

Prolonged Occupation: At the Vanishing Point of the *Jus ad Bellum*/*Jus in Bello* Distinction

ARDI IMSEIS[†]

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INTRODUCTION

One of the first conceptual dilemmas encountered in the study of international humanitarian law (IHL) is the question of how it is possible to legally regulate situations of armed conflict. What role does or should law play in periods of such complete and utter tumult, themselves the result of the ultimate breakdown of law and order, usually between States, but also among non-state actors? It was not without reason that Hersch Lauterpacht opined that it was in particular “regard to the law of war that the charge of a mischievous propensity to unreality has been leveled against the science of international law,” and that “the very idea of a legal regulation of a condition of mere force has appeared to many

[†] Assistant Professor of Law, Faculty of Law, Queen’s University. Member, UN Group of Eminent Experts on Yemen (2019-2021). United Nations Relief and Works Agency for Palestine Refugees in the Near East (2002-2014). Based on remarks delivered by the author at the *Texas International Law Journal* Symposium, “The Law of Occupation: A Modern and Historic Overview”, University of Texas at Austin, 4 March 2023.

incongruous to the point of absurdity.”¹ In an age in which great strides have been made towards the imposition of a general prohibition on the threat or use of force in international relations, first in form of the 1928 Kellogg-Briand Pact, and then more prominently in the 1945 Charter of the United Nations,² one could be forgiven in thinking it pointless to profess a role for law in the regulation of war. Yet, counterintuitive though it may seem, because the international system still contemplates circumstances in which the use of force may be legitimately invoked, even if as an exception to the general rule,³ it is fundamental for there to exist a body of law whose object and purpose is to limit the means and methods of warfare and to protect persons who are not, or are no longer, directly participating in hostilities.⁴ This is the nub of IHL as both a substratum and chief constituent of modern public international law.

As current events in Ukraine demonstrate, an important branch of IHL is the law of occupation.⁵ I should like to therefore focus my remarks on a question that has preoccupied me for some years, and has taken on greater relevance in recent months with the passage of General Assembly resolution 77/247 requesting the International Court of Justice (ICJ) to

1. ELIHU LAUTERPACHT, *INTERNATIONAL LAW: BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT: THE LAW OF PEACE, PART 2* 37–38 (1975), quoted in MARCO SASSOLI & ANTOINE A. BOUVIER, *HOW DOES LAW PROTECT IN WAR: CASES, DOCUMENTS, AND TEACHING MATERIALS ON CONTEMPORARY PRACTICE IN INTERNATIONAL HUMANITARIAN LAW* 76 (Geneva: Int’l Comm. of the Red Cross, 1999).

2. The *Kellogg-Briand Pact*, also known as the *General Treaty for the Renunciation of War*, provides in Article I that “the High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.” Article II further provides that “the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be . . . shall never be sought except by pacific means.” As noted by Brownlie, this instrument, which “has been ratified or adhered to by sixty-three states and is still in force,” included State Party reservations for the right of individual and collective self-defence thereby making it “the legal regime which was the actual precursor of the United Nations Charter.”; see IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 698–99. (Oxford Univ. Press, 6th ed. 2003); see U.N. Charter., Art. 2(4). The Charter of the United Nations, brought into force on 24 October 1945, provides in Article 2(4) that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

3. U.N. Charter., Art. 2(4). Chapter VII of the UN Charter, Art. 2(4) provides for the two universally endorsed exceptions to the general prohibition on use of force. First, Article 42 provides that where the Security Council “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security” where it has “determined the existence of any threat to the peace, breach of the peace or act of aggression” under Article 39 and has satisfied itself that non-forcible measures under Article 41 would be inadequate to address the situation. Second, Article 51 provides for an “inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.” In addition to these two exceptions, some writers have suggested that peoples who have a recognized right to self-determination also possess a right to resort to force in defence of that right; see MICHAEL AKEHURST, *MODERN INTRODUCTION TO INTERNATIONAL LAW* 336 (London: Routledge ed., 7th ed. 1997); see also *Declaration of Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, Annexed to UNGAR 2625 (XXV), 24 October 1970, fifth principle, paras. 2, 5 [hereinafter *Friendly Relations Declaration*], which provides that the “subjection of peoples to alien subjugation, domination and exploitation constitutes a violation” of the principle of equal rights and self-determination of peoples, and that “[i]n their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”

4. This is not to suggest that in cases of aggression, IHL would not apply, but only to emphasize, in the words of Lauterpacht, the “controversial” nature of the proposition that it is theoretically absurd to argue that armed conflict can be legally regulated “so long as the law permitted or even authorized resort to war.” See LAUTERPACHT, quoted in *supra* note 1 at 76.

5. See generally EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 3–4 (1993).

render an advisory opinion on the legal status of Israel's continued presence in the occupied Palestinian territory (OPT)⁶: namely, how do situations of prolonged occupation reconcile themselves with the foundational principle of international law requiring us to distinguish between the *jus ad bellum*—the law governing the right to resort to force – and the *jus in bello*—the law governing how force is used in armed conflict, or IHL.

The *jus ad bellum* is, of course, codified in the UN Charter, which imposes a general prohibition on the use of force under article 2(4), with two exceptions, namely where force is authorized by decision of the UN Security Council under Chapter IV, or where a State uses proportional and necessary force after being subjected to an armed attack under article 51.⁷ On the other hand, the *jus in bello* concerns itself with the means and methods of armed conflict, as well as the protection, status, duties and rights of specific categories of persons or objects, including civilians, combatants, civilian objects and military objectives. IHL consists of a multitude of general rules recognized as customary international law and therefore binding on all states and is codified to a large extent in the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, along with its annexed Regulations,⁸ the four 1949 Geneva Conventions, including the Convention Relative to the Protection of Civilian Persons in Time of War,⁹ and the 1977 Additional Protocol I to the Geneva Conventions.¹⁰

The conventional wisdom requires the distinction between the *ad bellum* and *in bello* law on the theory that to collapse them would frustrate the object and purpose of IHL, which is to limit the means and methods of armed conflict and to protect persons who are not, or are no longer, directly participating in such conflict. Because of its humanitarian purpose, IHL and its application must remain agnostic as to who is legally to blame for the commencement of armed conflict under the *ad bellum* law. If it were otherwise, so goes the thinking, the incentive of parties to armed conflict to abide by the *in bello* law would be reduced under the weight of competing accusations of aggressive war, thereby resulting in greater harm during the course of war to persons otherwise entitled to be treated humanely in line with the *in bello* rules.

This rationale is axiomatic for international lawyers, especially to those who practice in IHL. As with most rules of general application, however, sometimes strange facts can test their limitations, forcing us to reconsider accepted convention. In my respectful opinion, one such strange set of facts is that presented by situations of prolonged occupation. At bottom, it is my contention that if IHL rests at the vanishing point of international law, prolonged occupation rests at the vanishing point of the fundamental distinction between the *jus ad bellum* and *jus in bello*.

6. G.A. Res 77/247, Israel Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem (Dec. 30, 2022).

7. There is arguably a third exception, namely where force is used in defence of a people's right to self-determination. See *supra* note 3.

8. *Convention Respecting the Laws and Customs of War on Land*, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631 (entered into force Jan. 26, 1910) [hereinafter 1907 Hague Regulations].

9. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (entering into force 21 October 1950) [hereinafter Fourth Geneva Convention].

10. Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, 16 I.L.M. (1977); 1391, 1125 U.N.T.S. (1979); Art. 4(3) (June 8, 1977) [hereinafter Additional Protocol I].

To examine this, I would like to spend the remainder of this essay briefly setting out the basic tenets of the law of occupation and explaining where the natural tension, and even the collapse, that occupations of prolonged duration generate in respect of the fundamental distinction between the *ad bellum* and *in bello* law. I will then attempt to illustrate my points with recourse to three paradigmatic cases of prolonged occupation in existence today, namely Israel's 56-year occupations of the OPT and the occupied Syrian Golan Heights, and Morocco's 48-year occupation of Western Sahara.

I. THE LAW OF OCCUPATION

The law of occupation governs the administration of enemy territory captured as a result of an armed conflict and pending the conclusion of a final political settlement. In essence, the law of occupation sets out how the civilian (or "protected") population and its property is to be treated while an occupying power maintains effective control over the occupied territory. The law also outlines the duties and corresponding rights of the occupying power in respect of its overall obligation to protect the civilian population and maintain public order in the territory. Although the law attempts at some points to strike a balance between the legitimate military interests of the occupying power and the civilian population, its overriding aim is to ensure that claims of military necessity do not result in the violation of basic political and human rights of the latter.

A. *Fundamental Principles*

The two most fundamental principles underlying the law of occupation are as follows:

(i) Temporariness. Military occupation represents a *temporary* condition during which the role of the occupying power is limited merely to that of the *de facto* administrative authority.¹¹ Such authority is to be exercised for the benefit of the protected population, although the occupying power is permitted in specific circumstances to take measures to protect the legitimate interests of its military in the occupied territory so long as the military advantage gained is proportionate to the harm done to the protected population.¹² Because occupation is inherently temporary, the occupying power is prohibited from altering the status of the occupied territory. In addition, it is bound to permit and ensure the functioning of the pre-war administration of the territory. This includes the obligation to respect the laws in force in the territory, amending them only to the extent required to enable the occupying power to meet its obligations under the law.¹³

11. See generally Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, art. 43. 29 July 1899; Fourth Geneva Convention, *supra* note 9, art. 64.

12. See *id.*

13. These general propositions are given expression in a number of treaty provisions codifying both the Hague and Geneva law. Article 43 of the 1907 Hague Regulations, *supra* note 8, a first point of reference, provides that the occupant "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." Likewise, Article 64 of the Fourth Geneva Convention, *supra* note 9, states that "[t]he penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention."

One lacuna of the law of belligerent occupation is that it does not expressly establish a specific time limit for the lawful duration of an occupation. Nevertheless, the temporariness principle is well established,¹⁴ and finds expression in a number of treaty provisions in both the Hague and Geneva law. Regarding the Hague law, one example is Article 43 of the 1907 Hague Regulations, which provides that:

“The authority of the legitimate power having in fact passed into the hands of the occupation, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”¹⁵

The provisional nature of the occupying Power’s tenure as the temporary administrator of the territory whose people’s sovereignty—represented in the requirement to uphold local law—has merely been interrupted and not permanently abolished is self-evident from this provision. Likewise, the provisional status of the belligerent occupant’s position is affirmed through Article 55 of the 1907 Hague Regulations, which provides that the occupant “shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.”¹⁶ Rights of usufruct clearly do not equate with permanent sovereign title.

Regarding the Geneva law, another example is Article 47 of the Fourth Geneva Convention, which provides that:

“[p]rotected persons who are in occupied territory shall not be deprived, in any case, or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

This provision derives from the experiences of the Second World War, when attempts to introduce permanent change to territories occupied by the Axis powers, including through purported annexation of occupied territory, resulted in widespread and systematic violations of the rights of the civilian populations affected. The international community therefore sought through the Fourth Geneva Convention to reaffirm the provisional nature of belligerent occupation. This is confirmed by the commentary of the International Committee of the Red Cross on Article 47, which provides that

“[t]he occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights. This is what distinguishes occupation from annexation, whereby the Occupying Power acquires all or part of the occupied territory and incorporates it in its own territory.”¹⁷

(ii) Non-Sovereignty. The second principle was summed up well by Oppenheim when he stated that belligerent occupation does not yield so much as “an atom of sovereignty in the

14. See, e.g., GA Res. 77/246, para. 7 (Dec. 30, 2022).

15. 1907 Hague Regulations, *supra* note 8, art. 43.

16. *Id.* art. 55.

17. Jean S. Pictet, Int’l Committee of the Red Cross, Commentary, *IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1958) at 275.

authority of the occupant.”¹⁸ As a provisional state of affairs, under no circumstances does the fact of being in occupation of a territory entitle the occupant to sovereignty over that territory.¹⁹ This principle evolved from the outmoded law and practice governing the right of conquest, as it was understood, which gradually gave way to the notion of occupation: the idea that sovereign possession of territory occupied through force could never be definite until a treaty of peace.²⁰ As noted in 1925 by Arbitrator Borel in *Affaire de la Dette Publique Ottomane*:

“Quels que soient les effets de l’occupation d’un territoire par l’adversaire avant le rétablissement de la paix, ils est certain qu’à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté.”²¹

The modern law of occupation defers to the principle of self-determination of peoples, in so far as it understands that sovereignty in an occupied territory rests with its people, not in its governing elites.²² It is those people who possess sovereignty in the territory, rather than the ousted leadership or the foreign occupying power that has ousted that leadership from its seat of government. Indeed, that a belligerent occupant can never be sovereign in occupied territory inheres in the law of occupation itself. Given that military occupation can only arise in the context of an international armed conflict in which two or more States is involved, it is axiomatic that occupied territory must *always* involve territory *foreign* to the occupying power, i.e., territory within which that power is not possessive of sovereign title.

These two principles are fundamental. They are manifestations of at least three peremptory norms of international law, derogation from which is not permitted. The first of these is the prohibition on the acquisition of territory through the threat or use of force, itself a corollary of the general prohibition of the threat or use of force as codified in article 2(4) of the UN Charter.²³ The *Friendly Relations Declaration*,²⁴ which according to Brownlie is “a useful epitome of the law and a form of state practice,”²⁵ makes clear that “[t]he territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force” and that “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal.”²⁶ The second peremptory norm is the obligation of states to respect the right of peoples to self-determination. As affirmed by the ICJ on a number of occasions, the obligation to respect the right of peoples to self-determination is of an *erga omnes* character, a right opposable against all in the international community.²⁷ The third peremptory norm is

18. Oppenheim, L. “The Legal Relations Between an Occupying Power and the Inhabitants” (1917) 33 L.Q. Rev. 363, at 364, *quoted in* Dinstein, Y. “The International Law of Belligerent Occupation and Human Rights” (1978) 8 Isr. Y.B. on H.R. 104, at 106.

19. Pictet, *supra* note 17, at 275.

20. *Id.*

21. *Affaire de la Dette Publique Ottomane* (Bulgaria, Irak, Palestine, Transjordan, Greece, Italy and Turkey), 1925, 1 RIAA 529, at 555.

22. Yutaka Arai-Takahashi, *Preoccupied with occupation: critical examinations of the historical development of the law of occupation*, 94 Int’l Rev. of the Red Cross 51, 68 (2012).

23. See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. (July 9), para. 87 [hereinafter Wall Advisory Opinion]; see also S.C. Res. 242 (Nov. 22 1967).

24. Friendly Relations Declaration, *supra* note 3.

25. BROWNLIE, *supra* note 2, at 705.

26. Friendly Relations Declaration, *supra* note 3, first principle, para. 10.

27. See *East Timor* (Port. v. Austl.), Judgment, 1995 I.C.J. 90 (June 30) (detailing how the principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court); *Wall Advisory Opinion*, *supra* note 23, at 171–72; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1996 I.C.J. 16 (June 21); On the *jus cogens* status of self-determination, see James Crawford, The

the obligation of states to refrain from imposing regimes of alien subjugation, domination, and exploitation inimical to humankind, including racial discrimination and apartheid. As we shall see, this can occur in situations of prolonged occupation where an irredentist occupying Power, already alien by definition, may impose discriminatory rule over the protected population in order to entrench its specious claims of sovereignty over that population's territory.²⁸

As interdependent concepts, these three *jus cogens* principles undergird the modern law of occupation and inform virtually every aspect of that normative regime as exists in both treaty and custom.

B. Key Treaty-Based Rules

What are some of the key treaty-based rules of the law of occupation that we should consider when examining the tension that prolonged occupations place on the fundamental distinction between *in bello* and *ad bellum* law?

An important rule concerns the issue of what signals the existence of an occupation. The test as to whether a territory is occupied is commonly referred to as the “effective control” test. Article 42 of the 1907 Hague Regulations provides that “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”²⁹ As affirmed by the United States Military Tribunal at Nuremberg in the *Hostages Case (U.S.A. v. Wilhelm List et al.)*, the existence of effective control is a factual question, and one which can only be satisfied in circumstances where, during the course of an international armed conflict, a foreign military force has invaded enemy territory and exerts any measure of control over the population, to the exclusion of the established governmental authorities.³⁰

International Law Commission's Articles on State Responsibility: Introduction, Text, and Commentaries 188, 246–47 (2002). See also, ILC Draft Conclusions *supra* note 28.

28. Further authority for the *jus cogens* status of each of these three norms is to be found in the *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, Report of the International Law Commission, 73rd Sess., 18 April-3 June & 4 July-5 August 2022, A/77/10, at para. 44, Annex [hereinafter “ILC Draft Conclusions”], where, in addition to the “prohibition of aggression” and the “right of self-determination”, the ILC lists the “prohibition of aggression”, the obligation to respect the “right of self-determination”, the “prohibition of racial discrimination and apartheid”, “the prohibition of crimes against humanity” and “the basic rules of international humanitarian law” as *jus cogens* norms. The inadmissibility of acquisition of territory through the threat or use of force is a corollary of the prohibition of aggression. According to the Friendly Relations Declaration, *supra* note 3, Annex, the General Assembly appears to be of the view that there is little, if any, *normative* difference between the prohibition of aggression and its corollary prohibiting the acquisition of territory through the threat or use of force.

29. Convention Respecting the Laws and Customs of War on Land, annex, art. 42, *opened for signature* July 29, 1899, 36 Stat. 2277, T.S. 359.

30. Effective control is usually comprised of a military element and an administrative element, although both are the responsibility of the commander-in-chief of the occupying military (i.e. not the civilian governmental authorities of the occupying power). As affirmed in the *Hostages Case*, the establishment of effective military control does not require a particular number or distribution of forces in the whole of the occupied territory; such control remains unchanged even when the belligerent occupant evacuates parts of the territory, so long as it is able “at any time” to reassume control over those parts. In addition, technical advances in the means and methods of warfare since 1907 have altered the formula, to the point where use of such methods as air and sea power, combined with limited ground force (even along the perimeter of the territory in question), are now said to be sufficient to establish effective military control. In respect of the exercise of effective administrative control – what is referred to in Article 6 of the Fourth Geneva Convention as “functions of government” – such control can include matters as far ranging as the maintenance of a system of taxation, the administration of public records, the development of fiscal policies, and the provision of education and health services. In the specific context of Israel's prolonged military occupation of the OPT, the question of effective control has taken on significance. In August

Another rule concerns the question of who the occupying Power has a special duty to protect in the occupied territory. Article 4 of the Fourth Geneva Convention defines “[p]ersons protected by the Convention” as those who find themselves “in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”³¹ Under Article 27, protected persons “shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof . . .”³² Article 32 of the Convention prohibits the occupying power from “taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands,” including “murder, torture, corporal punishment,” and “any other measures of brutality.”³³ Likewise, Article 33 absolutely prohibits collective punishment of protected persons.³⁴ Importantly, Article 8 affirms that protected persons “may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention,” including by special agreements between them and the occupying Power.³⁵

A particularly important rule concerns certain prohibitions placed on the occupying Power from engaging in demographic change in the occupied territory. Article 49 of the Fourth Geneva Convention prohibits “[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory . . . regardless of their motive.”³⁶ Likewise, it also prohibits the occupying power from “transfer[ring] parts of its own civilian population into the territory it occupies.”³⁷ According to Pictet, this injunction was “intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons in order, as they claimed, to colonize those territories.”³⁸ Importantly, the *Rome Statute of the International Criminal Court* treats both the forcible transfer of a protected

and September 2005, Israel withdrew its settlers and permanent military installations and forces from the Gaza Strip in a unilateral act it termed “disengagement.” Israel has since taken the view that the occupation of the Gaza Strip has come to an end, including its corresponding international legal obligations towards the Palestinian civilian population. The Israeli position notwithstanding, as a matter-of-fact Israel has retained effective control over the Gaza Strip’s borders, its airspace and its territorial waters. Moreover, Israel continues to maintain ultimate administrative control over Gaza’s population registry, electricity supply, tax system and fiscal policy. Finally, Israel retains, and has exercised to devastating effect since the disengagement, the “right” to re-enter Gaza at will, which is not in accordance with accepted principles governing the use of force under the UN Charter. In view of the effective control test outlined above, there is little question that Israel remains in occupation of the whole of the Gaza Strip. The Hostages Trial, Case No. 47, at 55, United States Military Tribunal, Nuremberg (Feb. 19, 1948).

31. Fourth Geneva Convention, *supra* note 9, art. 4.

32. Art. 27 is, *in toto*, “the basis on which the Convention rests, the central point in relation to which all its other provisions must be considered”; while the specific “obligation to grant protected persons humane treatment is in truth the leitmotiv of the four Geneva Conventions.” *See* Fourth Geneva Convention, *supra* note 9, art. 4 (Text of the Fourth Geneva convention), discussed in Pictet, *supra* note 17, at 200, 201–04.

33. *See* Fourth Geneva Convention, *supra* note 9, art 4 (Text of the Fourth Geneva convention), *discussed in* Pictet, *supra* note 17, at 221.

34. *Id.* at 224.

35. *Id.* at 7.

36. Pictet indicates that this provision was formulated against the backdrop of the “deportations” that took place in occupied Europe during the Second World War, when “millions of human beings were torn from their homes, separated from their families and deported from their country, usually under inhumane conditions.” *See id.* at 278.

37. *Id.*

38. *Id.* at 283.

population from the occupied territory, and the transfer of the civilian population of the occupying Power into the occupied territory, as war crimes.³⁹

As part of the occupying power's obligation to maintain public order in the occupied territory, the Fourth Geneva Convention outlines an array of practical duties owed toward the protected civilian population. These include the obligation to "facilitate the proper working of all institutions devoted to the care and education of children" (Article 50), to ensure "the food and medical supplies of the population" (Article 55), and to ensure the facilitation of "relief schemes" on behalf of the population if "inadequately supplied" (Article 59).⁴⁰ More demonstrative of the foundational principles underlying the law of occupation is Article 54, providing that "[t]he occupying power may not alter the status of public officials or judges in the occupied territories," and Article 64, providing that "[t]he penal laws of the occupied territory shall remain in force," subject to limited exceptions.⁴¹

Finally, a critical aspect of the law of belligerent occupation, indeed of IHL itself, is that it contains fundamental elements of the growing corpus of international criminal law. Building on the principles established at Nuremberg, the affirmations in the Fourth Geneva Convention of the right of civilian persons to protection against willful killing, torture or inhuman treatment, great suffering or serious injury to body or health, unlawful deportation, deprivation of the right to fair trial, and extensive destruction and appropriation of property not justified by military necessity, are classified as "grave breaches," and therefore war crimes at international law. By way of enforcement of these crimes, Article 146 of the Convention, in part, obliges all High Contracting Parties to enact legislation penalizing the commission of grave breaches under Article 147, and to search for and prosecute or extradite those individuals suspected of committing or ordering the commission of such breaches. Together, Articles 146 & 147 arguably constitute the single most important treaty-based provisions of the law of belligerent occupation, providing normative muscle and content to the obligation provided for in common Article 1 of the 1949 Geneva Conventions, under which the High Contracting Parties "undertake to respect and to ensure respect for the present Convention in all circumstances."

II. THE PROBLEM WITH PROLONGED OCCUPATION

So what is the problem with prolonged occupation?

Because the humanitarian imperative underpinning IHL contemplates the existence of a legal regime governing military occupation, it necessarily follows that occupation as such does not *ipso facto* represent an illegal state of affairs. The fundamental distinction between the *jus ad bellum* and the *jus in bello* renders it generally accepted that occupations resulting from the impermissible resort to force (e.g. aggression) are necessarily illegal. The most current example of this is Russia's illegal invasion, occupation and purported annexation of portions of Ukraine, but others include Iraq's 1991 occupation of Kuwait and the 2003 US/UK occupation of Iraq.⁴² On the other hand, occupations resulting from a lawful

39. See *Rome Statute of the International Criminal Court*, art. 8, s. 2(b)(viii) (on settlements); see also art. 8, s. 2(a)(vii) (on unlawful deportation or transfer). On the latter, see also Fourth Geneva Convention, *supra* note 9, art. 147.

40. Fourth Geneva Convention, *supra* note 9, arts. 50, 55, 59.

41. Fourth Geneva Convention, *supra* note 9, arts. 54, 64.

42. See Michael Ramsden, *Strategic Litigation in Wartime: Judging the Russian Invasion of Ukraine through the Genocide Convention*, 56 VAND. J. TRANSNAT'L L. 181, 201 (2023); see also S.C. Res. 686, para. 2(b) (Mar. 2,

invocation of the use of force are legal, *per se*. Two examples of this would be the Allied occupations of Germany and Japan following World War II. In such cases, the lawfulness of the occupation would not be impugned by subsequent transgressions by the occupying power of the *jus in bello* during the occupation. In practice, the legality of occupations has thus only ever been conceived against these two separate paradigms; the *jus ad bellum* understood as providing the normative framework for assessing the legitimacy of the original act giving rise to the occupation, the *jus in bello* perceived as providing a valuable normative framework within which to measure the behaviour of the belligerent occupant during an occupation, but inappropriate for, if incapable of, assessing the legality of the particular regime of occupation itself. As noted by Ben-Naftali, Gross and Michaeli, international law treats occupation as “a factual, rather than a normative, phenomenon. [. . .] the fact of occupation generates normative results—the application of the international laws of occupation—but in itself does not seem to be a part of that, or any other, normative order”.⁴³

What concerns me are the implications of these principles on occupations of a prolonged duration. In recent work I have undertaken, I have asked the following question: where a prolonged occupant engages in serious violations of IHL, including with consequences that systematically violate certain of its obligations *erga omnes* and/or obligations of a *jus cogens* character under general international law, how can it be said that the regime of force maintaining the situation thus remains legitimate or “legal?”⁴⁴

It seems to me that the yardstick of the *jus cogens* norms requiring respect for the right of peoples to self-determination, the inadmissibility of the acquisition of territory through force, and the obligation to refrain from imposing regimes of alien subjugation, domination and exploitation is key in helping us answer this question. These norms underpin the modern law of occupation, namely that occupation represents a temporary condition, and that the occupying power does not, by virtue of the occupation, possess any right of sovereignty over the territory occupied. Therefore, where the facts of any prolonged occupation establish that an occupying power is violating its obligations under IHL with the effect of systematically violating its obligation to respect the right of the occupied population to self-determination or engaging in acts of annexation of the territory in question, a strong case can be made that such an occupation must be regarded as illegal. If I am right in this assessment, it affirms that situations of prolonged occupation may portend a collapse of the fundamental distinction between the *jus in bello* and the *jus ad bellum*, hitherto a largely unquestioned proposition of general international law.

1991); see also Harold Hongju Koh, *Foreword: On American Exceptionalism*, 55 STAN. L. REV. 1479, 1523 (2003).

43. Orna Ben-Naftali et al., *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 BERKELEY J. INT'L L. 551, 552 (2005). There is a school of thought that posits that in circumstances of a prolonged occupation not otherwise impugned for being the result of an initial aggression of the occupying power, that occupying power must continually demonstrate that its presence in the occupied territory is justified under the *jus ad bellum* for the occupation to be regarded as lawful. Where such an occupying power cannot demonstrate that its continued occupation is necessary or proportionate to defend against the armed attack that gave rise to its initial invocation of defensive force leading to the occupation, such an occupation must necessarily be illegal; see Ralph Wilde, *Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation*, 22 PALESTINE Y.B. INT'L L. 3, 21 (2021). I acknowledge this position as sound, but this does nothing to negate my present argument that where violations of *in bello* rules occur over a prolonged occupation not otherwise tainted by an initial act of aggression, those violations – which are meant to be assessed and kept isolated from the *ad bellum* framework – can nonetheless produce consequences under the *ad bellum* law rendering the occupation illegal.

44. See Ardi Imseis, *Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020*, 31 EUR. J. INT'L L. 1055, 1072 (2020).

To test this, we can briefly turn to the cases of Israel's 56-year occupation of the OPT and the Syrian Golan Heights, and Morocco's 48-year occupation of Western Sahara.

A. *The Occupied Palestinian Territory*

Since 1967, Israel has been in belligerent occupation of the OPT.⁴⁵ During this time, it has pursued a policy of altering the status of the territory, with the publicly declared aim of annexing it, *de jure* or *de facto*.⁴⁶ The OPT is the recognized self-determination unit of the Palestinian people and territorial base of the State of Palestine, which is now recognized by 139 states and a non-Member Observer State of the UN.⁴⁷ Yet Israel's assertions of exclusive sovereignty over the OPT have violated the above-noted *jus cogens* norms underpinning the law of occupation, namely the prohibition of territorial conquest, the obligation to respect the right of peoples to self-determination, and the obligation to refrain from imposing regimes of alien subjugation, domination and exploitation.⁴⁸ This is most clearly manifested through Israel's policy of transferring its civilian population into the OPT in violation of Article 49 of the Fourth Geneva Convention and the Rome Statute.⁴⁹ According to a 2012 UN Fact-Finding Mission, each Israeli government since 1967 has "openly lead and directly participated in the planning, construction, development, consolidation and/or encouragement of settlements" in the OPT through a variety of political, military and economic means.⁵⁰ According to Michael Lynk, a former UN Special Rapporteur on Human Rights in the OPT, in 2019 the number of Israeli settlers was 665,000.⁵¹ The settlements have, for all intents and purposes, annexed *de facto* large swathes of the OPT to Israel proper. These areas form the majority of the West Bank and have effectively fragmented Palestinian space into tens of discontinuous cantons. As for *de jure* annexation, in 1980 the Israeli Cabinet unilaterally and illegally annexed East Jerusalem and parts of the West Bank, amalgamating them with West Jerusalem.⁵² This helped consolidate Israeli settlements established by the occupying Power in East Jerusalem

45. Valentina Azarova, *Israel's Unlawfully Prolonged Occupation: Consequences Under an Integrated Legal Framework*, EURO. COUNCIL ON FOREIGN REL. (June 2, 2017), https://ecfr.eu/publication/israels_unlawfully_prolonged_occupation_7294/ (last visited July 16, 2023).

46. *Id.*

47. Colum Lynch and Joel Greenberg, *U.N. Votes to Recognize Palestine as 'Non-Member Observer State'*, WASH. POST (Nov. 29, 2012, 8:48 p.m.), https://www.washingtonpost.com/world/national-security/united-nations-upgrades-palestines-status/2012/11/29/5ff5ff7e-3a72-11e2-8a97-363b0f9a0ab3_story.html (last visited July 16, 2023).

48. The manner in which Israel's occupation has imposed a regime of alien subjugation, domination, and exploitation has been through a regime of racial discrimination and apartheid. *See A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, HUM. RTS WATCH (Apr. 27, 2021), <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution> (last visited July 16, 2023); *see also* Imseis, *supra* note 44, at 1072.

49. *Chapter 3: Israeli Settlements and International Law*, AMNESTY INT'L, <https://www.amnesty.org/ee/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/> (last visited Jul. 16, 2023).

50. Rep. of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, U.N. Doc. A/HRC/22/63, paras. 20–24 (Feb. 7, 2013) [hereinafter UN Fact-Finding Mission]; *see also* Human Rights Council Res. 22/29, U.N. Doc. A/HRC/RES/22/29 (April 15, 2013) (endorsing the UN Fact-Finding Mission).

51. Rep. of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, U.N. Doc. A/HRC/47/57, para. 62 (July 29, 2021).

52. Rep. of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, Note by the Secretary General, U.N. Doc. A/77/328, para. 16 (Sept. 14, 2022) (discussing the Security Council's reaffirmation of the illegality of the acquisition of territory by force following Israel's 1980 annexation of East Jerusalem).

from 1967.⁵³ In January 2023, current Israeli prime minister, Benjamin Netanyahu, publicly affirmed that his government will continue to “promote and develop [Jewish] settlement” in the OPT, including East Jerusalem, which it is doing at a rapid pace and with the open goal of frustrating the right of the Palestinian people to self-determination.⁵⁴

The UN response to these developments has been unequivocal. In 1967, the Security Council affirmed the ‘inadmissibility of the acquisition of territory by war’ in Resolution 242 (1967) and called upon Israel to withdraw from territories occupied in the war. In resolution 252 (1968), it further affirmed that all ‘legislative measures and administrative measures and actions taken by Israel . . . which tend to change the legal status of Jerusalem are invalid and cannot change that status.’⁵⁵ In August 1980, when the Israeli parliament formally annexed East Jerusalem, the UN Security Council in resolution 478 (1980) censured Israel ‘in the strongest terms,’ stating that the annexation constituted ‘a violation of international law’ and was ‘null and void and must be rescinded forthwith.’⁵⁶ The resolution further called upon ‘all Member States to accept this decision’ and ‘[t]hose States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.’⁵⁷ These principles and resolutions have been reaffirmed multiple times over the years,⁵⁸ including by the ICJ,⁵⁹ and most recently by the Security Council in resolution 2334 (2016), which condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions.”⁶⁰

Importantly, these developments have led two special procedures of the UN Human Rights Council—the UN Special Rapporteur on Human Rights in the OPT and the UN Commission of Inquiry on the OPT and Israel—to determine that the occupation is now unlawful.⁶¹ In the opinion of Special Rapporteur Lynk, Israel’s occupation has crossed the “red line” into illegality through its purported *de jure* and *de facto* annexation of the OPT,

53. See B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank*, The Israeli Info. Ctr. for Hum. Rts. in the Occupied Territories, https://www.btselem.org/publications/summaries/200205_land_grab (last visited July 10, 2023) (noting the increase of significant resources and expand of the Israeli settlements in occupied territories).

54. See Nasim Ahmed, *Jewish Supremacy is State Policy, Says Netanyahu*, MIDDLE E. MONITOR (Jan. 3, 2023, 5:31 PM), <https://www.middleeastmonitor.com/20230103-jewish-supremacy-is-state-policy-says-netanyahu/> (detailing actions current Israeli prime minister, Benjamin Netanyahu, took to ensure the Jewish peoples’ exclusive right).

55. *Jerusalem/Israeli Measures-SecCo Action: S/RES/252 (1968)-Verbatim record*, UNITED NATIONS (May 21, 1968, 4 PM), <https://www.un.org/unispal/document/auto-insert-182119/>.

56. Ardi Imseis, *Reflections on the Ukraine Moment and Western Selectivity: A Response to Ingrid (Wuerth) Brunk and Monica Hakimi*, CTR. FOR INT’L LAW, <https://cil.nus.edu.sg/blogs/reflections-on-the-ukraine-moment-and-western-selectivity-a-response-to-ingrid-wuerth-brunk-and-monica-hakimi/> (last visited July 10, 2023).

57. S.C. Res. 478 para. 5 (Aug. 20, 1980).

58. For example, see S/RES/252 (1968); S/RES/446 (1979); S/RES/452 (1979); S/RES/465 (1980); S/RES/2334 (2016); A/RES/77/187 (2022); A/RES/77/126 (2022) (condemning Israeli annexation of Palestinian territory).

59. See Wall, *supra* note 23, at 171.

60. S.C. Res. 2334 (Dec. 23, 2016).

61. See Rep. of the Spec. Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, U.N. Doc. A/25/67 (2014); see also Rep. of the Independent Int’l Comm. of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Isr., U.N. Doc. A/50/21 (2022).

and its failure to govern the territory in the best interests of the protected population in good faith in accordance with the law of occupation.⁶² Likewise, in the words of the CoI:

The Commission concludes that Israel treats the occupation as a permanent fixture and has—for all intents and purposes—annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. Actions by Israel constituting *de facto* annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank. The International Court of Justice anticipated such a scenario in its 2004 advisory opinion, in which it stated that the wall was creating a *fait accompli* on the ground that could well become permanent and tantamount to *de facto* annexation. This has now become the reality.⁶³

It is apparent from these opinions that violations of the *in bello* law can result in *de facto* annexation of an occupied territory which, in turn, constitutes a violation of the *ad bellum* principle prohibiting the acquisition of territory through the use of force. In other words, prolonged occupation can lead to the collapse of the *in bello/ad bellum* distinction.

B. *The Occupied Syrian Golan Heights*

All the same legal principles and conclusions apply when it comes to the Israeli occupation and annexation of the Syrian Golan Heights. This is because the occupying Power has also pursued an open policy of settling that territory with its civilian nationals with the aim of asserting exclusive sovereignty in the territory.

According to the [UN](#), on the eve of the June 1967 war, 90,000 Syrians were living in the Golan Heights. One month following the war, that number stood at 6,396.⁶⁴ The International Committee of the Red Cross reported that most of the Syrian refugees had been expelled by the occupying Power.⁶⁵ This was no doubt an attempt to clear the territory of as many of its indigenous Syrian inhabitants as possible to make way for their replacement by Israeli settlers, now approximately 25,000 in number and growing. In 1981, Israel purported to annex the Golan Heights through the passage of legislation to this effect.⁶⁶ In December 2022, the occupying power [approved a plan](#) to add 7,300 housing units in the Golan Heights over the next five years, with the aim of doubling the current number of its settlers.⁶⁷ Two new settlements will also be established as part of this [plan](#).⁶⁸ Israel has been consistent and very open about its position since 1967, despite the requirements of international law: it vows to never return the occupied Golan Heights to Syria. In former Israeli PM Naftali Bennett's words: 'The Golan is Israeli. Full stop.'⁶⁹

62. Rep. of the Spec. Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, U.N. Doc. A/25/67, paras. 45–65 (2014).

63. COI Report, *supra* note 61, para. 76.

64. *Id.* para. 18.

65. *Id.*

66. Golan Heights Law, 5742-1981, LSI 36 7 (1981–82), (Isr.), https://main.knesset.gov.il/EN/about/history/Documents/kns10_golan_eng.pdf.

67. COI Report, *supra* note 61, para. 18.

68. *Id.*

69. Dan Williams, *Israel Says It Will Keep Golan as Assad's Fortunes, U.S. Views Shift*, REUTERS (Oct. 11, 2021), <https://www.reuters.com/world/middle-east/israel-says-it-will-keep-golan-assads-fortunes-us-views-shift->

As with the OPT, the response of the UN has been consistent and clear. Thus, in Resolution 497 (1981), the Security Council affirmed “that the acquisition of territory by force is impermissible, in accordance with the Charter of the United Nations, the principles of international law and relevant Security Council resolutions,” and decided that Israel’s attempted annexation of the occupied Syrian Golan Heights was “null and void and without international legal effect.”⁷⁰ This position has been affirmed by the General Assembly on multiple occasions, including in resolution [77/125](#) of 15 December 2022, in which the Assembly called upon the occupying power ‘to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan.’⁷¹ Importantly, it also called upon all Member States not to recognize any of the legislative or administrative acts taken by Israel that purport to alter the status of the territory. Likewise, in resolution 77/126 of 12 December 2022, the Assembly condemned Israel’s “settlement activities . . . in the occupied Syrian Golan and any activities involving the confiscation of land, the disruption of the livelihood of protected persons, the forced transfer of civilians and the annexation of land, whether de facto or through national legislation.”⁷²

As with the OPT, the UN record establishes that Israel has abused its role as a prolonged occupying Power to settle, usurp natural resources from, and purportedly annex the Syrian Golan Heights, all in violation of its IHL obligations which in turn violate the prohibition on territorial conquest and the obligation to respect the Syrian people to self-determination. It stands to reason that its occupation of that territory must be illegal, and that the basis of that illegality is—at least in part—rooted in Israel’s violation of the *jus in bello*. This provides further evidence of the collapse between the *jus in bello* and the *jus ad bellum* that prolonged occupations can give rise to.

C. *Occupied Western Sahara*

Following a report by the UN Special Committee on Decolonization, in 1965 the General Assembly urged Spain, the colonial power in Western Sahara (then Ifni and Spanish Sahara), to take all necessary measures for the “liberation” of the territory and “to enter into negotiations on the problems relating to sovereignty” in relation to it.⁷³ For the two years prior to that time, the Sahrawi people—represented by the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (POLISARIO)—were engaged in a guerrilla war of national liberation against Spain.⁷⁴ In addition to the indigenous Sahrawi people, competing claims to sovereignty over the territory were advanced by both neighbouring Morocco and Mauritania.⁷⁵ A 1975 Advisory Opinion of the ICJ affirmed the right of the population of Western Sahara to self-determination and rejected Moroccan and Mauritanian claims of territorial sovereignty in the country.⁷⁶ By agreement later that year, Spain handed administration over the territory to Morocco and Mauritania, who subsequently partitioned it between themselves. The armed conflict aimed at Sahrawi national liberation continued.

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70. S.C. Res. 497 (Dec. 17, 1981).

71. G.A. Res. 77/125, at 2 (Dec. 15, 2022).

72. G.A. Res. 77/126, at 5 (Dec. 15, 2022).

73. G.A. Res. 2072 (XX), at 60 (Dec. 16, 1965).

74. *The Polisario Front, Morocco, and the Western Sahara Conflict*, ARAB CTR. WASH. D.C., <https://arabcenterdc.org/resource/the-polisario-front-morocco-and-the-western-sahara-conflict/> (last visited July 16, 2023).

75. *Id.*

76. Western Sahara, Advisory Opinion, 16 October 1975 I.C.J. (Oct. 16) paras. 70, 162.

Morocco took control of the of the country in 1979, when Mauritania withdrew on the strength of a peace agreement with POLISARIO.⁷⁷ In line with the ICJ's Advisory Opinion, General Assembly and Security Council resolutions have repeatedly affirmed, both expressly and impliedly, the right of the Sahrawi people to self-determination.⁷⁸ The General Assembly has also affirmed the fact that Morocco is in "continued occupation" of the territory,⁷⁹ thereby attracting the application of the law of occupation. This is important, because Morocco has illegally settled some 200-300,000 of its civilians in the territory who now form the majority of the population in violation of the Fourth Geneva Convention.⁸⁰ Between 1980 and 1987, the occupying Power erected a series of long sand walls (known as the 'berm'), heavily mined and fortified with barbed wire, observation posts and sophisticated early warning systems.⁸¹ These walls "served to enclose all of the major population centers of the Western Sahara and the territory's rich phosphate deposits."⁸² Along with Western Sahara's large fishing reserves, Morocco has engaged in the widespread and systematic plunder of these phosphate deposits.⁸³ In keeping with Rabat's general position that occupied Western Sahara is in fact its sovereign territory, Morocco continues to exploit and trade in Western Sahrawi natural resources for its national benefit in violation of the law of occupation.

As with the OPT and Golan Heights, the case of Western Sahara demonstrates the tension between the *jus in bello* and the *jus ad bellum*. It is the violation by Morocco of its IHL obligations, including civilian settlement and widespread and systematic usurpation of the territory's natural resources, that underpins its illegal claim to exclusive sovereignty over the territory in violation of the principle prohibiting acquisition of territory by force and the right of the Sahrawi people to self-determination. The violation of the *in bello* rules has led directly to a violation of the *ad bellum* rules, despite the purported firewall between these two sets of rules.

CONCLUSION

In each of the cases we have surveyed, it is clear that the occupying powers have violated the fundamental principles underpinning the law of occupation, being the temporariness of occupation and the fact that occupation can never vest sovereignty in the occupant. These principles are expressions of three *jus cogens* norms, derogation from which is not permitted, namely the prohibition on territorial conquest, the obligation to respect the right of peoples to self-determination, and the obligation of states to refrain from imposing regimes of alien subjugation, domination, and exploitation inimical to humankind, including racial discrimination and apartheid. The collapse between the *jus in bello* and the *jus ad bellum* is manifest in situations of prolonged occupation where widespread and systematic violations of the former compound over time and crystalize into violations of the latter. In

77. *The Polisario Front*, *supra* note 74.

78. *See, e.g.*, G.A. Res. 33/31A (Dec. 13, 1978); G.A. Res. 34/37 (Nov. 21, 1979); G.A. Res. 35/19 (Nov. 11, 1980); S.C. Res. 377 (Oct. 22, 1975); S.C. Res. 380 (Nov. 6, 1975).

79. *See* G.A. Res. 34/37 (Nov. 21, 1979).

80. Stephen Zunes & Jacob Mundy, *Western Sahara: War, Nationalism and Conflict Irresolution*, in *SETTLERS IN CONTESTED LANDS: TERRITORIAL DISPUTES AND ETHNIC CONFLICTS* 40 (2015).

81. Eva Kassoti, *Doing Business Right: Private Actors and the International Legality of Economic Activities in Occupied Territories*, 7 *CAMBRIDGE INT'L L.J.*, 301, 307 (2018).

82. Hum. Rts Watch, *Rep. on the United Nations Operation in the Western Sahara*, at 8 (1995).

83. STEPHEN ZUNES & JACOB MUNDY, *WESTERN SAHARA: WAR, NATIONALISM AND CONFLICT IRRESOLUTION* 34–35 (2010).

light of the pending advisory opinion on the legal status of Israel's occupation of the OPT, it remains to be seen if the ICJ will take the opportunity to provide greater clarity in this regard.