

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Working Group on the issue of human rights and transnational corporations and other business enterprises

Ref.: AL OTH 149/2025
(Please use this reference in your reply)

17 December 2025

Dear Mr. Claudio Descalzi,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 1993/2A and 53/3.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company information we have received concerning **the adverse human rights impacts of, Italy-based and partially Italy-controlled oil company, Eni S.p.A's activities in the occupied Palestinian territory and the alleged failure of the Italian Government to protect and respect human rights in this context. Eni S.p.A has acquired an offshore gas exploration license to maintain resource extraction in illegally occupied Palestinian territorial waters and has been providing crude oil for Israel's military occupation and actions amounting to a plausible risk of genocide.**

According to the information received:

Eni S.p.A is an Italy-based energy company operating in the exploration, development and extraction of natural gas and oil in over 60 countries. The Italian government has a combined stake-holding in Eni S.p.A. of 31.8 per cent and this ownership is held both directly by the Ministry of Economy and Finance

Eni S.p.A

(‘MEF’) (approximately 2 per cent) and indirectly by the Cassa Depositi e Prestiti (‘CDP’), a state-controlled bank holding approximately 29.8 per cent of the company. The combined stake in the company held by the MEF and CDP makes the State the single largest and most influential shareholder in Eni S.p.A. This provides de facto control, because even without a 50.1 per cent majority, the remaining shareholdings are distributed through a diffuse range of investors who are unlikely to be able to form unified opposition to the Italian government. This position gives the Government of Italy the power to influence, appoint Board Members, and exercise a veto power against hostile takeover attempts or major corporate changes that may run counter to the national interest. In addition, Eni S.p.A. is subject to special legislation known as the [‘Golden Powers’ regulation](#), allowing the State of Italy to intervene in, or block, corporate resolutions, acts or operations concerning strategically important assets in the energy sector if they pose a threat to national security or public interests, irrespective of ownership. This provides the Italian government with a direct means of control over critical strategic decisions undertaken by ENI S.p.A., including in relation to its actions in the acquisition of offshore gas exploration licences in Exclusive Economic Zones (EEZ) established in Israeli and Palestinian waters.

Furthermore, following a merger in October 2024, Eni S.p.A. was issued a stake of 38.7 per cent shares in UK-based Ithaca energy, owned by the Israeli-owned Delek Group which is currently on the OHCHR [database of business enterprises involved in listed activities related to Israeli settlements in the occupied Palestinian territory](#), including supplying fuel to the Israeli Defence Forces and ongoing engagement with activities in the West Bank considered illegal under international law.

Eni was awarded six exploration licenses in Zone G of the ‘Exclusive Economic Zone’ (‘EEZ’) in the OBR4 tender of Israel's Ministry of Energy and Infrastructure on 13 December 2022. EEZ is an area where over 60 per cent falls within the maritime territory of Palestine. As the State of Palestine is recognized by 157 of the 193 members of the United Nations, Eni S.p.A.’s acquisition of licenses from Israel for exploration in the maritime area belonging to the State of Palestine illegally occupied by Israel, is in violation of international law. In addition, the State of Palestine is a signatory to the United Nations Convention on the Law of the Sea (UNCLOS), Eni S.p.A. is engaging in illegal economic relations in illegally occupied Palestine.

Israel relies on imports for its crude oil and fuel. Due to the lack of publicly available information regarding the use of oil and gas in the Israeli economy, there is little evidence to suggest a separation between crude oil used for civil and military purposes. The largest source of crude oil to Israel is through the Baku-Tbilisi-Ceyhan (BTC) pipeline, of which Eni S.p.A. is a minority shareholding partner. Eni S.p.A. also partly-owns the Caspian pipeline (CPC), which is the second largest supplier of crude oil to Israel.

1 per cent of all crude oil imported by Israel between October 2023 and July 2024 can be attributed to a single shipment of 30,000 tons of crude oil by the Val d’Agri Oil project, a joint venture between Eni S.p.A (61 per cent) and Shell

(39 per cent).

Crude oil from the BTC pipeline is usually delivered to the Haifa refinery. From this refinery, two OHCHR database-listed companies supply fuel to petrol stations throughout Israel and across the occupied Palestinian territory. This fuel is also used by the Israeli military, enabling its gross violations of international law. One of these two companies is the Delek group, with whom Eni S.p.A can be directly linked.

The gas exploration licenses awarded to Eni S.p.A are currently being challenged in a case led by leading Palestinian human rights organisations as an explicit violation of international law, which prohibits occupying powers from pillaging, selling or exploiting natural resources.

Since October 2023, Israel has repeatedly cut off access to fuel and has cut or destroyed nearly all access to electricity, water and other supplies to Gaza. This engineered dependency has been operationalized for genocide.

While the initial three-year exploration of the OBR4 period concludes this December (2022-2025), Eni S.p.A has refrained from suspending this license over the past two years despite the legal developments during that period, including the rulings and findings of the International Court of Justice and successive reports by the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. While the crime of plunder is typically established upon the commencement of extraction, by not suspending its license, Eni S.p.A. has still been contributing to Israel's unlawful occupation and other violations in the OPT.

Without wishing to prejudge the accuracy of the information received, we express our serious concern that your company continues to pursue fossil fuel exploration in sovereign Palestinian maritime territory, provide crude oil to Israel and continue to be involved, directly or indirectly, in unlawful Israeli settlements. In the occupied Palestinian territory, the Guiding Principles must be read in conjunction with the responsibilities emanating from the ICJ [Advisory Opinion](#) 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 Court found Israel's occupation – composed of its military presence, settlements, associated infrastructures, and control of Palestinian natural resources – to be unlawful in its entirety on the basis of sustained violations of two peremptory norms of international law: the right to self-determination of the Palestinian people and the prohibition on the acquisition of territory by force. The latter may constitute the international crime of aggression under the Rome Statute of the International Criminal Court (ICC). The ICJ explicitly affirmed that “occupation cannot transfer or confer sovereign title to the occupying Power over the territory that it occupies”, Israel's security concerns cannot override peremptory norms, and “the Palestinian people's right to self-determination cannot be subject to conditions on the part of [Israel], in view of its character as an inalienable right”.

The ICJ also noted that Israel's occupation is in breach of the law prohibiting racial segregation and apartheid. The United Nations General Assembly has since determined that Israel's occupation must be withdrawn totally and unconditionally by

18 September 2025 (see [A/ES-10/24](#)). Until such time as this happens, there must be no recognition, aid or assistance rendered that would assist in maintaining these wrongful acts.

Furthermore, in 2024, the ICJ has issued provisional measures connected to the risk of genocide in Gaza in the matter of *South Africa v Israel*, and the ICC has issued arrest warrants in the *Situation in the State of Palestine* for Israeli Prime Minister, Benjamin Netanyahu and former Israeli Defense Minister, Yoav Gallant, on the basis that there are reasonable grounds to believe they have committed war crimes and crimes against humanity related to persecution, widespread and/or systematic murder and starvation, and directing attacks against the civilian population in the occupied Palestinian territory.

The right of self-determination is the most fundamental and existential right for all human beings. It pertains to the inherent capability of a people to exist and determine themselves *as a people* in a given territory, free from foreign control and occupation. As a result, the denial of self-determination taints with illegality all other actions exercised against the will of the Palestinian people and jeopardises all their human rights. This includes amongst others: the fundamental freedoms of association, assembly, movement and thought, conscience and religion, the right to a fair trial, safe and adequate housing, and work, as well as the security and dignity of every Palestinian, men and women, the elderly and children alike. For decades, the Israeli occupation has systematically violated Palestinian right to self-determination and Palestine's territorial sovereignty by seizing, annexing, fragmenting, and transferring the Israeli civilian population to the occupied territory (for more, see [here](#)).

Furthermore, based on all of the information reviewed, there are reasonable grounds to believe that Eni S.p.A is violating its responsibilities to respect human rights as set out in the [Guiding Principles on Business and Human Rights](#). These principles include the responsibilities to undertake human rights due diligence processes to identify, prevent, mitigate, and account for adverse human rights impacts. These impacts may also trigger criminal liability where it can be shown that Eni S.p.A caused, contributed towards, or was directly linked to international crimes committed by the State of Israel and knowingly failed in its capacity to withdraw its support, enabling such crimes to occur.

In light of this, Eni S.p.A's ongoing entrance into economic relations or trade dealing with the State of Israel concerning the occupied Palestinian territory or parts thereof may further entrench its occupation and annexation of that territory and is therefore in violation of customary international law regarding the prohibition on the use of force and the right of the Palestinian people to pursue their economic, social and cultural development. Moreover, the applicable legal framework and the gravity of the situation on the ground in the occupied Palestinian territory, particularly in Gaza, indicates that there are reasonable grounds to believe that Eni S.p.A is **contributing to gross human rights abuses that require the immediate cessation of the concerned business activity**, and the remedy of the harm done to Palestinians. This includes some of activities identified in UN resolutions [31/36](#) and [53/25](#).

It is further noted that compliance with domestic laws of a given jurisdiction, does not absolve private entities of their responsibilities or liabilities under international

law. Eni S.p.A executives may face criminal liability for aiding and abetting war crimes including genocide through the provision of crude oil to fuel Israel's assault on Gaza. In addition, Eni may be criminally liable for complicity in unlawful annexation and pillage (articles 8(2)(a)(iv) and 8(2)(b)(xvi) of the Rome Statute) – by illegally acquiring licenses from Israel for Gas exploration in Palestinian territory, where Israel is the occupying power, and does not have sovereignty. Nothing prevents the prosecutor from extending the application of the Rome Statute to senior officials or individuals from corporations deemed to be complicit in such violations. **This could potentially include directors or senior representatives of Eni S.p.A.**

Based on the above, we find that there are reasonable grounds to believe that Eni S.p.A has engaged in activities that constitute abuses of peremptory norms of international law and other critical legal principles and standards, including primarily:

1. Aiding and assisting in / contributing to the denial of the Palestinian right to self-determination, including control over their own natural resources, and the future possibility to exercise it.
2. Aiding and assisting in the maintenance of Israel's unlawful military occupation of Palestinian territory.
3. Aiding and assisting in the permanent annexation of occupied Palestinian territory.

This situation exposes Eni S.p.A to potential criminal liability for the material support it provides to maintain Israel's unlawful occupation, amounting to serious international crimes under the Rome Statute.

Ancillary to this, there are reasonable grounds to believe that Eni S.p.A is at a minimum, directly linked to and/or supporting the following violations, among others:

- Aiding and abetting in war crimes by the use of collective punishment and the use of starvation of the civilian population, both of which constitute crimes under international law.
- Eni may be criminally liable for complicity in unlawful annexation and pillage (Articles 8(2)(a)(iv) and 8(2)(b)(xvi) of the Rome Statute)

Moreover, Eni S.p.A may be implicated in aiding and abetting actions that are at serious risk of constituting genocide, particularly given the knowledge that Israel may possess the intent to commit genocide.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information with respect to measures taken by your company to respect human rights, including to conduct heightened human rights due diligence prior to investing in companies, or operating in conflict-affected contexts, with particular reference to the current hostilities in the occupied Palestinian territory, in accordance with the UN Guiding Principles on Business and Human Rights. In this context, what are the measures that your company has taken or is planning to take to prevent from being associated with serious violations of international human rights law, international criminal law and international humanitarian law. Is there any plan to drop the license you have been provided by the State of Israel (OBR4 – (2022-2025), to explore Palestinian territorial waters by the end of the year.
3. Please indicate specific remedial measures that your company has taken or is considering taking to remedy victims affected by its activities. Please provide information on steps taken by your company to establish, or participate in effective operational-level grievance mechanisms, in line with the UN Guiding Principles to address adverse human rights impacts caused by your company in this context.

This communication and any response received from you will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged abuses and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

Please note that a letter expressing similar concerns have been sent to the Government of Italy. A copy of this letter has also been sent to Israel and State of Palestine.

Please accept, Excellency, the assurances of our highest consideration.

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Pichamon Yeophantong
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Annex

Overview of the legal framework governing the legal responsibility of corporate entities in the occupied Palestinian territory

Introduction

This annex sets out the international legal framework broadly applicable to the businesses involved in the occupied Palestinian territory (oPt). It aims to provide guidance on the interpretation and application of the legal concepts and factual findings presented in the main report. Not intended as an exhaustive exposition of international law in this domain, it presents the broad principles of business responsibility, particularly those applicable where corporate entities¹ are implicated in displacing Palestinians from their land and replacing them with unlawful colonies, contrary to international law. Businesses risk being held responsible for exploitative, abusive and even criminal conduct. Although business responsibility for and criminal complicity in violations was certainly identifiable in the oPt prior to October 2023, subsequent factual and legal developments could implicate corporations in unlawful occupation and genocide.

Business responsibility under international law

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultation with governments, civil society, human rights defenders and the business community. The guiding principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These guiding principles are based on the recognition of:

- a) "The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialised bodies or corporations performing specialised functions, which must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be matched by appropriate and effective remedies when they are violated".

¹ [A/HRC/59/23](#), para. 5.

The guiding principles also make clear that companies have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to companies on how to meet their responsibility to respect human rights and to provide remedies where they have caused or contributed to adverse impacts. The guiding principles have identified two main components of the corporate responsibility to respect human rights, which require “business enterprises to:

- a) Prevent their own activities from causing or contributing to adverse human rights impacts and address those impacts when they occur;
- b) Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided through their business relationships, even where they have not contributed to those impacts”. (guiding principle 13).

The commentary to guiding principle 13 notes that companies can be affected by adverse human rights impacts, either through their own activities or as a result of their business relationships with other parties (...) The 'activities' of business enterprises are understood to include both actions and omissions; and their 'business relationships' include relationships with business partners, entities in their value chain and any other non-State or State entities directly linked to their business operations, products or services.

To meet their responsibility to respect human rights, companies should have in place policies and procedures appropriate to their size and circumstances:

- a) A political commitment to uphold their responsibility to respect human rights;
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impact;
- c) Processes to redress any adverse human rights impacts they have caused or contributed to (guiding principle 15).

According to guiding principles 16-21, human rights due diligence involves:

- a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise has caused or contributed to through its activities, or that are directly related to the operations, products or services provided by its business relationships;
- b) Integrate the results of impact assessments into relevant business functions and processes, and take appropriate action in accordance with their involvement in the impact;
- c) Monitor the effectiveness of the measures and processes adopted to address these adverse human rights impacts in order to know whether they are working;

- d) Communicate how adverse effects are addressed and demonstrate to stakeholders – particularly those affected – that appropriate policies and processes are in place to implement respect for human rights in practice. This process of identifying and assessing actual or potential adverse human rights impacts should include substantive consultation with potentially affected groups and other stakeholders (guiding principle 18).

Where an enterprise causes or is likely to cause an adverse human rights impact, it should take the necessary steps to end or prevent that impact. “The establishment of operational-level grievance mechanisms for those potentially affected by corporate activities can be an effective means of redress provided they meet certain requirements listed in principle 31 (guiding principle 22).

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political and other attempts to influence the outcome (commentary to guiding principle 25).

In its report on “business, human rights and conflict-affected regions: towards heightened action” (A/75/212), the UN Working Group on Business and Human Rights urges home and host States to use their key policy tools and levers to ensure that business engages in conflict-sensitive heightened human rights due diligence when operating in conflict-affected areas. To conduct heightened human rights due diligence, business should focus on three main steps: first, identify the root causes of tensions and potential triggers, which include the contextual factors such as the characteristics of a country or region that can affect conflict, and the real and perceived grievances that can drive conflict. This conflict analysis will help identify the human rights abuses or impacts that may arise due to the conflict and not just business operations. There will be a difference between workplace risks based on normal safety concerns versus those related to employees belonging to different groups that were parties to a conflict. Second, map the main actors in the conflict and their motives, capacities and opportunities to inflict violence, which include affected stakeholders, parties to the conflict and “mobilizers”, those people or institutions using grievances and resources to mobilize others, either for violence or for peaceful conflict resolution. Business should pay particular attention to human rights defenders, those “individuals or groups that, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights.”

In conflict affected contexts, human rights defenders may share the same claims as a party to the conflict but advocate for rights holders in a peaceful manner. Business should therefore be careful to differentiate between the two, and not expose human rights defenders to undue risks, for example by initiating frivolous legal proceedings or reporting them to authorities. Third, identify and anticipate the ways in which the businesses’ own operations, products or services impact upon existing social tensions and relationships between the various groups, and/or create new tensions or conflicts.

The report also underscores that there is ample evidence of the differentiated impact of violence on women and girls and that conflict exacerbates gender-based discrimination. Accordingly, it is important for business to realize the specific experience of women and girls in conflict and post-conflict situations and, given the risks to women and girls of sexual violence, discrimination and pervasive inequality, the private sector should address gender and conflict as part of any heightened human rights due diligence.

When responsibility may entail criminal liability

Failure to act responsibly in line with international law may implicate corporate entities in more serious violations giving rise to criminal liability, for the *corporate* entity and/or for its executives.

Drawn from the legacy of the Industrialists' trials at Nuremberg,² corporate accountability for international crimes is based on a recognition of the critical role the economy plays in times of war and conflict,³ and the fact that corporate entities may be involved in heinous violations of international law constituting *international* crimes.

Individual executives can be held criminally liable for the actions of their corporate entities, including before the International Criminal Court.⁴ While, increasingly, *corporate* entities themselves, could also face criminal liability as a result of the emerging crystallization of customary international legal principles.⁵ This includes some domestic jurisdictions which attribute criminal liability to corporations,⁶ and a growing body of treaties enshrine criminal liability of legal persons, which means that under international law corporations can be criminally liable for specific crimes, including genocide,⁷ apartheid,⁸ financing terrorism,⁹ organized crime¹⁰ and

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- ² *Krupp Case (United States of America v. Alfred Krupp)*, Judgment of 31 July 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, Vol. IX; *I.G Farben Case (United States of America v. Carl Krauch et al.)*, Judgment of 30 July 1948, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, Vol. VIII.
- ³ Submission (1.3); Anita Ramasastry, "Corporate Complicity: From Nuremberg to Rangoon - An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations" *Berkeley Journal of International Law* vol. 20, Issue 1, p. 91. Annika van Baar, "Transnational Holocaust Litigation and Corporate Accountability for Atrocities Beyond Nuremberg" (19 February 2019); Jonathan Kolieb, 'Through the Looking-Glass: Nuremberg's Confusing Legacy on Corporate Accountability under International Law' *American University International Law Review* vol. 32, No. 2, (2017), p. 569, 582.
- ⁴ Michael Kelly, *Prosecuting Corporations for Genocide* (OUP, 2016); Submission 1.3; [A/75/212](#), para. 11.
- ⁵ International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries, 2019, [A/74/10](#), pp. 81-84, https://legal.un.org/ilc/texts/instruments/english/commentaries/7_7_2019.pdf. African Union, Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 27 June 2014, art. 46 (not yet in force); Special Tribunal for Lebanon, *New TV S.A.L. Karma Mohamed Tashin Al Khayat*, Case No. STL-14-05/PT/AP/AR126.1, Decision of 2 October 2014; *U.S. v. Krauch, et. al.* (the I.G. Farben Case), VIII *Trials of War Criminals Before the Nuremberg Military Tribunals*, iii-iv (1952); *contra* UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998, Official Records, vol. III (A/CONF.183/13), art. 23, para. 6, footnote 71.
- ⁶ E.g. Ecuador Código Orgánico Integral Penal, Registro Oficial, Suplemento, Año 1, N°180, 10 February 2014, art. 90; www.ipinst.org/wp-content/uploads/publications/businessand_intcrime.pdf.
- ⁷ Genocide Convention, Article VI; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 420; Michael Kelly, *Prosecuting Corporations for Genocide*.
- ⁸ International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), art. I(2).
- ⁹ International Convention for the Suppression of the Financing of Terrorism, art. 5.
- ¹⁰ UN Convention against Transnational Organized Crime, art. 10.

corruption.¹¹

The conduct of corporations and their executives may entail direct criminal liability but more commonly constitutes complicity or aiding and abetting liability. This may involve instigating, moral support,¹² or abetting, furnishing aid or assistance for or procuring the means for the commission of a crime¹³ or the creation of conditions necessary for atrocity crimes to occur.¹⁴ International tribunals have generally found that criminal liability for such forms of complicity: (a) *can* be established where the aid or assistance has a material effect on the commission of the crime,¹⁵ and (b) depends on the knowledge possessed by the entity/executive of how its services or activities will be utilised, and the effect on the commission of the crime.¹⁶

In other words, it is not necessary to show that the entity or individual *intended* the particular harm; it is sufficient that in providing logistical, financial or operational support, they had actual or constructive *knowledge* that the principal *perpetrators* were engaged in a given crime,¹⁷ or, in the case of prosecutions before the ICC, acted “for the *purpose* of facilitating the commission of such a crime”.¹⁸ Financial and managerial control over a corporate entity engaged in the crime is sufficient to establish the basis for individual criminal responsibility.¹⁹ Jurisprudence has confirmed that corporate actors cannot avoid accountability by claiming that they were merely fulfilling commercial contracts.²⁰

¹¹ UN Convention against Corruption, art. 26.

¹² International Criminal Tribunal for Yugoslavia, *Prosecutor v Blaškić*, Case No. IT-95-14-A, 29 April 2004, paras. 46–47.

¹³ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, para. 533-538; *Prosecutor v. Blagojević*, Case No. IT-02-60-T, para. 777; International Criminal Tribunal for Rwanda, *Prosecutor v. Kamuhanda*, Case No. ICTR-95-54A-A, Judgment, 22 January 2003, para. 596.

¹⁴ International Criminal Tribunal for Rwanda, *Prosecutor v Nahimana, Barayagwiza and Ngeze*, Case No. ICTR-99-52-T, Judgment, Summary, 3 December 2003, paras. 973-974.

¹⁵ Note: the most common criminal standard requires “a substantial effect” on the commission of the crime: International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Tadić*, Case No. IT-94-1-T, 7 May 1997, paras. 688-692; while the ICC does not set such a high standard, an “effect” is sufficient: International Criminal Court, *Prosecutor v. Bemba*, Case No. ICC-01/05-01/13, Trial Judgment Pursuant to Article 72 of the Statute, 19 October 2016, para. 90; International Criminal Court, *Prosecutor v. Al Mahdi*, Case No. ICC-01/12-01/15, Decision on the Confirmation of Charges, 24 March 2016, para. 26; See Oona A. Hathaway et al, “Aiding and Abetting in International Criminal Law”, *Cornell Law Review*, vol. 104, (2019), pp. 1606-1609.

¹⁶ International Criminal Tribunal for Yugoslavia, *Prosecutor v Furundzija*, Trial Judgment, Case No. IT-95-17/1-T, 10 December 1998, paras. 209, 235; www.icj.org/wp-content/uploads/2012/06/Vol.1-Corporate-legal-accountability-thematic-report-2008.pdf, pp. 9, 39-40; Irene Pietropaoli, “Expert Legal Opinion”, pp. 18-19; consider also the *Lundin Oil Case* before the Swedish District Court, <https://www.business-humanrights.org/en/latest-news/lundin-petroleum-lawsuit-re-complicity-war-crimes-sudan/>.

¹⁷ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, para. 541; *Prosecutor v. Blagojević*, Case No. IT-02-60-T, paras. 384, 777; International Criminal Tribunal for Rwanda, *Prosecutor v Ntakirutimana and Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Appeal Judgement, 13 December 2004, paras. 500-501, 551; see also in the context of state responsibility: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 421; William A. Schabas, *Genocide in International Law: The Crime of Crimes* (CUP, 2009) p. 522.

¹⁸ Rome Statute, Article 25(3)(c) (Emphasis added); International Criminal Court, *Prosecutor v. Bemba*, Case No. ICC-01/05-01/13, Trial Judgment Pursuant to article 74 of the Statute, para. 97 (Oct. 19, 2016).

¹⁹ International Residual Mechanism for International Criminal Tribunals, *Prosecutor v Kabuga* (Case No. MICT-13-38-PT, Prosecution’s Second Amended Indictment, 1 March 2021, paras. 9, 25, 30, 34.

²⁰ *Trial of Bruno Tesch and Two Others (The Zyklon B Case)* (1947) 1 Law Reports of Trials of War Criminals 93 (British Military Court, Hamburg) pp. 102.

Mechanisms of enforcement

This international framework is enforceable via a range of mechanisms – particularly at the domestic and regional levels – established by States in order to fulfil the legal obligations outlined in section 2.1.

For many corporate actors a key incentive to uphold practices that respect human rights is the risk of reputational damage arising from their involvement in human rights violations and international crimes. The UN Database (see 3.1 below),²¹ for instance, has significantly promoted awareness of corporate responsibility in the oPt and contributed to divestment decisions.

An examination of all legislative and policy mechanisms adopted by states is beyond the scope of this report. In many jurisdictions, corporate violations of *jus cogens* norms, customary international law, international criminal law and international human rights law are enforceable in courts, while in others domestic criminal laws, tortious and negligence laws, and contract laws provide useful mechanisms for victims. The UNGPs can and should be consistently used to provide the normative lens to assess corporate conduct and establish legally relevant facts.

Examples of corporate accountability for violations of international law include: in the UK for toxic emissions from a subsidiary-run copper mine,²² in the Netherlands for the supply of nerve gas to Iraq,²³ in France for payments to armed groups to keep a cement factory running²⁴ and in Sweden for using the military to secure oil fields in Sudan.²⁵ In the US, a civil suit under the Alien Torts Statute, under which US courts can hold American corporations accountable for “violation[s] of the law of nations”,²⁶ led to settlement with a US oil company for its complicity in violations in Myanmar.²⁷

Where a corporate entity profits from actions that constitute an international crime (e.g., a war crime, genocide, apartheid or an act of aggression), this may also form the predicate crime for an offence under money laundering and proceeds of crime legislation that exists in many domestic jurisdictions,²⁸ which, if successfully proven, can infect all corporate dealings along the supply chain, such as provision of insurance, tech services, legal accountancy and banking services.²⁹

²¹ A/HRC/RES/31/36 (2016); A/HRC/RES/53/25 (2023); UN Database: www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/database-hrc3136.

²² Supreme Court of the United Kingdom, *Vedanta Resources PLC v Lungowe* [2019] UKSC 20.

²³ District Court of The Hague, *Public Prosecutor v. Frans Cornelis Adrianus van Anraat*, 23 December 2005, www.internationalcrimesdatabase.org/Case/178/Van-Anraat/.

²⁴ “Communiqués de Presse: Lafarge Poursuivi Pour Financement Presume de Terrorisme” (15 November 2016). Cour de cassation, [7 September 2021] Pourvoi No. 19-87.036; www.asso-sherpa.org/lafarge-in-syria-french-supreme-court-issues-decisive-ruling-on-charges-faced-by-the-multinational.

²⁵ www.business-humanrights.org/en/latest-news/lundin-petroleum-lawsuit-re-complicity-war-crimes-sudan/.

²⁶ Alien Torts Statute, 28 US Code, para. 1350; note Supreme Court decisions in *Sosa v. Alvarez-Machain*; *Kiobel v. Royal Dutch Petroleum*; *Jesner v. Arab Bank* and *Nestle v. Doe* have severely restricted the scope of the Statute in recent years; see Federica Violi, “Navigating Corporate Accountability in International Economic Law: A Critical Overview”, (2024) in Ioannis Papadopoulos, et al., (eds), *Handbook of Accountability Studies: Politics, Law, Business, Work* (Elgar Publishing, forthcoming 2025).

²⁷ *Doe v Unocal* (hereafter Unocal) <https://earthrights.org/case/doe-v-unocal/#timelineff69-1a905f26-f4b6>, *Wiwa v Royal Dutch Petroleum Co* (Wiwa), *Talisman*, *Bowoto v Chevron* (Bowoto), *John Does v Exxon Mobil Corp* (Exxon Mobil), *Rio Tinto*, and *Beanal v Freeport-McMoran Inc.* (Beanal).

²⁸ E.g. Proceeds of Crime Act 2002 (UK).

²⁹ Consider *World Uyghur Congress v National Crime Agency* [2024] EWCA Civ 715.

Domestic human rights due diligence laws now exist in several states, including France,³⁰ Germany,³¹ Norway³² and Switzerland,³³ and the number can be expected to increase across EU states following the adoption of the EU Directive on Corporate Sustainability Due Diligence in July 2024,³⁴ subject to proposed amendments.³⁵ These laws establish mechanisms for supervision and enforcement through injunctive orders and effective, proportionate and dissuasive penalties.³⁶ They are often complemented by regulations applicable to particular sectors, such as dual-use cyber-surveillance items,³⁷ forced labour³⁸ and non-financial reporting entities.³⁹

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct have opened new opportunities for scrutiny.⁴⁰ These require all 51 adhering States, including Israel,⁴¹ to establish National Contact Points (NCPs) to promote the guidelines and create a non-judicial grievance mechanism allowing NGOs, trade unions, affected individuals and communities to lodge complaints about the direct operations or supply chains of companies operating in or from an OECD-country,⁴² and to receive a mediated outcome or final determination with recommendations.⁴³

Where direct remedies are not available against corporate entities, it may be possible to hold States responsible for failing to comply with their obligations vis-a-vis corporate entities within their jurisdiction.⁴⁴

Applying the framework to the occupied Palestinian territory

In the case of the oPt, corporate entities **have been on notice for decades** regarding the widespread and systematic nature of the human rights violations perpetrated there. Proper human rights due diligence would have identified the risk of corporate entities incurring responsibility for such violations well before the catastrophic events that have unfolded since October 2023 – all the more so if the required heightened processes were followed.

³⁰ French Duty of Vigilance Act 2017, *LOI n°2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*.

³¹ German Act on Corporate Due Diligence Obligations in Supply Chain 2021, *Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*, 16 July 2021.

³² Norwegian Transparency Act 2021, *Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions*, <https://lovdata.no/dokument/NLE/lov/2021-06-18-99>.

³³ Swiss Due Diligence Act 2021, Nicolas Bueno, "The Swiss Human Rights Due Diligence Legislation: Between Law and Politics", *Business and Human Rights Journal*, vol. 6, No. 3 (2021), pp. 542-549.

³⁴ EU Corporate Sustainability Due Diligence Directive, 2024/1760, (July 2024).

³⁵ www.business-humanrights.org/en/latest-news/eu-ohchr-publishes-commentary-on-omnibus-proposal-warns-that-omnibus-proposal-risks-backsliding-on-csddd/.

³⁶ https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#what-are-the-obligations-for-companies;

www.morganlewis.com/pubs/2024/03/the-first-french-court-rulings-on-the-duty-of-vigilanc.

³⁷ Regulation (EU) 2021/821.

³⁸ Regulation (EU) 2024/301.

³⁹ E.g. www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022.09.05_gpfg_guidelines_observation_exclusion.pdf; www.ccc.ca/wp-content/uploads/2019/12/9.-CCC-Human-Rights-Due-Diligence-Guidelines-Defence-Security.pdf.

⁴⁰ OECD Guidelines.

⁴¹ <https://mneguidelines.oecd.org/ncps/israel.htm>.

⁴² <https://mneguidelines.oecd.org/ncps/how-do-ncps-handle-cases.htm>.

⁴³ UK National Contact Point, *Final Statement: Lawyers for Palestinian Human Rights complaint to UK NCP about JCB*, Decision, 12 November 2021; Spanish National Contact Point, *Final Statement: Comité de Solidaridad de la Causa Árabe (CSCA) & a company active in the construction sector*, 25 May 2022.

⁴⁴ Ralph Wilde, Legal Opinion, 1 December 2024, https://alhaqueurope.org/wp-content/uploads/2024/12/ralph_wilde_icj_opt_ao_thirdstateseu_legal_opinion.pdf, paras. 91-94.

An inherently unlawful context, gradually exposed

Since 1967, Palestinian and Israeli human rights groups,⁴⁵ the United Nations main organs⁴⁶ as well as UN treaty bodies,⁴⁷ special rapporteurs,⁴⁸ investigative committees⁴⁹ and major international NGOs – including Human Rights Watch,⁵⁰ Amnesty International,⁵¹ Save the Children⁵² and Oxfam⁵³ – have systematically documented the Israeli occupation’s many violations, including the economic structures that sustain it.

In its 2004 Advisory Opinion, the ICJ found that Israel’s construction of the Wall in the West Bank, including east Jerusalem, violated peremptory norms of international law, including the right to self-determination, the prohibition on annexation and obligations under international humanitarian and human rights law, including the crime of forced displacement.⁵⁴

The 2004 Advisory Opinion laid the foundation for civil society responses such as the BDS campaign⁵⁵ and initiatives by other actors⁵⁶ who have mobilized around the principle that those who profit from occupation should be held accountable. In response to mounting pressure, as well as internal risk assessments and strategic considerations, several companies have taken action. Some corporations have divested - for example, KLP from Caterpillar,⁵⁷ Irish Strategic Investment Fund from six Israeli companies⁵⁸ and AXA from five Israeli banks and Elbit Systems⁵⁹ – or have withdrawn their operations from the Israeli market, as have Veolia,⁶⁰ CRH,⁶¹ General Mills,⁶² G4S,⁶³

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- ⁴⁵ www.alhaq.org/cached_uploads/download/2025/01/14/punishing-a-nation-1736840036.pdf;
www.alhaq.org/cached_uploads/download/alhaq_files/publications/Annexation_Wall_english.pdf;
https://badil.org/cached_uploads/view/2021/04/19/wp-e-11-1618822997.pdf;
https://badil.org/cached_uploads/view/2021/04/19/icl-wp12-eng-1618823024.pdf;
www.btselem.org/publications/fulltext/202101_this_is_apartheid.
- ⁴⁶ UNSC 242 (1967), 338 (1973), [S/RES/2334](https://www.un.org/Depts/undersec/res/2334.html) (2016).
- ⁴⁷ CERD/C/113/3.
- ⁴⁸ A/HRC/49/87 (2022); A/HRC/13/53 (2010).
- ⁴⁹ A/HRC/28/79 (2015); A/HRC/50/21 (2022).
- ⁵⁰ www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution.
- ⁵¹ www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/; www.amnesty.org.uk/files/2018-09/3.%20Campaign%20Briefing%201%20-%20Israel%20Palestine%2050%20years%20of%20occupation.pdf?5wqeX6EBE_M50pnGGMDot1UJj3FPvx6q=.
- ⁵² www.un.org/unispal/wp-content/uploads/2003/07/6bb117b13425504685256ea90055c8ab_assessment.pdf;
https://unispal.un.org/pdfs/GS_HumImplosion.pdf.
- ⁵³ https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp104-palestinians-five-years-of-illegality_4.pdf.
- ⁵⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, paras. 120-123; 163(3)(D).
- ⁵⁵ <https://bdsmovement.net/BNC>.
- ⁵⁶ www.whoprofits.org/; <https://afsc.org/>; <https://dontbuyintooccupation.org/>;
<https://act.progressive.international/watermelon/>.
- ⁵⁷ www.klp.no/en/corporate-responsibility-and-responsible-investments/exclusion-and-dialogue/exclude-caterpillar-inc.pdf.
- ⁵⁸ www.gov.ie/en/department-of-finance/press-releases/minister-mcgrath-notes-ntma-confirmation-of-divestment-from-certain-investments-in-the-occupied-palestinian-territory/;
https://hwkvufmtfxjkrhbrfqkj.supabase.co/storage/v1/object/public/PUB/AXA_investments_Israeli_banks_report.pdf.
- ⁵⁹ www.middleeastmonitor.com/20150829-veolia-completes-withdrawal-from-israel-in-victory-for-bds-campaign/;
www.crh.com/media/1062/dev-strat-update-07012016_2.pdf;
www.generalmills.com/news/stories/an-update-on-general-mills-joint-venture-in-israel.
- ⁶⁰ <https://mayafiles.tase.co.il/RHtm/1524001-1525000/H1524391.htm>; www.g4s.com/news-and-insights/news/2017/06/29/sale-of-g4s-secure-solutions-israel-ltd; www.g4s.com/news-and-insights/news/2016/05/23/statement-regarding-the-sale-of-g4s-israel.
- ⁶¹
- ⁶²
- ⁶³

Yokohama⁶⁴ and Pret a Manger,⁶⁵ and Ben & Jerrys continues to fight to implement its decision to withdraw sales to colonies against efforts of its parent company Unilever.⁶⁶ In the sports sector, sustained advocacy led Adidas, PUMA, and Erreà to end their sponsorship of the Israel Football Association.⁶⁷

In 2016, the UN Human Rights Council adopted resolution [A/HRC/RES/31/36](#), pursuant to which the Office of the High Commissioner for Human Rights established a database in 2020 (‘UN database’) listing business enterprises that have “directly and indirectly enabled, facilitated and profited from the construction and growth of the settlements”, identifying ten specific types of activities.⁶⁸ Its most recent iteration, updated in 2023, lists 97 companies.⁶⁹ While it does not cover the full gamut of relevant activities, the database captures critical components of the complex matrix of corporate entities involved in the displacement and replacement of the Palestinians.

Seismic shift: international court proceedings

Recent legal developments concerning the oPt have significantly reshaped the assessment of corporate responsibility and potential liability.

Most significant is the ICJ’s Advisory Opinion of 19 July 2024, which addressed the legality of Israel’s very *presence* in the oPt. The Court declared the prolonged presence of Israel in the whole of the territory, including its colony regime – composed of its military presence, settlements, associated infrastructures and control of Palestinian natural resources⁷⁰ – as illegal⁷¹ in its entirety on the basis of sustained violations of two peremptory norms of international law: the right to self-determination of the Palestinian people and the prohibition on the acquisition of territory by force (annexation).⁷² The Court also recognized, among others, the violation of the non-derogable norm prohibiting racial segregation and apartheid.⁷³

The ICJ’s finding of a violation of the prohibition on the use of force effectively qualifies the occupation as an act of aggression.⁷⁴ Consequently, any dealings that support or sustain the occupation and its associated apparatus may amount to complicity in an international crime under the Rome Statute.⁷⁵ While Israel, as the de facto occupying power, remains bound by international humanitarian law, the illegality of the occupation means all administrative and military actions it undertakes in the oPt – from controlling visas, permits and movement, to incarceration and economic

⁶⁴ www.y-yokohama.com/release/pdf/2024111414mg004.pdf.

⁶⁵ www.reuters.com/business/retail-consumer/british-sandwich-chain-pret-abandons-plan-open-israel-2024-06-03/.

⁶⁶ www.unilever.com/news/press-and-media/press-releases/2021/unilever-statement-on-ben-and-jerrys-decision/; www.nbcnews.com/business/business-news/ben-jerry-s-withdraws-sales-israeli-settlements-clashes-parent-company-n1274403; <https://fortune.com/europe/2025/03/19/unilever-oppressiveness-ben-jerrys-ceo-sacked-social-mission/>; www.timesofisrael.com/ben-jerrys-founder-said-looking-to-buy-back-company-from-unilever-amid-israel-spat/.

⁶⁷ www.bdsmovement.net/news/israel-football-association-loses-yet-another-sponsor.

⁶⁸ A/HRC/22/63 (2013) para. 96; A/HRC/RES/31/36 (2016); A/HRC/43/71 (2020).

⁶⁹ www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session31/database-hrc3136/23-06-30-Update-israeli-settlement-opt-database-hrc3136.pdf para. 14.

⁷⁰ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, I.C.J. Reports 2024, para. 111.

⁷¹ *Ibid.*, paras. 155 and 261-264.

⁷² *Ibid.*, paras. 173, 179 and 252.

⁷³ *Ibid.*, paras. 223-229.

⁷⁴ *Ibid.*, paras. 252-258.

⁷⁵ Rome Statute, Article 8 *bis*; [A/77/356](#), para. 22.

regulation – lack lawful authority under international law and should be considered invalid.⁷⁶

Second, the recognition by the ICJ of the violation of the right to self-determination in turn informs the interpretation of all human rights and other legal obligations that flow therefrom. As the Court said, **the right to self-determination** is the most fundamental and existential right for all human beings, as it pertains to the inherent capability of a people to exist and determine themselves as a people in a given territory, free from foreign control and occupation.⁷⁷ Without this right, a people are unable to exercise control over their lives and resources in the territory recognized under international law as their own.⁷⁸

On the basis of the ICJ’s Advisory Opinion, the UN General Assembly demanded that Israel bring to an end its unlawful presence in the oPt by 17 September 2025.⁷⁹ Until that happens, States must not provide aid or assistance or enter into economic or trade dealings, and must take steps to prevent trade or investment relations that would assist in maintaining the illegal situation created by Israel in the oPt.⁸⁰ It should be emphasized that the failure of States to act on the ICJ ruling does not absolve corporate entities of their responsibilities under international law and the UNGPs.

Atrocity crimes

This sustained situation of illegality with impunity, with its associated violations of international law and international crimes, has predictably given rise to further egregious violations, amounting to atrocity crimes, committed since October 2023. These have in turn precipitated the opening by the ICJ and ICC of proceedings concerning Israel: the former relating to genocide, the latter to war crimes and crimes against humanity.

On 26 January 2024, following the *South Africa v. Israel* proceedings under the Genocide Convention, the ICJ ordered Israel to take “all measures” within its power to prevent genocidal acts against Palestinians,⁸¹ and in May 2024, the Court ordered Israel to “immediately halt” military operations that may bring about conditions of life intended to destroy.⁸² In separate proceedings, *Nicaragua v. Germany*, the ICJ reminded *all* States “of their international obligations relating to the transfer of arms⁸³ to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate” international law.⁸⁴

⁷⁶ Ralph Wilde, Legal Opinion, para 45.

⁷⁷ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, I.C.J. Reports 202, paras. 230-233; [A/77/356](#) paras. 16-18.

⁷⁸ [A/77/356](#) (2022) para. 237.

⁷⁹ [A/RES/ES-10/24](#) (2024), para. 2.

⁸⁰ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, I.C.J. Reports 202, paras. 278-279.

⁸¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order, 26 January 2024, I.C.J. Reports 2024, para. 86(1).

⁸² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order of 28 March 2024, Order, 24 May 2024, I.C.J. Reports 2024, paras. 29, 57(2)(a).

⁸³ [www.un.org/unispa/document/arms-transfers-un-experts-20jun24/](#).

⁸⁴ *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Order, 30 April 2024, I.C.J. Reports 2024, paras. 22-24; *Legal Consequences Arising*

By placing States on explicit notice of this risk of genocide, the ICJ orders engaged the obligation under Article 1 of the Genocide Convention to “prevent and punish” genocide, thereby exposing all those who continue to aid, abet or assist Israel in committing such acts to potential international responsibility for complicity in genocide.

In November 2024, the ICC issued arrest warrants in the *Situation in the State of Palestine* for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, on the basis that there are reasonable grounds to believe that they bear criminal responsibility for war crimes and crimes against humanity.

Consequences for corporate entities

The above legal developments have significantly reshaped the assessment of corporate responsibility and potential liability, which must now be interpreted in light of these orders and decisions of international courts.

The scale and severity of violations occurring throughout Israel’s decades-long military occupation – which has helped entrench a settler-colonial apartheid regime – should already have alerted corporate actors to their responsibility to avoid *causing, contributing to* or being *directly linked to* ongoing human rights violations, and the possibility that they may have been complicit in the commission of international crimes, such as by aiding and abetting and facilitating them. The political economy of Israel’s occupation set out in the report, is illustrative of the entwinement of all manner of corporate activities with the *displacement* and *replacement* of Palestinians in the oPt. At a minimum, this *directly linked* these corporate activities with an entrenched and structural set of violations that almost certainly already triggered the responsibility of corporate entities to cease engagement linked to the oPt under the UNGPs, on the basis of their limited capacity to wield influence in order to prevent or mitigate the adverse impact. But the recent and ongoing ICJ and ICC proceedings have removed any possible doubt and put corporate entities – whether subsidiaries, parent companies or direct actors and investors – clearly on notice of the serious risk of being implicated in very serious violations of international law, including human rights violations and international crimes, and of their actions having contributed to or become criminally complicit in these violations and crimes.

Israel’s ongoing illegal occupation of the oPt creates an untenable situation for corporate entities to simply continue business as usual. The finding that the occupation is *per se* illegal, and that international crimes, including genocide, and arguably the crime of aggression, may have been committed, has gone far beyond a “heightened risk” of adverse human rights impact. The private sector must, in its own interests, urgently reconsider all engagement connected to Israel’s economy of occupation and now genocide.

A consequence of the ICJ Advisory Opinion is a requirement for heightened human rights due diligence on the part of corporate entities, which must now address

from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, I.C.J. Reports 202, para. 285(7).

the fundamental illegality at the heart of Israel's enterprise. They can no longer limit their legal assessments and mitigation measures to questions of Israel's specific conduct and whether certain human rights (e.g., environmental, workers' or children's rights or lack of fair trial guarantees) and humanitarian frameworks are respected.⁸⁵ For example, the incarceration of thousands of Palestinians, whether in administrative detention or after being convicted in military courts, is unlawful due to the lack of legal authority and because it is part of a governance system using mass incarceration of Palestinians as a tool of systemic repression and forced displacement, and not merely due to the absence of fair trial guarantees. The Advisory Opinion also signals that corporate entities must recognize the primacy of the right to self-determination and its interpretive function in the construction of all other human rights protections.⁸⁶ This means human rights policies and environmental, social and governance frameworks cannot continue to overlook the right to self-determination, which is firmly embedded within human rights law,⁸⁷ recognized as a foundational right of all peoples, and the prerequisite to all other rights.⁸⁸

It also means recognizing that any engagement with the Palestinian people and in the oPt must comply with their right to self-determination. This supersedes paternalistic justifications based on the fiduciary obligations of the occupying power under the Fourth Geneva Convention, and invalidates specious justifications by corporate entities, such as that an investment through Israel as the occupier can eventually benefit the Palestinians as well, or that divestment would have adverse human rights impacts.⁸⁹

The ICJ Advisory Opinion, endorsed by the UN General Assembly, imposes a prima facie responsibility on corporate entities to not engage and/or to withdraw totally and unconditionally from any dealings with any component of the occupation. Where corporate entities disregard this notice, fail to abide by their responsibilities under the UNGPs and continue engagement through their activities and relationships with Israel, its economy, its military and private sector connected to the oPt, they knowingly contribute to or cause violations, including the denial of the Palestinian right to self-determination, the permanent annexation of Palestinian territory or the maintenance of Israel's unlawful occupation of Palestinian territory. The escalation in legal responsibility arises also because ongoing sustainment of any relationships and activities in such a serious context, contributes to legitimating Israeli conduct and furthering impunity which in turn leads to ever more egregious conduct. Normalisation of the illegal is essential to the survival of Israel's settler-colonial enterprise.

Now, this is a political economy that was always eliminatory and has turned into genocidal mode. Confirming this, the ICJ Provisional Measures and ICC Arrest Warrants signal the risk that corporate entities – and their executives – that engage in the oPt are implicated in serious international crimes. Any decision to continue engagement in Israel's economy is therefore done with knowledge of the crimes that

⁸⁵ Ralph Wilde, Legal Opinion, paras. 51-52.

⁸⁶ [CCPR/C/70/D/547/1993](#), para. 9.2; [CCPR/C/124/D/2950/2017](#), paras. 9.9-9.11; [CCPR/C/124/D/2668/2015](#), paras. 1.4, 2.4, 6.11.

⁸⁷ Common Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁸⁸ [A/RES/637\(VII\)](#); CCPR General Comment No. 12 (1984) para. 1.

⁸⁹ UNGP Commentary to 19; Tyler McCreary, "Historicising the encounter between state, corporate and indigenous authorities on Gitxsan lands" *Windsor Yearbook of Access to Justice*, vol. 33, No. 3, (May 2016), p. 18.

may be taking place, and of the fact that they may provide material support to Israel to continue to commit those crimes.

Corporate entities and their executives can, and indeed must, find themselves liable in civil or criminal law for such conduct, in addition to the multitude of other crimes and human rights violations that are part of the economy of occupation. The actions entities and executives do or do not take in accordance with their responsibilities, vis-a-vis these legal developments and the UNGPs, have material relevance to key evidential questions that would arise in the course of determining their civil and/or criminal liability.