Third State Economic Responsibility

in light of the International Court of Justice's
Advisory Opinion on the
Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem

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Glossary

Abbreviation	Name
AO	Advisory Opinion
BITs	Bilateral Investment Treaties
CERD	International Covenant on the Elimination of All Forms of Racial Discrimination
COI	Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel
HRC	United Nations Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHL	International Humanitarian Law
NATO	North Atlantic Treaty Organisation
NCPs	OECD National Contact Points
OECD	Organisation for Economic Co-operation and Development
OPEC	Organisation of the Petroleum Exporting Countries
OPT	Occupied Palestinian Territory
PA	Palestinian Authority
PLO	Palestinian Liberation Organisation
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties

1. Summary of outcomes

- In its Advisory Opinion (AO) of July 2024 on the 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory (OPT), including East Jerusalem' the International Court of Justice (ICJ) found that Israel's occupation of Palestine is illegal. Israel is in violation of four peremptory norms of international law, jus cogens norms, which are the highest-ranking rules of international law. The protection of such norms is fundamental for international peace and security, and for upholding the principles of the UN Charter. The Court concluded that Israel is in breach of the Palestinian people's right of self-determination, the prohibition against use of force and its corollary the prohibition against annexation, and the prohibition against racial segregation and apartheid.

- The Court articulated Israel's duty to end the occupation as rapidly as possible. The UN General Assembly overwhelmingly voted to set the deadline for ending the occupation at one year, by 18 September 2025.

- The Court also highlighted that third states have the **duty to cooperate towards ending the illegal occupation of Palestine** and an **obligation not to recognise its illegal effects**.

- According to the ICJ, this includes the duty to **abstain from entering into economic or trade details** with Israel concerning the OPT or parts thereof which may entrench its unlawful presence; to **abstain from recognition through diplomatic missions** of Israel's illegal presence in the OPT; and to take steps to **prevent trade or investment relations** that assist in the maintenance of the illegal situation.

- Israel's role as an occupying power cannot be understood in isolation from the overall operations of the Israeli state and its economy. The **Israeli economy benefits from Israel's role as an occupying power and its exploitation of the Palestinian economy** in the form of both resources and people. Given this

entrenched entanglement, it is not feasible for third states to differentiate between the economy of Israel and the economy of the occupation. Taking measures only in relation to the settlements, which are in a permanent state of expansion, contributes to legitimising the regime that sustains the prolonged illegalities and sustains its exploitation of the Palestinian economy.

- **Third state economic responsibility encompasses any economic actions that a state can take, whether positive or negative, to limit Israel's ability to continue violating peremptory norms of international law.** Based on the relevant precedent, states have a duty to impose a three-way arms embargo on Israel and to conduct **due diligence in relation to any economic activity that is connected to the Israeli war economy**, starting with critical industries such as the technology, finance, and energy industries.

- With respect to **trade obligations**, third states must undertake due diligence and a thorough review of existing relations to ensure they do not support Israel's illegal occupation of the Palestinian territory. A harmonised reading of the General Agreement on Trade and Tariffs (GATT), the UN Charter, and customary international law on state responsibility reveals that **states are required to impose comprehensive trade measures against Israel to avoid complicity in its unlawful actions**. Article XXI(c) of GATT permits states to suspend Israel's Most Favoured Nation (MFN) treatment to fulfil their obligations under the UN Charter. Considering Israel's extensive economic entanglement with its occupation policies, imposing restrictions solely on settlements is insufficient. **A suspension of existing trade agreements, and the imposition of embargos in industries feeding into the war economy** is essential to prevent the legitimisation of Israel's illegal actions, while ensuring compliance with international law and the duty to review and monitor existing relationships.

- Israel's **Bilateral Investment Treaties** protect foreign investments and provide a mechanism for holding Israel accountable for its actions. These treaties can be strategically leveraged to bring to an end the unlawful occupation in line with

the ICJ AO and the UNGA Resolution, either by advocating for their termination or by enabling foreign investors to file claims for damages related to Israel's conduct in the OPT.

- Third states are bound by ***erga omnes*** **obligations arising from** ***jus cogens*** **norms, which override treaty obligations when in conflict**. Under Article 53 of the Vienna Convention on the Law of Treaties, treaties that violate peremptory norms, such as those facilitating Israel's illegal occupation of the OPT, are void. Third states must not recognise or assist such illegalities, as doing so exposes them to legal and reputational risks. Moreover, states also have a duty to eliminate the consequences of such actions.

- Regarding **corporate responsibility**, businesses operating in Israel and Palestine must follow to the UN Guiding Principles on Business and Human Rights by conducting heightened due diligence to identify and mitigate human rights risks, especially those affecting the right of self-determination. **If their activities directly or indirectly contribute to violations, states must order home corporations to cease harmful operations and mitigate harm**. Businesses must consider responsible disengagement if they lack sufficient leverage to drive change. This includes evaluating supply chains, investments, and partnerships to avoid complicity in the illegal occupation.

2. The ICJ Advisory Opinion – Key outcomes

2.1 Background & Key Findings

In its Advisory Opinion (AO) of 19 July 2024 on the '*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*', the International Court of Justice (ICJ) delivered a historic advisory opinion declaring that Israel's 57-year-old ongoing occupation of the West Bank and East Jerusalem, as well as its siege on Gaza (collectively referred to as the Occupied Palestinian Territory or OPT) is illegal under international law in its entirety (the Israeli occupation of the OPT to be hereinafter referred to as the "Illegal Occupation").[1] This "Illegal Occupation" is characterised as grave, prolonged, cumulative, systemic and structural. The UN General Assembly later set 18 September 2025 as the deadline for ending the illegal occupation of Palestine.[2]

This Advisory Opinion was delivered 20 years after the ICJ's 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (hereinafter, Legality of the Separation Wall),[3] and in the same year as the ICJ's three Provisional Measures Orders (PMO) in *South Africa v Israel* under the Genocide Convention, which found it plausible that a genocide was occurring in Gaza.[4] The

[1] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) 186, 19 July 2024 (hereafter *Advisory Opinion on Legal Consequences*), available at: https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf. The AO provides an authoritative judicial pronouncement on the legal obligations that arise from the UN Charter, the decisions of the Security Council, international human rights and humanitarian law, and the law of state responsibility as it relates to occupied Palestine. The obligations laid out in these bodies of law are binding on UN member states based either on their accession to these conventions and as a matter of customary international law.

[2] UNGA Resolution 'Advisory opinion of the International Court of Justice on the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel's continued presence in the Occupied Palestinian Territory' (18 September 2025) UN Doc A/ES-10/24, available at: https://docs.un.org/en/A/RES/ES-10/24.

[3] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (2004) ICJ Rep 136, where the ICJ found Israel's construction of a wall contrary to international law [para 143]. Specifically, the court found Israel to be in violation of the Fourth Geneva Convention [para 120]. The ICJ held that, due to the Wall constituting a serious breach of pre-emptory norms (just cogens), third party states, in accordance with customary international law, must not recognise the unlawful situation created by the wall and must ensure Israel's compliance with international law. They are obligated under the Fourth Geneva Convention to refrain from aiding or assisting in maintaining the wall and associated violations under Article 1 to "ensure respect" for the Convention. This implies active measures to prevent breaches of international humanitarian law in the OPT.

[4] On 26 January 2024, the ICJ issued provisional measures order in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* stating that there was a plausible risk of genocide and that third parties have an obligation under the Genocide

International Criminal Court (ICC) issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant for several counts of war crimes and crimes against humanity.[5]

The ICJ observed that Israel is in violation of several obligations *erga omnes* arising from peremptory norms of international law. Peremptory norms of international law are the core principles of the international legal regime designed to safeguard international peace and security.[6] Herein, Israel is in violation of the following:

- **The *jus cogens* prohibition on use of force through the act of annexation**: Israel's policies and practices designed to bring the OPT under its permanent control constitute acts of annexation, violating of the prohibition of the acquisition of territory by force – a fundamental principle enshrined in the UN Charter (paras 155-179 of the AO).[7] The Court found that Israel is in violation of its erga omnes obligations arising from the prohibition of the use of force to acquire territory (para 274 of the AO). Based on this finding, it can be argued that the violations of use of force amount to an aggression of a continuing character against the territorial integrity and political independence of the State of Palestine.[8]

Convention from the moment they are made aware of a serious risk of genocide being committed to take preventative action. The ICJ issued further decisions on 28 March 2024 and on 24 May 2024, expanding on the provisional measures to call on Israel to immediately halt its military offensive in Gaza.

[5] The ICC issued the arrest warrants in November 2024, alleging their involvement in war crimes and crimes against humanity due to Israel's conduct in the war on Gaza including employing starvation as a method of warfare and intentionally directing attacks against civilian populations, amongst other crimes. Under the Rome Statute of the ICC, states which have ratified the Rome Statute are legally bound to fully comply with the ICC in its investigations and prosecutions, including executing arrest warrants issued by the Court.

[6] 'Peremptory norms of general international law (jus cogens) reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and are universally applicable,' Conclusion Two, International Law Commission 'Draft Conclusions on the identification and legal consequences of peremptory norms of general international law (jus cogens)' (2022).

[7] Under the principle enshrined in Article 2(4) of the Charter of the United Nations, "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

[8] Ardi Imseis, 'A Seismic Change' (*Verfassungsblog*, 10 October 2024) <https://verfassungsblog.de/a-seismic-change/> accessed 9 April 2025.

- **The *jus cogens* prohibition against discrimination, racial segregation and apartheid**: The broad array of discriminatory legislations and measures by Israel against the Palestinians (including the resident permit policy in East Jerusalem, restrictions on the movement of Palestinians and demotion of Palestinian properties) constitutes systemic discrimination based on, *inter alia*, race, religion or ethnic origin. This discrimination is a violation of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on the Elimination of All Forms of Racial Discrimination (CERD).[9] The Court concluded that Israel was in violation of Article 3 of CRED, which prohibits racial segregation and apartheid (paras 180-229 of the AO).[10]

- **The *jus cogens* people's right of self-determination**: Israel's unlawful policies and practices are in breach of Israel's *jus cogens* obligation to respect the right of the Palestinian people to self-determination which is a violation of the UN Charter[11] and international law.[12] The Palestinian right of self-determination is not limited to statehood or democratic governance. Building on the relevant historical precedents and a harmonised interpretation of international law, Palestinian right of self-determination can be understood as decolonisation as also highlighted by several Separate Opinions by individual judges linking Israel's prolonged occupation to colonisation. [13] Herein, it is premised on non-domination, non-exploitation and the right of return.[14]

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[9] ICCPR Articles 2(1) and 2(26); ICESCR Article 2 (2); CERD Article 2.

[10] CERD Article 3 provides: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

[11] *Advisory Opinion on Legal Consequences* [231- 324], which discuss the importance and centrality of the right to self-determination under international law.

[12] *Advisory Opinion on Legal Consequences* [230-243].

[13] *Advisory Opinion on Legal Consequences* (Separate Opinion of Judge Yusuf) [4 and 12]; (Separate Opinion of Judge Xue) [4].

[14] Shahd Hammouri, 'The Palestinian Right of Self Determination as Decolonialisation: The Premises of Economic Third State Responsbility' *Al Haq Independent Research Series* <https://www.alhaq.org/cached_uploads/download/2025/01/20/palestinian-self-determination-as-decolonisation-shahd-hammouri-1737366311.pdf> accessed 7 March 2025.

Further, the ICJ found Israel to be in violation of a host of other international legal obligations including:

- Violation of the Fourth Geneva Convention through the transfer by Israel of settlers and maintenance of their presence in the OPT (paras 115-119 of AO);[15]
- Violation of the Hague Regulations through the confiscation or requisitioning of land for the expansion of Israel's settlements (paras 120-123 of the AO);[16]
- Violation of (i) customary international law as contained in the Hague Regulations,[17] (ii) the Rio Declaration on Environment and Development of 1992,[18] (iii) the Palestinian people's right to permanent sovereignty over natural resources, through Israel's exploitation of natural (particularly water) resources (paras 124-133 of the AO);
- Violations of the Hague Regulations and Fourth Geneva Convention through the extension of Israeli law and exercise of regulatory authority by Israel over the OPT (paras 134-141);[19]

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[15] Sixth paragraph of Article 49 of the Fourth Geneva Convention, provides that "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". As the Court observed in its 2004 Advisory Opinion, this provision "prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory" [120].

[16] Articles 46, 52 and 55 of the Hague Regulations prohibit the occupying power from confiscating or requisitioning private property and requires it to administer any public property for the benefit of the local population.

[17] Article 55 of the Hague Regulations provides that "the occupying Power shall be regarded only as administrator and usufructuary of natural resources in the occupied territory, including but not limited to forests and agricultural estates, and it shall "safeguard the capital" of these resources".

[18] Principle 23 of Rio Declaration on Environment and Development of 1992 provides that "[t]he environment and natural resources of people under . . . occupation shall be protected" (see also International Law Commission, "Draft principles on protection of the environment in relation to armed conflicts, with commentaries", UN doc. A/77/10 (2022), principle 20).

[19] Under Article 43 of the Hague Regulations, the occupying Power must in principle respect the law in force in the occupied territory unless absolutely prevented from doing so. This rule is complemented by the second paragraph of Article 64 of the Fourth Geneva Convention, which exceptionally allows the occupying Power to "subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the [Fourth Geneva] Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them".

- Violations of the prohibition of forcible transfer of the protected population under the Fourth Geneva Convention through Israel's policies and practices (including forcible evictions, extensive house demolitions, restrictions on residence and movement, large-scale confiscation of land, deprivation of access to natural resources (para s 142-147 and 180-229 of the AO);[20]
- Violations of the Hague Regulations, the Fourth Geneva Convention and the ICCPR through violence against Palestinians by Israeli settlers and security forces, Israel's systematic failure to prevent or punish such violence, and its excessive use of force against Palestinians (paras 148-154 of the AO).

A harmonised reading of the court's decision reveals the larger picture of what is clear on the ground. The Court found practices akin to apartheid, *de facto* annexation, violation of the right of self-determination, violation of Palestinian sovereignty over natural resources and a wide spectrum of violations of international humanitarian law. The perpetration of these violations by Israel, as a foreign and occupying power, fits within a wider context of alien domination and subjugation which amounts to colonisation.

While there are no clear criteria in international law for what alien domination and subjugation entails, elements of systemic exploitation, dispossession, fragmentation, inhumane acts, prosecution and discrimination by an alien power would be common indicators.[21] The prevalence of such systemic practices by Israel against the Palestinian people is widely documented,[22] and the illegal nature of such practices has been

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[20] Under the first paragraph of the Fourth Geneva Convention.
[21] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, ICJ Advisory Opinion (25 February 2019) [153] and Separate Opinion of Judge Cançado Trindade. Further practices of apartheid intersect with practices of alien domination and subjugation, review some acts associated with apartheid listed in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, ICJ Advisory Opinion (1971) ICJ Rep 16 [130].
[22] See, for example, the report of Richard Falk and Virginia Tilly, 'Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation, Issue No.' ESCWA (2017) UN Doc. E/ESCWA/ECRI/2017/1(2017) [37-84] <https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1013&context=ps_pubs> accessed 22 June 2023; ESCWA, 'Report on Apartheid' (2022) UN Doc.A/77/356; Al Haq, BADIL, Palestinian Center for Human Rights, Al Mezan Center for Human Rights, Addameer, Civic Coalition for Palestinian Rights in Jerusalem, Cairo Institute for Human Rights Studies, Habitat International Coalition – Housing and Land Rights Network for CERD, 'Joint Parallel Report to the United Nations Committee on the

reaffirmed by the ICJ.

Judge Yusuf, in his Separate Opinion, reaffirms that 'any belligerent occupation which substitutes an indefinite occupation for the legally sanctioned temporariness of belligerent occupation takes on the characteristics of colonial occupation or of conquest, both of which are contrary to the United Nations Charter and to contemporary principles of international law.'[23] The materiality of colonisation extends beyond the OPT to cover the Palestinian people living across historic Palestine and in the diaspora, as the Nakba established the groundwork for existing relations of exploitation and domination.[24]

Palestinian self-determination is a right in and of itself, and not an outcome that is to be achieved through negotiations with Israel.[25] As President Salam notes in his Declaration to the AO, making Palestinian self-determination conditional on the success of negotiations with Israel would mean that "the cessation of violations of international law, including violations of peremptory norms (*jus cogens*) would be subject to the veto of the perpetrator of these violations."[26] While the Oslo Accords (1993)[27] signed between the Palestinian Liberation Organisation (PLO) and Israel normalised the erasure of the political rights of Palestinians and Israel's multi-faceted control of the OPT, the Advisory Opinion leaves no doubt that such control on the entirety of Palestinian territory is illegal,[28] rendering any premise for normalising

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Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (2019) <https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf> accessed 10 March 2025; HRC 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict' (2009) UN Doc. A/HRC/12/48.

[23] *Advisory Opinion on Legal Consequences* (Separate Opinion of Judge Yusuf) [4].

[24] Ahmad H Sa'di and Lila Abu-Lughod, *Nakba: Palestine, 1948, and the Claims of Memory* (Columbia University Press 2007).

[25] OHCHR, 'Experts hail ICJ declaration on illegality of Israel's presence in the occupied Palestinian territory as "historic" for Palestinians and international law', Press Release (30 July 2024) <https://www.ohchr.org/en/press-releases/2024/07/experts-hail-icj-declaration-illegality-israels-presence-occupied> accessed 10 March 2025.

[26] *Advisory Opinion on Legal Consequences* (Declaration of President Salam) [57].

[27] Oslo I: Declaration of Principles on Interim Self-Government Arrangements (13 September 1993); Oslo II: Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed 28 September 1995

[28] *Advisory Opinion on Legal Consequences* [264]; John Quigley, 'The Oslo Accords: More Than Israel Deserves' (1997) 12 American University International Law Review 285.

Israel's domination or any undemocratically elected authority over the OPT irrelevant.

2.2 Third State Economic Responsibility

2.2.1 The Economic Context

The economic relationship between Israel and Palestine is deeply embedded within Israel's settler-colonial project, making separation both impractical and redundant. Key Israeli industries, including weapon manufacturers and the high-tech sector, have directly benefited from the occupation through the exploitation of Palestinian resources and labour, under a system of institutional mediocrity and lack of transparency. Israel maintains economic dominance through border control, trade restrictions and financial leverage, ensuring Palestinian dependence while obstructing any path to economic self-sufficiency.

Economic control over Palestine began during the British Mandate (1922-1947), when British policies facilitated Zionist economic expansion while marginalising Palestinian farmers and businesses. Zionist land acquisitions and trade policies favoured Jewish industries, which created a shift in economic power. By 1947, the Jewish economy had surpassed the Palestinian economy.[29] This asymmetry deepened following the 1967 occupation of the West Bank, including East Jerusalem and the Gaza Strip, leading to a structured dependency that systematically underdeveloped the Palestinian economy.[30] Palestinian labour was absorbed into Israeli industries, particularly construction and manufacturing, under exploitative conditions with suppressed wages and minimal rights—an arrangement that benefits Israel while institutionalising economic stagnation for Palestinians.

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[29] Jacob Metzer, *The Divided Economy of Mandatory Palestine* (Cambridge University press, 1998)
[30] Yusid A. Sayigh, 'The Palestinian Economy under Occupation: Dependency and Pauperization' 15 Journal of Palestine Studies 46 (1986; Taher Labadi, 'How Israel Dominates the Palestinian Economy' (*Jacobin,* 20 December 2023) <https://jacobin.com/2024/01/israel-palestine-settler-colonialism-labor-economy> accessed 10 March 2025.

Israeli industrial zones in illegal settlements, bolstered by government subsidies and regulatory leniency, have further entrenched this dependency. By 2012, 75% of settlements received top-tier government support, while Israel's control over Palestinian trade led to a persistent trade deficit, replacing local goods with Israeli imports. The 1993 Oslo Accords and the Paris Protocol only reinforced Israel's economic control by keeping Palestinian trade, currency, and labour movement under Israeli jurisdiction.[31] Consequently, the Palestinian Authority (PA) remains financially dependent on international aid and debt, while Israel's arbitrary withholding of Palestinian tax revenues further destabilises the PA and ensures ongoing economic uncertainty.

Ultimately, the Israeli economy is inseparable from its settler-colonial framework, sustaining Palestinian economic dependency through labour exploitation, trade imbalances, and territorial control. The lack of structural transparency and the institutional mediocrity within this system renders any notion of economic separation not only unfeasible but irrelevant, as Palestinian economic activity remains subject to Israeli policies, which are designed to perpetuate subjugation rather than foster independent development.

With relation to economic obligations, third state obligations laid out by the Court can be identified as intersecting layers, each giving rise to a different set of obligations, some of which are outlined below.

2.2.2 Not to recognise as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory.

The first layer of third state responsibility, articulated by the ICJ AO, includes the **Obligation not to Recognise as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory.** As suggested in the

[31] Oslo I: Declaration of Principles on Interim Self-Government Arrangements (13 September 1993); Paris Protocol: Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., representing the Palestinian people (19 April 1994).

Separate Opinions of Judge Yusuf and Judge Xue,[32] this situation has the characteristics of colonisation.

"The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, inter alia, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory" (para 278 of the AO).

The first layer starts with the **suspension of all economic activity with Israel where it purports to be acting on behalf of the OTP**.[33] Herein, states have the duty to stop all trade and investment in the settlements and any other Israeli establishments in the OTP. This leads to the following question: how does one differentiate economic dealings where Israel purports to be acting on behalf of the OTP?

As set out above, Israel's economic relations in the OTP are deeply entangled with the Israeli economy. The occupation of the Palestinian territory cannot be understood in isolation of the overall colonial nature of the Israeli state.[34] Ever since its inception, Israel has created the ideal conditions for facilitating the exploitation of the Palestinian economy.[35] As in any other colonial context,[36] the Palestinian economy has been

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[32] *Advisory Opinion on Legal Consequences*, (Separate Opinion of Judge Yusuf) [4 and 12]; Separate Opinion of Judge Xue [4].
[33] A historical precedent here is the UNGA's request to third states "to discontinue all economic, financial or trade relations with South Africa concerning Namibia and to refrain from entering into economic, financial or other relations with South Africa, acting on behalf of or concerning Namibia, which may lend support to its continued illegal occupation of that Territory;" UNGA, 'Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa' (12 December 1969) UN Doc. A/RES/2554 [10].
[34] Rabea Eghbariah, 'Toward Nakba as a Legal Concept' (2024) 124 Columbia Law Review 887.
[35] Shahd Hammouri, 'Systemic Economic Harm in Occupied Palestine and the Social Connections Model' (2021) 22 The Palestine Yearbook of International Law Online 112; George T Abed, *The Palestinian Economy: Studies in Development under Prolonged Occupation* (Routledge 1988); Leila Farsakh, 'Palestinian Labor Flows to the Israeli Economy: A Finished Story?' (2002) 32 Journal of Palestine studies 13.
[36] Walter Rodney, *How Europe Underdeveloped Africa* (Verso Books 2018); Theotonio Dos Santos, 'The Structure of Dependence' (1970) 60 The American economic review 231. The UNGA referred to the forced dependency of territories under Portuguese colonisation, herein it condemned "the activities of the financial interests operating in the Territories under Portuguese domination, which exploit the

rendered dependent on the Israel economy.[37] The two economies are intertwined in terms of the allocation of natural resources, tourism, energy and currency to name but a few.[38] This systemic depravation is exemplified in Israeli land law, which masqueraded colonial land grab.[39] Furthermore, the institutional structure of domination has created an interdependent relationship on an administrative level.[40]

Taking the above into consideration, the legal structures facilitating domination through dependency are premised on an illegality that must not be recognised by other states. Moreover, it is presumed that information pertaining to the economic entanglements of the two economies are held by Israel, which has persistently upheld a non-cooperative attitude vis-à-vis international mechanisms.[41]

Without recognising the material reality of this institutional structure of domination and given the lack of transparency on Israel's part, those interpreting the ICJ's finding may limit the scope of prohibited economic dealings only to those with a direct link to the settlements. Based on recent observations of engagements with this subject matter, international institutions tend to accept such narrow interpretations. [42]

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human and material re- sources of the Territories and impede the progress of their peoples towards freedom and independence"; UNGA, 'Question of Territories under Portuguese administration' (17 November 1967) UN Doc A/RES/2270(XXII); Samir Amin, 'Underdevelopment and Dependence in Black Africa--Origins and Contemporary Forms' (1972) 10 The Journal of Modern African Studies 503.

[37] Yusif A Sayigh, 'The Palestinian Economy under Occupation: Dependency and Pauperization' (1986) 15 Journal of Palestine Studies 46; Taher Labadi, 'How Israel Dominates the Palestinian Economy' (*Jacobin*, 20 December 2023) https://jacobin.com/2024/01/israel-palestine-settler-colonialism-labor-economy accessed 29 November 2024.

[38] See Alaa Tartir, Tariq Dana and Timothy Seidel, *Political Economy of Palestine: Critical, Interdisciplinary, and Decolonial Perspectives* (Springer Nature 2021).

[39] Hadeel S Abu Hussein, *The Struggle for Land Under Israeli Law: An Architecture of Exclusion* (Routledge 2021).

[40] Al Haq, BADIL, Palestinian Center for Human Rights, Al Mezan Center for Human Rights, Addameer, Civic Coalition for Palestinian Rights in Jerusalem, Cairo Institute for Human Rights Studies, Habitat International Coalition – Housing and Land Rights Network, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (2019), https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf, accessed 4 July 2023.

[41] Review arguments in 'Petition to the UN General Assembly: Unseating Israel Is the Only Way to Preserve the Integrity of the International Legal System.' (*Law for Palestine*) <https://law4palestine.org/petition-to-the-un-general-assembly-unseating-israel-is-the-only-way-to-preserve-the-integrity-of-the-international-legal-system/> accessed 2 December 2024.

[42] Thus far international organisations have demonstrated a position that can be described as orchestrated mediocracy vis-à-vis Palestine. Relevant UN bodies have assessed the context through liberal lens which overlooks lessons learned from colonisation. For further discussion see Shahd

However, distinguishing between economic dealings related to the OPT and those related to Israel captures only a fraction of the economic relations that enable the entrenchment of the occupation. The Israeli economy benefits from Israel's role as an occupying power, profiting from the exploitation of Palestinian resources and labour. This deep-seated entanglement makes it impossible for third states to distinguish between Israel's economy and the economy of the occupation.

2.2.3 To abstain from dealings that further entrench Israel's unlawful presence in the occupied Palestinian territory

The second layer of third state responsibility, articulated by the ICJ, includes the duty to: *"abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory"* (para 278 of the AO).

In line with the ICJ AO, **states have a duty to undertake due diligence to ensure that neither their subjects nor their governments engage in acts which impede on the Palestinian people's right of self-determination**. Taking steps to prevent trade or investment relations that assist in the maintenance of the illegal situation can take various forms, but could include boycotts, divestments as well as sanctions, such as measures advocated for by the BDS movement.

States are called upon to undertake due diligence in order to decide whether a specific economic relation further entrenches the occupation. Imagining how such responsibility can be assumed begins by identifying which acts further entrench Israel's presence in the OPT?

Hammouri, 'The Commission of Inquiry on Palestine and Israel: To Speak of Genocide from a European Liberal Lens' (2024) 2024 Peace Human Rights Governance 1.

Given the prolonged nature of Israel's occupation, the economic interdependency of its colonisation, and its lack of transparency, isolating specific acts that sustain the occupation from Israel's broader economic activities is not feasible. A distinction cannot be made between the Israeli economy and the economy of Israel in relation to the OPT. Alternatively, adopting a functionalist interpretation of the Court's findings under the umbrella of self-determination as decolonisation can lead us to another way of thinking about the third state economic modalities to end the illegal occupation of Palestine and safeguard the self-determination of its peoples. Such an interpretation begins with a fundamental question: What is the purpose of third state responsibility?

Building on the analysis presented thus far, it becomes clear that states have an active duty to collaborate in ending the colonisation of the Palestinian people.[43] The centrality of ending the Israeli occupation of Palestine to safeguarding peace and security in the region was noted by the UN General Assembly (UNGA) in 1976.[44] One of the key lessons learnt from the decolonisation processes thus far is that colonisation stops when it becomes economically unviable.[45] In other words, the most appropriate framework for state responsibility in the context of decolonisation is to enforce economic restrictions on the perpetrating state in an effort to force compliance with international law.[46] Such measures would respond to the reality of the perpetrator state's bad faith, as was noted by the UNGA in 1982, when it called upon states "to cease forthwith, individually and collectively, all dealings with Israel in order totally

[43] This duty was repeatedly reiterated in resolutions on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, for example UN Doc. A/RES/2908(XXVII) (1973).

[44] "Reaffirms that a just and lasting peace in the Middle East cannot be achieved without Israel's withdrawal from all Arab territories occupied since 1967 and the attainment by the Palestinian people of their inalienable rights, which are the basic prerequisites enabling all countries and peoples in the Middle East to live in peace"; UNGA 'The situation in the Middle East' (12 September 1976) UN Doc. A/RES/31/61 [3].

[45] Amilcar Cabral, *Resistance and Decolonization* (Rowman & Littlefield 2016). Chapter Four: Economic Resistance; Lee Jones, 'South Africa: Sanctioning Apartheid' in Lee Jones (ed), *Socities Under Siege: Exploring How International Economic Sanctions (Do Not) Work* (Oxford University Press 2015) Lee Jones, 'South Africa: Sanctioning Apartheid' in Lee Jones (ed), *Societies Under Siege: Exploring How International Economic Sanctions (Do Not) Work* (Oxford University Press 2015) https://doi.org/10.1093/acprof:oso/9780198749325.003.0003> accessd 5 November 2024. Also generally review: Frantz Fanon, *A Dying Colonialism* (Grove Atlantic 1959).

[46] The ILC Draft Articles on state responsibility do not prescribe a particular way to cooperate to end a grave illegality. See Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1, November 2001, Article 41 Commentary [3].

to isolate it in all fields".[47] As the UNGA stated in 1969, economic relations with the colonial state "constitute a major obstacle to political independence and to the enjoyment of the natural resources of those Territories by the indigenous inhabitants".[48] The colonised people dream of an end to exploitative relations with the dominating state.[49] Moreover, such relations are premised on entangled illegalities that third states have the duty not to recognise.

Third state economic responsibility thus encompasses any economic actions that a state can take, whether positive or negative, to limit Israel's ability to continue violating peremptory norms of international law. States must conduct due diligence to study their influence towards the Israeli war economy as a whole. Economic measures must focus on industries vital to the war economy such as the technology, finance and energy industries. The UNGA noted in 1969 that "any economic or other activity which impedes the implementation of the Declaration [on granting independence] and obstructs efforts aimed at the elimination of colonialism, apartheid and racial discrimination in southern Africa and other colonial Territories violates the political, economic and social rights and interests of the peoples of the Territories and is therefore incompatible with the purposes and principles of the Charter".[50]

Additionally, in its position paper in September 2024, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (COI) outlined the obligations for third states in light of the ICJ

[47] UNGA 'The situation in the occupied Arab territories' (5 February 1982) UN Doc. A/RES/ES-9/1 [13].
[48] UNGA 'Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa' (12 December 1969) UN Doc. A/RES/2553 [preamble].
[49] *Return to the Source: Selected Texts of Amilcar Cabral, New Expanded Edition* (NYU Press 2022) <https://www.jstor.org/stable/jj.17102139> accessed 5 November 2024. 30,31.
[50] UNGA 'Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa (12 December 1969) UN Doc. A/RES/2553 [preamble].

AO.[51] With respect to financial and economic relations, the COI outlined the following responsibilities arising from the ICJ AO:

- States must “cease all financial, trade, investment and economic relations with Israel that maintain the unlawful occupation or contribute to maintaining it”;[52]
- States must “review their trade and economic agreements with Israel that involve products and produce of the unlawful settlements”;[53]
- States must “examine private enterprises incorporated in their territory and non-profit or non-governmental organisations registered in their territory and their dealings with Israel and the OPT, undertaking a thorough due-diligence review.”[54]
- If a state finds that such entities are engaging in activities that maintain the unlawful occupation, it must “take all reasonable measures to prevent them, such as revoking a corporation’s articles of incorporation or a non-profit organisation’s registration.”[55]
- States must “carefully review NGOS that are financially or politically supporting the unlawful occupation.” They should not give support to such organisations, such as through tax-emptions or tax deductibility for donations and must “ensure the cessation of financial contributions to support the unlawful occupation, including settlements and settlers.”[56]

These responsibilities must be interpreted in line with the understanding of the Israeli war economy as entrenched with its presence in the occupied Palestinian territory, as articulated above.

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[51] COI ‘Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (18 October 2024) [11-35] <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2024-10-18-COI-position-paper_co-israel.pdf>, accessed 2 November 2024..
[52] *Idem* [29].
[53] *Ibid.*
[54] *Idem* [30].
[55] *Ibid.*
[56] *Idem* [31].

2.2.4 Critical actions

Third states have various economic tools at their disposal to fulfil their duty to limit Israeli's ability to continue violating peremptory norms of international law and to dismantle the structures that sustain its colonisation.

Arms embargo

The most straightforward step towards third state economic responsibility within the context of decolonisation is an arms embargo. Moreover, an arms embargo would disincentivise arms corporations invested in maximising profit from Israel's colonisation. Such an embargo extends to the transit, and sometimes the purchase, of weapons. This measure addresses the need to stop the proliferation of arms within the asymmetric war economy. For example, in the case of South Africa, the UN Security Council (UNSC) demanded an arms embargo in 1963.[57] In the case of Angola, the UNGA requested "all Member States to deny Portugal any support or assistance which may be used by it for the suppression of the people of Angola", using language which resonates with that of the ICJ in its 2024 AO.[58]

With respect to military related relations, the COI found that States have a duty "to conduct a due diligence review of all transfer and trade agreements with Israel".[59] In this context, making a distinction between defensive and offensive weapons and advising states to avoid supplying the latter,[60] is unfeasible at best and, at worst, could shield continued violations of international law. The distinction also risks distorting the effectiveness of economic measures. In the case of South Africa, the UNSC generalised the embargo to include ''arms and related material" referred to in

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[57] UNSC Resolution 181 (7 August 1963) UN Doc. S/RES/181, where the Security Council calls upon all states to cease the sale and shipment of arms to South Africa.

[58] 'The situation in Angola' (18 December 1962) UN Doc. A/RES/1819 (XVII) [7]. Similar language is used by the Security Council: "all States should refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the peoples of the Territories under its administration" in UNSC Resolution 180 (31 July 1963) [on the question of Territories under Portuguese administration], UN Doc. S/RES/180.

[59] *Idem* [26]

[60] *Ibid.*

Resolution 418(1977), including all nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and equipment as well as weapons and ammunition, spare parts and supplies for the aforementioned and the sale or transfer thereof.[61] It is important to note that Jet Fuel may be considered a component of arms under the Arms Trade Treaty.[62]

Undeniably, the premises for an arms embargo against Israel have been repeatedly established. In 1976, the UNGA asked states to refrain from supplying military aid and assistance that further entrenches Israel's occupation of the OPT.[63] In 1982, the UNGA asked states 'To refrain from supplying Israel with any weapons and related equipment and to suspend any military assistance which Israel receives from them,' and '(b) To refrain from acquiring any weapons or military equipment from Israel.'[64] In April 2024, the Human Rights Council adopted a resolution calling upon states to 'cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel'.[65] The case for an arms embargo against Israel has gained further momentum under the duty to prevent genocide, which was engaged after the ICJ's PMO in the case of South Africa v. Israel.[66]

Energy embargo

Another common measure of state responsibility towards fulfilling obligations within the context of decolonisation, is the imposition of an energy embargo. In 1964, a research paper published as part of a conference on the use of economic measures against Apartheid South Africa noted the potential of withholding oil as an effective

[61] UNSC 'Resolution 591 (1986) / adopted by the Security Council at its 2723rd meeting'(28 November 1986) UN Doc. S/RES/591.
[62] Shahd Hammouri, 'Shipments of Death' (*LPE Project*, 15 July 2024) <https://lpeproject.org/blog/shipments-of-death/> accessed 1 December 2024.
[63] UNGA 'The situation in the Middle East' (9 December 1976) UN Doc. A/RES/31/61 [5].
[64] UNGA 'The situation in the occupied Arab territories' UN Doc. A/RES/ES-9/1 (5 Feb 1982) [12 (a) and (b)].
[65] Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice* (Geneva: United Nations, 2024) UN Doc. A/HRC/RES/55/28 [14].
[66] Shahd Hammouri, 'The Legal Case for Imposing Embargoes on Israel' (*Al Jazeera*, 3 April 2024) <https://www.aljazeera.com/opinions/2024/4/3/the-legal-case-for-imposing-embargoes-on-israel> accessed 1 December 2024.

economic counter measure.[67] The paper also noted that the key issue with such an embargo, as is the case with any embargo on Israel today, was the enforcement of such measures, particularly when powerful states were unwilling to offer support or enforcement.[68]

In 1963, the UNGA imposed an embargo on petroleum products.[69] Later, during the 1973 Yom Kippur War, oil-producing Arab states enacted an oil embargo against South Africa and other states for their support of Israel.[70] The effects of this embargo drew the attention of the UN Special Committee against Apartheid, which had previously shown limited interest in such measures.[71] The Committee's interest led to recommendations at the UNGA, which resulted in the drafting of UNGA Resolution 3411 in 1973, calling on states to impose an 'effective embargo on the supply of petroleum, petroleum products and strategic raw materials to South Africa'.[72] This call for an oil embargo would be repeated in nearly every subsequent UNGA resolution on South Africa and its apartheid policies, granting legitimacy to the measure that would be adopted by other organisations, including the Organisation of the Petroleum Exporting Countries (OPEC).[73]

Other economic activities that limit the colonising state's capacity to subjugate include prohibiting the perpetrator's ships to port, refusing landing or passage of the perpetrator's air crafts, boycotting that state's goods, refraining from exporting arms

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[67] Brian Lapping, 'Oil Sanctions against South Africa' 1964 in Ronald Segal (ed.), *Sanctions against South Africa* 1964 (Penguin; First Edition 1 January 1964).
[68] Shipping Research Bureau, Embargo Apartheid oil secrets revealed, (Amsterdam University Press 1995) available at: https://kora.matrix.msu.edu/files/50/304/32-130-1C09-84-Embargo_Apartheids_Oil_Secrets_Revealed%20opt.pdf [accessed 4 November 2024]
[69] UNGA 'Question of South West Africa' (13 November 1963, UN Doc. A/RES/1899(XVIII) [7 a,b].
[70] Britannica, Arab oil embargo, Available at: <https://www.britannica.com/event/Arab-oil-embargo> accessed 4 November 2024
[71] Shipping Research Bureau, *Embargo: Apartheid oil secrets revealed* (Amsterdam University Press 1995), 17 <https://kora.matrix.msu.edu/files/50/304/32-130-1C09-84-Embargo_Apartheids_Oil_Secrets_Revealed%20opt.pdf>, accessed 4 November 2024.
[72] UNGA, 'Situation in South Africa' (28 November 1975) UN Doc A_RES_3411 (XXX) (28 November 1975) [11].
[73] Shipping Research Bureau, *Embargo: Apartheid oil secrets revealed*, (Amsterdam University Press 1995), 17, <https://kora.matrix.msu.edu/files/50/304/32-130-1C09-84-Embargo_Apartheids_Oil_Secrets_Revealed%20opt.pdf> accessed 4 November 2024.

to that state, and withholding any trade relations with it.[74] Furthermore, the UNGA noted the role of the finance industry in the colonising economy and asked states 'to refrain from extending loans, investments' to the perpetrator state.[75] In 1982, the UNGA asked states '[t]o suspend economic, financial and technological assistance to and co-operation with Israel.'[76]

Building on this framework of third state economic responsibility, it is essential to explore specific economic measures that states should implement in order to fulfil their legal obligations. The following sections will examine third state economic obligations with respect to trade and investment, as well as the responsibility of corporations registered in their territories.

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[74] UNGA, 'The policies of apartheid of the Government of the Republic of South Africa' (14 December 1962) A/RES/1761(XVII) [4]; 'Question of Territories under Portuguese administration' (21 December 1965) UN Doc. A/RES/2107(XX) [6]; 'The policies of apartheid of the Government of South Africa' (21 11 1969) UN Doc. A/RES/2506(XXIV)[B], [5].
[75] UNGA 'The policies of apartheid of the Government of South Africa' (21 November 1969) UN Doc. A/RES/2506(XXIV)[B], [5(c).
[76] UNGA 'The situation in the occupied Arab territories' (5 February 1982) UN Doc. A/RES/ES-9/1 [12(c)].

3. Trade obligations

This section outlines the legal obligations of third states, examines relevant provisions of World Trade Organization (WTO) law, and discusses the scope of trade measures that third states should implement. Moreover, this section also argues that comprehensive trade measures against Israel are not only permitted but are required in order for third states to fulfil their obligations under international law. Furthermore, WTO law provides the legal basis to undertake such trade measures while remaining compliant with general trade-related obligations. States are required to act both individually and collectively, including within the framework of the WTO and other relevant regional and international organisations of which they are Members.

3.1 Third States are required to undertake Trade measures against Israel

Trade measures against Israel are explicitly recognised as measures that third states ought to undertake to fulfil their legal obligations. The UNGA Resolution of September 2024, which translated the ICJ's opinion into practical actions or "precise modalities' to put an end of Israel's Illegal Occupation, explicitly addressed the trade-related measures that states should be undertaking.[77] The UN Human Rights Experts[78] and the COI[79] also spoke of the trade-related measures that ought to be undertaken.

It is important to emphasise that these different sources clearly indicate that the economic relations in question include those that risk contributing to Israel's unlawful presence in the OPT and to the maintenance of this unlawful situation.

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[77] UNGA (13 September 2014) A/ES-10/L.31/Rev.1, 13, 4(d)(ii) and (iv), with reference to *Advisory Opinion on Legal Consequences* [281].

[78] OHCHR, 'UN experts warn international order on a knife's edge, urge States to comply with ICJ advisory opinion' Press Release (18 September 2024) <https://www.ohchr.org/en/statements/2024/09/un-experts-warn-international-order-knifes-edge-urge-states-comply-icj-advisory , accessed 10 March 2025.

[79] COI, Legal analysis and recommendations on implementation of the International Court of Justice, Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (18 October 2024) [29] <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2024-10-18-COI-position-paper_co-israel.pdf>, accessed 10 March 2025.

3.2 WTO law supports measures to pursue UN Charter obligations

The security exceptions under WTO law reflect a hierarchy within the legal framework which prioritises states' obligations under the UN Charter over those under WTO law. In particular, Article XXI(c) of the General Agreement on Tariffs and Trade GATT (also replicated under the WTO agreements related to services and intellectual property), provides an exception which allows states to undertake measures in pursuance of their obligations under the United Nations Charter for the maintenance of international peace and security. The law of state responsibility has been applied in the enforcement of WTO rules,[80] including as a tool for interpreting WTO Agreements in accordance with the Vienna Convention on the Law of Treaties (VCLT).[81] In accordance with the customary rule of interpretation enshrined in Article 31(3)(c) VCLT, the application and interpretation of WTO rules will have to take into account other relevant applicable rules of international law, including the general international law of state responsibility.[82] Accordingly, and under the current circumstances and the persistence of Israel's illegality, WTO members have the legal basis to justify suspension of Israel's most-favoured nation (MFN) treatment, despite such measures being unlawful in normal circumstances.

The trade relations of most third states with Israel are governed by WTO rules. Where states have additional trade agreements—such as bilateral, regional, or other free

[80] The view that the WTO Agreements are a so-called 'self-contained system' has been largely discredited, and practice has confirmed that general international law is applicable to WTO disputes. See Report of the Appellate Body, WTO, 'United States—Standards for Reformulated and Conventional Gasoline,' (29 April 1996) WT/DS52/AB/R and Anna Ventouratou, 'The Law on State Responsibility and the World Trade Organization' (2021) Journal of International Investment and Trade, referencing Pieter Jan Kuijper, 'The Law of GATT as a Special Field of International Law: Ignorance, Further Refinement or Self-Contained System of International Law?' (1994) 25 NYIL 227.
[81] Ibid, Anna Ventouratou (2021): Ventouratou points out that "WTO case law confirms that WTO adjudicative bodies have taken into consideration the rules on state responsibility – as codified in ARSIWA – in interpreting the terms of the WTO Agreements, as relevant rules of international law applicable between the parties under Article 31(3)(c) VCLT".
[82] Under Article 3.2 of the WTO Dispute Settlement Understanding, WTO adjudicative bodies are instructed to 'clarify the existing provisions of [the WTO] agreements in accordance with customary rules of interpretation of public international law'. This is in line with the approach adopted by the International Law Commission Study Group on Fragmentation, which explained that '[a]ll treaty provisions receive their force and validity from general law, and set up rights and obligations that exist alongside rights and obligations established by other treaty provisions and rules of customary international law'. See: ILC Report, 'Fragmentation of International Law' (18 July 2006) [414].

trade and investment protection agreements—any arising obligations supplement those under the WTO. Many Free Trade Agreements (FTA) usually replicate the WTO exceptions, including Article XXI(c) of GATT.

In its wording (i.e. 'in pursuance of' obligations under the UN Charter), Article XXI(c) GATT sets a broad, rather than strict, correlation between the measure taken and the set objective. This article does not include the 'necessity' requirement which appears in other parts of the WTO security exceptions, such as Article XXI(b) GATT on essential security exception. This difference influences the nature of the measures that could be taken under each article. A measure taken to fulfil obligations under the UN Charter could be seen as one that contributes maintaining international peace and security.[83] The practice related to Article XXI(c) of GATT,[84] which preceded the establishment of the WTO, shows that states invoked this exception as a basis to suspend MFN treatment with other states, in order to implement UN resolutions.[85]

3.3 Trade measures against Israel should be comprehensive

While the duty to halt all trade and investment with and in the settlements, as well as any with other Israeli establishments in the OPT, clearly falls within the economic measures required from third states, these measures do not exhaust the full scope of economic actions required. Comprehensive trade measures in the form of overall

[83] *Advisory Opinion on Legal Consequences* [33], ICJ notes that 'In the view of most of these participants, the subject-matter of the General Assembly's request, although it involves Israel and Palestine, concerns the responsibilities of the United Nations and wider questions of international peace and security, as well as certain obligations *erga omnes* of States'.
[84] The present text of Article XXI dates back to the 30 October 1948 Geneva Final Act. It has never been amended. The provisions of what is now GATT Article XXI were included and discussed in the context of the US Draft Charter, and London and New York Draft Charter texts Article on exceptions to the commercial policy chapter (see Article 32, US draft; Article 37, London and New York drafts).
[85] The import licensing notification of Cyprus notes that imports from certain countries are prohibited in accordance with United Nations resolutions (L/5640, 24 January 1994). Brazil's 1994 notification on import licensing notes that the import licensing system of Brazil applies for goods entering from or exported to any country except for those covered by UN embargoes (L/5640/Add.54). India's 1994 background document for simplified balance-of-payments consultations notes that while almost all of India's trading partners received most-favoured-nation treatment in the issue of import licences, import licences were not issued for imports from countries facing UN mandated sanctions, at present Iraq, Fiji, Serbia and Montenegro" (L/5640/Add.7/Rev.6, 18 August 1994; see also BOP/321 of 24 October 1994).

embargo on export and import relations with Israel, including suspension of the MFN treatment at the WTO and any other preferential treatment under other trade agreements, are part of the economic measures required to effectively implement the obligation not to assist in maintaining the prolonged illegal situation perpetrated by Israel against the Palestinian People.

The illegality perpetuated by Israel relies on a systemic regime of policies and practices that span decades, including—but not limited to—the settlements and their associated regime, annexation, and legislative and other measures that discriminate against Palestinians in the OPT.[86] In this context, the scope of the obligation not to assist in maintaining the situation created by Israel's illegal presence in the OPT is broader than mere assistance in maintaining the settlements.

There is an entrenched intertwined relation between the Israeli economy and the OPT.[87] Here, the role of Israel as an occupying power cannot be understood as an act isolated from the overall operations of the Israeli State and Israeli economy.[88] Israel's practices, policies and laws create the conditions for facilitating the exploitation of the Palestinian economy, and in turn the Israeli economy benefits from this exploitation.[89] UNCTAD has studied how the Israeli economy benefits from Israel's role as an occupying power, and how it extracts resources from the OPT and Palestinian

[86] See UNGA Resolution of September 2024. For example, it is documented how Israeli land law has been designed as a tool of forceful exclusion. Hadeel Abu Hussein, The Struggle for Land Under Israeli Law: An Architecture of Exclusion (2021), referenced by Shahd Hammouri, The Palestinian Right of Self-determination as Decolonisation: A talk presented to the Committee on the Inalienable Rights of Palestinian People.
[87] See: Ralph Wilde (December 2024), "Illegality of Israel's presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in the light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and consequences for third States and the European Union,
https://www.ucl.ac.uk/laws/sites/laws/files/ralph_wilde_icj_opt_ao_thirdstateseu_legal_opinion.pdf
[88] Rabea Eghbariah, 'Toward Nakba as a Legal Concept' (2024) 124 Columbia Law Review 887
[89] Shahd Hammouri, 'Systemic Economic Harm in Occupied Palestine and the Social Connections Model'(2021) 22 The Palestinian Yearbook of International Law Online 112; George T. Abde, *The Palestinian Economy: Studies in Development under Prolonged Occupation* (1988); Leila Farsakh, 'Palestinian Labor Flows to the Israeli Economy: A Finished Story?' (2002) 32 Journal of Palestine Studies 13.

people.[90] Third states seeking to fulfil the obligation to distinguish between Israel and the OPT, and wanting to dissociate from trading or financial relations with Israel or Israeli entities that are linked to the illegal occupation, will face such a challenge of delineating between what is Israel proper and what is linked to or benefitting, directly or indirectly, from Israel's unlawful presence in the OPT.

The illegal settlements are in a permanent state of expansion and their boundaries not static. This undermines any attempts to respect the obligation of preventing relations with the illegal settlements. Generally, limiting measures to settlement-related embargoes would be insufficient to fulfil third States' obligations under international law. Taking measures only in relation to the settlements, while maintaining normal trade relations with Israel outside the settlements, helps to preserve normalised conditions for Israel and, in effect, contributes to legitimising the regime that sustains the prolonged illegalities and exploitative relations it perpetuates. Consequently, this will assist Israel in maintaining the illegality in defiance of international law.

It is clear that any comprehensive measures taken by third States against Israel are distinct from controversial unilateral coercive measures because they based on the ICJ's authoritative determination of international law violations, including serious breaches of peremptory norms. These measures are supported by collective UNGA action and are aimed at fulfilling clear obligations under the UN Charter and international law.

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[90] UNCTAD (August 2022), Report prepared by the secretariat of the United Nations Conference on Trade and Development on the economic costs of the Israeli occupation for the Palestinian people: the toll of the additional restrictions in Area C, 2000–2020.

4. Investment obligations

This section addresses ways to leverage Israel's bilateral investment treaties (BITs) to ensure an end to Israel's illegal presence in the OPT and the full realisation of the right of the Palestinian people to self-determination.

4.1 Bilateral Investment Treaties

By way of background, BITs can be traced back to the post-World War II era. These treaties, which were signed between two states, were designed to promote economic cooperation and protect foreign investments by investors from one of the signatory states in the territory of the other state. The treaties include substantive provisions that guarantee, for instance, that investments from one signatory state to the BIT receive specific protections within the territory of the other signatory state. While the specific substantive guarantees vary by BIT, there is a significant amount of overlap including the commitments that investments will be accorded fair and equitable treatment, and will be protected from unlawful expropriation.

BITs also contain an investor-state dispute resolution clause allowing investors from one state to sue the other state for reparations (including restitution and compensation) before an international arbitral tribunal in the event the latter, through its acts or omissions, breaches the substantive guarantees provided for in the investment treaty causing the investment losses. For example, under the Israel-Japan BIT, Israel agrees to protect Japanese investments in the territory of Israel and Japan agrees to protect Israeli investments in Japanese territory. Additionally, investors from Japan can sue Israel if Israel mistreats Japanese investments in breach of the treaty and, likewise, investors from Israel can sue Japan if Japan mistreats Israeli investments in breach of the treaty. Today, there are over 2,500 BITs in force worldwide. Based on publicly available information on UNCTAD's website, it appears that Israel maintains a total of 36 bilateral investment treaties (BITs) with other States which are in force.[91]

[91] UNCTAD also refers to 9 other treaties with investment provisions in force which may contain relevant provisions.

4.2 Using Israel's BITs to promote accountability and advance in service of the Palestinian liberation struggle

4.2.1 Termination of Israel's bilateral treaties

Building on the preceding analysis, Israel's BITs should be terminated as part of a comprehensive embargo on third state relations with Israel. This aligns with states' obligations, as determined by the ICJ, not to recognise as lawful the existence and continuation of Israel's unlawful presence in the OPT.

There are several possible benefits of such termination. The effect of termination would be to contribute to the growing isolation of Israel on the global stage and promote the view that Israel is a pariah, unlike other states which are able to maintain and reinforce bilateral relations including investment relations. It may also reduce investor confidence in Israel as a jurisdiction where foreign investments are safe.[92] In the long run,[93] termination would also close the door to claims for compensation brought by Israeli investors against states with whom Israel has a BIT, a justice mechanism which Israeli investors have used to challenge state action taken against their investments which is alleged to constitute a breach of a BIT.[94]

However, there are also possible disadvantages. First, it is unclear whether termination would have the impact of reducing the amount of Foreign Direct

[92] To counter this, Israel could always mitigate this consequence through the provision of substantive protections and incentives for foreign investors through its national legal framework.
[93] Israel's BITS generally contain sunset provisions which ensure the provisions of the treaty will continue to apply for a defined period for investments in the territory made prior to the date of termination. This period of time is typically 10 years but it depends on each BIT.
[94] Until now, five ICSID cases have been brought by Israeli investors, including one which is pending. See Search Cases | ICSID (search by investor nationality; Israel). A few other non-ICSID investment cases have also been brought by Israeli investors against States with whom Israel has a BIT.

Investment in Israel.[95] Second, in the long run,[96] termination would close the door to claims for compensation against Israel brought by foreign investors in Israel and possibly in the OPT (see next section below).[97]

4.2.2 Treaties remain in effect:

As long as Israel's BITs remain in force, foreign investors holding the nationality of a signatory state may file claims for compensation against Israel for actions which may constitute a breach of the BIT towards investments in Israel (and potentially the OPT).

In this latter scenario, the investor claimant would sue Israel for their conduct in the OPT, which affected the investor's investment (e.g. the Gaza genocide, the siege of Gaza, destruction, fragmentation, and annexation of parts of the West Bank, etc.).[98] This would happen before an international arbitral tribunal, which would be constituted to hear the claim under the theory that the OPT should be considered Israel's "Territory" for the purposes of the BIT's jurisdictional requirements due to Israel's *de facto* control in the OPT.[99] If successful in defending any jurisdictional objections, the arbitral tribunal would hear arguments on the merits. If the arbitral tribunal determines that Israel's conduct has breached the substantive standards in the BIT, it may award reparations to the investor, including restitution and/or compensation.

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[95] According to one study which looked at rates of FDI in States where BITs had been terminated (e.g. Ecuador, Bolivia, South Africa, Indonesia and India), it was observed that investment flows from former BIT partner countries were more likely to increase rather than decrease after BIT termination. At most, it is accepted that the effect of BITs on the flow of FDI is debatable. See Sauvant, Karl and Sachs, Lisa E., *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties and Investment Flow* (Columbia Center on Sustainable Investment Books 2009).

[96] Israel's BITS generally contain sunset provisions which ensure the provisions of the treaty will continue to apply for a defined period for investments in the territory made prior to the date of termination. This period of time is typically 10 years but it depends on each BIT.

[97] Israel does not appear to have been sued in a prior investor-State dispute.

[98] Cyprus and the UAE both have BITs with Israel and constitute States where FDI inflow into the OPT originates.

[99] This argument would be made without prejudice to whether Israel's exercise of control was lawful or not. There are a number of cases brought by Ukrainian investors against Russia under the Russia-Ukraine BIT in which tribunals considered parts of Ukraine which were annexed to Russia as Russian territory for the purposes of the BIT. See e.g. *Belbek v. Russia* and *Privatbank v.* Russia which were reported on in the Global Arbitration Review.

Even if the investor does not prevail, outcomes can be used to support efforts to bring an end to the Israel's unlawful occupation and apartheid regime in the OPT. If an investor can be identified (i) with one of the nationalities of the States with whom Israel has signed a BIT and (ii) whose investment was destroyed due to Israel's policies and practices, then the clearest way to leverage the BIT is to file such claim for compensation. This process offers the following benefits:

- Bringing a successful claim would **affirm this strategy as a means of filing direct claims for compensation against Israel, likely generating significant media attention and attracting new potential investor claimants to file their own cases.**
- Any case brought will **increase the cost of Israel's unlawful conduct** since it will require Israel to devote time and resources to its defence and risks, resulting in an arbitral award for damages enforceable against Israeli state assets.
- It will also provide **another public forum to challenge Israel's treatment of Palestinians** by focusing on how Israel treats investments made for the benefit of Palestinian society in the OPT.[100] In that sense, even if a case is not successful by resulting in an award for damages, it can still contribute to **isolating Israel on the global stage,** by adding to the chorus of international accountability efforts such as before the ICC, ICJ, and national jurisdictions worldwide, further adding to the historical record.
- Realising the risk of claims being made against Israel for its conduct in the OPT, even the filing of one claim may **provoke Israel to terminate its BITs to avoid the filing of additional claims**.[101] This would not be a negative outcome, as **termination has its own benefits** (see above). Moreover, due to the presence of sunset clauses in Israel's BITs, termination would not take immediate effect.

[100] Cases are typically not confidential with all submissions and awards made public but even confidential cases are reported on in media. In the event the Parties disagree on whether a case should be public or confidential, the arbitral tribunal is empowered to decide the matter.
[101] Investment treaties are usually unilaterally terminated, i.e. denounced due to dissatisfaction by one of the Contracting Parties, often as a result of being hit by an increasing number of claims.

Instead, it would likely transpire after 10 years,[102] allowing **new claims to be filed during that period in relation to investments made before the BIT's notification of termination**.

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[102] It is necessary to check the language of the specific BIT at issue to verify how long the sunset clauses preserve the right to bring claims.

5. Corporate obligations

This section examines the legal frameworks applicable to businesses operating or engaging in economic activities associated with Israel and in its illegal settlements in light of the ICJ's 2024 Advisory Opinion. The analysis will focus on the framework provided by the UN Guiding Principles on Business and Human Rights (UNGPs), and its application to businesses operating in or facilitating Israel's crimes and illegal occupation.

5.1 UN Guiding Principles on Business and Human Rights

Businesses operating in conflict-affected areas have a duty to adhere to heightened legal standards under frameworks such as the UNGPs.[103] These frameworks mandate rigorous measures to prevent corporate actions from exacerbating violence or contributing to human rights violations.

Under the UNGPs, businesses must conduct heightened human rights due diligence in conflict zones.[104] This involves identifying risks associated with their operations, including the possibility of supplying goods or services that could fuel hostilities or employing security arrangements that may perpetuate violence. Such due diligence is not a one-time exercise but a continuous process, reflecting the evolving nature of conflicts and their impacts on communities and operations.

According to the UNGPs, all businesses have a responsibility to "respect all human rights at all times". A central human right in this context is the right to self-determination. The UNGPs use the terms 'cause, contribute, or directly linked' to determine a business's responsibility for adverse impacts on human rights. Where a business 'causes or contributes to' such adverse impacts, or where it identifies a risk, it must stop harmful activity, mitigate risks and remediate any harm. If a business is 'directly linked to' the harms via its business partners, it is expected to use what leverage it has to effect change and work with its partners to do so. If a business's

[103] United Nations, *Guiding Principles on Business and Human Rights* (2011) UN Doc A/HRC/17/31.
[104] United Nations Development Programme, *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide* (2022) https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide accessed 10 March 2025.

leverage is insufficient to effect change, it must determine whether to terminate its relationship, including considerations such as leaving a territory.

The UN Office of the High Commissioner for Human Rights (OHCHR) has indicated that the terms 'cause, contribute, or directly linked to' sit on a continuum of responsibility, where businesses may shift from 'directly linked to' to 'contribution', triggering their remedial responsibilities.[105] Although the terms are not clearly defined in the UNGPs, factors such as the power of the business, its independence, the severity of the harm, the predictability of the harm and the existence of any pertinent mitigation measures help to situate the business along this continuum.

Businesses and corporations engaging in activities which support or facilitate Israeli violations of international law and the unlawful occupation must be held to the UNGPs:

- **Preventing Human Rights Abuses against the Palestinian people (Principles 11, 12 and 13):** Businesses are required to avoid causing or contributing to adverse human rights impacts. Where a business 'causes or contributes to' adverse human rights impacts, or identifies a risk, it must cease harmful activity and remediate the harm. In the context of the illegal occupation, companies must proactively assess and mitigate the negative effects of their activities, products or services on Palestinian rights, ensuring that their operations do not sustain or exacerbate the conditions of illegal occupation.

- **Establishing a Robust Human Rights Policy that Commits to Not Supporting the Illegal Occupation (Principles 12 and 16):** Businesses must develop and publicly communicate a comprehensive human rights policy informed by expert advice and stakeholder consultation. Moreover, businesses should be urged to clearly outline in their human rights policy an express commitment to

[105] OHCHR, *Response to Request from BankTrack for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking* Sector (12 June 2017) 7; see also Tara Van Ho, 'Defining the Relationships: "Cause, Contribute, and Directly Linked to" in the UN Guiding Principles on Business and Human Rights' 43 Human Rights Quarterly 4 (2021) 8-9.

ending any support that sustains the unlawful occupation, in line with the obligations highlighted by the ICJ's Advisory Opinion.

- **Conducting Thorough Human Rights Due Diligence on Violations of Palestinian Human Rights, including the Right of Self Determination (Principles 17 to 21):** The UNGPs recognise that there is an inherent and heightened risk of human rights violations in conflict-affected areas. To address this risk, businesses operating in Palestine and Israel must engage in heightened human rights due diligence. This involves identifying and assessing actual and potential adverse impacts and integrating these findings into practices, monitoring the effectiveness of remedies and reporting efforts to address risks. In the case of Israel's prolonged and compounded violations, businesses must consider the interconnection between Israel's economy and its illegal activities in the OPT. In the context of the unlawful settlements in the occupied West Bank, businesses are required to consider how their conduct legitimises, normalises, maintains or strengthens the unlawful occupation.

  Whilst a business would normally be expected to undertake its own human rights due diligence to understand the impacts of its products and operations, the ICJ's decision circumvents the inquiry, putting businesses on notice that their participation in any economic activity that further entrenches the illegal occupation settlements amounts to participation in an ongoing war crime and a breach of the UN Charter.

- **Extending Responsibility Beyond Direct Operations (Principles 12, 13(b), 17 and 23):** If a business is "directly linked" to human rights harms through its partners, it must use its leverage to drive change; if leverage is insufficient, it should collaborate with others to increase its influence. The more severe the harm, the faster action must be taken. In cases like Israel's Illegal Occupation, which involves violations of numerous *jus cogens* norms, war crimes and systemic human rights violations, 'directly linked' businesses might shift to rapidly 'contributing'. If they fail to effect change, they must assess whether to

terminate relationships or exit the territory. Businesses that continue their engagement without driving meaningful change risk shifting from being 'linked' to harms to actively 'contributing' to them.

The question that arises is whether effective leverage can exist in contexts such as the Israeli unlawful occupation, where systemic and structural violations, policies and practices have survived multiple administrations, parties and governing bodies. In this context, it is not possible to mitigate or to use leverage effectively. This means that corporations with the power and independence to leave, and that are aware of the severity and the predictability of the harm, are responsible due to their continued operation. In such cases, the only viable way to uphold the corporation's obligations is through responsible disengagement.

- **Providing Effective Remedies (Principles 22, 29 and 30):** Companies have a responsibility to provide or participate in accessible, equitable, and effective grievance mechanisms that offer redress to those harmed by their operations. For businesses implicated in the Illegal Occupation, these remedial measures must align with internationally recognised human rights standards and reflect a genuine commitment to accountability - ensuring that any violations linked to their activities are promptly addressed and rectified.

5.2 Applying the UNGPs to businesses operating in the OPT or facilitating the illegal occupation

Companies providing goods or services to the Israeli state inherently support and perpetuate Israel's settler-colonial system. Under the UNGPs, contributing to such harm is also an act of participating in it.

Israel's Illegal Occupation and settlement industry are deliberately structured to integrate private sector participation by offering incentives that encourage business involvement. For example, Palestinians' natural resources have been systematically pillaged and controlled by Israel since its inception, and much of it has been

privatised. Palestine's minerals, agricultural lands, oil, and water have all been controlled and privatised by Israel.[106] Water, for example, is pillaged from Palestinian land and property, and sold back to Palestinians by private actors and abetting corporations.[107] This not only sustains the occupation, but normalises it internationally, influencing foreign economic relations. The entire economic ecosystem around the settler-colonial system depends on private sector support, making businesses complicit in maintaining it—whether through military, infrastructural, or commercial means.

Businesses fall into two categories: those directly operating in the OPT, Israeli war economy and settlements, and those indirectly supporting them. Direct operators actively contribute to violations of peremptory norms as well as a host of violations of international law, as outlined in Section 2 of this booklet. However, responsibility also extends to institutional investors, banks, parent companies, and ESG analysts, all of whom play a role in sustaining and legitimising the occupation:

- **Banks**, particularly transnational ones, have significant power as well as independence to make a choice to leave. As such, they can be presumed to be, at a minimum, 'contributing to' the harm.

- **Institutional investors** make a choice to invest in businesses that are engaged in war crimes, crimes against humanity, and linked human rights violations. An investor's relationship to the harm is via their investees and then via the investors with the state's commission of war crimes, crimes against humanity, and serious violations of human rights. Given the severity and predictability of the harm, institutional investors are likely 'contributing to' the harm *unless* they adopt adequate mitigation measures.

[106] Al-Haq, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory* (Al-Haq, 2015); Al-Haq, *Business and Human Rights in Palestine* (Al-Haq).
[107] Al-Haq, *Corporate Liability: The Right to Water and the War Crime of Pillage* (Al-Haq, 2022) https://www.alhaq.org/publications/20995.html, accessed 6 March 2025.

- **Transnational parent companies** often have significant power over their subsidiaries as well as a great deal of independence. Parent companies are expected to conduct due diligence across their global value chains and exercising considerable leverage to ensure that subsidiaries do not support the settlements, policies and practices akin to apartheid, or the securitisation of Palestine by Israel.

- **Global value chain businesses** purchase or supply goods in a manner that normalises or maintain activity. Some businesses which provide essential goods such as education, healthcare or essential foods, may be justified in remaining longer even though the settlements are unlawful, since settlers retain their fundamental human rights. The provision of jobs is not, in and of itself, sufficient to justify staying. Whilst humanitarian access to food, water, shelter, and education remains a right of all civilians in an armed conflict, businesses providing such goods may equally choose to leave and terminate their relationships if they do not find effective use of their leverage.

- **ESG Data Providers** play a crucial role in assessing human rights risks. Where an ESG provider fails to align itself with the UNGPs, it creates a knock-on effect whereby other businesses are likely to fail to meet their responsibilities, thus linking the provider to the harm. When a provider makes choices to intentionally dilute its analysis to facilitate or ignore human rights violations, as has been seen with the prominent Morningstar's Sustainalytics, it can be 'contributing to' the harms.[108] Morningstar has faced criticism for altering its approach to avoid assessing risks related to the Israeli occupation, which not only distorts the data provided to institutional investors but also perpetuates the normalisation of the occupation and erases Palestinian rights. This failure

[108] For complete analytical overviews of Morningstar, see Foundation for Middle East Peace, 'Promoting Risk & Undermining Rights: Morningstar's Betrayal of Palestine & ESG' (Podcast) (6 December 2022) <https://fmep.org/resource/promoting-risk-undermining-rights-morningstars-betrayal-of-palestine-esg/> accessed 21 March 2025; and Foundation for Middle East Peace, 'Promoting Risk & Undermining Rights: Morningstar's Betrayal of Palestine & ESG: Part 2' (Podcast) (15 Feburary 2024) < https://fmep.org/resource/promoting-risk-undermining-rights-morningstars-betrayal-of-palestine-esg-part-2/> accessed 21 March 2025.

to adequately assess risks and its subsequent impact on businesses' actions makes Morningstar directly linked to, if not contributing to, human rights violations and war crimes in the occupied territories and to the oppression of Palestinians.

5.3 Holding corporations liable for violating their international obligations

International Humanitarian Law (IHL) imposes direct legal obligations on businesses whose operations intersect with armed conflicts.[109] These obligations include ensuring that corporate activities do not aid or abet violations such as targeting civilians, destroying civilian infrastructure, or supporting actions that constitute war crimes. For example, businesses providing logistical or material support to actors in a conflict must take proactive steps to prevent their goods or services from being used in unlawful ways. Violations of IHL can result in criminal or civil liability under both international and national legal systems.

Criminal law in national and international criminal courts is expected to play a role in addressing accountability. It is anticipated that ad hoc accountability mechanisms will be established for the case of Palestine, like those during the UN Public Hearings on Transnational Corporations in Apartheid South Africa. Corporations can be held liable for extraterritorial violations of human rights in many jurisdictions, including the UK, France, Norway, and Canada. Additionally, corporations can be held accountable for violations of international human rights law in regional courts, such as the African Court on Human and Peoples' Rights. These possibilities highlight the significant litigation risks faced by corporations that fail to adhere to their duties.

[109] International Committee of the Red Cross, *Private Businesses and Armed Conflict: An Introduction to Relevant Rules of International Humanitarian Law* (2024) , https://www.icrc.org/en/document/private-businesses-armed-conflict-introduction-relevant-rules-international-humanitarian-law, accessed 10 March 2025.

Further, corporations are faced with the risk of complaints through OECD National Contact Points (NCP).[110] Complaints to NCPs have become an increasingly popular mechanism to challenge corporate behaviour and can provide precedents for targeting corporate actors involved in sustaining and perpetuating the illegal occupation. In addition to these frameworks, various instruments and initiatives provide meaningful tools within the broader corporate accountability system. These include the UN Global Compact,[111] the International Labour Organisation Declaration and related supervisory mechanisms,[112] and the UN Principles for Responsible Investment.[113]

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[110] See OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (2018) https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf accessed 10 March 2025.
[111] UN Global Compact, <https://unglobalcompact.org/what-is-gc> accessed 10 March 2025, and see table comparing the UN Global Compact to the UNGPs and OECD Guidelines in Schedule 7 at https://media.business-humanrights.org/media/documents/files/documents/Comparative_UN_Global_compact_and_UNGP.pdf , accessed 10 March 2025.
[112] ILO 'ILO Declaration on Fundamental Principles and Rights at Work (*ILO*) https://www.ilo.org/about-ilo/mission-and-impact-ilo/ilo-declaration-fundamental-principles-and-rights-work accessed 10 March 2025
[113] UNPRI 'What are the Principles for Responsible Investment?' (*PRI*) https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment accessed 10 March 2025.

6. Contractual obligations and *jus cogens* norms

6.1 The relationship between Treaty Obligations and *Erga Omnes* Obligations

Third states, bound by *jus cogens* norms, must prioritise compliance with international law, even if doing so necessitates terminating existing treaty obligations. The Vienna Convention on the Law of Treaties 1969 (VCLT), which reflects customary international law, offers a framework for addressing such conflicts.

Article 53 of the VCLT states that any treaty that violates a peremptory norm of international law is rendered null and void - independent of any formal declaration or subsequent state practice. The operation of Article 53 thus establishes a legal regime where the inherent public order interest pre-empts the autonomy of the parties. When a treaty conflicts with *jus cogens*, third States are obligated to recognise the resulting nullity.

In the context of the OPT, this means that if a treaty or agreement between a third state and Israel—whether directly or indirectly—supports the occupation or enables illegal activities in the OPT, that treaty could be considered void. At the very least, it becomes unenforceable when it clashes with *erga omnes* obligations, exposing third states to significant legal and reputational consequences for complicity in violations of fundamental international norms. Third States have a legal duty not to recognise such illegalities and to treat them as void.[114]

Article 41 of the Vienna Convention on the Law of Treaties addresses the responsibility of third party states when they assist or encourage another state's breach of international obligations. In the context of Palestine, third party states that provide military, economic, or political support to Israel, thereby enabling the maintenance of its illegal occupation, risk being complicit in violating peremptory norms, which are non-negotiable and binding on all states. By aiding Israel's occupation, third party states not only undermine international law but also

[114] Orakhelashvili, A. *Peremptory Norms in International Law,* 'Chapter 6: Effect of *Jus Cogens* in the Law of Treaties' (Oxford University Press 2008) 143.

expose themselves to legal accountability, reputational damage, and the moral stain of facilitating systemic violations of fundamental human rights.

The procedural regime established by Articles 46, 69, and 71 of the VCLT mandates the elimination of consequences derived from the void treaty and prohibits subsequent validation. Articles 69 and 71 of the VCLT outline the remedial measures required to restore the international legal order. Article 71(1) of the VCLT imposes a duty on the parties to 'eliminate as far as possible the consequences' of any act performed in reliance on a provision that conflicts with a *jus cogens* norm. This obligation extends to third states. Furthermore, Article 45 prohibits any form of subsequent validation or waiver, thus underscoring the supremacy of peremptory norms.

6.2 Case Study: NATO

The North Atlantic Treaty, which established NATO, establishes obligations for member states. However, the treaty also establishes that the security obligations of members do not override international law.[115] In his Separate Declaration to the ICJ Advisory Opinion, Judge Tladi wrote that "security interests as such, no matter how serious or legitimate, cannot override rules of international law".[116]

As previously established, all states have a duty to impose a full arms embargo on Israel. In practice, however, member states are signalling the intention to prioritise NATO obligations over international law and mask their lack of adherence through fragile interpretations of the relevant law and facts. The British government, for example, has made clear that it will continue to supply parts for F-35 fighter jets to Israel under a NATO programme, claiming that the UK's participation in the programme is "crucial to wider peace and security". This is despite the fact that F-35 aircrafts have been deployed against civilians in Gaza, in violation of international

[115] North Atlantic Treaty Article 7.
[116] *Advisory Opinion on Legal Consequences*, Declaration of Judge Tladi [44].

law. NATO states are thus acting in defiance of the ICJ’s Advisory Opinion, which clearly established that security concerns cannot override international law.

The ICJ's advisory decision confirms that third party states are obligated by *jus cogens* norms—such as the right to self-determination and the proscription against acquiring territory by force—to neither recognise nor aid Israel in sustaining its unlawful occupation of the OPT. Since peremptory norms take precedence, *erga omnes* duties override over treaty obligations in cases of conflict. Third states must ensure that their acts do not justify or encourage the occupation in accordance with their obligations under international law.

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