasefire upon the release of the hostages.<sup>118</sup>

However, Qatar made clear its intention to resume the mediation efforts should the circumstances change and both parties returned to the negotiation table in good faith. In fact, Qatar remained as a mediator behind the scenes, and successfully brokered (with Egypt) the ceasefire and release of Israelis hostages that began on January 19. This achievement will surely embolden Qatar’s aspiration of becoming a diplomatic powerhouse in the Middle East.

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<sup>115</sup> “Qatar denies end of mediation role”, *The Jewish Chronicle*, November 10, 2024.

<sup>116</sup> Ibid.

<sup>117</sup> “Qatar suspends mediation efforts between Israel and Hamas”. Aya Betrawy, *NPR*, November 10, 2024.

<sup>118</sup> Ibid.



Prior to this, Qatar succeeded in convening a meeting in Doha on December 7, 2024 with Russia, Iran, Egypt, Jordan, and Saudi Arabia, where they persuaded the Iranian foreign minister that Bashar al-Assad should step down immediately to prevent a new protracted civil war and further bloodshed in Syria.<sup>119</sup>

### **Qatar's lack of transparency in its humanitarian assistance to Gaza**

While Qatar argues that its financial assistance is aimed at humanitarian relief and rebuilding efforts in Gaza, critics contend that this funding indirectly supports Hamas's military operations and governance.<sup>120</sup> The Qatari government has often maintained that it provides funds to help stabilize the region and alleviate the humanitarian crisis in Gaza, but the dual-use nature of such assistance raises concerns about its potential contribution to terrorism.<sup>121</sup>

### **Allegations of Qatari bribes**

Investigations into alleged Qatari bribes to members of the European Parliament, emerging in late 2022, suggest efforts by Qatari officials to sway EU stances on labor rights and regional political issues. By leveraging support within the EU, Qatar potentially seeks to secure diplomatic advantages and maintain regional alliances that align with its interests in the Middle East.<sup>122</sup>

## **11. IS THE TWO-STATE SOLUTION VIABLE AFTER OCTOBER 7 ATTACK?**

The “two-state solution” has been conventional wisdom since the 1980s, positing that Israeli-Palestinian negotiations leading to the creation of a viable democratic, peace-loving Palestinian state adjacent to Israel is necessary to achieve peace in the Middle East.

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<sup>119</sup> “Syria after Assad”, Robin Wright, *The New Yorker*, December 15, 2024.

<sup>120</sup> “Intel report: Qatar’s funding, policies led directly to Oct. 7; it shouldn’t be key mediator”, David Horivitz, *The Times of Israel*, April 8, 2024.

<sup>121</sup> Ibid.

<sup>122</sup> “Qatar corruption scandal rocks European Parliament”, *Courthouse News Service*, [posted](#) on December 13, 2024.

On October 7, 2023, Hamas, in coordination with Iran and with the complicity, or at least passivity, of the Palestinian Authority (PA), dealt a severe blow to the two-state paradigm. This framework is based on mutual trust and peace, envisioning two states living side by side in harmony—not in a North Korea-South Korea or Berlin Wall fashion. At this stage, there is no doubt whatsoever that Iran has been acting increasingly “as a partner and a sponsor” for Hamas and the Palestinian Islamic Jihad (PIJ) in promoting terrorism to annihilate the Jewish state.<sup>123</sup>

The damage done to Israel’s actual security, and the subjective sense of security among Israelis, make achieving a two-state solution impossible in the foreseeable future. On the other hand, it is estimated that 70 per cent of Gazans support Hamas to a varying degree. The *raison d’être* of Hamas is the destruction of the state of Israel. It is impossible to talk of peace while Hamas exists anywhere between the River and the Sea.

UN member states must refrain from advocating prematurely for the two-state solution, fully aware that it is absolutely unattainable for the time being. Rebuilding mutual confidence, if that is at all possible, will require time. Meaningful peace negotiations cannot be established until Iranian-sponsored terrorism is decisively defeated, and Turkey provides assurances that it will not use jihadist factions in Syria as proxies to attack Israel.<sup>124</sup> Only then can a peace process resume as envisioned in the Oslo Accords or the Road Map for Peace. We have already discussed the recent post on social media (X) by Iran’s Supreme Leader Khamenei expressing its categorical rejection of the two-state solution.<sup>125</sup> Cessation of terrorist violence and incitement to violence is a prerequisite in both frameworks to move forward in the peace process.

Palestinian statehood cannot be enforced by international courts or UN resolutions: it can only be achieved through mutual negotiations and a gradual process of Palestinian institution-building. The UN must recognize that there is no shortcut to Palestinian statehood. The October 7 attack has demolished the remnants of trust between peace-loving Israelis and Palestinians.

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<sup>123</sup> See, for example, “Advisory Letter: Towards a new direction for the Netherlands in the Israeli-Palestinian conflict”, Adviesraad Internationale Vraagstukken, October 23, 2024, p. 11.

<sup>124</sup> “Two State Solution Temporarily Closed for Renovation”, Koby Huberman, *The Jerusalem Strategic Tribune*, October 2024.

<sup>125</sup> Published on Khamenei’s [X account](#), November 29, 2024.

Iran and Hamas have also undermined another crucial tenet of the Oslo Accords: The PLO sought a Palestinian state based on the pre-1967 borders, but the October 7 attack demonstrated that Iran and Hamas no longer share that vision and instead pursue the establishment of a jihadist Palestinian state “from the river to the sea.” The PLO and the PA conceive the two-state solution proposed by UN General Assembly Resolution ES-10/24 as merely a tactical move towards achieving that jihadist goal.

The key difference lies in their methods: Hamas and Iran aim to eliminate Israel in the short term, while the PLO and PA seek to achieve the same outcome through the intermediate two-state solution as outlined in UNGA Resolution ES 10/24. It is unfortunate that Western nations, whether naively, complacently, or negligently, have failed to see that the purpose of that resolution is to degrade and isolate Israel, ultimately seeking to erase it from the territories of the former British Mandate. The PA and PLO’s strategy aligns with the Arab concept of “*hudna*”, which refers to merely a tactical, temporary ceasefire or truce to replenish forces and then defeat the enemy. Here, as mentioned above, accepting a two-state solution is a tactical and transitory move for strategic regrouping toward the ultimate goal of erasing Israel from the face of the Earth.

Having said that, it is not difficult to conclude that the ongoing conflict is not territorial in nature but existential. Since the beginning of the British Mandate, as thoroughly documented in the Peel Commission Report, the Arab Palestinians showed a firm and long-standing determination to reject the establishment of a Jewish state in the area.<sup>126</sup>

## **12. WHAT IS NEXT? UNGA RESOLUTION A/79 L/23 CALLS ON UN MEMBERS TO HOLD HIGH-LEVEL CONFERENCE**

Subsequent to Resolution ES-10/24, on November 25, 2024, the General Assembly issued Resolution A/79 L/23 (sponsored by Senegal) calling on UN members to hold a “high-level International Conference for the Peaceful Settlement of the Question of Palestine and the Implementation of the

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<sup>126</sup> The Peel Commission, formally known as the Palestine Royal Commission, was a British Royal Commission of Inquiry, headed by Lord Peel, appointed in 1936 to investigate the causes of conflict in Mandatory Palestine, which was administered by the United Kingdom.

Two-State Solution”. This conference is scheduled to take place from June 2-4, 2025, in New York, preceded by a preliminary meeting in May.

Interestingly, the new resolution does not cite Resolution ES-10/24 among its precedents. Nor does it establish or reference the deadline for Israel’s withdrawal from the territories, which Resolution ES-10/24 had established for September 2025.

The new resolution does bring back to life UNSC 242 Resolution and the Oslo Accords (although they are not named), both foundational legal instruments which have been neglected by the majority of the Advisory Opinion and UNGA Resolution ES-10/24. The Resolution, in relevant part, reads:

*“Recalling the mutual recognition 31 years ago between the Government of the State of Israel and the Palestine Liberation Organization, the representative of the Palestinian people, and stressing the urgent need for efforts **to ensure full compliance with the agreements concluded between the two sides**”.* (bold added)

In fact, as previously discussed, the Oslo Accords continue to provide the legal framework for resolving the Israeli-Palestinian conflict, hence there is no substitute for direct negotiation between the parties to resolve “final status” issues—including final borders.

Therefore, UN member states may bring to the debate at that conference historical and legal arguments pertaining to the Israeli-Palestinian that have been rejected or neglected by the lethally-flawed ICJ Advisory Opinion of July 19, 2024, and UNGA Resolution ES-10/24.

### **13. CALL TO UN MEMBER STATES TO RECALIBRATE THEIR STRATEGIC POSITIONS TOWARDS THE MIDDLE EAST CONFLICT**

In her dissenting vote of the Advisory Opinion, Judge Sebutinde cautioned that the majority’s approach “...*is likely to exacerbate rather than de-escalate tension in the Middle East.*”<sup>127</sup> Her warning has proven prescient. Since the Advisory Opinion was rendered on July 19, 2024, tensions in the region have only escalated, culminating in open armed conflict between Israel and Iran.

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<sup>127</sup> Dissenting Opinion of Vice-President Sebutinde, para. 42.

Any attempt to implement UNGA Resolution ES-10/24 risks aggravating the situation further not only in the Middle East but globally, with potentially catastrophic consequences.

Despite these evolving realities, the UN continues to cling to an outdated narrative, disproportionately blaming Israel for the region's violence. This flawed and one-sided approach urgently needs to be reconsidered.

Resolution ES-10/24 epitomizes the UN's failure to address the true dynamics of the conflict. In his speech to the General Assembly on September 24, 2024, Argentine President Javier Milei sharply criticized the UN's "*systematic voting against Israel while failing to address terrorism*."<sup>128</sup>

Notably, no UN resolution has yet directly condemned the atrocities committed by Hamas—with Iran's endorsement—during the October 7 attack on Israel. In this respect, the influence in the UN General Assembly of anti-Israel blocs such as the Organization of Islamic Cooperation (OIC), the Non-Aligned Movement (NAM) and the African Union is alarming. These blocs provide a large number of votes to secure anti-Israel resolutions, forming a peculiar, informal alliance with Western nations that promotes a militant secular agenda.

The Briefing argues that UNGA Resolution ES-10/24 should not be implemented, and urges UN member states to recalibrate their strategic policies towards the Israeli-Palestinian conflict by prioritizing regional and global security over immediate Palestinian statehood.

The high-level conference called by UNGA Resolution A/79 L/23 on the Israeli-Palestinian conflict to be held in New York in June represents a good occasion for peace-loving states to bring common sense and sanity to the UN General Assembly. There will be a preparatory session in May.

The previously discussed Trump proposal on Gaza will surely have a tremendous impact on the climate set for this conference, as it has brought an unprecedented new perspective to the conflict.<sup>129</sup>

As described above, states are free, in fact encouraged, to bring to the discussions matters within the framework of the Oslo Accords inclusive historical and legal arguments on definitive borders. In the next section we will outline transitional proposals to bring security and good governance to post-war Gaza. The current volatile situation in Syria underscores the importance of having a well-structured and internationally supported plan for governance and security during transitional periods.

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<sup>128</sup> <https://www.youtube.com/watch?v=Pw2UMwLbMCE>

<sup>129</sup> "What is Trump's Proposal for Gaza?", American Jewish Committee (AJC), February 12, 2025.

### **Latest developments in Gaza**

UN members states participating in the upcoming UN conference are also required to assess the latest developments in Gaza. This includes President Trump's bold proposal on Gaza, and Hamas's threat to delay the release of the remaining Israeli hostages taken on October 7. This assessment obviously contains speculative elements at this stage, as nobody can predict how things will evolve until June in this shifting geopolitical landscape.

We can affirm, however, that Hamas's failure to release all of the remaining Israeli hostages taken on October 7, and its decision not to comply with an unconditional surrender will have grave consequences as outlined in the Executive Summary of this Briefing, namely (i) Israel's withdrawal from the Oslo Accords and (ii) Israel's entitlement to transfer Gazan civilians, based on the compelling military need to deprive Hamas of continuing to use them as human shields in the battlefield. In this event, UN members states would be encouraged to reassess the Palestinians' right to self-determination due to their continued rejection of exercising it and establishing a sovereign state living side by side with Israel, focusing on the destruction of the latter instead.

## **14. ADDRESSING SECURITY AND GOVERNANCE ISSUES IN POST-WAR GAZA: A MULTINATIONAL PEACEKEEPING FORCE IN CONJUNCTION WITH MODERN TRUSTEESHIP?**

As discussed above, once the protracted war between Israel and Hamas in Gaza has ended, or a definitive ceasefire is effectively implemented, Israel will be entitled to remain in military occupation of the entire Gaza Strip in self-defense until the security threats originating from within the area are completely defeated. The recent IDF operation in Jabaliya disrupted newly entrenched Hamas and Palestinian Islamic Jihad (PIJ) recruits, demonstrating their ability to rapidly reestablish terrorist infrastructure in the absence of close IDF surveillance.<sup>130</sup>

We propose that Israel shares the burden of such military occupation with other nations, and works to establish an international peacekeeping force or coalition of willing nations, whether under the UN umbrella or otherwise, to ensure security and stability in the area.

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<sup>130</sup> "Israel cannot again leave Gazan areas for months", Yaakov Lappin, *Jewish News Syndicate* (JNS), December 31, 2024.

This international peacekeeping force should be led by Israel, and consist of a predominant Arab country composition, ideally the signatories of the Abraham Accords—United Arab Emirates, Bahrain, Sudan, and Morocco—along with Egypt, Jordan, and Saudi Arabia. Additionally, other peace-loving nations from outside the region, such as Argentina, Paraguay, El Salvador, and Guatemala from Latin America, and others from Africa, could complete the force.

Over time, a modern and innovative international trusteeship could be gradually established until Palestinians in Gaza are capable of forming a viable self-government. This trusteeship should involve an international funding effort to rebuild infrastructure and create sustainable economic progress in the area, with appropriate transparency and auditing mechanisms. It is also crucial to ensure that any interim administration brings solid institution-building programs for a future transition towards a Palestinian self-government.

We also advocate for a definitive and comprehensive solution to the thorny issue of refugees. To this end, we propose the establishment of an arbitration mechanism or claims commission to compensate refugees (or their descendants) that left their homes under violence (or perceived violence) from both sides in 1949: Palestinians who left the territories of the State of Israel on or around that date, and Jews who left the territories of the Arab states and the British Mandate that were seized by Jordan, in line with UNSC 242 “just settlement of the refugee problem”. It is time to acknowledge that all those considered “Palestinian refugees” cannot return “en masse” to Israel, as this would, in practice, signal the end of the Jewish state.

Finally, as it is known, in December 2024, Hamas and Fatah representatives met in Cairo to negotiate a committee that would run post-war Gaza.<sup>131</sup> This alternative should be rejected outright by the community of nations as it would only bring more destruction and bloodshed to Palestinians and Israelis alike. Hamas is a terrorist organization and cannot be permitted to exercise government functions in post-war Gaza.

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<sup>131</sup> “Hamas and Fatah agree to create committee to run postwar Gaza Strip”, Bethan Mc Kernan, *The Guardian*, December 3, 2024.



## 15. FINAL CONCLUSIONS AND RECOMMENDATIONS

- The ICJ Advisory Opinion and UNGA Resolution E-10/24 are lethally flawed and should be disregarded.
- The UNGA's one-sided focus on Israel's alleged wrongdoings, together with one-sided proceedings in the ICJ, has led the Court to render an Opinion that is based on false legal, historical and political premises.
- The ICJ's Advisory Opinion has adopted a historical and legal narrative that undermines the sovereignty of Israel as a UN member state, and rewards Arab-Palestinian aggression. This is the result of the one-sided UN resolution (77/247) and a one-sided Advisory Opinion process driven by the Palestinians and supported by around 80 states, many of them hostile to the State of Israel. Six out of fifteen judges of the Court criticized the one-sided nature of the Opinion, especially the Opinion's failure to adequately take account of Israel's legitimate security concerns. Of these, three judges strongly disagreed with the conclusion that the occupation is illegal, and one judge (the Court's Vice-President) stated that the Advisory Opinion is totally flawed and the Court should not have issued an Opinion at all.
- The main flaws of the Advisory Opinion and Resolution ES-10/24 are:
  - 1) The ICJ ignores Israel's legitimate sovereign claims to East Jerusalem and Judea & Samaria (aka West Bank). The ICJ disregarded the well-established principle of international law *uti possidetis juris*, which provides that the borders of newly formed states should be based on the frontiers that existed at the time of their independence.
  - 2) By calling on Israel to end its military presence in East Jerusalem, the West Bank and Gaza Strip without adequate security guarantees, the Advisory Opinion rewards aggression and ignores the existential threats posed to Israel by these territories. This approach is more likely to exacerbate tensions in the Middle East than to de-escalate them.
  - 3) The ICJ's approach undermines UNSC Res. 242, the Oslo Accords and the Security Council-sanctioned peace process, which is based on a negotiated solution to all outstanding issues in the conflict, including security, borders, the status of Jerusalem and the settlements.
  - 4) The ICJ provides no grounds for concluding that Israel's presence in the territories is illegal.

- In the evolving world scenario, any UN attempts to address the Israeli-Palestinian conflict in isolation—such as UNGA Resolution ES-10/24 aims to do—are bound to fail. The UN’s continued fixation on condemning Israel overlooks the broader geopolitical dynamics, particularly the involvement of state and non-state actors that perpetuate or tolerate terrorism.
- The ICJ Advisory Opinion and UNGA Resolution E-10/24 are not binding. Advisory Opinions are, as the name says, advisory only. Similarly, while UNGA resolutions reflect international opinion, they are also non-binding in nature. Accordingly, UN member states should not act to require Israel to end its presence in the territories in the absence of agreed security measures and should also not take steps to pre-empt or prevent negotiations between the parties on conflicting claims, as provided for in the legal principles of UN Security Council Resolution 242 (1967), the Oslo Accords and the UN-approved Roadmap for Peace.

## RECOMMENDATIONS

- **Reject the ICJ Advisory Opinion and UNGA Resolution ES-10/24** in their entirety, as they are lethally flawed and fail to consider Israel’s security concerns. Compliance with them will only escalate tensions in the region and beyond.
- **Prioritize the imperative of neutralizing internationally-sponsored terrorism** and jihadist threats originating from the West Bank and Gaza Strip over Palestinian demands for immediate statehood recognition.
- **Leverage Resolution A/79 L/23** to encourage pragmatic diplomacy and negotiations rooted in the Oslo Accords and UNSC Resolution 242. A coordinated international effort, led by the United States and supported by peace-supporting Arab countries is crucial for fostering meaningful change.
- **Hamas must be uprooted and UNRWA dismantled:** Hamas’s goal of eliminating Israel makes peace impossible, while UNRWA has been infiltrated by Hamas members, exacerbating extremism and undermining its role in providing humanitarian aid to civilians.
- **Ensure reforms of Palestinian governance** to establish the foundations for a viable state, while recognizing Israel’s sovereign claims and maintaining Israel’s right to control of the West Bank as a security buffer until such time as a negotiated agreement is reached that satisfies Israel’s need for secure borders.

- **Recognize Israel’s sovereignty over East Jerusalem pursuant to the principle of *uti possidetis juris*, and its superior sovereignty rights over Judea and Samaria (the West Bank) and Gaza Strip** under international law, reaffirming Israel’s sovereignty rights in these contested areas.
- **Propose the establishment of an international peacekeeping force in the Gaza Strip** led by Israel and the United States, for addressing governance and security issues in post-war Gaza. This force would consist of countries that are signatories of the Abraham Accords and other moderate Arab states such as Egypt and Jordan, as well as other peace-loving nations from regions such as Latin America and Africa, possibly followed by an innovative modern trusteeship to foster long-term stability and peace.
- **Advocate for the creation of an arbitration mechanism** or claims commission to compensate refugees who fled their homes in 1949: Palestinians who left the territories of the State of Israel on or around that date, and Jews who left the territories of Arab states and the territories of Mandate Palestine that were seized by Jordan—in line with UNSC Resolution 242’s call for a “just settlement of the refugee problem”.

**END OF DOCUMENT**