
**INTERNATIONAL HUMAN RIGHTS LAW IN THE OCCUPIED
PALESTINIAN TERRITORY: APPLICABILITY, VIOLATIONS, AND AVENUES
FOR REDRESS AFTER THE 2024 ICJ OPINION¹**

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ABSTRACT: On 19 July 2024, the International Court of Justice (ICJ) delivered an advisory opinion on the legal consequences of Israel's policies and practices in the Occupied Palestinian Territory. This article examines how the ICJ interpreted and applied international human rights law in that context, and the legal consequences arising from Israel's conduct as an occupying power. In response to the questions submitted by the United Nations General Assembly in Resolution 77/247 (2022), the Court concluded that international human rights law is applicable in the Occupied Palestinian Territory and binding on Israel. The opinion highlights systemic violations of international human rights law committed by Israel, particularly in connection with measures of racial segregation, and points to possible legal remedies aimed at securing their cessation and ensuring reparation for the harm caused.

Keywords: Occupied Palestinian Territory; International Human Rights Law; International Court of Justice; Racial Discrimination; Reparation.

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INTRODUCTION

On 19 July 2024, the International Court of Justice (ICJ) delivered its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. This opinion was intended to answer two questions submitted by the United Nations General Assembly in its Resolution 77/247 of 30 December 2022.

The first question concerned “the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?”.³ The second question concerned the impact of these “policies and practices of Israel” on “the legal status of the occupation” and “the legal consequences that arise for all States and the United Nations”.⁴

The two questions posed,⁵ insofar as they concerned the legal consequences of probable violations of international law in general and international human rights law in particular (notably with regard to the “related discriminatory legislation and measures” mentioned), required the ICJ to adopt an approach incorporating international human rights law. Such an approach was all the more necessary since Resolution 77/247 of 30 December 2022 invited the Court to give an advisory opinion “considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004”.⁶ This did not escape the attention of the ICJ,⁷ which, in its analysis in response to the two questions submitted by the General Assembly, devoted substantial attention to international human rights law.

This article examines the following research question: to what extent does the ICJ’s 2024 Advisory Opinion clarify the applicability of international human rights law to the Occupied Palestinian Territory and the legal consequences flowing from its systematic violation by Israel? The Court’s reasoning, together with the broader lessons that may be drawn from the Advisory Opinion of 19 July 2024, shows that the rules of this branch of law apply to the Occupied

³ UNGA, Resolution 77/247 of 30 December 2022, para. 18, question (a).

⁴ *Ibid.*, para. 18, question (b).

⁵ Summarized by the ICJ, “[t]hese questions relate first to the legal consequences arising from certain policies and practices of Israel as an occupying Power in a situation of belligerent occupation since 1967. Secondly, they relate to how such policies and practices affect the legal status of the occupation in light of certain rules and principles of international law and to the legal consequences which arise from this status” (Opinion of 19 July 2024, para. 27).

⁶ UNGA, Resolution 77/247 of 30 December 2022, para. 18.

⁷ Advisory Opinion of 19 July 2024, para. 87.

Palestinian Territory, that they are being systematically violated by Israel, and that remedies may be envisaged to address and sanction those violations.

1. INTERNATIONAL HUMAN RIGHTS LAW APPLICABLE IN THE OCCUPIED PALESTINIAN TERRITORY

The question arose as to whether international human rights law is applicable in the Occupied Palestinian Territory. The significance of this applicability lies in the existence of obligations incumbent upon Israel as the occupying power, and in the ability of Palestinians to invoke the rights guaranteed under this branch of law, to denounce violations, and to seek reparation. The answer given by the Court in its Opinion of 19 July 2024 is in the affirmative and provides an opportunity to discuss the instruments of international human rights law binding on Israel, their applicability beyond Israeli territory, and the relationship between international humanitarian law and international human rights law.

1.1. The relationship between international humanitarian law and international human rights law

The continued occupation of the Palestinian Territory by Israel since 1967, following an international armed conflict (the Six-Day War, which opposed Israel to Jordan, Egypt, Syria, and Iraq), constitutes, due to its duration, a legally exceptional situation. Israel invokes this exceptional nature to challenge the applicability of international human rights law in the Occupied Palestinian Territory. Its traditional position is that international humanitarian law (in particular the Hague Regulations and the Fourth Geneva Convention) constitutes the appropriate legal framework for situations of occupation arising from an international armed conflict, such as that existing in the West Bank. According to this view, human rights instruments are designed to protect citizens from their own governments in times of peace.⁸ Conversely, for most of the States⁹ or regional organizations¹⁰ that took part in the proceedings leading to the Opinion of 19 July 2024, nothing appears to prevent international human rights law – which States are required to respect at all times, including during armed conflict – from applying in the Occupied Palestinian Territory, with human rights obligations complementing those arising from the law of occupation.¹¹

⁸ See ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 102.

⁹ 57 States submitted written statements, and 49 of them (but not Israel) presented oral arguments before the ICJ during the hearings in February 2024.

¹⁰ The League of Arab States, the Organization of Islamic Cooperation, and the African Union.

¹¹ Advisory Opinion of 19 July 2024, para. 98.

In its Opinion of 19 July 2024, the Court recalls that the protection afforded by human rights conventions does not cease in times of armed conflict or occupation.¹² It notes that, in such situations, certain rights held by individuals or legal entities may fall exclusively within the scope of international humanitarian law, others may fall exclusively within the scope of international human rights law, and still others may be governed simultaneously by both branches of international law.¹³ In doing so, the Court essentially reiterates the position and reasoning it adopted in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.¹⁴ In that earlier opinion, the ICJ referred to its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, in which it found that the protection afforded by the International Covenant on Civil and Political Rights (ICCPR) does not cease during times of war, except through the effect of a derogation clause provided for in Article 4,¹⁵ which States may invoke in the event of a public emergency, with the exception of certain non-derogable rights.¹⁶

This approach by the Court is consistent with the observation, generally accepted in doctrine¹⁷ and case law¹⁸, that while international humanitarian law and international human rights law are distinct branches of international law, certain situations may fall simultaneously within the scope of both. International humanitarian law – as *lex specialis*,¹⁹ whose purpose is to govern the conduct of hostilities and to protect persons not participating in the hostilities²⁰ – applies specifically in situations of armed conflict or occupation, with the exception of situations of internal tensions or internal disturbances, such as isolated and sporadic acts of violence.²¹ International

¹² *Ibid.*, para. 99.

¹³ *Idem.*

¹⁴ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 106.

¹⁵ Article 4 of the ICCPR: “1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision”.

¹⁶ ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, para. 25.

¹⁷ See Codula DROEGE, “The interplay between international humanitarian law and international human rights in situations of armed conflicts”, *Israel Law Review*, vol. 40, 2007, pp. 310-355.

¹⁸ That of the European Court of Human Rights (*Hassan v. the United Kingdom*, No. 29750/09, 16 September 2014, para. 104) as well as that of the Inter-American Court of Human Rights (Juana María IBÁÑEZ RIVAS, “Le droit international humanitaire au sein de la jurisprudence de la Cour interaméricaine des droits de l’homme”, *Revue des droits de l’homme*, vol. 11, 2017).

¹⁹ Advisory Opinion of 9 July 2004, para. 105. On the significance of this ICJ approach, see Amna GUELLALI, “*Lex specialis*, droit international humanitaire et droits de l’homme : leur interaction dans les nouveaux conflits armés”, *Revue générale de droit international public*, vol. 111, 2007, pp. 542-547.

²⁰ The 1977 Additional Protocols to the 1949 Geneva Conventions (the Additional Protocol of 8 June 1977 to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts (Protocol I), and the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non-international armed conflicts (Protocol II)) cover both dimensions.

²¹ See Marko MILANOVIĆ, “La fin de l’application du droit international humanitaire”, *Revue internationale de la Croix-Rouge*, vol. 75, 2014, p. 137.

human rights law is primarily intended to apply in times of peace, but it may also apply in times of war. Accordingly, both legal frameworks may apply in situations of armed conflict or occupation. Indeed, an armed conflict does not suspend the application of human rights norms stemming from binding instruments, unless a derogation clause is invoked by the State concerned. In practice, during armed conflicts, international human rights law complements and strengthens the protection provided by international humanitarian law.²² The complementarity of these two branches of international law aims to ensure the best possible protection of human beings.

1.2. The applicability of international human rights law instruments beyond national territories

Israel also contests the applicability of international human rights law in the Occupied Palestinian Territory, arguing that the instruments it has ratified are intended to apply only within Israeli territory, which, according to its position, now includes East Jerusalem.²³ These instruments are, in its view, aimed at protecting citizens from their own government. According to Israel, they are all the less likely to apply since only part of the West Bank remains occupied territory and the Gaza Strip is no longer occupied territory.²⁴

Conversely, for most of the States and international organizations that participated in the proceedings leading to the Opinion of 19 July 2024, the scope of application of international human rights law does not depend solely on the territorial limits of the State. Rather, this body of law applies to the acts of a State carried out in the exercise of its jurisdiction beyond its own territory.²⁵ Consequently, in their view, the international human rights instruments ratified by Israel are applicable in the Palestinian Territory it occupies.

In its response, the Court recalls that international human rights instruments are applicable to the acts of a State carried out in the exercise of its jurisdiction beyond its own territory, particularly in occupied territories.²⁶ In doing so, the Court repeats almost word for word the position and reasoning it adopted in its Judgment of 19 December 2005 in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*.²⁷ That Judgment

²² See Louise DOSWALD-BECK and Sylvain VITÉ, “Le droit international humanitaire et le droit international des droits de l’homme”, *Revue internationale de la Croix-Rouge*, vol. 75, 1993, p. 120.

²³ Since the adoption of the Basic Law of 30 July 1980 establishing the status of Jerusalem, Israel has declared “complete and united” Jerusalem as its capital and no longer considers East Jerusalem to be occupied territory. However, the Security Council, in Resolution 478 of 20 August 1980, stated that all measures aimed at altering the status of Jerusalem were null and void.

²⁴ Since its military withdrawal in 2005, Israel no longer considers the Gaza Strip to be occupied territory.

²⁵ Advisory Opinion of 19 July 2024, para. 98.

²⁶ *Ibid.*, para. 99.

²⁷ ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, para. 216.

was itself inspired by the Opinion of 9 July 2004 on the *Wall*, in which the Court considered that those instruments are applicable to the acts of Israel, even outside its own territory, in its capacity as an occupying power exercising territorial jurisdiction over the Occupied Palestinian Territory.²⁸ The Court thus concluded that Israel is required to comply with the obligations set out in these instruments in its conduct and legal relations with the Palestinian population. The Opinion of 19 July 2024 goes further by affirming that, “from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, contiguity and integrity of which are to be preserved and respected”.²⁹ The Occupied Palestinian Territory therefore refers to a “single territorial unit”, and the Gaza Strip remains an occupied territory under Israeli control.³⁰

This approach of the ICJ is consistent with the generally accepted view that international human rights conventions duly ratified by a State are applicable to that State’s acts performed in the exercise of its jurisdiction beyond its own territory. In other words, the scope of application of international human rights law does not depend solely on the territorial limits of the State party; rather, this body of law also applies to acts carried out by a State outside its territory when it exercises effective control over an area or over individuals located abroad.³¹ In the case of occupation, this implies that the occupying State is required to apply, within the occupied territory, not only the human rights instruments to which it is a party, but also those binding upon the occupied State. This results from Article 43 of the Hague Regulations, which obliges the occupying power to respect and apply, as far as possible, the laws in force in the occupied territory.³²

Several participants in the proceedings expressed divergent views on the relevance, in general, of the Oslo Accords.³³ Israel traditionally maintains that it is the responsibility of the Palestinian Authority, and not its own, to apply international human rights law instruments in the Occupied Palestinian Territory.³⁴ However, the parties to the Oslo Accords agreed to “exercise

²⁸ Advisory Opinion of 9 July 2004, paras. 111-113.

²⁹ Advisory Opinion of 19 July 2024, para. 78, citing General Assembly Resolution 77/247 (2022), para. 12; Article XI of the Oslo II Accord; General Assembly Resolution ES-10/20 (2018), sixteenth preambular paragraph; Security Council Resolution 1860 (2009), second preambular paragraph; and Security Council Resolution 2720 (2023), fourth preambular paragraph.

³⁰ *Ibid.*, paras. 93 and 94. Indeed, after withdrawing its settlements in 2005, Israel retained effective control over the land, sea, and air access to the Gaza Strip, control which has significantly intensified since 7 October 2023.

³¹ In this respect, according to consistent case law, see notably the judgment *Al-Skeini and Others v. the United Kingdom* of 7 July 2011, in which the European Court of Human Rights held that the European Convention on Human Rights could apply to acts committed by British forces in Iraq, provided that the State exercised effective control there, which is a question of fact (Application No. 55721/07, paras. 138-139). The judgment refers to the cases of *Loizidou*, *Banković*, and *Ilascu*, which underpin this jurisprudence.

³² See in this regard Éric DAVID, *Principes de droit des conflits armés*, Bruylant, 4th ed., 2008, p. 565.

³³ Advisory Opinion of 19 July 2024, paras. 65 and 102. The Oslo Accords are a series of agreements signed in the 1990s between Israel and the Palestine Liberation Organization (PLO), aimed at establishing a framework for resolving the Israeli-Palestinian conflict.

³⁴ For a detailed analysis of the Israeli position, see Mais QANDEEL, *Enforcing Human Rights of Palestinians in the Occupied Territory*, Grossman, 2018, pp. 77-80.

their powers and responsibilities pursuant to” those Accords, “with due regard to internationally-accepted norms and principles of human rights and the rule of law”.³⁵ In this regard, the Court recalls that the “legitimate rights” of the Palestinian people recognized in the Oslo Accords include the right to self-determination.³⁶ Moreover, the Oslo Accords prohibited the parties from “initiat[ing] or tak[ing] any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations”.³⁷ The Court observes that, for the purpose of interpreting the Oslo Accords, it is necessary to take into account Article 47 of the Fourth Geneva Convention, which provides that the protected population “shall not be deprived” of the benefits of the Convention “by any agreement concluded between the authorities of the occupied territories and the Occupying Power”. For all these reasons, the Court considers that the Oslo Accords cannot be interpreted as limiting in any way Israel’s obligations under the relevant rules of international law applicable in the Occupied Palestinian Territory.³⁸

1.3. The instruments of international human rights law binding on Israel

In its Opinion of 19 July 2024, “[a]s regards international human rights law, the Court observes that Israel is party to several legal instruments containing human rights obligations”.³⁹ Among these instruments, the Court uses the term “including” to refer to three of them: the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (ICERD), the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (ICESCR), and the ICCPR of 19 December 1966.⁴⁰ Indeed, Israel ratified ICERD on 3 January 1979, and both the ICESCR and ICCPR on 3 October 1991.

The ICJ recalls that Israel remains bound by the ICESCR and the ICCPR,⁴¹ without elaborating further, in light of the detailed analysis it had already provided regarding these two instruments in its Opinion of 9 July 2004 on the *Wall*. It devotes more substantial attention to the ICERD, noting that this convention contains no provision explicitly limiting its territorial scope of application,⁴² and that several of its provisions impose obligations on States Parties that apply “in territories under their jurisdiction” (Article 3) or with respect to “everyone within their jurisdiction” (Article 6). Accordingly, the Court finds that the Convention is also applicable to the conduct of a State party that produces effects beyond its own territory. With particular regard to the Occupied

³⁵ Oslo II Accord, Article XIX.

³⁶ Advisory Opinion of 19 July 2024, para. 102, citing the Advisory Opinion of 9 July 2004, para. 118.

³⁷ Oslo II Accord, Article XXXI, para. 7.

³⁸ Advisory Opinion of 19 July 2024, para. 102.

³⁹ *Ibid.*, para. 97.

⁴⁰ *Idem.*

⁴¹ *Ibid.*, para. 100.

⁴² *Ibid.*, para. 101.

Palestinian Territory, the Committee on the Elimination of Racial Discrimination has found that the Convention applies to acts committed by Israel against individuals present in that territory.⁴³ The Court thus concludes that Israel must comply with the obligations imposed by the ICERD when exercising jurisdiction beyond its own territory.⁴⁴

By using the term “including”, the Court implies that Israel is a party to other instruments that also impose human rights obligations upon it. The ICJ could, for example, have referred to the Convention on the Rights of the Child of 20 November 1989, ratified by Israel on 3 October 1991.⁴⁵ This convention was indeed cited by the Court as a relevant human rights instrument in its Opinion of 9 July 2004 on the *Wall*.⁴⁶ The Court could also have mentioned the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 18 December 1979 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 10 December 1984, both ratified by Israel on 3 October 1991, as well as the Convention on the Rights of Persons with Disabilities of 13 December 2006, ratified by Israel on 28 September 2012. It is likely that the Court chose to focus on the instruments most relevant to the Israeli policies and practices in the Occupied Palestinian Territory under review. Nevertheless, all international human rights instruments ratified by Israel⁴⁷ are applicable to its conduct in the Occupied Palestinian Territory, and violations of those instruments may be identified and sanctioned. Israel is also bound by the principles and norms of international human rights law that have attained customary status, including most of the content of the Universal Declaration of Human Rights of 10 December 1948.

2. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW RESULTING FROM ISRAEL'S POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY

International law – of which international human rights law is a branch – contains general principles, including respect for the right to self-determination and the territorial sovereignty of States, which prohibit colonization and the annexation of territories by force. However, unlike

⁴³ See: United Nations, CERD Committee, “Concluding observations on the combined seventeenth to nineteenth periodic reports of Israel”, CERD/C/ISR/CO/17-19, 27 January 2020, paras. 9-10; United Nations, CERD Committee, “Consideration of reports submitted by States parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel”, doc. CERD/C/304/Add.45, 30 March 1998, para. 12.

⁴⁴ Advisory Opinion of 19 July 2024, para. 101.

⁴⁵ *Ibid.*, para. 103.

⁴⁶ Advisory Opinion of 9 July 2004, para. 113.

⁴⁷ Israel is not, however, a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, nor to the International Convention for the Protection of All Persons from Enforced Disappearance of 23 December 2010.

international humanitarian law and other branches of public international law, international human rights law contains few specific provisions prohibiting the policy of colonization in an occupied territory or the annexation of parts of such a territory, with the exception of the (peremptory) principle of the right of peoples to self-determination. On the other hand, the direct and indirect effects of the colonization and annexation of parts of the Occupied Palestinian Territory lead to violations of certain provisions of international human rights law instruments (A). Discriminatory laws and measures, for their part, are likely to directly infringe specific rules of international human rights law (B). Taken as a whole, these Israeli policies and practices in the Occupied Palestinian Territory violate the Palestinian people's right to self-determination, which is recognized as a component of international human rights law (C).

2.1. The consequences of the policy of colonization and annexation

In its Opinion of 19 July 2024, the ICJ recalls that Israel has implemented a policy of colonization throughout its occupation of the Palestinian Territory.⁴⁸ This policy, pursued by Israeli public authorities, consists of encouraging and organizing the transfer of part of the Israeli civilian population into the Occupied Palestinian Territory, a policy that contravenes international law (Article 49(6) of the Fourth Geneva Convention),⁴⁹ and that most likely constitutes a war crime under the Rome Statute.⁵⁰ The Court further notes that the presence and expansion of Israeli settlements have been extensively analyzed by various United Nations bodies and agencies,⁵¹ including with respect to their effects. By way of example, in its Resolution 19/17 of 10 April 2012, the Human Rights Council established an independent international fact-finding mission tasked with studying the impact of Israeli settlements on the civil, political, economic, social, and cultural rights of Palestinians in the Occupied Palestinian Territory, including East Jerusalem. The Secretary-General of the United Nations and the United Nations High Commissioner for Human Rights regularly publish reports documenting the facts related to the establishment and expansion of Israeli settlements. The issue of Israel's settlement activities and their effects is also addressed in reports of the Independent International Commission of Inquiry and in those of various Special Rapporteurs, including the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. These reports draw on numerous sources, including first-hand

⁴⁸ Advisory Opinion of 19 July 2024, para. 113. This also constitutes a grave breach of Additional Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Article 85(4)(a)) and a war crime (Article 85(5)), although Israel has not ratified this Protocol.

⁴⁹ *Ibid.*, para. 115, citing the Advisory Opinion of 9 July 2004, para. 120.

⁵⁰ Rome Statute, Article 8(2)(b)(viii). See Éric DAVID and Ghislain POISSONNIER, "Les colonies israéliennes en Cisjordanie, un crime de guerre ?", *Revue des droits de l'homme*, vol. 16, 2019.

⁵¹ Advisory Opinion of 19 July 2024, para. 113.

information, to provide detailed factual analysis of Israel’s settlement policy.⁵² They have enabled the Court to describe with precision how the Israeli authorities organize the transfer of Israeli civilians into the Occupied Palestinian Territory⁵³ and the annexation of large parts of that territory.⁵⁴

The Court thus analyzes the following:

- The large-scale confiscations or requisitions of land for the benefit of Israeli settlements;⁵⁵
- The exploitation of natural resources (including water, minerals, and agricultural land) in the Occupied Palestinian Territory by the Israeli authorities for the benefit of the Israeli population, to the detriment, and sometimes total exclusion, of the Palestinian population;⁵⁶
- The extension of Israeli military legislation to the Palestinian population, and the extension of Israeli civil legislation to the Occupied Palestinian Territory (in order to apply it to Israeli settlers);⁵⁷
- The forced displacement of the Palestinian population living in Area C of the West Bank, resulting from forced evictions, home demolitions, and restrictions on residence and freedom of movement;⁵⁸
- The violence of settlers and Israeli military personnel against Palestinians, which the Israeli authorities fail to prevent and punish.⁵⁹

All of these practices, resulting from the transfer of Israeli civilians into the Occupied Palestinian Territory and the annexation of parts of that territory, are contrary in particular to the law of occupation (as codified in the Hague Regulations and the Fourth Geneva Convention), as well as to the right of the Palestinian people to self-determination and sovereignty over their natural resources.

In its Opinion of 19 July 2024, the Court does not pursue its reasoning further, as it is sufficient to demonstrate the illegality of Israeli colonization and its effects. However, it is clear that these Israeli policies and practices accompanying the colonization and annexation of parts of the Occupied Palestinian Territory also constitute violations of international human rights law. They result in breaches of the Palestinians’ economic and social rights, as well as their civil and

⁵² *Idem*.

⁵³ *Ibid.*, para. 115, where various reports by United Nations bodies are referenced.

⁵⁴ *Ibid.*, paras. 162-173.

⁵⁵ *Ibid.*, paras. 120-123.

⁵⁶ *Ibid.*, paras. 124-133. On the issue of sovereignty over natural resources, see in particular Mamadou HÉBÉ and Catherine MAIA, “Article 13 : La présente Convention et la souveraineté permanente sur les richesses et les ressources naturelles”, in Giovanni DISTEFANO, Gloria GAGGIOLI, and Aymeric HÈCHE (dir.), *Commentaire de la Convention de Vienne sur la succession d’États en matière de traités*, Bruylant, 2016, pp. 459-528.

⁵⁷ Advisory Opinion of 19 July 2024, paras. 134-141.

⁵⁸ *Ibid.*, paras. 142-147.

⁵⁹ *Ibid.*, paras. 148-154.

political rights. This had already been noted in the 9 July 2004 Opinion on the *Wall*,⁶⁰ although that analysis was limited to the effects of the construction of the separation wall and its legal regime. The scope of the 19 July 2024 Opinion is broader than that of 2004, as it concerns the effects of the policy of colonization and annexation across the entire Occupied Palestinian Territory, and thus points to clearer and more extensive breaches of international human rights law. These include violations of economic and social rights resulting from the confiscation or requisition of land, the exploitation of natural resources, and the forced displacement of the Palestinian population. Among the rights violated are the right to work,⁶¹ the right to an adequate standard of living,⁶² the right to health,⁶³ and the right to education.⁶⁴ There are also violations of civil and political rights resulting from the forced displacement of the Palestinian population, the extension of Israeli legislation, and the violence committed by settlers and Israeli forces. The right to life,⁶⁵ the right to security,⁶⁶ and the right to a fair trial,⁶⁷ are thus violated, both in their criminal and in their civil and administrative components (particularly with regard to the possibility of contesting the various violations of human rights). Also gravely infringed are the right to freedom of movement,⁶⁸ the right to practice one's religion,⁶⁹ and the right to respect for family and private life.⁷⁰

2.2. The consequences of discriminatory laws and measures

Another aspect of question (a) posed by the United Nations General Assembly concerns the legal consequences of the adoption by Israel of “*related discriminatory legislation and measures*”.⁷¹

The Court considers that it must itself determine whether the laws and measures referred to in the General Assembly's question are discriminatory.⁷²

In its Opinion of 19 July 2024, the Court begins by recalling the definition of the concept of discrimination under international human rights law,⁷³ and notes that the principle of non-discrimination forms part of customary international law.⁷⁴ It then states that it will determine

⁶⁰ Advisory Opinion of 9 July 2004, paras. 132-136.

⁶¹ This right is guaranteed by Articles 6 and 7 of the ICESCR.

⁶² This right is guaranteed by Articles 7 and 11 of the ICESCR and Article 27 of the CRC. It includes the right to access food, clothing, and housing.

⁶³ This right is guaranteed by Articles 10 and 12 of the ICESCR and Article 24 of the CRC.

⁶⁴ This right is guaranteed by Articles 13 and 14 of the ICESCR and Article 28 of the CRC.

⁶⁵ This right is guaranteed by Article 6 of the ICCPR.

⁶⁶ This right is guaranteed by Article 9 of the ICCPR. In paragraph 242 of the Advisory Opinion of 19 July 2024, the Court identifies “the right to liberty and security of person” among the rights of Palestinians that are being violated.

⁶⁷ This right is guaranteed by Articles 9 and 14 of the ICCPR.

⁶⁸ This right is guaranteed by Article 12 of the ICCPR.

⁶⁹ This right is guaranteed by Articles 17, 18, and 27 of the ICCPR.

⁷⁰ This right is guaranteed by Articles 17, 18, 23, and 27 of the ICCPR.

⁷¹ See note 2 above.

⁷² Advisory Opinion of 19 July 2024, paras. 74 and 180.

⁷³ *Ibid.*, paras. 185-189. See Articles 2(1), and 26 of the ICCPR, Article 2(2), of the ICESCR, and Article 1 of the CERD.

⁷⁴ Advisory Opinion of 19 July 2024, para. 189.

whether the laws and measures adopted by Israel establish distinctions based on race, religion, or ethnicity with regard to the enjoyment by Palestinians of their human rights, and whether such differential treatment is justified, that is, whether it is reasonable, objective, and pursues a legitimate public interest.

On the basis of this definition, the Court examines the practical modalities and effects of:

- The Israel's policy on residence permits in East Jerusalem;⁷⁵
- The restrictions on the freedom of movement of Palestinians;⁷⁶
- The demolitions of Palestinian properties (whether punitive or for lack of building permits).⁷⁷

The Court concludes that these laws and measures violate the principle of non-discrimination and amount to discriminatory practices, particularly on the basis of race, religion, and ethnic origin⁷⁸, and that they exhibit a systemic character.⁷⁹ Israel's policy on residence permits in East Jerusalem, as imposed on Palestinians in the Occupied Palestinian Territory, violates, on a discriminatory basis, the right to respect for private and family life,⁸⁰ notably by preventing couples and families from living together. The restrictions imposed by Israel on the freedom of movement of Palestinians within the Occupied Palestinian Territory violate, on a discriminatory basis, not only the right to freedom of movement,⁸¹ but also obstruct the exercise of other rights, including the rights to work, health, education, and an adequate standard of living,⁸² as well as the right to be protected against arbitrary or unlawful interference with one's family.⁸³ The demolition of Palestinian homes – whether carried out as criminal sanctions, punitive actions, or administrative measures due to the lack of building permits in the Occupied Palestinian Territory (while such permits are rarely granted to Palestinians but routinely approved for settlers⁸⁴ – violates, on a discriminatory basis, the right to property⁸⁵ and the right to be protected against arbitrary or unlawful interference with one's family.⁸⁶

⁷⁵ *Ibid.*, paras. 192-197.

⁷⁶ *Ibid.*, paras. 198-206.

⁷⁷ *Ibid.*, paras. 207-222.

⁷⁸ *Ibid.*, para. 223. See Articles 2(1), and 26 of the ICCPR, Article 2(2), of the ICESCR, and Article 1 of the CERD.

⁷⁹ Opinion of 19 July 2024, paras. 223-229.

⁸⁰ This right is guaranteed by Articles 17, 18, 23, and 27 of the ICCPR and Article 10 of the ICESCR. The Advisory Opinion of 19 July 2024, para. 196, specifically refers to Article 23 of the ICCPR and Article 10(2) of the ICESCR.

⁸¹ This right is guaranteed by Article 12 of the ICCPR. In paragraph 242 of the Advisory Opinion of 19 July 2024, the Court identifies “freedom of movement” among the rights of Palestinians that are being violated.

⁸² Advisory Opinion of 19 July 2024, para. 206, citing the Advisory Opinion of 9 July 2004, para. 134.

⁸³ Article 17(1) of the ICCPR, to which reference is made in paragraph 206 of the Advisory Opinion of 19 July 2024.

⁸⁴ Advisory Opinion of 19 July 2024, paras. 215-216.

⁸⁵ Article 5(d)(v) of the CERD.

⁸⁶ Article 17(1) of the ICCPR, to which reference is made in paragraphs 210 and 220 of the Advisory Opinion of 19 July 2024.

The Court observes that the policies and practices implemented by Israel in the West Bank and East Jerusalem create a separation between the Palestinian population and Israeli settlers. This separation is both physical (through housing and road systems) and legal (through distinct legal and judicial systems). These laws and measures impose and maintain an almost complete separation between the Israeli settler communities and the Palestinian communities. For this reason, the Court finds that Israel's laws and measures constitute a violation of Article 3 of the ICERD,⁸⁷ a provision which requires States to act to prevent, prohibit, and eliminate racial segregation and apartheid. Cautiously, the Court refrains from expressly stating that these discriminatory laws and measures amount to a situation of apartheid. It limits itself to affirming that the current regime of racial discrimination amounts either to a system of racial segregation or to a system of apartheid, but that, in any case, it constitutes a serious form of racial discrimination.⁸⁸

2.3. The violation of the right to self-determination

Finally, the Opinion of 19 July 2024 addresses the consequences of Israel's policies and practices in the Occupied Palestinian Territory through the lens of the right to self-determination. In addition to the settlement policy and discriminatory laws and measures, the annexation of certain parts of the Occupied Palestinian Territory is also addressed.⁸⁹

The settlement policy and the practice of annexation have significant effects on Palestinian territorial integrity, including the fragmentation of the West Bank, the separation of East Jerusalem, the expansion of settlements and settler-only roads, the isolation of Palestinian communities, and the annexation of parts of the Occupied Palestinian Territory.⁹⁰ These effects amount to serious infringements of Palestinian territorial integrity.⁹¹ Yet, under customary international law, the right to territorial integrity is recognized as a “corollary of the right to self-determination”.⁹²

In the same vein, the policy of settlement, the practice of annexation, and the adoption of discriminatory laws and measures undermine – through their effects (the displacement of Palestinians from parts of the Occupied Palestinian Territory, and the separation of the Palestinian population between Gaza, the West Bank, and East Jerusalem) – the integrity of the Palestinian

⁸⁷ Advisory Opinion of 19 July 2024, paras. 226-229.

⁸⁸ An examination of the separate opinions of the judges reveals how some, such as the President of the Court, Nawaf Salam, or the South African judge, Dire Tladi, clearly view Israeli policies as amounting to the crime of apartheid, while others, such as the German judge, Georg Nolte, leave open the question of the precise legal characterization of these discriminatory policies.

⁸⁹ Advisory Opinion of 19 July 2024, paras. 162-173.

⁹⁰ *Ibid.*, paras. 164 and 238.

⁹¹ *Ibid.*, para. 238.

⁹² *Ibid.*, para. 237, referring to the Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, of 25 February 2019, para. 160.

people. However, every people is legally protected against acts aimed at dispersing its population and undermining its unity.⁹³

Israel's exploitation of the natural resources in the Occupied Palestinian Territory for its own benefit and for that of the Israeli settlements deprives the Palestinian people of the enjoyment of the natural resources located on their territory.⁹⁴ Yet, the right to exercise permanent sovereignty over natural resources – a principle of customary international law – is an element of the right to self-determination.⁹⁵

Israeli policies and practices result in an increased dependence of the West Bank, East Jerusalem, and especially the Gaza Strip, on Israel for the provision of essential goods and services.⁹⁶ They undermine the Palestinian people's ability to develop their economy and improve their standard of living. A core component of the right to self-determination is, however, precisely the right of peoples to freely pursue their economic, social, and cultural development.⁹⁷

It follows from these violations – on territorial integrity, on the integrity of the population, on the right to exercise sovereignty over natural resources, and on the right to freely pursue economic and social development – that Israel is in violation of the right of the Palestinian people to self-determination, which the ICJ recognizes as a peremptory norm of international law.⁹⁸ While the Court had already indicated that the right to self-determination is, indeed, a “fundamental human right”,⁹⁹ it expresses this even more clearly in the present case regarding the situation in the Occupied Palestinian Territory.¹⁰⁰

⁹³ *Ibid.*, para. 239.

⁹⁴ *Ibid.*, paras. 133 and 240.

⁹⁵ *Ibid.*, para. 240, referring to the Judgment in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, of 19 December 2005, para. 244.

⁹⁶ Advisory Opinion of 19 July 2024, para. 241.

⁹⁷ UNGA, Resolutions 1514 (XV) and 2625 (XXV).

⁹⁸ In the Advisory Opinion of 19 July 2024, it is noteworthy that the right to self-determination – set out in Article 1 of both the ICCPR and the ICESCR in identical terms – is explicitly recognized by the ICJ for the first time as a peremptory norm (para. 233). This recognition is all the more significant given the Court's traditionally cautious jurisprudential approach to this notion. See, in particular, Catherine MAIA, “Consécration du *jus cogens* : un dialogue à raviver entre cours internationale et régionales dans l'œuvre de reconnaissance de droits humains impératifs”, *Civitas Europa*, vol. 45, 2020, pp. 297-315.

⁹⁹ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, para. 144.

¹⁰⁰ Advisory Opinion of 19 July 2024, para. 233, referring to the Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* of 25 February 2019, para. 144.

3. POSSIBLE REMEDIES FOR VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW RESULTING FROM ISRAEL'S POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY

In light of the diversity and gravity of the violations of international human rights law identified in the Advisory Opinion of 19 July 2024 – violations stemming both from Israeli policies and practices and from Israel's ongoing unlawful presence in the Occupied Palestinian Territory – the question of Israel's international responsibility necessarily arises, as does the possible avenues of redress. In this regard, while the importance of reparation was reiterated by the ICJ (A), the possible judicial (B) or quasi-judicial (C) remedies were not elaborated on in the Opinion of 19 July 2024 and therefore warrant further examination. Some of them have already been recommended by the resolution adopted by the General Assembly on 18 September 2024.¹⁰¹

3.1. The importance of obtaining reparation for victims

The legal consequences arising from Israel's policies and practices and the wrongfulness of Israel's presence in the Occupied Palestinian Territory are addressed in the final part of the Court's Opinion, just before the operative part,¹⁰² comprising the consequences for Israel, for other States, and for the United Nations.

Regarding the legal consequences for Israel, the ICJ recalls that Israel's continued presence in the Occupied Palestinian Territory – in violation of the prohibition on the acquisition of territory by force and of the Palestinian people's right to self-determination – constitutes an ongoing internationally wrongful act engaging that State's international responsibility. Consequently, the first obligation, firmly grounded in general international law, is the duty to bring this unlawful situation to an end without delay.¹⁰³

The same obligation to cease wrongful acts applies to Israel's policies and practices found unlawful by the Court: "Israel has an obligation to put an end to those unlawful acts. In this respect, Israel must immediately cease all new settlement activity. Israel also has an obligation to repeal all legislation and measures creating or maintaining the unlawful situation, including those which discriminate against the Palestinian people in the Occupied Palestinian Territory, as well as all measures aimed at modifying the demographic composition of any parts of the territory"¹⁰⁴.

¹⁰¹ Draft Resolution A/ES-10/L.31/Rev.1 was adopted on 18 September 2024, during the 10th Emergency Special Session of the General Assembly, by 124 votes in favour, 43 abstentions and 14 votes against (including those of the United States and Israel). Making use for the first time of a prerogative granted in May 2024, Palestine – which holds the status of non-member observer State at the United Nations – submitted the draft so that the main lines of the ICJ's July Advisory Opinion would be incorporated into a General Assembly resolution.

¹⁰² Advisory Opinion of 19 July 2024, paras. 265-284.

¹⁰³ *Ibid.*, para. 267.

¹⁰⁴ *Ibid.*, para. 268.

Applied to Israel's obligations under international human rights law, this entails that the human rights violations committed against the Palestinian population, as identified by the Court, must cease.

As in its 9 July 2004 Advisory Opinion on the *Wall*,¹⁰⁵ the ICJ also reiterates that Israel has an obligation to make reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned.¹⁰⁶ Although the Court does not specify the modalities of such reparation, leaving this to be determined by the parties, it rightly recalls that, in accordance with applicable rules of international law, reparation encompasses restitution, compensation, and satisfaction.¹⁰⁷ Applied to Israel's obligations under international human rights law, this means that damages resulting from the human rights violations of the Palestinian population attributable to Israel, as described by the Court, must give rise to a right to reparation, which lies with the Israeli authorities.

Regarding the legal consequences for other States, the *erga omnes* nature of certain obligations violated by Israel under international humanitarian law and international human rights law implies that all States must cooperate with the United Nations to implement the modalities decided by the Organization to bring Israel's unlawful presence in the Occupied Palestinian Territory to an end and to give effect to the Palestinian people's right to self-determination.¹⁰⁸ On this point, in line with numerous resolutions of the Security Council and the General Assembly, the ICJ considers that: "in view of the character and importance of the rights and obligations involved, all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of

¹⁰⁵ Advisory Opinion of 9 July 2004: "Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned" by the construction of the wall in the Occupied Palestinian Territory (para. 152) and "Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered" (para. 153). This obligation has already been recognized in the context of the ICJ's contentious jurisdiction. Thus, in its judgment of 19 December 2005 in the case concerning *Armed Activities on the Territory of the Congo*, the Court held that Uganda was responsible for several internationally wrongful acts, namely "illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resource". These acts "resulted in injury to the DRC and to persons on its territory", for which Uganda was under an obligation to make reparation (para. 259).

¹⁰⁶ Advisory Opinion of 19 July 2024, para. 269. Among the ICJ judges, only Judge Sebutinde considered in her dissenting opinion that the question of reparation did not arise: "This is clearly a situation where there is enough blame to go round, not just of Israel but also of Arab Palestinians (for the failure of prior peace negotiations and for resorting to war) and, to some extent, the international community, for taking so long to find a lasting solution to the Israeli-Palestine conflict" (para. 61).

¹⁰⁷ In the context of another ongoing conflict, the one initiated by Russia against Ukraine in 2022, the General Assembly recalled the importance of reparation in the event of violations of international law in its Resolution A/RES/ES-11/5 of 15 November 2022, entitled "Furtherance of remedy and reparation for aggression against Ukraine". In this case, the General Assembly recommended the establishment of "an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine" (para. 3).

¹⁰⁸ Advisory Opinion of 19 July 2024, para. 275.

Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory. It is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end. In addition, all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention".¹⁰⁹

These obligations are reminiscent of the specific consequences of a serious breach of an obligation arising under a peremptory norm of general international law, as set out in Article 41 of the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts. They also extend to international organizations in general, and to the United Nations in particular, which the ICJ recognizes as having a responsibility to identify appropriate measures to bring the established violations to an end.¹¹⁰ Although the ICJ does not elaborate on such measures – likely in deference to the wide discretion enjoyed by the Security Council and the General Assembly as political organs – the United Nations has a central role to play in ensuring that Israel complies with its obligation of reparation.

In this regard, as Judge Tladi suggested in his declaration attached to the 19 July 2024 Advisory Opinion: “In view of the nature and scale of the violations of international law identified by the Court, and the potentially large pool of claimants resulting therefrom, the United Nations might want to consider the establishment of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of Israel identified in the Opinion. The revitalization and expansion of the mandate of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD), which was established by the General Assembly in 2006 following the issuance of the Wall Advisory Opinion, is relevant in this respect”¹¹¹.

Although it is not a compensation commission, a claims settlement body, or a judicial or quasi-judicial entity, this subsidiary organ of the General Assembly¹¹² was created to establish a

¹⁰⁹ *Ibid.*, para. 279.

¹¹⁰ *Ibid.*, para. 285, point 9 of the operative part. It should be noted that, unlike the English version of the Advisory Opinion, which states that the General Assembly and the Security Council “should consider the precise modalities and further action required”, the French version indicates that it is an obligation for the United Nations, which “must examine” (“doit examiner”) such measures.

¹¹¹ *Ibid.*, Declaration of Judge Tladi, para. 60

¹¹² UNGA, Resolution A/RES/ES-10/17 of 15 December 2006.

register of damages caused to all natural and legal persons affected by the construction of the wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem. However, due to Israel's refusal to comply with the 9 July 2004 Opinion, this initiative did not have the expected results. It has regained prominence, since in its Resolution of 18 September 2024, the General Assembly recognized “the need for the establishment of an international mechanism for reparation for all damage, loss or injury arising from the internationally wrongful acts of Israel in the Occupied Palestinian Territory”.¹¹³ It also called “for the creation by Member States, in coordination with the United Nations and its relevant bodies, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as to the Palestinian people, caused by the internationally wrongful acts of Israel in the Occupied Palestinian Territory, as well as to promote and coordinate evidence-gathering and initiatives aimed at securing such reparation by Israel”.¹¹⁴

In this regard, another initiative deserves mention: that of the United Nations Compensation Commission (UNCC). Established in 1991 as a subsidiary body of the Security Council,¹¹⁵ this Commission was mandated to compensate individuals, corporations, and governments for losses and damages suffered as a result of Iraq's invasion and occupation of Kuwait, through a compensation fund financed by a percentage of revenues from Iraqi oil and petroleum product exports. Given the high number of claims and the complexity of the damages (human, material, economic, and environmental) to be assessed, the Commission operated for more than three decades, until 2022,¹¹⁶ and processed nearly 1.5 million claims, awarding a total of \$52.4 billion in compensation. Transposing such an initiative to the Israeli case could be relevant. However, it remains rather hypothetical at this stage, not only because of the likely U.S. veto, but also because the necessary funds would have to be provided by Israel, without excluding the possibility of international financing.

3.2. Through judicial remedies

To obtain redress for violations of international human rights law in the Occupied Palestinian Territory resulting from Israel's policies and practices, several judicial avenues are available at the international, regional, and national levels.

¹¹³ UNGA, Draft Resolution A/ES-10/31/Rev.1, adopted on 18 September 2024, para. 10.

¹¹⁴ *Idem*.

¹¹⁵ UNSC Resolutions 686 of 2 March 1991, 687 of 3 April 1991, and 692 of 20 May 1991.

¹¹⁶ By its Resolution 2621 (2022), the Security Council decided to terminate the Commission's mandate, considering that it had completed the task entrusted to it 31 years earlier following Iraq's invasion of Kuwait.

At the international level, the ICJ can be seized of disputes between States concerning violations of international law and, in that context, determine reparations, particularly where the parties are unable to reach an agreement. For example, in its Judgment of 9 February 2022, delivered in the case concerning *Armed Activities on the Territory of the Congo*, the ICJ set the amounts of compensation that Uganda was required to pay to the Democratic Republic of the Congo for damages caused by violations of its international obligations, as previously found in the Court's judgment of 19 December 2005, including the occupation of the Ituri region and breaches of international human rights and humanitarian law. However, while both Palestine and Israel are entitled to appear before the ICJ, neither State has made a declaration under Article 36(2) of the Statute of the Court accepting its compulsory jurisdiction, which would allow the Court to adjudicate any legal dispute between them *ipso jure*, without the need for a special agreement. Furthermore, given the current state of affairs, it appears unlikely that Israel would recognize the ICJ's jurisdiction, either by way of a special agreement or through *forum prorogatum*.

Human rights treaties may also provide for the possibility of referring disputes concerning their application and interpretation to the ICJ. This is the case, with regard to the instruments ratified by Israel, of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (Article 9), the ICERD (Article 22), the CEDAW (Article 29) and the CAT (Article 30). Since both Israel and South Africa are parties to the Genocide Convention, South Africa invoked Article 9 of that treaty to bring a case against Israel before the ICJ in December 2023.¹¹⁷ The case is currently pending and has already led to several ICJ orders on provisional measures.¹¹⁸ The Opinion of 19 July 2024 could thus serve as a basis or a powerful argument for further ICJ proceedings against Israel and/or its allies,¹¹⁹ on the basis of jurisdiction established by

¹¹⁷ According to Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide: "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide (...), shall be submitted to the International Court of Justice at the request of any of the parties to the dispute". Thus, if a State considers that another State has violated the Convention, it may bring the dispute before the ICJ, including in cases where a State is accused of failing to comply with its obligations, whether by committing genocide or by failing to prevent or punish it.

¹¹⁸ ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Orders of 26 January, 28 March, and 24 May 2024. See: Catherine MAIA, "Guerre à Gaza : Israël accusé de 'génocide' par l'Afrique du Sud devant la Cour internationale de Justice", *Journal du droit transnational*, 18 January 2024; Ghislain POISSONNIER, "La Cour internationale de Justice précise les obligations d'Israël par rapport au risque de génocide à Gaza", *Dalloz*, 2024, p. 536. It should be noted that, with the exception of the Genocide Convention, Israel has expressed reservations to the compromissory clauses of the main human rights treaties, which is why only this convention could be invoked before the ICJ.

¹¹⁹ See the application filed by Nicaragua against Germany before the ICJ (Germany being the second-largest arms supplier to Israel) concerning *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory*, which led to the Order of 30 April 2024, deciding that there was no need to indicate provisional measures. See Catherine MAIA and Aklesso Jacques AKPE, "Arms sales to Israel against the backdrop of the war in Gaza: the ICJ rejects Nicaragua's request for provisional measures against Germany", *Journal du droit transnational*, 10 May 2024. The General Assembly resolution of 18 September 2024 also calls upon all States, in this regard and in accordance with their obligations under international law, to take measures to end "the provision or transfer of arms, munitions and

various human rights treaties. The particularly detailed content of the Opinion concerning racial segregation resulting from Israeli policies and practices in the Occupied Palestinian Territory – in breach of the ICERD – constitutes a strong invitation in this regard. If violations were recognized by the Court, these procedures could lead to reparations for the harm suffered by victims, including victims located in third States.

Still at the international level, the International Criminal Court (ICC) has jurisdiction to prosecute individuals responsible for international crimes that amount to serious violations of international human rights law, especially genocide, crimes against humanity, and war crimes.¹²⁰ Unlike Israel, Palestine ratified the Rome Statute in 2015. In 2018, pursuant to Articles 13(a) and 14 of the Rome Statute, the Palestinian Government referred the situation in the State of Palestine since 13 June 2014 to the Prosecutor, a move supported by further State referrals in 2023 (South Africa, Bangladesh, Bolivia, Comoros, Djibouti) and 2024 (Chile, Mexico). Following the decision of the ICC Pre-Trial Chamber in 2021,¹²¹ the Office of the Prosecutor opened an investigation into alleged war crimes and crimes against humanity committed in the Occupied Palestinian Territory.¹²² Since trials *in absentia* are not permitted, in May 2024, the Prosecutor submitted requests to the Pre-Trial Chamber for arrest warrants against two Israeli leaders¹²³ and three Hamas leaders.¹²⁴

Should cases be opened leading to the conviction of Israeli officials, the ICC could order individual reparations directly for Palestinian victims who have suffered harm as a result of the crimes for which a person has been convicted, which may include financial compensation, reimbursement for stolen property, or restitution of property or assets.¹²⁵ Where crimes have affected large groups or entire communities, the ICC may also award collective reparations, which can take the form of rehabilitation programs, community rebuilding projects, access to medical services, or other measures to restore victims' rights and dignity. The ICC has also established a Trust Fund for Victims,¹²⁶ which can be used to finance reparations or assistance programs for victims, especially when the convicted person is indigent or unable to cover the reparations ordered by the Court, which has so far always been the case.

related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory” (para. 5 (b)).

¹²⁰ Rome Statute, Article 5.

¹²¹ See: ICC, Pre-Trial Chamber, ICC-01/18-143, 5 February 2021; François DUBUISSON and Ghislain POISSONNIER, “La Cour pénale internationale et la Palestine : une décision hors du commun”, *Dalloz*, 2021, p. 642.

¹²² See Catherine MAIA and Aklesso Jacques AKPE, “Lorsque la justice internationale s’immisce dans le conflit en cours à Gaza”, *Multipol*, 14 June 2024.

¹²³ Prime Minister Benjamin Netanyahu and Minister of Defense Yoav Gallant.

¹²⁴ Yahya Sinwar, leader of the Islamic Resistance Movement Hamas in the Gaza Strip, Mohammed Diab Ibrahim Al-Masri, head of Hamas’s armed wing, and Ismail Haniyeh, head of the political wing of Hamas – the latter two having been killed in Israeli strikes in July 2024, in Gaza and Tehran respectively.

¹²⁵ Rome Statute, Article 75.

¹²⁶ *Ibid.*, Article 79.

At the regional level, although Israel is not a member of the Council of Europe and the European Court of Human Rights (ECtHR) therefore has no direct jurisdiction over this territory, individual applications can nonetheless be considered. For example, European nationals affected by Israeli policies and practices could theoretically bring actions against their own States before the ECtHR for failing to protect their rights in response to Israeli actions. The ECtHR could also adjudicate cases involving European companies operating in Israeli settlements or providing support to the Israeli army and/or administration. These companies may, through their activities, contribute to violations of rights protected under the European Convention on Human Rights. Consequently, States parties to the European Convention could be held responsible for failing to regulate or penalize the conduct of such companies. However, given that the ECtHR lacks direct jurisdiction over private companies, complaints would first need to be brought before national courts, and only then, once domestic remedies are exhausted, could they be submitted to the ECtHR.

Similarly, the Court of Justice of the European Union (CJEU) could be involved if European companies violate EU law, particularly regarding their legal obligations or trade involving products from settlements. While EU regulations require specific labelling for products originating from Israeli settlements, they do not prohibit their importation.¹²⁷ This could form the basis for legal challenges before national courts and EU institutions.¹²⁸ Finally, the EU-Israel Association Agreement, which entered into force in 2000, provides in Article 2 that: “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guide their internal and international policy and constitutes an essential element of this Agreement”. Given the nature and scope of the human rights violations described in the Opinion of 19 July 2024, this agreement could potentially be challenged before the CJEU.¹²⁹

¹²⁷ On 12 November 2015, the European Commission adopted an “Interpretative Notice” calling on EU Member States to introduce specific labelling requirements for products originating in Israeli settlements sold on the European market (OJ 2015, C 375, p. 4). The Court of Justice of the European Union, seized for a preliminary ruling by the French *Conseil d’État*, upheld this requirement on 12 November 2019 (Case C-363/18, RTD eur. 2020. 685, obs. Isabelle BOSSE-PLATIÈRE; RD rur. 2020. Comm. 59, obs. Éric PICHET and Ghislain POISSONNIER).

¹²⁸ The General Assembly Resolution of 18 September 2024 calls on all States, in this regard, and in accordance with their obligations under international law, to “take steps towards ceasing the importation of any products originating in the Israeli settlements” (para. 5, b)).

¹²⁹ See Yussef AL TAMIMI, “Implications of the ICJ Advisory Opinion for the EU-Israel Association Agreement”, *EJIL: Talk!*, 30 July 2024. It is worth noting that the association *Juristes pour le Respect du Droit International* (JURDI), based in Paris, filed a lawsuit for failure to act before the CJEU on 17 July 2025 against the European Commission and the Council of the European Union, alleging wrongful inaction in the face of serious violations of international law in the Occupied Palestinian Territory. See Florian BOUHOT, “Gaza: une association d’experts en droit international intente une action en justice face à l’inaction grave de l’UE”, *Le Parisien*, 16 July 2025.

At the domestic level, the Israeli Supreme Court, sitting as the High Court of Justice, may be seized by Palestinians or human rights organizations seeking to challenge actions by the Israeli government in the Occupied Palestinian Territory. However, this court's decisions are often criticized for partiality and for failing to adequately protect the rights of Palestinians, and are not always respected by Israeli executive or administrative authorities.¹³⁰ Furthermore, courts in certain States that apply the principle of quasi-universal jurisdiction, such as Spain, the Netherlands, Belgium, or France,¹³¹ may offer remedies to Palestinian victims seeking to prosecute individuals or companies for serious human rights violations and breaches of international humanitarian law, such as torture, war crimes, or crimes against humanity, regardless of where the crimes were committed.¹³² In some States, such as the United States with the Alien Tort Claims Act of 1789, civil actions could be brought against individuals or companies involved in human rights violations in Palestine. However, such proceedings remain difficult to initiate due to restrictive national legislation in the States where such legal frameworks exist.

Furthermore, with respect to business enterprises, while the UN Guiding Principles on Business and Human Rights were adopted by the Human Rights Council on 16 June 2011 to enhance the accountability of both public and private economic actors concerning the human rights impacts of their activities, these principles are not legally binding. As a result, the implementation of their three pillars – namely, the State's duty to protect human rights, the corporate responsibility to respect human rights through due diligence, and the right of victims to access effective remedies – depends largely on regional and national laws. In Europe, under civil society pressure, a few States – notably France, with its 2017 Duty of Vigilance Law (Law No. 2017-399 on the duty of vigilance of parent companies and ordering companies)¹³³ – have adopted specific laws requiring companies to establish vigilance plans aimed at preventing and avoiding human rights violations. The EU Directive 2024/1760 of 13 June 2024 on corporate sustainability due diligence also requires companies to prevent, cease, or mitigate their negative impacts on human rights.¹³⁴ The Opinion of 19 July 2024 could facilitate or encourage legal actions, whether

¹³⁰ See: David KRETZMER and Yael RONEN, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, Oxford University Press, 2021; François DUBUISSON, “La construction du mur en territoire palestinien occupé devant la Cour suprême d’Israël : analyse d’un processus judiciaire de légitimation”, in *Droit du pouvoir, pouvoir du droit. Mélanges offerts à Jean Salmon*, Bruylant, 2007, pp. 889-927.

¹³¹ Article 689-11 of the French Code of Criminal Procedure.

¹³² The General Assembly Resolution of 18 September 2024, emphasizes “the need to ensure accountability for the most serious crimes under international law through appropriate, fair and independent investigations and prosecutions at the national or international level, and to ensure justice for all victims and the prevention of future crimes” (para. 11).

¹³³ Articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code.

¹³⁴ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJUE of 5 July 2024. It applies to European companies and parent companies employing more than 1,000 people and generating a

civil or criminal, against French or European companies operating in Israeli settlements in the West Bank and East Jerusalem, or against those linked to Israeli companies involved in the policies and practices conducted in the Occupied Palestinian Territory. Its content recognizes the relevance of the approach adopted by the Human Rights Council, which consisted, on the one hand, of documenting violations of international human rights law suffered by the Palestinian civilian population as a result of Israeli policies and practices and, on the other hand, of formulating recommendations not only to Israel but also to third States, including in relation to non-State actors, such as business enterprises involved in settlement activity.¹³⁵

3.3. Through quasi-judicial remedies

Reparation for victims may also be pursued through quasi-judicial mechanisms. Like Palestine, Israel is party to seven of the nine core international human rights treaties, thereby subjecting it to monitoring by various UN treaty bodies – composed of experts responsible for overseeing the implementation of the respective treaties – to which Israel submits State reports on its domestic human rights situation. However, with regard to the acceptance of the competence of these committees to receive and consider individual or inter-State complaints, Israel has adopted a selective position.

As for the treaties to which Israel is a party, it has not ratified any of the optional protocols that permit individuals to submit “communications” against the State.¹³⁶ Thus, none of the UN treaty bodies has competence to receive individual complaints against Israel. In contrast, Palestine

worldwide turnover exceeding 450 million euros, as well as to franchises operating in the European Union with a global turnover exceeding 80 million euros, provided that at least 22.5 million euros have been generated from royalties.

¹³⁵ *Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. Report of the United Nations High Commissioner for Human Rights*, A/HRC/43/71, 28 February 2020. The list of 112 companies concerned (Israeli and foreign) was updated on 30 June 2023.

¹³⁶ Israel has not ratified the following instruments: the First Optional Protocol of 16 December 1966 to the ICCPR concerning individual communications to the Human Rights Committee; the Optional Protocol of 6 October 1999 to CEDAW concerning individual communications to the Committee on the Elimination of Discrimination against Women; the Optional Protocol of 13 December 2006 to the Convention on the Rights of Persons with Disabilities concerning individual communications to the Committee on the Rights of Persons with Disabilities; the Optional Protocol of 19 December 2011 to the CRC concerning individual communications to the Committee on the Rights of the Child; and the Optional Protocol of 10 December 2008 to the ICESCR concerning individual communications to the Committee on Economic, Social and Cultural Rights. Israel has also not accepted the mechanism provided for in Article 22 of the CAT concerning individual communications to the Committee against Torture, nor the mechanism under Article 14 of ICERD concerning individual communications to the Committee on the Elimination of Racial Discrimination.

has accepted such mechanisms for some committees,¹³⁷ and two individual complaints have already been filed against it before the Committee on the Rights of Persons with Disabilities.¹³⁸

However, Israel has accepted the competence of two committees to examine inter-State complaints. This is the case for the Committee against Torture¹³⁹ and the Committee on the Elimination of Racial Discrimination, for which the inter-State complaint mechanism is automatic.¹⁴⁰ Israel thus accepts that other States may file complaints against it before these two committees, with the exception of individuals, who cannot seek redress through this channel.

In this regard, it is noteworthy that, on 23 April 2018, Palestine submitted an inter-State communication against Israel to the Committee on the Elimination of Racial Discrimination, under Articles 11 to 13 of the corresponding Convention, which set out a detailed procedure. On 12 December 2019, the Committee decided that it had jurisdiction, and then, on 30 April 2021, that the communication was admissible. On 30 November of the same year, an *ad hoc* Conciliation Commission was established to offer its good offices to the States concerned with a view to achieving an amicable settlement of the dispute between the States parties regarding alleged violations of the Convention under Article 2(1) (past and continuing acts of racial discrimination), Article 3 (practices of racial segregation and apartheid), and Article 5 (policies regulating the life of Palestinians in the Occupied Palestinian Territory).

In its report of 21 August 2024,¹⁴¹ the *ad hoc* Conciliation Commission clarified that the scope of its mandate was limited to allegations of racial discrimination committed by Israel in the

¹³⁷ Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Committee on the Elimination of Racial Discrimination, and Committee on the Rights of Persons with Disabilities. Source: United Nations Treaty Collection (<https://treaties.un.org>).

¹³⁸ See: *Al-Sayed and Mangisto v. State of Palestine*, CRPD/C/28/D/67/2019, 23 March 2023; *Shaaban Al-Sayed and Gashao Mangisto v. State of Palestine*, CRPD/C/28/D/68/2019, 23 March 2023.

¹³⁹ Israel accepted the competence of the Committee against Torture to consider inter-State complaints on 19 November 2018, in accordance with Article 21 of the relevant Convention. It should be noted that, upon acceding to the Convention against Torture on 3 October 1991, Israel entered a reservation stating that it did not consider itself bound by the provisions of Article 30(1): “Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court”. Another reservation was also made to declare non-recognition of the investigative jurisdiction granted to the Committee under Article 20.

¹⁴⁰ The ICERD was ratified by Israel on 3 January 1979 and by Palestine on 2 April 2014.

¹⁴¹ *Report of the ad hoc conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination*, CERD/C/113/3, 21 August 2024. It should be noted that although the binding nature of the inter-State procedure implies that States parties to the Convention are required to participate in the proceedings in good faith, Israel challenged the Committee’s competence and declined to take part in the conciliation process (*ibid.*, paras. 9-17). In this regard, Israel relied on a notification sent on 22 May 2014 to the Secretary-General of the United Nations, in his capacity as depositary, to object to Palestine’s accession to the Convention on the grounds that it did not meet the necessary criteria for statehood, and to declare that such accession would have no effect on the conventional relationship between the two countries. The Committee rejected this argument. In its decision on competence dated 12 December 2019, it found that Palestine was indeed a State party to the Convention, rightly recalling the non-synallagmatic and *erga omnes* nature of the obligations enshrined in the Convention (*ibid.*, para. 34).

Occupied Palestinian Territory, which includes the West Bank, including East Jerusalem, and the Gaza Strip.¹⁴² It also considered that the current conflict should not affect the application of the Convention, as the prohibition of racial discrimination is a peremptory norm of international law (*jus cogens*) that remains binding under any conditions, including in cases of armed conflict.¹⁴³ Furthermore, it considered that the allegations of racial discrimination raised by Palestine are the “consequence of systematic policies and discriminatory practices of Israeli authorities against the Palestinian population over decades in the occupied territories”.¹⁴⁴

Among these policies and practices, the Commission found that “allowing new illegal constructions by Jewish settlers in Palestinian territories on the one hand and restricting building permits for Palestinians on the other, and continuing house demolition practices, contributes to a situation of systemic discrimination against Palestinians living in the Occupied Palestinian Territory. These realities, together with the restrictions of movement imposed on Palestinians through checkpoints, as well as limited access to roads, natural resources, land and basic social facilities, amount to a situation of racial segregation”.¹⁴⁵ Recalling the provisions of Article 2(1)(b) of the Convention, according to which “each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations”, the Commission declared that “[e]radicating racial discrimination is a shared responsibility of all States parties to the Convention”, so that “tolerating Israeli policies and practices resulting in racial discrimination can engage the international responsibility of any State party”.¹⁴⁶

The Commission’s report concludes with a series of recommendations addressed to Israel, including to: “Cooperate with any international or regional bodies or Governments willing to help in the settlement of the present dispute concerning racial discrimination, including through conciliation, good offices or any other method of peaceful settlement of disputes”; “Immediately end and refrain from all forms of indiscriminate attacks against civilians who are not taking part in active hostilities and of destruction of civilian objects, in full respect of the principles of distinction, precaution and proportionality”¹⁴⁷; and to “[e]nsure that all victims of racial discrimination enjoy full access to justice and reparation or satisfaction for any damage suffered, pursuant to article 6 of the Convention”.¹⁴⁸ This latter point may give rise to a new wave of legal (judicial and quasi-judicial)

¹⁴² *Ibid.*, para. 5.

¹⁴³ *Ibid.*, para. 40.

¹⁴⁴ *Ibid.*, para. 38.

¹⁴⁵ *Ibid.*, para. 48.

¹⁴⁶ *Ibid.*, para. 49.

¹⁴⁷ *Ibid.*, para. 51(a) and (b).

¹⁴⁸ *Ibid.*, para. 51(g). Recommendations are also addressed to Palestine, to the other States parties to the Convention, to the Security Council, and to the Committee on the Elimination of Racial Discrimination.

proceedings against Israel,¹⁴⁹ given that it is unlikely, in the short term, that the Israeli authorities will engage in a process of acknowledging racial discrimination and compensating the victims of such acts.

CONCLUSION

It is difficult to predict what concrete effects the ICJ's Opinion of 19 July 2024, will have in the coming years in the context of the Israeli-Palestinian conflict. However, it is likely that its impact will not be limited to the recognition of the illegality of the occupation of the Palestinian Territory and of Israeli policies and practices. This reflects the deep concern provoked by Israel's violations of international human rights law, especially those resulting from serious forms of racial discrimination, which are among the most visible to the general public due to their similarities with the former South African apartheid regime. The broadly supported resolution adopted by the General Assembly on 18 September 2024, firmly calling for an end to the occupation of Palestine by Israel within 12 months, constitutes a clear illustration of this concern on the part of the international community.

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¹⁴⁹ The General Assembly Resolution of 18 September 2024 calls for "the establishment of a mechanism to follow up on the violations by Israel of article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination identified by the International Court of Justice in its advisory opinion" (para. 14).

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