Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الأقلية العربية في اسرائيل
עדאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל

5 February 2024

To
Mr. Eli Cohen
Minister of Energy
By email: sar@energy.gov.il

To
Adv. Gali Baharav-Miara
Attorney General
By online submission

Re: Illegality of the Fourth Offshore Tender and Gas Drilling in the Palestinian Territorial Waters and Exclusive Economic Zone

We hereby appeal to you to act to: **a.** revoke the licenses for exploratory gas drilling granted under the Fourth Offshore Tender, Zone G, which would extend in blocks that intrude into the Palestinian territorial waters and the Exclusive Economic Zone (EEZ) adjacent to Gaza Strip; **b.** Cancel the tender for Zones G, H and E, and for other blocks that intrude into the territorial area and EEZ of Palestine; **c.** Refrain from signing additional license contracts for Zone G; and **d.** Halt any activity involving the exploitation of gas resources in the territorial waters and EEZ of Palestine.

Background

1. On 4 December 2022, the Israeli Ministry of Energy and Infrastructure (hereinafter: Ministry of Energy) published a tender for gas exploration licenses in the sea adjacent to Gaza Strip **(**Fourth Offshore Tender) (hereinafter: the tender). According to the tender guidelines, in issuing the tender, the Ministry of Energy acted under the Israeli Petroleum Law – 1952 and the Petroleum Regulations – 1953. The area subject to bidding in the tender includes 20 exploration blocks (of up to 400 km^2 each), covering a total area of 5,888 km^2, and divided into four zones: a. Zone E – consisting of three blocks, covering a total of 1,127 km^2; b. Zone G – consisting of six blocks, covering a total of 1,732 km^2; c. Area H – consisting of five blocks, covering a total of 1,527 km^2; and d. Zone I – consisting of six blocks, covering a total of 1,677 km^2, as illustrated in the tender map published by the Ministry of Energy, below (**Map No. 1**).

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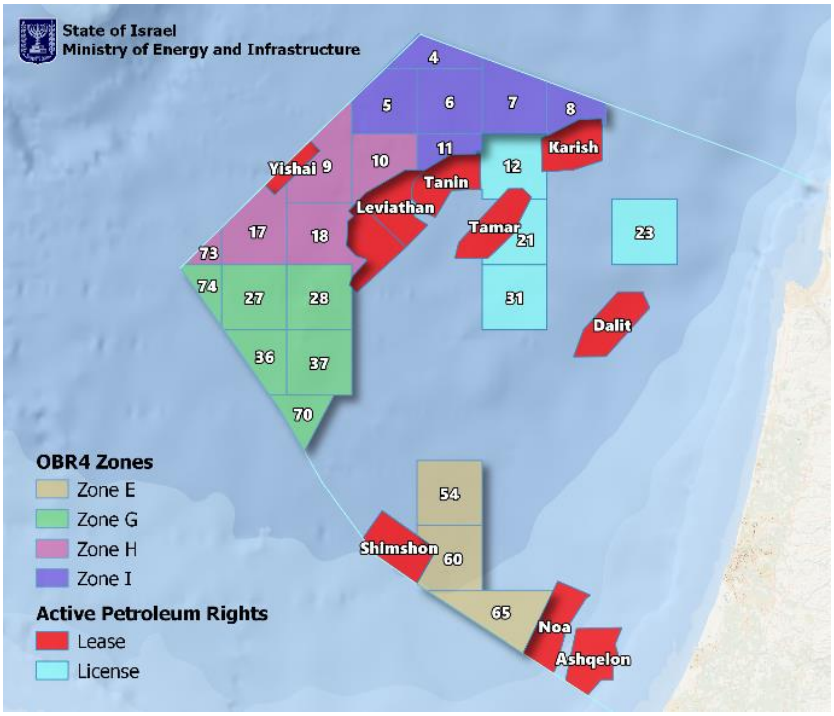
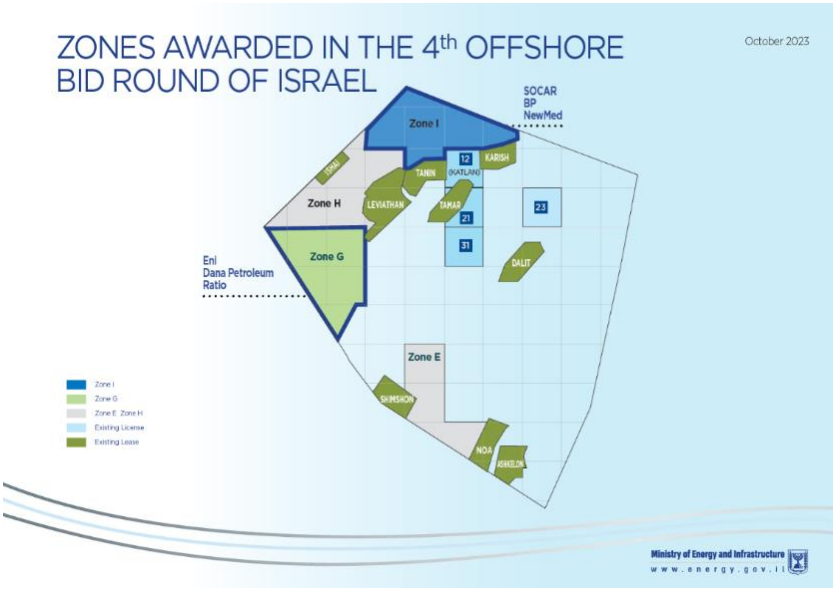
Map No. 1



2. On 29 October 2023, amid the Gaza war, the Ministry of Energy announced the successful bids for two of the aforementioned zones, granting six licenses for Zone G, and six additional licenses for Zone I. As far as we know, the implementation of the licenses has not yet begun. The map of the zones for which the results of the winners were announced was published by the Ministry of Energy; see below (**Map No. 2)**.

Map No. 2



3. A precise map drawn up for the purpose of examining the zones that was included in the tender (**Map No. 3**; see below, at the end of this letter) indicates that large areas of Zones G, H and E lie beyond Israel's Exclusive Economic Zone (EEZ) and substantially encroach upon Palestine's territorial sea and EEZ (hereinafter: the encroached-upon areas). The map indicates that the amount of intrusion as a percentage of the total area of these zones is as follows:

   I. Zone H – 79.9 km2 of 1,475.7 km2 (5.4%)
   II. Zone G – 1,063.3 km2 of 1,710.7 km2 (62.2%)
   III. Zone E – 836 km2 of 1,130.6 km2 (73.9%)

4. The map also shows that additional previously-demarcated gas reservoirs are encroaching on Palestine's EEZ: Shimshon – 244.5 km^2 of 244.5 km^2 (100%); Noa – 130.6 km^2 of 239.9 km^2 (54.4%), which also intrudes into Gaza's continental shelf; and Ashkelon (Mari B) - 91.5 km^2 of 242.1 km^2 (37.8%), where Palestine's territorial waters and continental shelf are also infringed.

Lack of authority and violations of international humanitarian law

5. The State of Israel does not have the authority to operate in the encroached-upon areas, since this maritime area does not belong to the State of Israel and is not a maritime area in which Israel has exclusive economic rights. Therefore, Israeli law, in accordance with which the Ministry of Infrastructure operates, does not apply in these areas. The encroached-upon areas are maritime areas over which the State of Palestine – an observer state according to UN General Assembly Resolution [67/19] of November 2012 – has sovereign rights and jurisdictional claims, including to the natural resources they contain. Israel does not have authority to determine the boundary of the Palestinian EEZ, since this is an inherently sovereign process that entails long-term and even permanent changes to the context of the exploitation of natural resources in the region.

6. At stake is occupied maritime area – the Israeli military is permanently stationed in this territory – or an area that is under the effective control of the State of Israel, and consequently several bodies of international law apply to it. International humanitarian law (IHL), the law of the sea, as well as international human rights law. Each body of law has implications for the rights, obligations and prohibitions that pertain at the various levels, including in the context of the exploitation of natural resources, as will be detailed below.

   See, e.g., Shani Friedman, "The Application of the Law of Occupation in Maritime Zones and Rights to 'Occupied' Marine Resources", *The International Journal of Marine and Coastal Law*, 36(3) (2021): 419-437 (2021); Marco Longobardo, "The Occupation of Maritime Territory under International Humanitarian Law", 95 *INT'L L. STUD.* 322 (2019): 323-361; Tassilo Singer, "Occupation of Sea Territory: Requirements for Military

Authority and Comparison to Art. 43 of The Hague Convention IV", in *Operational Law in International Straits and Current Maritime Security Challenges* 255 (Jörg Schildknecht, Rebecca Dickey, Martin Fink & Lisa Ferris eds.) 2018.

7. Thus, Israel's actions in the encroached-upon areas are governed in part by international humanitarian law, enshrined primarily in The Hague Convention with respect to the Laws of War of 1907 and its accompanying regulations, in the provisions of the Fourth Geneva Convention relative to the Protection of Civilians in Time of War of 1949, in the customary provisions set forth in the accompanying protocols of the Geneva Conventions of 1977, and in the general principles of international law.

8. One of the principles derived from the above is that the occupying power may use public assets it manages, and even the fruits thereof, to fulfill its obligations under the law of occupation, but it may not destroy these assets, transfer ownership of them to others, or deplete them. This principle is enshrined in Article 43 of The Hague Regulations, which outlines the general framework for the actions of an occupying power in an occupied territory.

9. This principle requires that any long-term change made in the occupied territory, to the extent permissible, should be made for the benefit of the local population (protected civilians). It also prohibits the occupying power from exploiting the natural resources of the occupied territories for its general needs. On this issue, it was held by the Israeli High Court of Justice in the *Jama'it Eskan* case that, "The Military Commander is not entitled to consider national interests, the economic, social aspects of his own country, insofar as they have no bearing on his security interest in the region or on the interests of the local population. Even the needs of the army are limited to its military needs, and not the needs of national security in the broad sense. An area held under belligerent occupation is not an open field for economic or other exploitation." (Israeli High Court of Justice 393/82 *Jama'it Eskan v. Commander of the IDF forces in the Judea and Samaria region*, P.D. (4), 785, 794-795 [1983]).

10. This principle is also enshrined in specific regulations concerning the occupier's powers in relation to public property, including Article 55 of The Hague Regulations, which states that the occupying power is no more than a trustee of the territory in its possession, which it holds as a deposit only, on a temporary basis. Depletion of natural resources is also not allowed under the usufructuary rule.

11. In addition, the tenders, issued under Israeli domestic law, constitute annexation of the Palestinian maritime area under effective Israeli control, since they attempt to circumvent the norms of IHL and apply Israeli domestic law to the Palestinian maritime area in relation to the management and exploitation of natural resources.

12. Israel's exploitation of these gas resources also stands in violation of Article 47 of The Hague Regulations and Article 33 of the Fourth Geneva Convention, which prohibit pillage. Pillage

was also listed as a war crime in the Rome Statute establishing the International Criminal Court (Article 8 (2)(B)(XVI)).

13. Such activity most blatantly violates the right of the Palestinian people to self-determination, encompassing the management of its natural resources in the encroached-upon areas. The right to self-determination includes free determination of the political status of the Palestinian people and its economic, social and cultural development (Article 1 of the International Covenant on Civil and Political Rights), while the right to sovereign power over natural resources is an integral part of the right to self-determination, including in its economic sense.

See, e.g., *Iain Scobbie*, "Natural Resources and Belligerent Occupation: Perspectives from international humanitarian and human rights law", in Susan M. Akram, Michael Dumper, Michael Lynk, Iain Scobbie, *International Law and the Israeli-Palestinian Conflict* (Routledge 2010).

14. The same principle already found explicit expression in UN General Assembly Resolution 1803 of 1962, which held, *inter alia*, that:

> Bearing in mind its resolution 1314 (XIII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international cooperation in the economic development of developing countries,
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> ...
>
> 1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
>
> 2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.
>
> ...

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

Violation of the law of the sea

15. The tenders in question are illegal and contrary to customary maritime law, since the definition of the zones within the tender contravenes the UN Convention on the Law of the Sea (UNCLOS) of 1982. The UNCLOS is the most important source of maritime law, regulating, *inter alia*, the demarcation of maritime borders. While most countries are signatories to the Convention, Israel is not; however, it has long been established that most of its provisions are considered binding since they form part of customary international law, including provisions regarding the definition of the concept of an 'exclusive economic zone' (EEZ), which is considered one of the innovations of the UNCLOS.

16. According to the UNCLOS, the 'territorial waters zone' extends approximately 12 nautical miles outward from the baseline of the Gaza Strip, including the sea floor and subsoil (Articles 2 and 3 of the UNCLOS), and it should be noted that Israeli law conforms to the Convention in this respect. This zone is usually considered an extension of the land of the coastal state, and therefore the laws that apply to it similarly apply to this zone. Since it is occupied maritime area, Israeli domestic law does not apply there.

17. The Palestinian EEZ – and this is the main point for our purposes – refers to the band of the Mediterranean Sea that lies beyond the coastal waters off the Gaza Strip up to a distance of 200 nautical miles from the baselines, including the sea floor within that band (Article 57 of the UNCLOS). In this area, exclusive sovereign powers are granted to the coastal state for the purposes of exploration and use of marine resources (Article 56 of the UNCLOS). Undoubtedly, therefore, these rights and powers are not vested in the State of Israel. As Map 3 below indicates, the tender additionally entails an intrusion onto the continental shelf adjacent to the coast of the Gaza Strip, which consists of the land and subsoil of the coastal state over an area of up to 200 nautical miles from the baseline (Article 76 of the UNCLOS). This intrusion creates an additional layer of exceeding authority, overstepping and violating the sovereign powers of the State of Palestine.

18. It should be stressed that Israel did not accede to the UNCLOS or declare its own exclusive economic zone. The Palestinian Authority, on the other hand, acceded to the UNCLOS on 1 February 2015 (in accordance with Article 308 of the Convention), and in its accession statement declared and specified the scope of its maritime areas and jurisdictions in a manner consistent with the UNCLOS.

19. Needless to say, in cases of conflicting claims concerning the demarcation of zones and rights, the area in question is considered a 'disputed area' in which only certain actions are allowed; the actions specified in the tender are unquestionably not permitted and constitute unreasonable and illegal actions. The manner in which the areas were demarcated within the tender entail violations of the aforementioned legal regimes and a misrepresentation of reality, given that the said areas of the sea are defined in a misleading manner. Any action taken in these areas requires, at the very least, the settlement of the dispute, either through the courts or via the settlement of the conflict between the parties, as a prerequisite, and Israel's moves to establish facts on the ground in such a manner are illegal and carried out in bad faith.

20. The tender is also in direct contravention of Article 77 of the UNCLOS, which states that:

> Article 77 Rights of the coastal State over the continental shelf
>
> 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
>
> 2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
>
> 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
>
> 4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

21. Specifically, Clause 3.5 of the tender makes clear that the areas are adjacent to the outer limits of Israel's EEZ, which has yet to be fully demarcated. The bidding companies are hence aware of this fact, and also have agreed to be bound by the terms and conditions that appear in Clause 17 of the model license, which states as follows:

> By submitting its bid, the bidder acknowledges that the Zones are adjacent to the outer limits of Israel's exclusive economic zone ("EEZ"), which has not yet been fully delimited. In light of these facts, the bidder acknowledges the information and agrees to be bound by the terms and conditions that appear in Article 17 of the Model Licence, which, for the avoidance of any doubt, form an integral part of the terms and conditions of this CFB, whether

as a licence holder in case a licence has been granted or as a bidder, and waive any claim, demand or cause of action, of any kind in this regard.

22. Clause 17 of the license stipulates in this context, that if, during the term of the license, areas are deducted from the zones included therein, then the total area of the license will decrease accordingly, as follows:

> The licence holder acknowledges and agrees that the area described above is part of the Exclusive Economic Zone of the State of Israel, which has not yet been fully delimited. If during the term of the Licence or during the period of any petroleum right granted following issue of this Licence (licence or lease) an area or areas are deducted from the area described above, the licence area or the other right area will be decreased accordingly without any compensation to the rights holder.

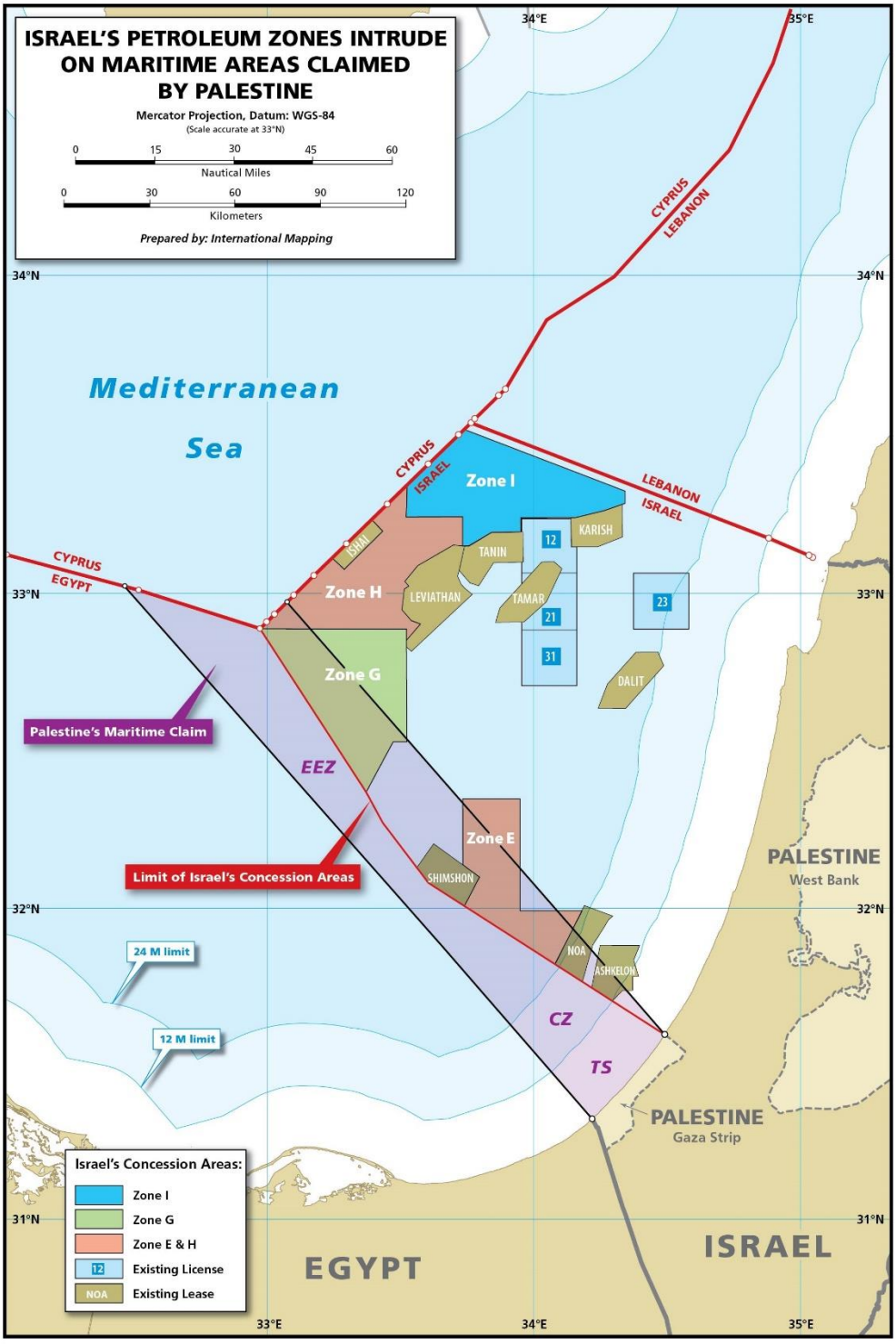
23. All of the foregoing indicates that the areas defined by Israel in its tender are illegal, as they deviate from the exclusive Palestinian maritime area and zones off the coast of the Gaza Strip. Hence, the tender and the implementation thereof are illegal.

In light of the above, you are hereby requested to act in accordance with the first paragraph of this letter.

Sincerely,

Dr. Suhad Bishara, Advocate

Map No. 3


ISRAEL'S PETROLEUM ZONES INTRUDE ON MARITIME AREAS CLAIMED BY PALESTINE
Mercator Projection, Datum: WGS-84
(Scale accurate at 33°N)
0 15 30 45 60
Nautical Miles
0 30 60 90 120
Kilometers
Prepared by: International Mapping
34°E
35°E
34°N
33°N
32°N
31°N
33°E
CYPRUS
LEBANON
Mediterranean
Sea
CYPRUS
ISRAEL
LEBANON
ISRAEL
CYPRUS
EGYPT
Zone I
Zone H
Zone G
Zone E
ISHAI
KARISH
TANIN
LEVIATHAN
TAMAR
DALIT
SHIMSHON
NOA
ASHKELON
12
21
31
23
Palestine's Maritime Claim
EEZ
Limit of Israel's Concession Areas
24 M limit
12 M limit
CZ
TS
PALESTINE
West Bank
PALESTINE
Gaza Strip
ISRAEL
EGYPT
Israel's Concession Areas:
Zone I
Zone G
Zone E & H
Existing License
Existing Lease