

The International Law Prohibition Against Transfer of Civilians into Occupied Territory: Western Sahara and Northern Cyprus

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International law prohibits the transfer by an occupying power of its own civilians into territory occupied by it ('transfer prohibition'). There has been much interest in the transfer prohibition in the context of Israel's settlements in the occupied Palestinian territory, encompassing the Gaza Strip and West Bank, including East Jerusalem ('OPT'). Yet, these issues arise in other geo-political contexts that are largely overlooked by international courts, international law scholars, civil society actors, and judicial, quasi-judicial and investigative bodies, thereby revealing a lack of even-handedness in the literature and the application of international law. This policy brief seeks to draw attention to two under-studied cases – Western Sahara and Northern Cyprus – in which violations of the transfer prohibition allegedly took place and to highlight the relative lack of public interest and mobilization on the issue of transfers and settlements in these cases.

This policy brief lays out the international law framework governing the transfer of civilians into occupied territories (Section 1.), followed by a brief overview of the conflicts in Western Sahara and Northern Cyprus and the alleged transfer practice in each situation (Sections 2. and 3. respectively). Section 4. reflects on the relatively muted response of the international community to alleged violations of the transfer prohibitions in the two situations under consideration. Finally, Section 5. offers concluding remarks and highlights the need to broaden the discourse on violations of the transfer prohibition, beyond the situation in the OPT.

1. The International Law Norm Against Transfer of Civilians into Occupied Territory

The transfer prohibition is contained in three international legal instruments. The most widely accepted and authoritative articulation of the transfer prohibition is contained in Article 49(6) of Geneva Convention IV, which provides that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies".¹ For almost three decades, Article 49(6) remained the only articulation of the transfer prohibition in international law. In its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* ('Wall Opinion'), the International Court of Justice ('ICJ') interpreted Article 49(6) as prohibiting not only deportations or forced transfer of populations, but also any measures taken by occupying powers to "organize or encourage transfers of parts of its own population into the occupied territory".²

Article 85(4)(a) of Additional Protocol I³ provides that the violation

of the transfer prohibition as contained under Article 49(6) "when committed wilfully and in violation of the Conventions or the Protocol" constitutes a grave breach of the Protocol.⁴ The significance of Article 85(4)(a) is that since the Protocol entered into force on 7 December 1978,⁵ the norm has widely been seen as a *war crime* whereas it had been regarded only as a *prohibition* after Geneva Convention IV entered into force in 1950.

Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court ('ICC') codifies, *inter alia*, the transfer, *directly or indirectly*,⁶ by the occupying power of parts of its own civilian population into the territory it occupies as a war crime.⁷ Finally, the customary law study of the International Committee of the Red Cross ('ICRC') recognizes as a rule of customary international humanitarian law that "states may not deport or transfer parts of their own civilian population into a territory they occupy".⁸

2. The Alleged Transfer of Civilians into Western Sahara

Western Sahara is a sparsely populated region situated on the northwest coast of Africa. Between 1884 and 1975, Western Sahara was a Spanish colony (referred to as 'Spanish Sahara'). The region has been subject to competing territorial claims of Morocco, Mauritania and the Sahrawi, the indigenous people of Western Sahara, represented by the Polisario Front, a national liberation movement established in 1973 and recognized by the United Nations ('UN') General Assembly ('UNGA').⁹

The right to self-determination of the people of Western Sahara began to be discussed in the UNGA in the early 1960s.¹⁰ Western Sahara

⁴ While Geneva Convention IV has been ratified by all States, making its provisions universally applicable, the provisions of Additional Protocol I apply only *vis-à-vis* those States which have signed and ratified the Protocol. Morocco has signed and ratified Additional Protocol I, whereas Turkey has not.

⁵ See Additional Protocol I, Article 85(5), *supra* note 3.

⁶ The emphasized words are believed to confirm that the responsibility of the occupying power for the transfer of its civilians into occupied territory may be triggered both by acts and omissions. See, Michael G. Kearney, "On the Situation in Palestine and the War Crime of Transfer of Civilians into Occupied Territory", in *Criminal Law Forum*, 2017, vol. 28, pp. 14–17.

⁷ Rome Statute of the International Criminal Court, 17 July 1998, Article 8(2)(b)(viii) (<https://www.legal-tools.org/doc/7b9af9/>). Neither Morocco nor Turkey is a State Party to the Rome Statute.

⁸ ICRC, "Rule 130: Transfer of Own Population into Occupied Territory", in *IHL Database: Customary IHL* (available on the ICRC's web site).

⁹ UNGA Resolution 34/37, Question of Western Sahara, UN Doc. A/RES/34/37, 21 November 1979 ('GA Res. 34/37') (<https://www.legal-tools.org/doc/yjs75xlv/>). On 21 June 2015, the Polisario Front deposited a unilateral declaration in accordance with Article 96(3) of Additional Protocol I (accepted by Switzerland as the depositary state) by which it undertook to apply the 1949 Geneva Conventions and Additional Protocol I in its armed conflict with Morocco (<https://www.legal-tools.org/doc/nknkv6q/>).

¹⁰ UNGA, Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and People, UN Doc. A/5800/Rev. 1, 1964–1965, pp. 290–291, Annex

¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 49 ('Geneva Convention IV') (<https://www.legal-tools.org/doc/d5e260/>).

² ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, p. 183, para. 120 ('Wall Opinion') (<https://www.legal-tools.org/doc/e5231b/>).

³ Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, Article 85(4)(a) ('Additional Protocol I') (<https://www.legal-tools.org/doc/d9328a/>).

has been on the UN's list of Non-Self-Governing Territories since 1963.¹¹ Morocco and Mauritania supported Spanish Sahara's independence from Spain,¹² however, Morocco believed that Western Sahara would freely choose to join it,¹³ while Mauritania dismissed Morocco's territorial claims.¹⁴ In 1966, the UNGA called on Spain to hold a referendum in consonance with the indigenous peoples' right to self-determination and in consultation with the governments of Morocco and Mauritania.¹⁵ However, it was not until 1975 that Spain finally announced that it would conduct a referendum.¹⁶

Meanwhile, Morocco challenged the Spanish government's claim that the Sahara was *res nullius*. At the UNGA's request,¹⁷ the ICJ issued an advisory opinion on 16 October 1975 opining that Western Sahara was not *res nullius* at the time of colonization by Spain and that the materials and information presented to the Court did not establish ties of territorial sovereignty between Western Sahara and the Kingdom of Morocco or the Mauritanian entity of such a nature as to affect the application of the UNGA Resolution 1514 (XV) (the Declaration on the Granting of Independence to Colonial Countries and Peoples) in the decolonization of Western Sahara and the principle of self-determination.¹⁸

Shortly thereafter, in November 1975, King Hassan II of Morocco called for a 'Green March', encouraging 350,000 unarmed Moroccan civilians to enter Western Sahara in a show of support for 'reclaiming' the territory.¹⁹ Simultaneously, Moroccan armed forces entered the territory from the north-east to crush the Polisario Front and close off the border with Algeria. On 14 November 1975, Morocco, Mauritania and Spain signed the Madrid Accords, whereby Spain committed to withdrawing from the Sahara by the end of February 1976 and handing over the territory to a joint Moroccan-Mauritanian administration.²⁰

The Polisario Front (backed by Algeria) engaged in an armed conflict with Morocco and Mauritania for the independence of Western Sahara. In 1976, Polisario announced the establishment of the Sahrawi Arab Democratic Republic ('SADR') as an independent state. Mauritania withdrew from the conflict in 1979, signed a peace treaty with Polisario and recognized the SADR.²¹ The territory under Mauritanian administration was thereafter occupied by Morocco. On 29 April 1991, the UN Security Council ('UNSC') accepted the UN Settlement Plan agreed to by Morocco and the Polisario Front and established the UN Mission for the Referendum in Western Sahara to facilitate the conduct of a referendum in the region, which would ask the Sahrawis to choose

between independence and integration with Morocco.²² In September 1991, a ceasefire finally came into effect.²³ However, the referendum has repeatedly been delayed due to disagreement between Morocco and Polisario over who would be eligible to vote.²⁴

Morocco thus occupies a majority of the territory of Western Sahara, which lies to the west of the Berm, a 2,700 km defensive barrier constructed by Morocco in occupied Western Sahara between 1980 and 1987. Polisario controls a small portion to the east of the Berm. The ceasefire was broken in 2020 and both sides have resumed engagement in armed hostilities.²⁵ The Sahrawis were divided broadly into three categories: those who remained on the territory occupied by Morocco, those who remained in the territory controlled by Polisario, and those who were forced to flee to Tindouf in Western Algeria, where approximately 173,600 Sahrawis are housed in refugee camps.²⁶

Morocco initially deployed approximately 40,000 troops in the part of Western Sahara controlled by it, but that number steadily increased in the 1980s to about 160,000.²⁷ To date, tens of thousands of Moroccan soldiers guard the Berm.²⁸ Since the beginning of the invasion, "Moroccanization" of the territory has been part of the official public policy.²⁹ The Moroccan government has incentivized Moroccans to migrate to and live in the territory of Western Sahara, by providing higher than average government salaries and tax incentives, and by offering attractive benefits for military personnel.³⁰ Morocco has invested billions of dollars in the creation of basic infrastructure in Western Sahara, such as airports, roads and electricity supply.³¹ The economic investments made by the Moroccan government have largely benefitted Moroccans and not the Sahrawis, as is evident from the fact that most shopkeepers in Western Sahara are Moroccan military members and that Moroccan settlers have controlling stakes in companies operating in Western Sahara's lucrative fishing industries.³² The Moroccan government also offers free or low-cost housing and subsidies on food and other basic necessities to incentivize non-military personnel from Morocco to settle in Western Sahara.³³

The movement of Moroccan settlers into Western Sahara was particularly high in the months leading up to the anticipated 1991 referendum. Polisario wanted the list of eligible voters to be as close to the list of Sahrawis listed in the 1974 census carried out by Spain (that is, Sahrawis who had resided in the Spanish colony and their direct descendants), whereas Morocco preferred an ethnic definition of Sahrawis regardless of where they resided before the Moroccan invasion. The Moroccan government transferred nearly 100,000 persons from Morocco to Western Sahara in the early 1990s as part of the so-called 'Second Green March'.³⁴ The Moroccan government claimed that these persons

No. 8; UNGA Resolution 2072, Question of Ifni and Spanish Sahara, UN Doc. A/RES/2072, 16 December 1965 (<https://www.legal-tools.org/doc/ehpq9rck/>).

¹¹ UNGA, Report of the Committee on Information from Non-Self-Governing Territories, UN Doc. A/5514, 31 August 1963, p. 34, Annex III (<https://www.legal-tools.org/doc/16vv49yt/>).

¹² UNGA, Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/6300/Rev.1, 1966, pp. 603–605, Annexes, Addendum to Agenda Item 23.

¹³ Thomas M. Frank, "The Stealing of the Sahara", in *American Journal of International Law*, 1976, vol. 70, no. 4, p. 702.

¹⁴ *Ibid.*

¹⁵ UNGA Resolution 2229 (XXI), Question of Ifni and Spanish Sahara, UN Doc. A/RES/2229(XXI), 20 December 1966 (<https://www.legal-tools.org/doc/lm8n-8bf0/>).

¹⁶ Letter dated 20 August 1974 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General, UN Doc. A/9714, 21 August 1974 (<https://www.legal-tools.org/doc/1tvcf6lo/>) (titled 'Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples').

¹⁷ UNGA Resolution 3292 (XXIX), Question of Spanish Sahara, UN Doc. A/RES/3292(XXIX), 13 December 1974 (<https://www.legal-tools.org/doc/d184x-0cq/>).

¹⁸ ICJ, *Western Sahara*, Advisory Opinion, 16 October 1975, pp. 31–33, 39–41, 47–49, 68, paras. 54–59, 81–83, 103–107, 162 (<https://www.legal-tools.org/doc/512a2a/>).

¹⁹ David Seddon, "Morocco and The Western Sahara", in *Review of African Political Economy*, 1987, vol. 38, p. 24.

²⁰ Morocco, Mauritania and Spain, Declaration of Principles on Western Sahara, 14 November 1975 (<https://www.legal-tools.org/doc/e7dih8n/>).

²¹ Houda Chograni, "The Polisario Front, Morocco and the Western Sahara Conflict", in *Arab Center Washington DC*, 22 June 2021.

²² UNSC Resolution 690, The Situation Concerning Western Sahara, UN Doc. S/RES/690, 29 April 1991 (<https://www.legal-tools.org/doc/43aa2e/>).

²³ Juan Soroeta, "The Conflict in Western Sahara after Forty Years of Occupation: International Law versus *Realpolitik*", in *German Yearbook of International Law*, 2016, vol. 57, p. 197.

²⁴ Chograni, 2021, see *supra* note 21.

²⁵ Esther Sun, "What Does the Western Sahara Conflict Mean for Africa", in *Council on Foreign Relations*, 18 December 2024.

²⁶ UN Regional Information Centre for Western Europe ('UNRIC'), "Far from the Headlines: After 50 Years Refugees from Western Sahara are Still in Camps", 12 March 2024 (available on the UNRIC web site).

²⁷ Deon Geldenhuys, *Contested States in World Politics*, 1st ed., Palgrave Macmillan, London, 2009, p. 196.

²⁸ Hannah McNeish, "Western Sahara's Struggle for Freedom Cut Off by a Wall", *Al Jazeera*, 5 June 2015.

²⁹ Anne Lippert, "The Human Costs of War in Western Sahara", in *Africa Today*, 1987, vol. 34, no. 3, p. 53.

³⁰ William J. Durch, "Building on Sand: UN Peacekeeping in the Western Sahara", in *International Security*, 1993, vol. 17, no. 4, p. 164.

³¹ Geldenhuys, 2009, p. 196, see *supra* note 27.

³² Jacob Mundy, "Autonomy & Intifadah: New Horizons in Western Saharan Nationalism", in *Review of African Political Economy*, 2006, vol. 33, p. 263.

³³ Akbarali Thobani, *Western Sahara Since 1975 under Moroccan Administration*, E. Mellen Press, 2002, p. 12.

³⁴ M. Padrón Hernández, "The Moroccan King Wants Western Sahara Without its People: An Argument for Western Sahara as a Settler Colony", in *Settler Colonial Studies*, 2025, vol. 15, no. 1, p. 133.

were Western Saharan refugees from the time of Spanish colonization, however, some of these persons were allegedly ethnic Sahrawis of Moroccan territorial origin while others were allegedly non-Sahrawi.³⁵ It is reported that Morocco set up special training centres to train the transferred Moroccans on how to dress and speak like Sahrawis, thus turning it into a “transfer by performance”.³⁶ Moroccan settlers now outnumber the native population in Western Sahara.³⁷

3. Alleged Transfer of Civilians into Northern Cyprus

Cyprus is a Mediterranean island, located just south of Turkey (Türkiye). At various points in history, Cyprus came under the rule of different civilizations in the Mediterranean, including the Ancient Greek civilization beginning in the fourteenth century BC. The island formed a part of the Ottoman Empire for three centuries beginning in 1571, before coming under British rule in 1878. The year 1960 marked the end of formal British colonial rule in Cyprus. At the time, the population of Cyprus comprised of 81 per cent Greek Cypriots and 18 per cent Turkish Cypriots.³⁸

In the years preceding formal decolonization, Greek Cypriots sought the union of Cyprus with Greece (*enosis*), whereas Turkish Cypriots initially favoured a continuation of British rule, but later sought partition of the island (*taksim*).³⁹ The British were reluctant to cede control over the strategically important territory. After five years of negotiations, a solution was reached in 1960 whereby Cyprus was to gain independence subject to certain stipulations.⁴⁰ Britain was allowed to maintain sovereignty over two military bases, and the newly independent Cyprus was to refrain from any political or economic association with either Turkey or Greece that was likely to result in partition of the island or union of the island with either of the two states. Britain, Greece and Turkey were to safeguard Cyprus’ constitutional order, and Greece and Turkey were also responsible for defending Cyprus for which they could station troops in the region.⁴¹

In 1963, inter-ethnic violence broke out in Nicosia, which eventually spread across the island of Cyprus and lasted until 1967.⁴² The civil war resulted in the “physical separation of the two communities, and the creation of Turkish Cypriot enclaves” which established their own institutions of governance.⁴³ On 15 July 1974, Cypriot President Makarios was ousted in a coup led by the Greek National Guards stationed in Cyprus, with the aim of *enosis*. Shortly thereafter, Turkish troops invaded Cyprus. The invasion was carried out in two phases between 20 July and 16 August 1974. The first phase was justified on the grounds of the need to protect Turkish Cypriots and to restore the constitutional order. In the second phase, Turkey expanded its control and occupied nearly 37 per cent of the island. The island of Cyprus was thus split into two: a Turkish-controlled territory in the north and the independent Republic of Cyprus in the south. Some 95 per cent of the Greek Cypriots living in the northern part of the island fled to the south.⁴⁴ As per the terms

of the Third Vienna Agreement between Turkey and Cyprus in August 1975, Turkish Cypriots in the southern part of the island were allowed to settle in the northern part, thus reducing the population of Turkish Cypriots in the south to less than 1,000. In 1983, the Turkish Cypriot community declared independence as the Turkish Republic of Northern Cyprus (‘TRNC’), however, the UNSC regards the declaration as legally invalid and called upon “all States not to recognize any Cypriot State other than the Republic of Cyprus”.⁴⁵ Turkey is the only state which has recognized the TRNC.

Since 1974, Turkey has engaged in a policy of increasing the Turkish population of Cyprus, and assimilating Turkish Cypriots into what is called the ‘Turkish culture’ of Anatolia, through various means such as schools, the media and the army.⁴⁶ The first wave of Turkish settlement in Northern Cyprus began shortly after the division of Cyprus in 1974 and ended after the 1980 military coup in Turkey.⁴⁷ The Turkish-Cypriot administration sought to encourage the permanent settlement of Turks arriving in Northern Cyprus through the provision of housing and land, and granting them Cypriot nationality.⁴⁸ The settlers arriving in the first wave were mostly families from economically disadvantaged rural areas in Turkey. Along with Turkish Cypriots who had moved from the southern to the northern part of the island, they repopulated villages from which Greek Cypriots had fled during the partition of the island.⁴⁹ In addition to this agricultural labour class of settlers, Turkish veterans who served in the 1974 military invasion also settled in Northern Cyprus and were offered citizenship of the Turkish Federated State of Cyprus (‘TFSC’).⁵⁰ Citizenship was also extended to family members of Turkish soldiers who died in the 1974 invasion.⁵¹ Of the roughly 90,000 refugees or immigrants who entered Northern Cyprus between 1974 and 1980, 30,000–45,000 were from Turkey. During the first wave of settlement, approximately 25,000 settlers arriving from Turkey were given citizenship of the TFSC.⁵²

A second wave of settlers who arrived after 1983 did not receive Greek Cypriot properties or citizenship upon arrival. Until 1992, they could apply for citizenship after one year of residency, but thereafter, the Citizenship Law of 1992 required five years residency to be eligible to apply for citizenship.⁵³ The third wave of Turkish settlers began to arrive in Northern Cyprus in the 1990s, in response to the growing need for labour in the construction, tourism and catering sectors.⁵⁴ Moreover, Turkish military forces continue to maintain a large presence in Northern Cyprus, with approximately 30,000 troops.⁵⁵

Accession, Martinus Nijhoff, Leiden, 2006, pp. 37–38.

⁴⁵ UNSC Resolution 541, UN Doc. S/RES/541, 18 November 1983 (<https://www.legal-tools.org/doc/e29583/>).

⁴⁶ Yael Navaro-Yashin, “De-Ethnicizing the Ethnography of Cyprus: Political and Social Conflict between Turkish Cypriots and Settlers from Turkey”, in Papadakis, Peristianis and Welz, 2006, p. 94, see *supra* note 39.

⁴⁷ Jensehaugen, 2016, p. 4, see *supra* note 38.

⁴⁸ Committee on Migration, Refugees and Demography to the Parliamentary Assembly of Europe, Demographic Structure of Cyprus, Report of Alfons Cuco, Doc. No. 6589, 27 April 1992, p. 3, para. 6 (‘Cuco Report’).

⁴⁹ Helge Jensehaugen, “The Northern Cypriot Dream – Turkish Immigration 1974–1980”, in *The Cyprus Review*, 2014, vol. 26, no. 2, pp. 57–83.

⁵⁰ TFSC was the precursor to TRNC – it was declared a state in Northern Cyprus in 1974 and existed until 1983, when it was replaced by the TRNC.

⁵¹ Cuco Report, 1992, p. 29, para. 95, see *supra* note 48.

⁵² Rebecca Bryant, *The Past in Pieces: Belonging in the New Cyprus*, University of Pennsylvania Press, 2010, p. 43.

⁵³ The Citizenship Law of 1992 was amended on 29 May 2009 (<https://www.legal-tools.org/doc/4fdaeb/>).

⁵⁴ Mete Hatay, “Population and Politics in North Cyprus: An Overview of the Ethno-Demography of North Cyprus in Light of the 2011 Census”, Peace Research Institute Oslo Cyprus Centre and Friedrich-Ebert-Stiftung, Report No. 2/2017, pp. 20–22.

⁵⁵ “Cyprus Talks End Without a Peace and Reunification Deal”, *BBC News*, 7 July 2017; “Cyprus Talks Stall Over Fate of Turkish Troops”, *Al Jazeera*, 13 January 2017.

³⁵ Jacob Mundy and Stephen Zunes, “Moroccan Settlers in Western Sahara: Colonists or Fifth Column?”, in Oded Haklai and Neophytos Loizides (eds.), *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts*, Stanford University Press, 2015, pp. 60–61.

³⁶ Hernández, 2025, p. 134, see *supra* note 34.

³⁷ *Ibid.*

³⁸ Helge Jensehaugen, “‘Filling the Void’: Turkish Settlement in Northern Cyprus, 1974–1980”, in *Settler Colonial Studies*, 2016, p. 4.

³⁹ Yiannis Papadakis, Nicos Peristianis and Gisela Welz, “Introduction: Modernity, History, and Conflict in Divided Cyprus: An Overview”, in Yiannis Papadakis, Nicos Peristianis and Gisela Welz (eds.), *Divided Cyprus: Modernity, History, and an Island in Conflict*, Indiana University Press, 2006, p. 2.

⁴⁰ Treaty of Guarantee (Cyprus–Greece–Turkey–United Kingdom), 16 August 1960, Treaty of Alliance (Cyprus–Greece–Turkey), 16 August 1960, and Basic Structure of the Republic of Cyprus (Cyprus–Greece–Turkey–United Kingdom), 11 February 1959, each cited in Gillian King (ed.), *Documents on International Affairs 1959*, Oxford University Press, London, 1963 (<https://www.legal-tools.org/doc/0c4a90/>). See also Treaty Concerning the Establishment of the Republic of Cyprus (Cyprus–Greece–Turkey–United Kingdom), 16 August 1960 (<https://www.legal-tools.org/doc/ecxrch7b/>) and Constitution of the Republic of Cyprus, 6 July 1960 (<https://www.legal-tools.org/doc/6cf2a3/>).

⁴¹ *Ibid.*, Treaty of Guarantee, 1960, Article 3.

⁴² Papadakis, Peristianis, and Welz, 2006, p. 2, see *supra* note 39.

⁴³ Jensehaugen, 2016, p. 4, see *supra* note 38.

⁴⁴ Frank Hoffmeister, *Legal Aspects of the Cyprus Problem: Annan Plan and EU*

4. Muted Response of the International Community to Alleged Violations of the Transfer Prohibition in Western Sahara and Northern Cyprus

Despite the alleged violations of the transfer prohibition in Western Sahara and Northern Cyprus, hardly any attention has been paid to these violations by the international community, as compared to the discourse on settlements in the OPT. Israel's relevant conduct has been authoritatively proscribed in the ICJ's *Wall Opinion* in 2004,⁵⁶ and more recently, in its *Advisory Opinion* of 19 July 2024.⁵⁷ In its Preliminary Examination into the Situation in Palestine, the ICC's Office of the Prosecutor ('ICC-OTP') found that there was a reasonable basis to believe that members of Israeli authorities had committed war crimes under Article 8(2)(b)(viii) of the Rome Statute in the West Bank since 13 June 2014.⁵⁸ UNGA Resolution 2851 (1971) was the first UNGA resolution to explicitly call upon Israel to desist from establishing settlements and the transfer of its civilian population into the OPT.⁵⁹ In its Resolution 465 (1980), the UNSC expressed for the first time "deep concern" at Israel's settlements policy in the OPT.⁶⁰ Several UN bodies and special procedures have furthered the engagement with international law on Palestine, and relatedly with the question of settlements in the OPT. International law scholars and civil society actors have also played a proactive role in drawing attention to and mobilizing international law against violations of the transfer prohibition in the OPT.⁶¹

In contrast, in its resolutions since Morocco's invasion of Western Sahara in 1975, the UNSC has not characterized the territory as 'occupied' as understood in IHL, nor has it referred to the alleged violations of the transfer prohibition in the territory.⁶² The UNGA termed the situation an 'occupation' in two of its resolutions.⁶³ Subsequent resolutions of the UNGA and reports of the UN Secretary-General have reiterated the Sahrawis' right to self-determination, but have neither referred to the situation as an occupation, nor have they addressed alleged violations of the transfer prohibition.⁶⁴ There has also been significantly less engagement with the alleged transfers and settlements by Morocco among civil

society actors as compared to the OPT.⁶⁵

As for Northern Cyprus, several UNSC resolutions call for the withdrawal of Turkish troops from Northern Cyprus;⁶⁶ however, they do not specifically address alleged violations of the transfer prohibition. While some international institutions have recognized that Northern Cyprus is under Turkish occupation,⁶⁷ engagement with the alleged violations of the transfer prohibition from an international law perspective is negligible.⁶⁸

5. Conclusion

There is an enormous contrast in the international community's interest and engagement with alleged violations of the transfer prohibition in Western Sahara and Northern Cyprus, as compared to that in the OPT, which could give rise to perceptions of double standards in the literature and the application of international law. In the absence of comparable discourse and mobilization around other instances of transfers and settlements, the transfer prohibition has been understood and applied almost exclusively in the context of the OPT. This policy brief highlights the need to broaden the discourse on transfers and settlements in occupied territories by applying the international law norm to a broader set of cases, including but not limited to Western Sahara and Northern Cyprus. This would not only serve as a step towards accountability for these alleged violations, but also ensure a more robust jurisprudence on the transfer prohibition, which would in turn shed light on the common threads and patterns in settlement activities across different geo-political contexts.

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⁵⁶ *Wall Opinion*, see *supra* note 2.

⁵⁷ ICJ, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, p. 37, para. 119 (<https://www.legal-tools.org/doc/6pk9hiyo/>).

⁵⁸ ICC-OTP, "Situation in Palestine: Summary of Preliminary Examination Findings", 20 December 2019, para. 4 (<https://www.legal-tools.org/doc/yuhqbs5/>).

⁵⁹ UNGA Resolution 2851 (XXVI), Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, UN Doc. A/RES/2851(XXVI), 20 December 1971 (<https://www.legal-tools.org/doc/ywwy3xs2/>).

⁶⁰ UNSC Resolution 465, Territories Occupied by Israel, UN Doc. S/RES/465, 1 March 1980 (<https://www.legal-tools.org/doc/6fkm4oev/>).

⁶¹ See Birju Dattani, "Populism and the International Law of Self-Determination: Charting the Emergence of Populist Legal Movements from South Africa to Palestine", in *The Palestine Yearbook of International Law*, 2015, vol. 18, pp. 94, 110.

⁶² See Ben Saul, "The Status of Western Sahara as Occupied Territory under International Humanitarian Law and the Exploitation of Natural Resources", in *Global Change, Peace and Security*, 2015, vol. 27, no. 3, pp. 301–322.

⁶³ GA Res. 34/37, 1979, see *supra* note 9; UNGA Resolution 35/19, Question of Western Sahara, UN Doc. A/RES/35/19, 11 November 1980 (<https://www.legal-tools.org/doc/gcxdte6/>).

⁶⁴ See, for example, UNGA Res. 43/33, Question of Western Sahara, UN Doc. A/RES/43/33, 22 November 1988; UNGA, Report of the UN Secretary-General on the Situation Concerning Western Sahara, UN Doc. S/2024/707, 1 October 2024 (<https://www.legal-tools.org/doc/1586s2gl/>).

⁶⁵ The NGO Western Sahara Resource Watch has, however, employed international law principles to successfully campaign against Morocco's exploitation of fisheries in Western Sahara. See, "EU Court Ruling: Occupied Western Sahara Not Part of EU-Morocco Agreements", *Western Sahara Resource Watch*, 4 October 2024.

⁶⁶ See, for example, UNSC Resolution 353, UN Doc. S/RES/353, 20 July 1974 (<https://www.legal-tools.org/doc/27fe77/>); UNSC Resolution 357, UN Doc. S/RES/357, 14 August 1974 (<https://www.legal-tools.org/doc/0b768b/>).

⁶⁷ See, for example, European Court of Human Rights, *Loizidou v. Turkey*, Grand Chamber, Judgment, 18 December 1996, App. No. 15318/89, paras. 54–56 (<https://www.legal-tools.org/doc/550de8/>); Parliamentary Assembly of the Council of Europe, Situation in Cyprus, Resolution 1628, 1 October 2008 (<https://www.legal-tools.org/doc/kdhoyzh0/>).

⁶⁸ For a few notable exceptions, see Cuco Report, *supra* note 48; UN Economic and Social Council, Human Rights and Population Transfer: Final Report of the Special Rapporteur Mr. Al-Khasawneh, UN Doc. E/CN.4/Sub.2/1997/23, 27 June 1997 (<https://www.legal-tools.org/doc/109f0j/>); see also, mention of settlements in Cyprus in the ICC-OTP's "Report on Preliminary Examination Activities (2020)", 14 December 2020, p. 11, para. 35 (<https://www.legal-tools.org/doc/yg7mli/>).



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