

**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 ITA 9/2025  
(Please use this reference in your reply)

17 December 2025

Excellency,

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.

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 Government to protect and respect human rights in this context. Eni S.p.A's 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.**

These actions contravene peremptory norms of international law and risk complicity in atrocity crimes.

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 that this ownership is held both directly by the Ministry of Economy and Finance ('MEF') (approximately 2 per cent) and 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. 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, to exercise a veto power against hostile takeover attempts or major corporate changes that may run counter to the national interest. In addition, Eni 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, including in relation to its actions in the acquisition of offshore gas exploration licences in Palestine's

EEZ.

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 are currently on the OHCHR [database of business enterprises involved in listed activities related to Israeli settlements in the occupied Palestinian territory](#), for its economic involvement in Israeli settlements in Palestine, including supplying fuel to the Israeli Defence Forces ('IDF') 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.

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.

Eni, through its shareholding in the BTC and CPC pipelines and its Val d'Agri joint venture, is a significant supplier of crude oil to Israel. This oil is refined into fuel that sustains Israel's military occupation and operations in Palestine, which have been found to plausibly constitute acts of genocide and crimes against humanity by the International Court of Justice.

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 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, as well as having cut or destroyed nearly all access to electricity, water and other supplies to Gaza. This engineered dependency has been operationalized for genocide.

In addition, the initial three-year exploration of the OBR4 period concludes this December (2022-2025), Eni S.p.A, by refraining from suspending this license despite the recent legal developments, including the ICJ's findings, and the UN Independent Commission's report on atrocity crimes, Eni S.p.A is actively entrenching its complicity in Israel's unlawful occupation and annexation. While the crime of plunder is typically established upon the commencement of extraction, Eni S.p.A's mere acceptance and retention of these concessions may already constitute its complicity in such acts.

Without prejudging the accuracy of the information received, we express serious concerns at the known risk that the alleged investment by your Excellency government in Eni has facilitated and, if not stopped, and the lack of actions to protect against human rights abuses allegedly committed by ENI, have continued to facilitate violations and abuses of international human rights and international humanitarian law, including war crimes, crimes against humanity, and possibly genocide. In this regard, we would like to refer [general comment No. 24 \(2017\)](#) on State obligations under the International Covenant of Economic Social and Cultural Rights (ICESCR) in the context of business activities and to Italy's [Second National Action Plan on Business and Human Rights \(2021-26\)](#) issued on 1 December 2021. We note, in the former case, that Italy has been a State Party to the ICESCR since 15 September 1978, and, in the latter case, that the Italian government has committed to uphold the state duty to protect human rights in accordance with the 2011 United Nations Guiding Principles on Human Rights (UN Guiding Principles) through national action plans since 15 December 2016.

In connection with the above information, your Excellency is the primary shareholder in Eni, and we note that the UN Guiding Principles require the Italian government to ensure that Eni upholds its corporate responsibility to respect human rights and to ensure relevant policies, regulations including the regulations regarding respect for human rights are implemented. In keeping with the Italian government's commitment in its most recent National Action Plan, we would like to underline that the Guiding Principles:

Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, **an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations.** Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights. Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. (UN guiding principle 4, commentary, para. 1).

By engaging in the acquisition of offshore gas exploration licences, Eni has engaged in activities that constitute violations of peremptory norms of international law and other critical legal principles and standards, including primarily:

- 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;

- Aiding and assisting in the maintenance of Israel's unlawful military occupation of Palestinian territory;
- Aiding and assisting in the permanent annexation of occupied Palestinian territory.

This situation exposes Eni 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 is also involved in and/or supporting the following violations, among others:

- Aiding and abetting crimes against humanity, including the widespread and systematic extermination, persecution, murder, and forcible transfer of the civilian population.
- 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.

Furthermore, as a signatory to the Convention on the Prevention and Punishment of the Crime of Genocide, ('the Genocide Convention') Italy has a legal duty to prevent genocide under Article I. This obligation arises when there is a "serious risk" of genocide and requires states to use all reasonably available means to prevent it, especially those states with the capacity to influence the actors likely to commit or already committing the crime. A State's obligation to prevent genocide, and its corresponding duty to act, arises the moment it knows, or should reasonably know, of a serious risk that genocide may occur. On this basis, the ICJ considers that this threshold has been met in Gaza, thereby activating States' legal duty to take preventive measures under international law.

Therefore, in line with these obligations States must recognize Palestinian self-determination and justice as essential to lasting peace and security, and:

- Suspend all military, trade and diplomatic relations with Israel;
- Investigate and prosecute all officials, corporate entities and individuals involved in or facilitating genocide, incitement to commit genocide, crimes against humanity and war crimes and other grave breaches of international humanitarian law.

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 information on the steps taken by your Excellency's Government to make sure that business enterprises respect human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs), by requiring businesses to conduct human rights due diligence that addresses how to prevent, mitigate and remediate the adverse human rights impacts that business may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships. In particular, please specify the additional steps taken by your Excellency's Government to protect against human rights abuses by business enterprises that are owned or controlled by the State, including, where appropriate, by requiring heightened human rights due diligence to these business enterprises operating in conflict torn settings, in line with the UNGPs.
3. Please provide information regarding means that your Excellency Government has taken or is planning to take to help ensure that business enterprises operating in conflict affected areas are not involved with such abuses, including by (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.
4. Please provide information on any steps taken by your Excellency's Government to set out clearly the expectation that all business enterprises domiciled in your territory and/or jurisdiction respect human rights throughout their operations.
5. Please provide information on steps taken by your Excellency's Government to encourage businesses to establish and/or participate in operational-level grievance mechanisms, in line with the UN Guiding Principles, to effectively address the adverse climate change-related and other human rights impacts caused by and/or contributed to by business through their operations.
6. Please provide information on the measures your Excellency's Government is taking or considering taking to ensure compliance with the Advisory Opinion of the International Court of Justice. In this context, please provide information on the measures your Excellency's

Government is also taking, or reconsidering taking to ensure compliance with General Assembly resolution ES-10/25 of September 2024 on the “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”.

7. Please provide information on the measures that your Excellency's Government is taking or considering taking to ensure that persons affected by activities occurring outside your territory by business enterprises domiciled in your jurisdiction have access to remedy in your country, through State judicial or extra-judicial mechanisms. In this connection, please provide information on the steps taken by your Excellency's Government to comply with the Advisory Opinion and the provisional measure of the International Court of Justice.

This communication and any response received from your Excellency’s Government 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 violations 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 Excellency’s Government’s to clarify the issue/s in question.

Please note that a letter on this subject matter has been sent to Eni S.p.A expressing similar concerns. 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 entities<sup>1</sup> are implicated in displacing Palestinians from their land and replacing them with unlawful colonies, contrary to international law. Business 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.

We would also 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 consultations with governments, civil society, human rights defenders and the business community. The guiding principles were established as the authoritative global standard for all states and companies to prevent and address the negative impacts of business activities on human rights. The guidelines are based on the recognition that:

- 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 companies performing specialised functions, which must comply with all applicable laws and respect human rights;
- c. The need for appropriate and effective remedies for rights and obligations when they are violated.

Guiding principle 1 reiterates the State's duty to "protect against human rights abuses by business enterprises on its territory and/or under its jurisdiction". Guiding principle 2 provides that States should make clear that all companies domiciled on their territory and/or under their jurisdiction are expected to respect human rights in all their activities. In addition, guiding principle 1 reiterates that States must take appropriate measures to "prevent, investigate, punish and remedy such abuses through effective policies, laws, regulations and adjudication". Guiding principle 3 further requires, among other things, that a State "provide effective guidance to business enterprises on how to respect human rights throughout their operations".

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<sup>1</sup> [A/HRC/59/23](#), para. 5.

Guiding principle 4 establishes that States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the States or that receive substantial support and services from State agencies, where appropriate by requiring human rights due diligence.

Principles 11 to 24 and principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts. Moreover, the commentary of principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of guiding principle 13 notes that “[b]usiness enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. [...] Business enterprise’s ‘activities’ are understood to include both actions and omissions; and its ‘business relationships’ are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The guiding principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13).

Principles 17-21 lay down the four-step human rights due diligence process that all business enterprises should take steps to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

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 or other attempts to influence the outcome (commentary to guiding principle 25).

Furthermore, according to guiding principle 26, States should take appropriate measures to ensure the effectiveness of domestic judicial mechanisms when dealing with business-related human rights abuses, including by considering how to limit legal, practical and other obstacles that may lead to denial of access to remedy.

Guiding principle 7 on supporting business respect for human rights in conflict affected areas provides that States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

The UN Working Group on Business and Human Rights, in its report on "business, human rights and conflict-affected regions: towards heightened action (A/75/212), 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. Businesses 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. Businesses 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,<sup>2</sup> corporate accountability for international crimes is based on a recognition of the critical role the economy plays in times of war and conflict,<sup>3</sup> 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.<sup>4</sup> While, increasingly, *corporate* entities themselves, could also face criminal liability as a result of the emerging crystallization of customary international legal principles.<sup>5</sup> This includes some domestic jurisdictions which attribute criminal liability to corporations,<sup>6</sup> 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,<sup>7</sup> apartheid,<sup>8</sup> financing terrorism,<sup>9</sup> organized crime<sup>10</sup> and corruption.<sup>11</sup>

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,<sup>12</sup> or abetting, furnishing aid or assistance for or procuring the means for the commission of a crime<sup>13</sup> or the creation of conditions necessary for atrocity crimes to occur.<sup>14</sup> International tribunals have generally found that criminal liability for such forms of complicity: (a) *can* be established where the aid

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- <sup>2</sup> *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.
- <sup>3</sup> 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.
- <sup>4</sup> Michael Kelly, *Prosecuting Corporations for Genocide* (OUP, 2016); Submission 1.3; [A/75/212](#), para. 11.
- <sup>5</sup> 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](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.
- <sup>6</sup> 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](http://www.ipinst.org/wp-content/uploads/publications/businessand_intcrime.pdf).
- <sup>7</sup> 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*.
- <sup>8</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), art. I(2).
- <sup>9</sup> International Convention for the Suppression of the Financing of Terrorism, art. 5.
- <sup>10</sup> UN Convention against Transnational Organized Crime, art. 10.
- <sup>11</sup> UN Convention against Corruption, art. 26.
- <sup>12</sup> International Criminal Tribunal for Yugoslavia, *Prosecutor v. Blaškić*, Case No. IT-95-14-A, 29 April 2004, paras. 46-47.
- <sup>13</sup> *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.
- <sup>14</sup> 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.

or assistance has a material effect on the commission of the crime,<sup>15</sup> 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.<sup>16</sup>

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,<sup>17</sup> or, in the case of prosecutions before the ICC, acted “for the *purpose* of facilitating the commission of such a crime”.<sup>18</sup> Financial and managerial control over a corporate entity engaged in the crime is sufficient to establish the basis for individual criminal responsibility.<sup>19</sup> Jurisprudence has confirmed that corporate actors cannot avoid accountability by claiming that they were merely fulfilling commercial contracts.<sup>20</sup>

### *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),<sup>21</sup> 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

<sup>15</sup> 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. Tadic*, 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.

<sup>16</sup> 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](http://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/>.

<sup>17</sup> *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.

<sup>18</sup> 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).

<sup>19</sup> 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.

<sup>20</sup> *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.

<sup>21</sup> 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](http://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/database-hrc3136).

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,<sup>22</sup> in the Netherlands for the supply of nerve gas to Iraq,<sup>23</sup> in France for payments to armed groups to keep a cement factory running<sup>24</sup> and in Sweden for using the military to secure oil fields in Sudan.<sup>25</sup> 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”,<sup>26</sup> led to settlement with a US oil company for its complicity in violations in Myanmar.<sup>27</sup>

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,<sup>28</sup> 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.<sup>29</sup>

Domestic human rights due diligence laws now exist in several states, including France,<sup>30</sup> Germany,<sup>31</sup> Norway<sup>32</sup> and Switzerland,<sup>33</sup> 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,<sup>34</sup> subject to proposed amendments.<sup>35</sup> These laws establish mechanisms for supervision and enforcement through injunctive orders and effective, proportionate and dissuasive penalties.<sup>36</sup> They are often complemented by regulations applicable to particular sectors, such as dual-use cyber-surveillance

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

<sup>23</sup> District Court of The Hague, *Public Prosecutor v. Frans Cornelis Adrianus van Anraat*, 23 December 2005, [www.internationalcrimesdatabase.org/Case/178/Van-Anraat/](http://www.internationalcrimesdatabase.org/Case/178/Van-Anraat/).

<sup>24</sup> “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](http://www.asso-sherpa.org/lafarge-in-syria-french-supreme-court-issues-decisive-ruling-on-charges-faced-by-the-multinational).

<sup>25</sup> [www.business-humanrights.org/en/latest-news/lundin-petroleum-lawsuit-re-complicity-war-crimes-sudan/](http://www.business-humanrights.org/en/latest-news/lundin-petroleum-lawsuit-re-complicity-war-crimes-sudan/).

<sup>26</sup> 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).

<sup>27</sup> *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).

<sup>28</sup> E.g. Proceeds of Crime Act 2002 (UK).

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

<sup>30</sup> 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*.

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

<sup>32</sup> 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>.

<sup>33</sup> 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.

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

<sup>35</sup> [www.business-humanrights.org/en/latest-news/eu-ohchr-publishes-commentary-on-omnibus-proposal-warns-that-omnibus-proposal-risks-backsliding-on-csddd/](http://www.business-humanrights.org/en/latest-news/eu-ohchr-publishes-commentary-on-omnibus-proposal-warns-that-omnibus-proposal-risks-backsliding-on-csddd/).

<sup>36</sup> [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](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](http://www.morganlewis.com/pubs/2024/03/the-first-french-court-rulings-on-the-duty-of-vigilanc).

items,<sup>37</sup> forced labour<sup>38</sup> and non-financial reporting entities.<sup>39</sup>

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct have opened new opportunities for scrutiny.<sup>40</sup> These require all 51 adhering States, including Israel,<sup>41</sup> 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,<sup>42</sup> and to receive a mediated outcome or final determination with recommendations.<sup>43</sup>

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.<sup>44</sup>

### *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.

### *An inherently unlawful context, gradually exposed*

Since 1967, Palestinian and Israeli human rights groups,<sup>45</sup> the United Nations main organs<sup>46</sup> as well as UN treaty bodies,<sup>47</sup> special rapporteurs,<sup>48</sup> investigative committees<sup>49</sup> and major international NGOs – including Human Rights Watch,<sup>50</sup>

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<sup>37</sup> Regulation (EU) 2021/821.

<sup>38</sup> Regulation (EU) 2024/301.

<sup>39</sup> E.g. [www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022.09.05\\_gpfg\\_guidelines\\_observation\\_exclusion.pdf](http://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](http://www.ccc.ca/wp-content/uploads/2019/12/9.-CCC-Human-Rights-Due-Diligence-Guidelines-Defence-Security.pdf).

<sup>40</sup> OECD Guidelines.

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

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

<sup>43</sup> 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.

<sup>44</sup> Ralph Wilde, Legal Opinion, 1 December 2024, [https://alhaqueurope.org/wp-content/uploads/2024/12/ralph\\_wilde\\_icj\\_opt\\_ao\\_thirdstateseu\\_legal\\_opinion.pdf](https://alhaqueurope.org/wp-content/uploads/2024/12/ralph_wilde_icj_opt_ao_thirdstateseu_legal_opinion.pdf), paras. 91-94.

<sup>45</sup> [www.alhaq.org/cached\\_uploads/download/2025/01/14/punishing-a-nation-1736840036.pdf](http://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](http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Annexation_Wall_english.pdf); [https://badiil.org/cached\\_uploads/view/2021/04/19/wp-e-11-1618822997.pdf](https://badiil.org/cached_uploads/view/2021/04/19/wp-e-11-1618822997.pdf); [https://badiil.org/cached\\_uploads/view/2021/04/19/icl-wp12-eng-1618823024.pdf](https://badiil.org/cached_uploads/view/2021/04/19/icl-wp12-eng-1618823024.pdf); [www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](http://www.btselem.org/publications/fulltext/202101_this_is_apartheid).

<sup>46</sup> UNSC 242 (1967), 338 (1973), [S/RES/2334](https://www.un.org/Depts/undersec/res/2334.html) (2016).

<sup>47</sup> CERD/C/113/3.

<sup>48</sup> A/HRC/49/87 (2022); A/HRC/13/53 (2010).

<sup>49</sup> A/HRC/28/79 (2015); A/HRC/50/21 (2022).

<sup>50</sup> [www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution](http://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution).

Amnesty International,<sup>51</sup> Save the Children<sup>52</sup> and Oxfam<sup>53</sup> – 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.<sup>54</sup>

The 2004 Advisory Opinion laid the foundation for civil society responses such as the BDS campaign<sup>55</sup> and initiatives by other actors<sup>56</sup> 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,<sup>57</sup> Irish Strategic Investment Fund from six Israeli companies<sup>58</sup> and AXA from five Israeli banks and Elbit Systems<sup>59</sup> – or have withdrawn their operations from the Israeli market, as have Veolia,<sup>60</sup> CRH,<sup>61</sup> General Mills,<sup>62</sup> G4S,<sup>63</sup> Yokohama<sup>64</sup> and Pret a Manger,<sup>65</sup> and Ben & Jerrys continues to fight to implement its decision to withdraw sales to colonies against efforts of its parent company Unilever.<sup>66</sup> In the sports sector, sustained advocacy led Adidas, PUMA, and Erreà to end their sponsorship of the Israel Football Association.<sup>67</sup>

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

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- <sup>51</sup> [www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/](http://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=](http://www.amnesty.org.uk/files/2018-09/3.%20Campaign%20Briefing%201%20-%20Israel%20Palestine%2050%20years%20of%20occupation.pdf?5wqeX6EBE_M50pnGGMDot1UJj3FPvx6q=).
- <sup>52</sup> [www.un.org/unispal/wp-content/uploads/2003/07/6bb117b13425504685256ea90055c8ab\\_assessment.pdf](http://www.un.org/unispal/wp-content/uploads/2003/07/6bb117b13425504685256ea90055c8ab_assessment.pdf); [https://unispal.un.org/pdfs/GS\\_HumImplosion.pdf](https://unispal.un.org/pdfs/GS_HumImplosion.pdf).
- <sup>53</sup> [https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file\\_attachments/bp104-palestinians-five-years-of-illegality\\_4.pdf](https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp104-palestinians-five-years-of-illegality_4.pdf).
- <sup>54</sup> *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).
- <sup>55</sup> <https://bdsmovement.net/BNC>.
- <sup>56</sup> [www.whoprofits.org/](http://www.whoprofits.org/); <https://afsc.org/>; <https://dontbuyintooccupation.org/>; <https://act.progressive.international/watermelon/>.
- <sup>57</sup> [www.klp.no/en/corporate-responsibility-and-responsible-investments/exclusion-and-dialogue/exclude-caterpillar-inc.pdf](http://www.klp.no/en/corporate-responsibility-and-responsible-investments/exclusion-and-dialogue/exclude-caterpillar-inc.pdf).
- <sup>58</sup> [www.gov.ie/en/department-of-finance/press-releases/minister-mcgrath-notes-ntma-confirmation-of-divestment-from-certain-investments-in-the-occupied-palestinian-territory/](http://www.gov.ie/en/department-of-finance/press-releases/minister-mcgrath-notes-ntma-confirmation-of-divestment-from-certain-investments-in-the-occupied-palestinian-territory/).
- <sup>59</sup> [https://hwkvufmtfxjkrhbrfqj.supabase.co/storage/v1/object/public/PUB/AXA\\_investments\\_Israeli\\_banks\\_report.pdf](https://hwkvufmtfxjkrhbrfqj.supabase.co/storage/v1/object/public/PUB/AXA_investments_Israeli_banks_report.pdf).
- <sup>60</sup> [www.middleeastmonitor.com/20150829-veolia-completes-withdrawal-from-israel-in-victory-for-bds-campaign/](http://www.middleeastmonitor.com/20150829-veolia-completes-withdrawal-from-israel-in-victory-for-bds-campaign/).
- <sup>61</sup> [www.crh.com/media/1062/dev-strat-update-07012016\\_2.pdf](http://www.crh.com/media/1062/dev-strat-update-07012016_2.pdf).
- <sup>62</sup> [www.generalmills.com/news/stories/an-update-on-general-mills-joint-venture-in-israel](http://www.generalmills.com/news/stories/an-update-on-general-mills-joint-venture-in-israel).
- <sup>63</sup> <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](http://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](http://www.g4s.com/news-and-insights/news/2016/05/23/statement-regarding-the-sale-of-g4s-israel).
- <sup>64</sup> [www.y-yokohama.com/release/pdf/2024111414mg004.pdf](http://www.y-yokohama.com/release/pdf/2024111414mg004.pdf).
- <sup>65</sup> [www.reuters.com/business/retail-consumer/british-sandwich-chain-pret-abandons-plan-open-israel-2024-06-03/](http://www.reuters.com/business/retail-consumer/british-sandwich-chain-pret-abandons-plan-open-israel-2024-06-03/).
- <sup>66</sup> [www.unilever.com/news/press-and-media/press-releases/2021/unilever-statement-on-ben-and-jerrys-decision/](http://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](http://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/](http://www.timesofisrael.com/ben-jerrys-founder-said-looking-to-buy-back-company-from-unilever-amid-israel-spat/).
- <sup>67</sup> [www.bdsmovement.net/news/israel-football-association-loses-yet-another-sponsor](http://www.bdsmovement.net/news/israel-football-association-loses-yet-another-sponsor).

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.<sup>68</sup> Its most recent iteration, updated in 2023, lists 97 companies.<sup>69</sup> 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 resources<sup>70</sup> – as illegal<sup>71</sup> 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).<sup>72</sup> The Court also recognized, among others, the violation of the non-derogable norm prohibiting racial segregation and apartheid.<sup>73</sup>

**The ICJ's finding of a violation of the prohibition on the use of force effectively qualifies the occupation as an act of aggression.**<sup>74</sup> 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.<sup>75</sup> 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 regulation – lack lawful authority under international law and should be considered invalid.<sup>76</sup>

**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.<sup>77</sup> Without this right, a people are unable to exercise control over their lives and resources in the

<sup>68</sup> [A/HRC/22/63](#) (2013) para. 96; [A/HRC/RES/31/36](#) (2016); [A/HRC/43/71](#) (2020).

<sup>69</sup> [www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session31/database-hrc3136/23-06-30-Update-israeli-settlement-opt-database-hrc3136.pdf](http://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.

<sup>70</sup> *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.

<sup>71</sup> *Ibid.*, paras. 155 and 261-264.

<sup>72</sup> *Ibid.*, paras. 173, 179 and 252.

<sup>73</sup> *Ibid.*, paras. 223-229.

<sup>74</sup> *Ibid.*, paras. 252-258.

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

<sup>76</sup> Ralph Wilde, *Legal Opinion*, para. 45.

<sup>77</sup> *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, paras. 230-233; [A/77/356](#) paras. 16-18.

territory recognized under international law as their own.<sup>78</sup>

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.<sup>79</sup> 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.<sup>80</sup> 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,<sup>81</sup> and in May 2024, the Court ordered Israel to “immediately halt” military operations that may bring about conditions of life intended to destroy.<sup>82</sup> In separate proceedings, *Nicaragua v. Germany*, the ICJ reminded all States “of their international obligations relating to the transfer of arms<sup>83</sup> to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate” international law.<sup>84</sup>

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.

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<sup>78</sup> [A/77/356](#) (2022) para. 237.

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

<sup>80</sup> *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.

<sup>81</sup> *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).

<sup>82</sup> *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).

<sup>83</sup> [www.un.org/unispal/document/arms-transfers-un-experts-20jun24/](http://www.un.org/unispal/document/arms-transfers-un-experts-20jun24/).

<sup>84</sup> *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 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).

### *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 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.<sup>85</sup> 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.<sup>86</sup> This means human rights policies and environmental, social and governance frameworks cannot continue

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<sup>85</sup> Ralph Wilde, Legal Opinion, paras. 51-52.

<sup>86</sup> [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.

to overlook the right to self-determination, which is firmly embedded within human rights law,<sup>87</sup> recognized as a foundational right of all peoples, and the prerequisite to all other rights.<sup>88</sup>

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.<sup>89</sup>

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 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.

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<sup>87</sup> 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).

<sup>88</sup> A/RES/637(VII); CCPR General Comment No. 12 (1984) para. 1.

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