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الحكمة العليا

THE SUPREME COURT

INTERNATIONAL LAW, DEFENSIVE DEMOCRACY, AND THE ISRAELI HIGH COURT'S JUDGMENT ON DIAKONIA'S REGISTRATION

15 October 2026

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Executive summary

After decades of humanitarian activities in the Israeli–Palestinian context, the Swedish development organisation Diakonia lost its registration with the Israeli authorities pursuant to new, widely criticised guidelines for the registration of international NGOs introduced in 2025. The Inter-Ministerial Team responsible for the process denied Diakonia’s registration on the purported grounds that (1) the organisation has called for a boycott of the State of Israel as per the terms of the 2011 Boycott Law; and (2) engaged in delegitimisation campaigns against the State of Israel.

On 31 August 2026, a three-judge panel of Israel’s Supreme Court sitting as High Court of Justice unanimously upheld the Inter-Ministerial Team’s decision based on the reasoning that Diakonia’s support for a ban on trade with Israeli settlements in the occupied Palestinian territory (oPt) contravenes the 2011 Boycott Law, which interdicts calling for a boycott also of an area under Israel’s control. The Court did not have to rule on the delegitimisation ground, but the views expressed in the Justices’ separate opinions suggest that it would have been upheld as well, albeit not unanimously.

Both the judgment and the initial decision of the Inter-Ministerial Team raise a range of serious concerns about attitudes towards international law and escalating measures targeting civil society.

Selective approach to international law

First, there is near-universal consensus that the establishment of Israeli settlements in the oPt is illegal under international law. This emanates from the terms of Article 49(6) of the Fourth Geneva Convention and has been affirmed by various judicial and political authorities, including the landmark Advisory Opinion rendered by the International Court of Justice in July 2024. Many commentators further share Diakonia’s view that third States are required to ban trade with settlements so as not to engage in conduct that would contribute to their maintenance, expansion, or profitability. It is worth noting that several States, including allies of Israel, have taken steps to implement such a ban.

While to date, the High Court has never explicitly rendered a decision on the legality of the settlements, Justice Stein specifically quotes – and thus seemingly endorses – the State’s position that ‘settlements ... whose establishment was approved by successive Israeli Governments were established on State lands without violating any right or any law’ in the judgment. This directly contradicts basic rules of international law and the broad consensus of the international community.

In other parts, Justice Stein does invoke international law, notably the principle of State sovereignty according to which Israel has discretion to deny the entry of foreigners into its territory. While this assertion is correct in principle, Justice Stein fails to consider that Diakonia has been primarily operating in the oPt, with its office located in annexed East Jerusalem, in respect of which Israel is not the lawful sovereign. As an occupying power, Israel may take certain security measures in the oPt and has a duty to maintain public order and civil life, pursuant to which it may control the presence of foreign actors. However, since at least a part of the population in the oPt is inadequately supplied, Israel has an unconditional obligation to consent to and facilitate with all the means at its disposal relief operations carried out by impartial humanitarian organisations. Even in respect of its own sovereign territory, Israel may not arbitrarily withhold consent to such activities.

In short, the Court relies on a distorted account of international law when it purports to correspond with the political agenda of the Israeli government but entirely omits reference to widely accepted rules and principles – and even penalises actors drawing on them – when criticism is directed at the authorities instead.

Shrinking space, not ‘defensive democracy’

A second concerning aspect of the judgment was Justice Willner’s view that the measures taken against Diakonia due to its support for a boycott of trade with settlements accord with the doctrine of ‘defensive democracy’. In this regard, commentators have expressed doubt as to whether a State that for decades has been subjecting millions of Palestinians in the oPt to military rule and according its own

nationals in the same territory preferential treatment can rightfully call itself a liberal democracy. Furthermore, instead of lawful action to preserve the domestic constitutional order envisaged by this principle, denying the registration of an organisation solely because it has denounced violations of international law resembles the policies of authoritarian governments.

Diakonia's loss of registration must be viewed against the backdrop of longstanding Israeli efforts to restrict the work of Palestinian, but also Israeli and international civil society, which have been escalating since the onset of hostilities in October 2023. Dozens of other organisations have been affected as well, many of which deliver lifesaving assistance to Palestinians across the oPt. It is these communities humanitarian organisations are mandated to serve that will ultimately bear the brunt of repression.

Introduction

On 31 August 2026, Israel's Supreme Court sitting as High Court of Justice rendered its judgment in proceedings instituted by the Swedish development organisation Diakonia against ministries and agencies of the Israeli government.¹ In a unanimous ruling, Justices Yael Willner, Alex Stein, and Ruth Ronnen rejected Diakonia's petition and upheld a decision by the responsible Inter-Ministerial Team to deny Diakonia's registration with the Israeli authorities pursuant to a new, heavily criticised procedure applicable to international NGOs as of 2025.² Diakonia had previously been registered with the Israeli authorities and carried out humanitarian activities in the Israeli-Palestinian context for decades.

The Inter-Ministerial Team rejected Diakonia's application for registration on the grounds that (i) the organisation 'actively promotes delegitimization campaigns against the State of Israel, as stipulated in Decision No. B/188 of the Ministerial Committee for National Security Affairs dated 8.3.2017';³ and that (ii) it has publicly 'called for a boycott of the State of Israel, as defined in the *Law for Prevention of Damage to [the] State of Israel through Boycott, 5771-2011*'.⁴

The High Court of Justice upheld this decision based on the reasoning that Diakonia's public support for a ban on trade with Israeli settlements in the occupied Palestinian territory (oPt) falls within the definition of 'boycott against the State of Israel' under the

¹ HCJ 85895-02-26 *Diakonia v The Minister of Diaspora Affairs and Combating Antisemitism* (31 August 2026) (The Judgment)

² 'International Non-Governmental Organizations Primarily Engaged in Activities with Palestinian Residents for the Purpose of Humanitarian Aid: Guidelines for the Registration of Organizations and Issuance of Recommendations for Their Foreign Employees' (9 March/14 September 2025) <https://www.gov.il/en/pages/interministerial_team_registration_humanitarian_organizations_foreign_employees> (2025 Guidelines). For a critique, see, for example, Eitan Diamond, 'New Israeli Guidelines Threaten to Eliminate Humanitarian Action in the Occupied Palestinian Territory Almost Entirely' (Just Security, 8 April 2025) <<https://www.justsecurity.org/109772/israel-humanitarian-ngo-guidelines/>>

³ 2025 Guidelines (n 2) s 7.1(8). See The Judgment (n 1) Opinion of Justice Willner para 3

⁴ 2025 Guidelines (n 2) s 7.1(7). See The Judgment (n 1) Opinion of Justice Willner para 5

2011 Boycott Law,⁵ which includes calling for a boycott of 'an area under [Israel's] control'.⁶

Both the judgment and the underlying administrative decision raise serious concerns about attitudes towards international law and the actors endeavouring to promote it. This note seeks to address some of these concerns.

⁵ The Judgment (n 1) Opinion of Justice Willner para 11; *ibid* Opinion of Justice Stein para 1; *ibid* Opinion of Justice Ronnen para 1

⁶ 'Law Preventing Harm to the State of Israel by Means of Boycott – 2011' (translation by ACRI, 2011) art 1 <<https://law.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf>>

Approach to international law

A first concerning aspect of the judgment was the High Court's treatment of international law, particularly the law of occupation. Such concerns have been raised by commentators in the context of other rulings for decades.⁷

The prohibition of settlements and implications for economic relations

There is widespread agreement that Israeli settlements in the oPt are illegal under international law. That is because Article 49(6) of the Fourth Geneva Convention prohibits an occupying power from deporting or transferring its own civilian population into the territory it occupies.⁸ Such transfer is prohibited even if not forcible, for example when an occupying power provides support for relocation.⁹ This prohibition is based upon the historical precedent of Nazi Germany's colonisation of occupied territories across the European continent during the Second World War.¹⁰ It gives effect to the fundamental maxim of the law of occupation pursuant to which the occupying power is not the lawful sovereign in the occupied territory.¹¹ Instead, it is merely the 'temporary administrator' of the territory.¹² As such, the occupant is bound by the 'conservationist principle', which requires it to maintain the territorial, demographic, and institutional status quo.¹³ Establishing civilian settlements in occupied territory would disrupt this

⁷ See, for example, David Kretzmer and Yaël Ronen, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2nd ed, OUP 2021); Orna Ben-Naftali and Eitan Diamond, 'No Place for Palestinians: The Israeli High Court of Justice Fades Out of the Global Community of Courts – The Farcical Tragedy of the 2022 Judgment on Masafer Yatta' (2023) 41 Boston U Int'l L J 47; 'Eviction of Palestinian Communities in Masafer Yatta: A Failed Account of International Law' (IHL Centre, 13 May 2022) <<https://www.diakonia.se/ihl/news/analysis-international-law-evictions-masafer-yatta/>>

⁸ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV) art 49(6)

⁹ ICRC, *Commentary on the Fourth Geneva Convention: Convention (IV) Relative to the Protection of Civilian Persons in Time of War* (2nd ed, ICRC 2025) (2025 ICRC Commentary to GC IV) art 49 para 3236

¹⁰ *ibid* para 3164

¹¹ See, for example, Yoram Dinstein, *The International Law of Belligerent Occupation* (2nd ed, CUP 2019) para 161; Eliav Lieblich and Eyal Benvenisti, *Occupation in International Law* (OUP 2022) 9, 24–28

¹² Lieblich and Benvenisti (n 11) 26. See *ibid* 9, 27–30

¹³ See, for example, *ibid* 11–18 and the references cited therein

status quo, threaten the rights of the local population, and facilitate territorial claims to, or unlawful annexation of, the occupied territory further down the line.¹⁴ Under the Rome Statute of the International Criminal Court, ‘the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies’ is a war crime.¹⁵

Successive Israeli governments should have been aware of this illegality since the inception of the occupation in June 1967. At the time, Theodor Meron, then a Legal Advisor at Israel’s Foreign Ministry, wrote in a secret memorandum that the establishment of Israeli settlements in the oPt ‘would be a violation of the Fourth Geneva Convention’.¹⁶ Over the past decades, this position has been repeatedly affirmed by international political and judicial authorities, foreign governments, and human rights organisations.¹⁷ In 2004, for example, the International Court of Justice (ICJ) – the principal judicial organ of the United Nations (UN) – held ‘that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law’.¹⁸ Furthermore, in 2016, the UN Security Council adopted Resolution 2334, which reaffirmed ‘that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law’.¹⁹ It is also well-documented

¹⁴ See, for example, Jens Iverson, ‘Stop Saying “Annexed Territories”: Alternatives to the Bully’s Term’ (Just Security, 5 October 2022) <<https://www.justsecurity.org/83365/stop-saying-annexed-territories-alternatives-to-the-bullys-term/>>

¹⁵ Rome Statute of the ICC (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 art 8(2)(b)(viii)

¹⁶ ‘Judge Theodor Meron’ (IRMCT) <<https://www.irmct.org/en/about/judges/judge-theodor-meron>>. See Donald Macintyre, ‘Israelis Were Warned on Illegality of Settlements in 1967 Memo’ *The Independent* (London, 11 March 2006) <<https://www.independent.co.uk/news/world/middle-east/israelis-were-warned-on-illegality-of-settlements-in-1967-memo-6106920.html>>

¹⁷ See, for example, ‘Chapter 3: Israeli Settlements and International Law’ (Amnesty International, 30 January 2019) <<https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>>; Press Release, ‘Foreign Office Minister Condemns Israeli Settlement Announcement’ (Foreign & Commonwealth Office and The Rt Hon Tobias Ellwood, 30 January 2015) <<https://www.gov.uk/government/news/foreign-office-minister-condemns-israeli-settlement-announcement--3>>; nn 18, 19 below

¹⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 (Wall Advisory Opinion) [120]

¹⁹ UNSC Res 2334 (2016) (23 December 2016) UN Doc S/RES/2334(2016) para 1

that Israel's settlement project is connected to a range of other violations, such as the dispossession and displacement of Palestinian communities.²⁰

In addition to this near-universal consensus, various authorities support the position that third States are obliged to take steps to ensure that they do not partake in activities that contribute to the maintenance, expansion, and profitability of the settlements. Security Council Resolution 2334, for example, explicitly called upon all States 'to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967' while 'bearing in mind' the illegality of settlements.²¹ Moreover, in its landmark 2024 Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, the ICJ not only 'reaffirm[ed] that the Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law'²² but also found that Israel's overall presence in the oPt is unlawful²³ and detailed a range of obligations addressed to third States.²⁴ These include, notably, 'to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory',²⁵ and 'not to render aid or assistance

²⁰ See, for example, 'The Elimination Project: Israel's Systematic Dismantling of Palestinian Collective Life in the West Bank' (B'Tselem, September 2026)

<https://www.btselem.org/sites/default/files/publications/202609_the_elimination_project_eng.pdf>; 'Maximum Territory, Minimum Population: The Annexation of the West Bank Through Settlement, Violence and the Fragmentation of Palestinian Space' (Yesh Din, 9 September 2026) <<https://www.yesh-din.org/en/maximum-territory-minimum-population-the-annexation-of-the-west-bank-through-settlement-violence-and-the-fragmentation-of-palestinian-space/>>

²¹ UNSC Res 2334 (n 19) para 5

²² *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (Advisory Opinion) General List No 186 [2024] (2024 Advisory Opinion) [155]

²³ *ibid* [285(3)]

²⁴ See, for example, 'Responsibility of Third Parties Emanating from the Findings of the ICJ's Advisory Opinion of 19 July 2024' (IHL Centre, 22 October 2024) <<https://www.diakonia.se/ihl/news/icj-advisory-opinion-legal-consequences-third-states-international-organisations/>>

²⁵ 2024 Advisory Opinion (n 22) [278]

in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory'.²⁶

Diakonia's view that these obligations require States to adopt a ban on trade with settlements is based on a widely supported interpretation of these legal authorities shared by a range of commentators.²⁷ It is also reflected in State practice, including on the part of States allied with Israel. On 8 September 2026, for example, Canada, France, and the UK announced that they would 'ban the importation of goods from settlements and enforce targeted measures against settlements and those who facilitate them or profit from them'.²⁸ In a separate statement, Canada, Denmark, Finland, France, Iceland, Ireland, Norway, Poland, Portugal, Spain, Sweden, and the UK 'confirm[ed] their intention to introduce national and/or support European restrictions on trade in goods with settlements'.²⁹ Belgium, Ireland, the Netherlands, Norway, and Spain have already taken

²⁶ *ibid* [279]

²⁷ See, for example, Yussef Al Tamimi, 'Implications of the ICJ Advisory Opinion for the EU-Israel Association Agreement' (EJIL:Talk!, 30 July 2024) <<https://www.ejiltalk.org/implications-of-the-icj-advisory-opinion-for-the-eu-israel-association-agreement/>>; Gleider Hernández and Ramses A Wessel, 'Expert Legal Opinion on the Implications for the European Union of the July 2024 International Court of Justice Advisory Opinion regarding the Policies and Practices of Israel in the Occupied Palestinian Territory' (University of Groningen, 2025) <[Hernandez-Wessel_Expert-Legal-Opinion-on-ICJ-AO-19-July-2024-and-the-EU.pdf](#)>

²⁸ Press Release, 'Joint Statement by the Prime Minister, President Macron and Prime Minister Carney on the Two-State Solution' (Prime Minister's Office, 10 Downing Street and The Rt Hon Andy Burnham MP, 8 September 2026) <<https://www.gov.uk/government/news/joint-statement-by-the-prime-minister-president-macron-and-prime-minister-carney-on-the-two-state-solution>>. See also 'The IHL Centre Welcomes Decision of Canada, France and the UK to Prohibit Trade with Israeli Settlements in the West Bank' (IHL Centre, 8 September 2026) <<https://www.diakonia.se/ihl/news/the-ihl-centre-welcomes-the-uk-governments-decision-to-prohibit-trade-linked-to-israeli-settlements-in-the-occupied-palestinian-territory/>>

²⁹ 'Joint Statement of the Foreign Ministers of Canada, Denmark, Finland, France, Iceland, Ireland, Norway, Poland, Portugal, Spain, Sweden and the UK on the Two-state Solution' (Global Affairs Canada, 8 September 2026) <<https://www.canada.ca/en/global-affairs/news/2026/09/joint-statement-of-the-foreign-ministers-of-canada-denmark-finland-france-iceland-ireland-norway-poland-portugal-spain-sweden-and-the-uk-on-the-two.html>>

this step,³⁰ which is also being discussed at EU level.³¹ This too has prompted retaliatory measures by the Israeli authorities.³²

Selective reading in the judgment

The Israeli High Court has never explicitly addressed the lawfulness of the settlements, treating their existence as a political question.³³ Moreover, in a 2015 ruling, the Court largely upheld the Boycott Law, which as noted extends to calls for a boycott related to areas under Israel's control.³⁴ Further still, however, the judgment against Diakonia seems to come very close to endorsing the official position of the Israeli government, in disregard of international law. By way of example, a website of the Israeli Ministry of Foreign Affairs, dated November 2015, argues – incorrectly – in respect of the settlements that ‘the case of Jews voluntarily establishing homes and communities in their ancient homeland, and alongside Palestinian communities, simply does not match the kind of forced population transfers contemplated by Article 49(6)’ of the Fourth Geneva Convention.³⁵

In the judgment, all three Justices refer to the West Bank as ‘Judea and Samaria’,³⁶ in keeping with the established practice of the Israeli authorities and, indeed, the Court

³⁰ *ibid*

³¹ See, for example, Jennifer Rankin, ‘EU Accused of Dragging its Feet Over Ban on Trade with Illegal Israeli Settlements’ *The Guardian* (Brussels, 12 July 2026) <<https://www.theguardian.com/world/2026/jul/12/eu-accused-dragging-its-feet-ban-trade-israeli-settlements>>

³² See, for example, Peter Beaumont, ‘Israel to Close British Consulate in Jerusalem After Sanctions Announced’ *The Guardian* (London, 8 September 2026) <<https://www.theguardian.com/world/2026/sep/08/israel-close-british-consulate-jerusalem-sanctions>>; Al Jazeera Staff, ‘Israel Revokes Dutch Diplomats’ Status Over Sanctions on Settlements’ *Al Jazeera* (Doha, 27 September 2026) <<https://www.aljazeera.com/news/2026/9/27/israel-revokes-dutch-diplomats-status-over-sanctions-on-settlements>>

³³ See, for example, David Kretzmer, ‘Settlements in the Supreme Court of Israel’ (2017) 111 *American J Int’l L Unbound* 41, 41

³⁴ ‘Dispatches: Israeli Supreme Court Upholds “Anti-Boycott Law”’ (Human Rights Watch, 18 April 2015) <<https://www.hrw.org/news/2015/04/18/dispatches-israeli-supreme-court-upholds-anti-boycott-law>>

³⁵ ‘Israeli Settlements and International Law’ (Israeli Ministry of Foreign Affairs, 30 November 2015) <<https://www.gov.il/en/pages/israeli-settlement-and-international-law>>

³⁶ The Judgment (n 1) Opinion of Justice Willner para 10; *ibid* Opinion of Justice Stein para 7; *ibid* Opinion of Justice Ronnen para 3

itself³⁷ – a political choice of terminology that reflects the unlawful agenda of the settlement project. Furthermore, in an explicit endorsement of the Israeli government’s legal views, Justice Stein, who concurred with the lead opinion by Justice Willner, notably quoted ‘the State’s position’ that ‘settlements and communities whose establishment was approved by successive Israeli Governments were established on State lands without violating any right or any law’.³⁸ In his view, this ‘constitutes a legitimate reason to refuse [Diakonia’s] request to enter the territory of the State [of Israel], establish an office therein, and conduct its activities from that office while, alongside its commendable humanitarian work, disseminating negative views concerning the legality of the settlements and encouraging boycotts against them’.³⁹ This observation – premised, as it is, upon the assumption that the State’s position reflects a valid reading of international law – seems to mark a departure from the Court’s longstanding self-professed agnosticism on the subject, placing it in diametric opposition to the near-total consensus of the international community.

On other occasions, the judgment does invoke commonly accepted precepts of international law. In his concurring opinion, for example, Justice Stein quotes *Oppenheim’s International Law* in support of the proposition ‘that a sovereign State is entitled to admit, or refuse to admit, foreign persons and entities into its territory, without being required to provide reasons or justification’.⁴⁰ While this is generally true as a matter of principle, Justice Stein omits the fact that Diakonia has been primarily

³⁷ See, for example, Correction of Terms in Legislation Bill (Judea and Samaria), 5785–2024; ‘Annexation Legislation Database’ (Yesh Din) <<https://www.yesh-din.org/en/legislation/>>; Zizette Darkazally, ‘Israel’s Accelerating De Facto Annexation of the West Bank Has Dangerous Implications’ (Chatham House, 17 April 2026) <<https://www.chathamhouse.org/2026/04/israels-accelerating-de-facto-annexation-west-bank-has-dangerous-implications>>; David Kretzmer, ‘The Law of Belligerent Occupation in the Supreme Court of Israel’ (2012) 94 Int’l Rev Red Cross 207; ‘Sovereignty in All but Name: Israel’s Quickening Annexation of the West Bank’ (International Crisis Group, 9 October 2025) <<https://www.crisisgroup.org/rpt/middle-east-north-africa/israelpalestine/252-sovereignty-all-name-israels-quickenning-annexation-west-bank>>; ‘The Knesset Advances Legislation to Establish a Heritage Authority in the West Bank, Annexing Archaeological Activity to Israel’ (Peace Now, 31 May 2026) <<https://peacenow.org.il/en/heritage-authority>>; ‘Urgent Alert: Israeli Cabinet Decisions’ (Emek Shaveh, 9 February 2026) <<https://emekshaveh.org/en/israeli-cabinet-decisions/>>

³⁸ The Judgment (n 1) Opinion of Justice Stein para 7

³⁹ *ibid*

⁴⁰ *ibid* para 2 and the reference cited therein

operating in the oPt, which is not ‘the territory of the State [of Israel]’⁴¹ and in respect of which Israel is not the legitimate sovereign; Diakonia’s office was located in East Jerusalem, Israel’s unlawful annexation of which is without legal effect under IHL, does not change its status as occupied territory, and does not deprive protected persons of their benefits under the Fourth Geneva Convention.⁴² Accordingly, Israel does not possess a sovereign right to deny the entry of foreigners into the oPt. As an occupying power, it does have a fundamental obligation to maintain or restore public order and civil life,⁴³ and it can take certain security measures in the occupied territory ‘as may be necessary as a result of the war’,⁴⁴ both of which may entail ‘regulating the presence or activities of external actors’ therein.⁴⁵ However, if the whole or part of the population in the occupied territory is inadequately supplied – as is the case in the oPt⁴⁶ – an occupying power must agree to and facilitate with all the means at its disposal relief schemes implemented by impartial humanitarian actors.⁴⁷ Finally, even in respect of its own territory, Israel has an obligation not to arbitrarily withhold consent to humanitarian activities, including on the basis of its duty to ensure respect for IHL.⁴⁸

Justice Stein also alludes to extra-legal norms of courtesy and etiquette, proclaiming that ‘a guest should not insult his hosts’⁴⁹ (the ‘insult’ being, in this case, an alignment

⁴¹ *ibid* para 7

⁴² GC IV (n 8) art 47

⁴³ Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 art 43; ‘Shrinking Humanitarian Space in the oPt: An IHL Assessment’ (IHL Centre, 1 April 2025) 24 <<https://www.diakonia.se/ihl/news/shrinking-humanitarian-space-opt/>>

⁴⁴ GC IV (n 8) art 27(4); Shrinking Humanitarian Space in the oPt: An IHL Assessment (n 43) 24

⁴⁵ Shrinking Humanitarian Space in the oPt: An IHL Assessment (n 43) 24

⁴⁶ See, for example, ‘Humanitarian Situation Report | 2 October 2026’ (OCHA oPt, 5 October 2026) <<https://www.ochaopt.org/content/humanitarian-situation-report-2-october-2026>>

⁴⁷ GC IV (n 8) art 59(1); Shrinking Humanitarian Space in the oPt: An IHL Assessment (n 43) 24–25. See ‘A Legal Appraisal of Israel’s Purported Aid Delivery Scheme in Gaza’ (IHL Centre, 20 June 2025) <<https://www.diakonia.se/ihl/news/a-legal-appraisal-of-israels-purported-aid-delivery-scheme-in-gaza/>>. On the requirement of impartiality, see Shrinking Humanitarian Space in the oPt: An IHL Assessment (n 43) 27–29

⁴⁸ Shrinking Humanitarian Space in the oPt: An IHL Assessment (n 43) 23 and the references cited therein; GCs common art 1; Study on Customary IHL by the International Committee of the Red Cross (ICRC) ‘Customary IHL Study’ (ICRC, first published in 2005) r 144

⁴⁹ The Judgment (n 1) Opinion of Justice Stein para 9

with near-universally held interpretations of international law and calling upon States to adjust their conduct accordingly). Again, Justice Stein leaves aside the fact that, as an occupying power, Israel is itself an (uninvited) 'guest' in the oPt, and its treatment of the population under its control has not exactly been a measure of politeness over the decades,⁵⁰ in addition to its very presence having since been declared unlawful by the ICJ.⁵¹ The guest, as it were, has long overstayed its welcome.

In short, the Court appears to adopt a selective reading of international law, referring to principles such as State sovereignty when it purportedly accords with the interests of the Israeli authorities while disregarding the same body of law – and even punishing reliance on it – when an international NGO expresses criticism of Israel's policies. Such doctrinal incoherence is indicative of double standards.

⁵⁰ See, for example, n 20 above; nn 72–74 below

⁵¹ 2024 Advisory Opinion (n 22) [285(3)]

Shrinking space, not ‘defensive democracy’

Furthermore, as noted, the second – and initial – ground proffered by the Inter-Ministerial Team to deny Diakonia’s application for registration was its alleged promotion of ‘delegitimization campaigns against the State of Israel’.⁵² Justice Ronnen conceded, *obiter*, that Diakonia’s public proclamations – including calling for a ban on trade with Israeli settlements – may not rise to this level, which she deemed reserved for an ‘organization expressly declar[ing] that it categorically denies the existence of the State of Israel as a sovereign State in which the Jewish people exercise their right to self-determination’.⁵³ By contrast, during the hearing, Justice Stein proclaimed in this regard that ‘anyone who calls the State of Israel an apartheid state has no right to set foot in [it]’,⁵⁴ while Justice Willner noted in her lead opinion that she perceived ‘certain difficulties’ with Justice Ronnen’s ‘observations concerning the ground of delegitimization’.⁵⁵ Such reasoning suggests that the Court would have upheld this second ground as well had it been asked to do so, albeit not unanimously.

The accusations levelled against Diakonia must be viewed in the broader context of Israeli efforts to undermine – first and foremost Palestinian, but also Israeli and international – civil society actors,⁵⁶ for example by calling them traitors,⁵⁷ designating

⁵² 2025 Guidelines (n 2) s 7.1(8). See The Judgment (n 1) Opinion of Justice Willner para 3

⁵³ The Judgment (n 1) Opinion of Justice Ronnen para 7

⁵⁴ Nir Hasson and Chen Maanit, “‘That Word Crosses Red Lines’ – High Court Justice: Bar Anyone Who Labels Israel Apartheid State from Country” *Ha’aretz* (Tel Aviv, 21 July 2026) <<https://www.haaretz.com/israel-news/israel-security/2026-07-21/ty-article/.premium/bar-entry-to-those-calling-israel-an-apartheid-state-high-court-justice-says/0000019f-8199-d490-a59f-a7fd89070000>>. See ‘Q&A: Apartheid in the Occupied Palestinian Territory and Prospects for Accountability’ (IHL Centre, 24 July 2026) <<https://www.ihlcentre.org/news/qa-apartheid-in-the-occupied-palestinian-territory-and-prospects-for-accountability/>>

⁵⁵ The Judgment (n 1) Opinion of Justice Willner para 16

⁵⁶ See, for example, ‘Timeline: Shrinking Space in Israel-Palestine’ (IHL Centre, last updated 5 October 2023) <<https://www.diakonia.se/ihl/jerusalem/shrinking-space/interactive-timeline-shrinking-space/>>

⁵⁷ See, for example, ‘Israel’s Occupation: 50 Years of Dispossession’ (Amnesty International, 7 June 2017) <<https://www.amnesty.org/en/latest/campaigns/2017/06/israel-occupation-50-years-of-dispossession/>>

them as ‘terrorist organisations’,⁵⁸ raiding their offices,⁵⁹ and taking steps against their staff.⁶⁰ Such measures – of which the new registration procedure for international NGOs forms part – have been escalating since the outbreak of hostilities in October 2023.⁶¹

In this vein, it is also instructive to consider Justice Willner’s concluding remarks. She ‘rejected in the strongest possible terms’ Diakonia’s view ‘that its call for a boycott of areas under the control of the State of Israel constitutes substantive criticism’ of Israeli government policies.⁶²

A call for a boycott entails a tangible and significant danger to the State of Israel and its residents. The State’s justified struggle against this phenomenon, which is based on the doctrine of “**defensive democracy**,” gives effect to the State’s right to defend itself and its residents, inter alia, against adverse discrimination solely on account of their origin or residence in the State of Israel or in an area under its control.⁶³

The notion of ‘defensive’ or ‘militant democracy’⁶⁴ referenced by Justice Willner was first articulated by German Jewish theorist Karl Loewenstein⁶⁵ against the backdrop of the collapse of the Weimar Republic and the rise of fascist regimes across the European continent. To this day, German constitutional law recognises the principle (called *wehrhafte Demokratie*) pursuant to which State institutions can take certain lawful

⁵⁸ See, for example, ‘Designation of Palestinian CSOs as “Terrorist Organisations”’ (IHL Centre, 18 November 2021) <<https://www.diakonia.se/ihl/news/designation-of-palestinian-csos-as-terrorist-organisations/>>

⁵⁹ See, for example, Bethan McKernan, ‘Israeli Forces Raid Offices of Six Palestinian Human Rights Groups’ *The Guardian* (Jerusalem, 18 August 2022) <<https://www.theguardian.com/world/2022/aug/18/israeli-forces-raid-palestinian-human-rights-groups-offices>>

⁶⁰ See, for example, ‘Israel: Revoke Rights Defender’s Travel Ban’ (Human Rights Watch, 2 March 2012) <<https://www.hrw.org/news/2012/03/02/israel-revoke-rights-defenders-travel-ban>>; ‘Israel: Military Harassing Rights Group Staff’ (Human Rights Watch, 27 October 2013) <<https://www.hrw.org/news/2013/10/27/israel-military-harassing-rights-group-staff>>

⁶¹ ‘Shrinking Civic and Humanitarian Space in Israel–Palestine: A Brief Overview of Recent Developments’ (IHL Centre, 18 May 2026) <<https://www.diakonia.se/ihl/news/shrinking-civic-and-humanitarian-space-in-israel-palestine-a-brief-overview-of-recent-developments/>>

⁶² The Judgment (n 1) Opinion of Justice Willner para 13

⁶³ *ibid*

⁶⁴ Karl Loewenstein, ‘Militant Democracy and Fundamental Rights, I’ (1937) 31 *Am Pol Sci Rev* 417

⁶⁵ ‘Karl Loewenstein, Amherst Professor’ *New York Times* (Amherst, Massachusetts, 16/17 July 1973) <<https://www.nytimes.com/1973/07/17/archives/karl-loewenstein-amherst-professor.html>>

measures against actors that seek to overthrow the constitutional order.⁶⁶ It increasingly features in public discourse given the current rise of the far right.⁶⁷ In the past, the Israeli Supreme Court too embraced this doctrine, for example by outlawing Meir Kahane's Jewish supremacist Kach party.⁶⁸ It has been argued that today, Kahane's ideological heirs serve as ministers in Israel's governing coalition,⁶⁹ while there have been concerted efforts to bar Palestinian candidates and parties from contesting the October 2026 elections.⁷⁰

While Justice Willner invokes Israel's 'right to defend itself and its residents ... against adverse discrimination',⁷¹ it has been contended that Israel's preferential treatment of its own nationals in the oPt, who unlike Palestinians can move freely and receive access to land, infrastructure, and public resources, including protection by the Israeli military and police, while being subjected to the comparatively more protective rules of Israeli domestic law, amounts to racial discrimination and apartheid.⁷² In this vein, some

⁶⁶ See, for example, Gertrude Lübke-Wolff, 'Wehrhafte Demokratie: Die Instrumente des Parteiverbots und der Grundrechtsverwirkung' (Verfassungsblog, 13 October 2023) <<https://verfassungsblog.de/wehrhafte-demokratie/>>

⁶⁷ See, for example, Vera Weidenbach, 'AfD's Victory Shatters Germany's Illusions of Immunity to the Far Right' *Ha'aretz* (Tel Aviv, 7 September 2026) <<https://www.haaretz.com/world-news/europe/2026-09-07/ty-article/.premium/afds-victory-shatters-germanys-illusions-of-immunity-to-the-far-right/000001a0-7bb3-d7d5-a9fc-7ffee500000>>

⁶⁸ See, for example, Daniel Williams, 'Israel High Court Bars Kahane Party as Racist' *Los Angeles Times* (Jerusalem, 19 October 1988) <<https://www.latimes.com/archives/la-xpm-1988-10-19-mn-3588-story.html>>

⁶⁹ See, for example, Joshua Leifer, 'Kahane's Ghost: How a Long-Dead Extremist Rabbi Continues to Haunt Israel's Politics' *The Guardian* (London, 20 March 2025) <<https://www.theguardian.com/news/2025/mar/20/meir-kahane-israel-kach-ben-gvir-long-dead-extremist>>

⁷⁰ See, for example, Michael Hauser Tov and others, 'Israel's Elections Committee Votes to Bar All Arab Parties' *Ha'aretz* (Tel Aviv, 23 September 2026) <<https://www.haaretz.com/israel-news/elections/2026-09-23/ty-article/.premium/oppositions-yisrael-beiteinu-backs-ban-on-arab-parties-from-2026-election-run/000001a0-ccd2-dc31-a3ea-cdfe2c120000>>; Chen Maanit, 'Israel's Election Committee Rejects Move to Bar Ben-Gvir, Smotrich's Parties from Knesset Bid' *Ha'aretz* (Tel Aviv, 24 September 2026) <<https://www.haaretz.com/israel-news/elections/2026-09-24/ty-article/.premium/israels-election-committee-to-consider-bids-to-bar-otzma-yehudit-democrats/000001a0-d214-d18d-afbf-f3d6c7c70000>>; James Shotter, 'Israel's Top Court Overturns Ban of Arab Parties in Upcoming Election' *Financial Times* (Jerusalem, 2 October 2026) <<https://www.ft.com/content/9bbcd715-1417-49b6-bc56-1745f17cd674?syn-25a6b1a6=1>>

⁷¹ The Judgment (n 1) Opinion of Justice Willner para 13

⁷² See, for example, 'A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution' (Human Rights Watch, 27 April 2021) <<https://www.hrw.org/report/2021/04/27/threshold->

commentators have expressed doubt as to whether, as a matter of principle, a country that has been ruling over millions of Palestinians in the oPt by military decree for almost six decades, depriving them of basic civil and political rights,⁷³ can rightfully call itself a democracy.⁷⁴

In any event, invoking the notion of 'defensive democracy' to characterise measures taken against a humanitarian organisation because it called for a boycott of trade with illegal settlements indicates bad faith: rather than defending democracy, the de-registration of organisations that express criticism of the authorities based on human rights and international law bears resemblance to similar measures adopted by authoritarian governments.⁷⁵ At the same time, the Israeli government's increasing rapport with far-right and even antidemocratic forces around the world once again exposes a deeply troubling and cynical double standard.⁷⁶

An additional observation can be made regarding the role of the judiciary. It is well accepted that the separation of powers mandates courts to rein in executive or legislative overreach.⁷⁷ As noted, pursuant to the notion of 'defensive democracy', all

[crossed/israeli-authorities-and-crimes-apartheid-and-persecution](#)>; Michael Sfard, 'The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion' (Yesh Din, June 2020) <<https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>>

⁷³ 'Born Without Civil Rights: Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank' (Human Rights Watch, 17 December 2019) <<https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>>

⁷⁴ See, for example, Oliver Holmes, 'Israel is a Non-Democratic Apartheid Regime, Says Rights Group' *The Guardian* (Jerusalem, 12 January 2021) <<https://www.theguardian.com/world/2021/jan/12/israel-is-a-non-democratic-apartheid-regime-says-rights-group>>; Prof Dr Martin Beck, 'The Political System of Israel – Not a Democracy' (2020) 1 GIGA Focus Middle East <<https://www.giga-hamburg.de/en/publications/giga-focus/israels-politisches-system-keine-demokratie>>

⁷⁵ See, for example, 'Russia's Putin Signs Law Against "Undesirable" NGOs' *BBC News* (London, 24 May 2015) <<https://www.bbc.com/news/world-europe-32860526>>; 'China: Scrap Foreign NGO Law Aimed at Choking Civil Society' (Amnesty International, 28 April 2016) <<https://www.amnesty.org/en/latest/news/2016/04/chinascrap-foreign-ngo-law-aimed-at-choking-civil-society/>>

⁷⁶ See, for example, Ishaan Tharoor, 'Israel's Leaders Find Allies Among the Global Far Right' *The New Yorker* (New York, 13 August 2026) <<https://www.newyorker.com/news/global-notes/israels-leaders-find-allies-among-the-global-far-right>>

⁷⁷ See, for example, Piotr Mikuli, 'Separation of Powers' (last updated March 2018) Max Planck Encyc Comp Const'l L <<https://oxcon.ouplaw.com/display/10.1093/law-mpeccol/law-mpeccol-e466?d=%2F10.1093%2F1aw-mpeccol%2F1aw-mpeccol-e466&p=emailAAomya2qdeUvs>>

State authorities – including the judiciary – may step in to shield the constitutional order from attack.⁷⁸ The latter arguably also requires for a robust judiciary to take it upon itself to defend international law and the rules-based international order from transgressions, lest judges and lawyers become complicit not just in the slide towards authoritarianism but also the descent into global impunity and lawlessness. Indeed, it can be surmised that there is a connection between the two: governments that openly treat international norms with disdain may readily flout the rule of law and trample on fundamental rights domestically as well. What is more, in many cases relevant rules of international law will have been incorporated into domestic law.⁷⁹ Israel's High Court of Justice, it seems, is increasingly bent on reneging on this tripartite promise.

Finally, it must be emphasised that Diakonia's case is not an isolated incident; dozens of other humanitarian organisations have also been denied registration pursuant to the new guidelines,⁸⁰ affecting diverse fields such as demining, education, health, nutrition, shelter, and WASH.⁸¹ The yearslong process has placed an undue burden on all organisations, including those whose registration was eventually approved, diverting critical human and financial resources away from substantive work. At present, a climate of fear prevails amongst civil society, with the proverbial 'Sword of Damocles' persistently hanging over NGOs. They are left with an impossible choice: compromise on principles, or risk losing access to the communities they are mandated to serve.

⁷⁸ See nn 64, 66 above

⁷⁹ See, for example, Tamar Hostovsky Brandes, 'Constitutional Adjudication of International Law Violations: The Israeli Supreme Court's Invalidation of the Settlement Regularization Law' (Verfassungsblog, 14 June 2020) <<https://verfassungsblog.de/constitutional-adjudication-of-international-law-violations/>>

⁸⁰ See, for example, Nir Hasson, 'High Court Upholds Rules Requiring Gaza, West Bank Aid Groups to Hand Over Employee Lists' *Ha'aretz* (Tel Aviv, 20 May 2026) <<https://www.haaretz.com/gaza/2026-05-20/ty-article/premium/gaza-west-bank-aid-groups-will-be-forced-to-cease-work-after-top-court-ruling/0000019e-45a6-d222-a1be-65b648e30000>>; Melanie Lidman and Sam Mednick, 'Israel Says it Will Halt Operations of Several Humanitarian Organizations in Gaza Starting in 2026' *The Associated Press* (Jerusalem, 30 December 2025) <<https://apnews.com/article/gaza-israel-hamas-palestinians-ceasefire-war-news-286106d7a5a911704cdcf1c93248e502>>

⁸¹ 'UN Agencies and NGOs Call for Immediate Lifting of Impediments to Humanitarian Access and NGO Operations in the Occupied Palestinian Territory' (OCHA oPt, 17 December 2025) <<https://www.ochaopt.org/content/un-agencies-and-ngos-call-immediate-lifting-impediments-humanitarian-access-and-ngo-operations-occupied>>

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