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Expert Legal Opinion on the Implications for the European Union of the July 2024 International Court of Justice Advisory Opinion regarding the *Policies and Practices of Israel in the Occupied Palestinian Territory*

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19 June 2025

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Date: **19 June 2025**

This Expert Legal Opinion is the result of independent work carried out by the authors. The views, analyses and conclusions expressed herein are solely those of the authors, who conducted the research and wrote the opinion in their capacity as independent academic experts.

Executive Summary

- The ICJ's 2024 Advisory Opinion concerned the policies and practices of Israel in the Occupied Palestinian Territory (OPT); at issue were the nature and legal status of Israel's presence in the OPT, with special attention drawn to the settlement of Israelis in the OPT and the treatment of Palestinians and their property in the OPT.
- Although **ICJ advisory opinions** are not formally binding in the sense of generating legal obligations directly, they **contribute authoritatively to the identification, interpretation, and application of international legal obligations**, and their specific determinations may generate legal consequences for third parties under customary international law. **Consequently, all international actors, including the EU and its Member States, are under a duty to take due account of the conclusions in ICJ advisory opinions.**
- The 2024 Advisory Opinion found that the policies and practices of Israel:
    - **constitute a breach of the obligation to respect the right to self-determination of the Palestinians**, a right considered to be of *jus cogens* in the context of foreign occupation, and in the light of the prohibition on the acquisition of territory pursuant to the use of force;
    - **constitute a breach of international human rights law**, specifically the **prohibition on racial segregation and/or apartheid**;
    - **constitute a breach of international humanitarian law**, specifically the **obligations not to annex, whether *de jure* or *de facto*, territory that falls under occupation or has otherwise come under its control following the use of force**; the forced evacuation or displacement of civilians from occupied territory; the introduction of settlers into occupied territory; and the disproportionate use of force, violence, and ill-treatment of civilians in occupied territory.

  These are breaches of obligations *erga omnes* that give rise to obligations on other international actors.
- The 2024 Advisory Opinion concluded that in the light of the **sustained abuse by Israel of its position as an Occupying Power**, together with the serious violations of international human rights law and international humanitarian law caused by Israel's policies and practices, **Israel's presence in the OPT has become unlawful as a whole and must be brought to an end as soon as possible**. Israel was also found to be under an obligation to provide full reparation for its unlawful acts.
- **The Court further considered that Israel is under an obligation to cease immediately all settlement activities, particularly the construction of Israeli settlements, and to evacuate all settlers from the OPT**.
- The Court dismissed the claim that security concerns might in any way preclude the wrongfulness of the policies and practices of Israel in the OPT.
- The gravity, intensity, and scope of these violations of international law led the Court to recognise that **third parties are under specific legal obligations to co-operate towards bringing Israel's unlawful presence in the OPT to an end, and not to recognise its illegal effects, and to abstain from any aid and assistance in respect of Israel's wrongful acts**.

- The breaches ascertained by the Court have generated **international legal obligations that are binding not only on EU Member States, but also on the EU and its institutions**. The EU must comply with all its international legal obligations in the exercise of its functions and powers; and the EU is bound by rules of general international law, including universally accepted customary international law, which is binding upon the EU institutions. **EU law must also be interpreted consistently with relevant rules of international law**, in particular those of a peremptory nature.
- Accordingly, all States, including the EU and its Member States, are under the following international obligations:
    - to abstain from treaty relations with Israel in any instance where Israel purports to act on behalf of, or in relation to, the OPT;
    - to abstain from entering into economic or trade dealings with Israel concerning the OPT or parts thereof which may entrench its unlawful presence in the territory;
    - to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation;
    - to co-operate with other international actors, in particular the United Nations, in respect of measures aimed at bringing to an end Israel's unlawful presence in the OPT, and including any unlawful acts arising out of the occupation.

These general obligations must be respected across the full scope of EU and Member State relations with Israel. To abide by these obligations, they must revisit and reassess a number of instruments, policies, and activities.

- With regard to the EU-Israel Association Agreement as the overarching framework for bilateral EU-Israel relations, **the EU's ongoing review of Israel's compliance with the 'essential elements' (or 'human rights') clause enshrined in Article 2 of the Agreement must properly take into account the findings of serious violations of international humanitarian and human rights law in the 2024 Advisory Opinion. These findings justify the invocation of Article 2 and the adoption of appropriate responsive measures**. **These measures could include suspending the Agreement in part or in full, given the serious violations of peremptory norms of international law by Israel identified in the Advisory Opinion**.
- In the area of trade, the EU's existing position stipulates that goods and services originating in Israeli settlements in the OPT are ineligible for preferential tariff treatment under the EU-Israel Association Agreement. In addition, all such products must be labelled clearly to indicate their origin. However, the EU's existing policy measures (Technical Arrangement of 2005 and Interpretative Notice on labelling of 2015) do not allow for full and effective enforcement of these obligations. More fundamentally, the EU's existing measures were not designed to require the EU to abstain from economic or trade dealings with Israeli settlements and/or other forms of trade with Israel that would entrench its unlawful presence in the OPT. Accordingly, the differentiation policies regarding trade with settlements are ineffective in fulfilling the obligations binding on the EU that were identified in the 2024 Advisory Opinion. **The EU must therefore reassess its policies regarding products originating in the Israeli settlements in order to abide by these**

obligations. This likely requires further restrictions—and potentially an outright ban—on trade or economic dealings with Israeli settlements and on other forms of trade with Israel that would **entrench its unlawful presence in the OPT**.

- In the area of EU funding, under the Guidelines adopted by the EU in 2013, EU funding programmes such as Horizon Europe and financial instruments including the European Investment Bank already must exclude Israeli entities and activities in the OPT. Further, in the light of the obligations identified in the 2024 Advisory Opinion, **funding of Israeli entities and activities under these programmes and instruments must be reviewed. Moreover, the 2013 Guidelines must be reassessed** to address the activities of contractors and subcontractors selected by grant beneficiaries, the exception that allows for the funding of Israeli public authorities operating in the OPT, and the possibility of funding for entities and projects inside Israel that nevertheless support Israel's unlawful presence in the OPT, including 'dual-use' projects with a potential military application. The EU must also consider the potential for inadvertent or 'indirect' financing of projects that assist in the maintenance of the unlawful occupation. **As a potential precautionary measure, the EU may need to suspend ongoing disbursements pending such review**.
- In the area of investment relations and other economic dealings with Israel and Israeli entities, **the EU and its Member States are required to review and, if necessary, adopt measures to prevent investment relations by EU-based companies and other entities, particularly financial institutions, that might assist in the maintenance of Israel's presence in the OPT. The EU and its Member States are under a duty to restrict and/or to end any dealings with companies listed in the UN database of enterprises benefitting Israeli settlements**. They must also review and reinforce their existing advisories for businesses and citizens regarding economic activities in settlements to ensure that their addressees are aware of the risk of operating in breach of the obligations identified by the Court.
- In the area of visa and travel, the EU and its Member States **may remove the exemption for visa-free travel for Israeli nationals residing in the OPT, thus requiring settlers to apply for a visa**. This measure is in keeping with the obligation of the EU and its Member States to distinguish in their dealings between Israel within its pre-1967 borders and the OPT. Based on the same obligation, **the EU could also adopt a decision not to recognise passports and travel documents issued by Israeli authorities in the OPT**.
- In the area of arms trade, EU Member States are under an obligation to re-assess their obligations under the 2013 Arms Trade Treaty (including export permits), in the light of armed violence committed against Palestinians by Israeli settlers and Israeli security forces in the OPT. Consequently, **EU Member States must exercise special caution and re-assess any licences to export arms to Israel, due to the risk that these arms would be used in the commission of serious violations of international humanitarian law as identified in the 2024 Advisory Opinion**.

- Finally, in the area of diplomatic relations, the EU and its Member States **must abstain from any diplomatic acts**, such as the relocation of diplomatic premises or the operation of diplomatic or consular services, that might be regarded as recognition of the effects of Israel's unlawful presence in the OPT. Accordingly, **the EU and its Member States should maintain current policies with respect to the relocation of diplomatic missions into the OPT or Jerusalem**, as this would constitute unlawful recognition of Israel's illegal presence in the occupied territory and/or a potential failure to co-operate with United Nations organs having already taken a position on the question.

- A failure of the EU to comply with its international legal obligations as described in the 2024 Advisory Opinion **would engage the international responsibility of the EU, which would be under an obligation to cease its unlawful conduct, and to provide full reparation for any such violations**. Because the EU legal order enshrines a commitment for the EU and its Member States to uphold and apply international law, **this failure could be invoked in Member State courts or before the CJEU**, not only by victims who have been directly injured by such breaches.

* * *

Table of contents

Table of abbreviations

AG	Advocate General of the Court of Justice of the European Union
ARIO	Article on the Responsibility of International Organisations (ILC)
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts (ILC)
BIT	Bilateral Investment Treaty
CERD	International Convention on the Elimination of Racial Discrimination
CFI	Court of First Instance of the European Union (now General Court)
CFR	Charter of Fundamental Rights (of the European Union)
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CSDDD	Corporate Sustainability Due Diligence Directive
DBIO	Don't Buy Into Occupation Coalition (of 25 civil society organisations)
EC	European Commission
EEAS	European External Action Service
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
EIF	European Investment Fund
ENP	European Neighbourhood Policy
EP	European Parliament
Erasmus+	European Programme for education, training, youth, and sport (2021-2017)
ETIAS	European Travel Information and Authorisation System
EU	European Union
FDI	Foreign Direct Investment
ICJ	International Court of Justice
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ITLOS	International Tribunal for the Law of the Sea
MEP	Member of the European Parliament
OPT	Occupied Palestinian Territory: the West Bank, the Gaza Strip, and East Jerusalem, as defined in UN Security Council Resolution 267 (1967)
PLO	Palestine Liberation Organisation
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties
VCLT-IO	Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations

1. Introduction

The present Expert Legal Opinion was drafted pursuant to a request made by a cross-party coalition of Members of the European Parliament (MEPs) affiliated with the S&D, Renew, and Greens/EFA groups led by Tineke Strik, Barry Andrews, Matjaž Nemec, Hana Jalloul Muro, and Villy Søvndal. Through this Expert Legal Opinion, these groups sought clarification as to the potential legal consequences for the European Union (EU) and its Member States flowing from the July 2024 International Court of Justice (ICJ) Advisory Opinion on the *Policies and Practices of Israel in the Occupied Palestinian Territory*.[1] Specifically, the request for the present Expert Legal Opinion enumerated the following questions:

- *Are current EU positions and policies in accordance with the ICJ AO?*
- *What are the specific implications of the ICJ AO for the EU, including in relation to:*
    - *The EU declaratory position on Israel/Palestine: Does it need to be revised in light of the Court's findings in the AO (e.g., to recognise the illegality of the occupation)?*
    - *EU trade with Israel and Israeli settlements: Does the EU need to abstain from economic or trade dealings with settlements and/or other forms of trade with Israel concerning the OPT which may entrench its unlawful presence?*
    - *EU investment in Israel and Israeli settlements: Does the EU need to take steps to prevent investment relations that assist in the maintenance of Israel's presence in the OPT?*
    - *Is the existing EU policy on settlement products (non-preferential treatment and labelling short of a trade ban) sufficient or does it need to be revised?*
    - *The EU-Israel Association Agreement: Does the EU need to review and/or suspend the Agreement in light of the ICJ AO?*
    - *Israel's participation in EU programmes, such as Horizon Europe: Does the EU need to review the 2013 Guidelines excluding settlements (e.g., regarding the current exception for Israeli ministries based in East Jerusalem), restrict the scope of projects (e.g., on defence and dual use items), or suspend Israel's participation altogether?*
    - *Other potentially significant implications identified during the research from among the optional questions below or others.*
    - *How should these policy implications be implemented by the EU and member States, and which institutions are responsible?*
- *To what extent are the implications identified in the expert opinion binding for the EU?*

The following questions were also posed as 'optional questions':

- *What are implications for other EU policies and dealings with Israel, including:*

    - *Investment in more detail: Does the EU need to, e.g., restrict dealings with companies listed in the UN database of enterprises benefitting Israeli settlements, and/or reinforce its existing advisories for businesses and citizens regarding economic activities in settlements?*
    - *Travel and visa: Visa-free access for settlers and recognition of their Israeli passports.*
    - *Recognition of Israeli elections in the settlements (cf. EU position on elections in Crimea).*
- *What are the specific implications for EU member States at national level, including towards:*
    - *Arms trade with Israel.*
    - *Legal basis of banning trade with settlements at national level vs. exclusive EU competence (already addressed in the September 2024 expert opinion by Prof. Tridimas and Prof. Koutrakos).*
    - *Other policies.*
- *Legal options for bringing the EC/EU into compliance with the ICJ AO, including through litigation before the Court of Justice of the European Union.*

Legal scholars, non-governmental organisations (NGOs), and several politicians have already offered their interpretations of the potential obligations arising from the ICJ's 2024 Advisory Opinion for the EU. In their request for an Expert Legal Opinion, the political groups referenced an assessment by the Head of the Legal Department of the European External Action Service (EEAS), which concluded that existing EU policy is already aligned with the 2024 Advisory Opinion. According to this assessment, revisiting the EU's policy on imports from settlements is a 'matter of political appreciation' rather than a legal obligation.[2]

Of further note are ongoing discussions taking place among experts and representatives from EU Member States within the Public International Law Working Group (COJUR), with further deliberations expected to continue at both the expert and political levels. Frustrated by the inability to convene an EU-Israel Association Council meeting with human rights concerns on the agenda, in November 2024, then EU High Representative for Foreign Affairs and Security Policy Josep Borrell proposed that the Foreign Affairs Council ban imports from illegal settlements and suspend political dialogue with Israel, in relation to the human rights obligations contained in the 'EU-Israel Association Agreement'[3] and citing directly to the 2024 Advisory Opinion.[4] However, the High Representative's proposal failed to secure the required unanimity of EU Member States.[5] In May 2025, the current EU High Representative, Kaja Kallas, announced that a review of the EU-Israel Association Agreement would be launched in the light of the humanitarian blockade in the Gaza Strip since early 2025.[6]

The authors of this Expert Legal Opinion are sensitive to the divergent positions within the EU and between Member States governments regarding the wider dispute between Israel and Palestine. Accordingly, the authors emphasise that the present Expert Legal Opinion is focussed purely on a legal analysis based on the applicable rules of international and EU law. This Expert Legal Opinion is confined to interpreting the 2024 Advisory

Opinion, assessing its key implications for the EU as a subject of international law, and exploring its potential consequences for the policies and practices of EU Member States. While the authors evaluate a wide range of EU policies, a comprehensive and technical evaluation of *all* EU policies and practices with respect to Israel that might be relevant in the light of the 2024 Advisory Opinion is beyond the scope—and timeframe—of this Expert Legal Opinion. However, the authors strive to offer tailored, concrete guidance on the relevant legal standards for reviewing the most pertinent EU instruments, policies, and actions.

* * *

2. The ICJ's Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*

On 19 July 2024, the Court rendered its Advisory Opinion on *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. This landmark Opinion, which was rendered twenty years after the ICJ's 2004 Advisory Opinion on the *Construction of a Wall in the Occupied Palestinian Territory*,[7] clearly spells out fundamental breaches of international law by Israel, as well as the consequences of these breaches for Israel, for other States, and for other international actors.

Before turning to the Court's opinion, it is important to explain that the Court's findings are not purely of an advisory character: in the discharge of its advisory function, the interpretation and application of international law by the ICJ has contributed materially to the development of international law and to the recognition of binding international obligations.

2.1 The advisory function of the Court

Pursuant to Article 96 of the United Nations Charter[8] and Article 65 of its own Statute, the ICJ is competent to render advisory opinions at the request of organs and specialised agencies of the United Nations (UN). Formally, advisory opinions do not have binding force on the requesting organ/specialised agency, the UN, or any States concerned.[9] This is in distinction to the binding character of the Court's judgments in contentious cases on States parties to the dispute.[10]

Though in international law, judicial decisions—including advisory opinions—are not formal sources of international law, it is long-established that the ICJ's judgments and advisory opinions are accorded significant legal authority. The Court's decisions are regarded as relevant in the correct interpretation of treaty provisions, determining the existence and scope of rules of customary international law and general principles, as well as in relation to peremptory norms of international law. As noted by the International Law Commission, they have 'persuasive and practical value in helping to resolve subsequent legal disputes'.[11] As early as 1938, Leland Goodrich had remarked about the ICJ's institutional predecessor, the Permanent Court of International Justice, that 'the statement that advisory opinions are purely advisory is formalistic, perhaps even naïve'.[12] Today, calling into question the authority of advisory opinions by the ICJ is 'almost blasphemous' on the international plane.[13]

The systematic reliance by international lawyers on the Court's advisory opinions in subsequent disputes or judicial proceedings attests to these opinions' significant legal weight. The established practice of the Court itself is to rely extensively on its previous decisions as legal authorities in support of its conclusions.[14] This is also visible in the work of other international actors such as international organisations and other international courts and tribunals. For instance, the United Nations General Assembly (UNGA) regularly endorses authoritative findings made by the ICJ in an advisory capacity.

Specifically, the 2024 Advisory Opinion has already received clear endorsement from States. In Resolution (ES-10/24), adopted by a large majority of the UN General Assembly on 19 September 2024, the UNGA 'welcomed' and endorsed in no ambiguous terms the conclusions of the Court.[15] Indeed, the EU and its institutions consistently follow a similar practice, affording significant legal weight to advisory opinions of the ICJ when identifying and applying international law.[16] There are no grounds for departing from this established practice.

The international legal relevance of the Court's advisory opinions thus goes further than being authoritative, as can be observed in the 2021 Judgment on preliminary objections rendered by the International Tribunal for the Law of the Sea (ITLOS) in a dispute brought by Mauritius against the Maldives.[17] The dispute concerned the delimitation of the maritime boundary between the two countries in the Indian Ocean, but the Maldives objected to the Tribunal's jurisdiction on the basis that, as evidenced by the ICJ's 2019 Advisory Opinion in *Separation of the Chagos Archipelago*,[18] a dispute existed between the United Kingdom and Mauritius over sovereignty over the Chagos Archipelago after Mauritius had obtained independence from British colonial rule.

Though the ICJ had declared that the separation of Chagos from the Mauritius colony by the United Kingdom was a violation of international law, sovereignty over the Archipelago had not been transferred back to Mauritius at the time of the proceedings before ITLOS.[19] According to the Maldives, the dispute was inadmissible before ITLOS due to the non-participation of the United Kingdom. Therefore, the United Kingdom was an 'indispensable third party' under the so-called 'Monetary Gold rule', following which an international court should not proceed with a case in situations where a determination of

the legal conduct of an absent third State formed the very subject-matter of the case. The Maldives contended that, to effect the required maritime delimitations, ITLOS would address the question of sovereignty over the Chagos Archipelago in the absence of the United Kingdom.

The Tribunal rejected these preliminary objections, and the reasoning given is crucial for understanding the potential legal effect of ICJ advisory opinions. ITLOS concluded that, as a consequence of the ICJ's 2019 Advisory Opinion, there no longer existed a legal 'dispute' over the sovereignty over the Chagos Archipelago as the United Kingdom was not sovereign. In so doing, ITLOS addressed explicitly the legal weight of ICJ advisory opinions, noting that 'judicial determinations made in advisory opinions carry *no less weight and authority* than those in judgments because they are made with the same rigour and scrutiny by the "principal judicial organ" of the United Nations with competence in matters of international law',[20] and concluding that:

> [t]he determinations made by the ICJ with respect to the issues of the decolonization of Mauritius in the Chagos advisory opinion *have legal effect and clear implications for the legal status of the Chagos Archipelago.* The United Kingdom's continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations.[21]

The 2021 ITLOS judgment provides a striking recent illustration of the binding legal effects and potential consequences of advisory opinions of the ICJ, as a matter not merely of authority and influence, but of generating concrete and specific international legal norms. **Though of course formally, the Court's opinions are not binding, the specific determinations of the existence of legal obligations may generate legal consequences on all international actors. In short, the view that ICJ advisory opinions are merely influential is misplaced.**

2.2 Context of the *Policies and Practices of Israel* Opinion

The 2024 Advisory Opinion was rendered twenty years after the ICJ's much-discussed *Construction of a Wall* Opinion. In this earlier opinion rendered in 2004, the ICJ notably concluded that the West Bank, East Jerusalem and the Gaza Strip were under occupation by Israel and constituted the 'Occupied Palestinian Territory' (OPT).[22] The ICJ also found that Israel's erection of a 'separation barrier' in the West Bank was unlawful under international law, in particular, as a breach of the right to self-determination of the Palestinian population. As the ICJ noted in its 2024 Advisory Opinion, despite these findings, 'the construction of the wall continued, as well as the expansion of settlements in the Occupied Palestinian Territory.'[23] In 2024, the Court reprised this view, noting that the Palestinian territory occupied since 1967 'encompasses the West Bank, East Jerusalem and the Gaza Strip' and, moreover, that 'from a legal standpoint, the Occupied Palestinian Territory constitutes a single territorial unit, the unity, continuity and integrity of which are to be preserved and respected.'[24]

Four other proceedings currently pending before the ICJ have immediate bearing on the substance of the *Policies and Practices of Israel* Opinion. Three of these proceedings are contentious cases. In *Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)*, Palestine challenges the United States' decision to relocate its Embassy to Jerusalem.[25] In *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Nicaragua argues that Germany violates several of its international obligations by lending substantial support to Israel.[26] In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, South Africa alleges that Israel's military response to the 7 October 2023 Hamas-led terrorist attacks and hostage-taking amounts to a breach of the Genocide Convention.[27] This third case is remarkable because of the three sets of provisional measures ordered by the ICJ in light of the urgency and direness of the humanitarian disaster in the Gaza Strip.[28] Finally, at the end of last year, the UNGA adopted a resolution seeking yet another advisory opinion from the ICJ, this time on *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*.[29]

The rulings in all these pending cases are likely to engage in questions that will entail further legal implications in respect of EU policy towards Israel and Palestine.

2.3 Key findings by the Court

The landmark 2024 Advisory Opinion sets out several fundamental conclusions that will be addressed in detail below. The ICJ found that **Israel's policies constitute annexation, violate the Palestinians' right to self-determination, and breach Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD),[30] which prohibits racial segregation and apartheid**. The ICJ further determined that **sustained abuse by Israel as an Occupying Power in the OPT led to the occupation of Gaza, the West Bank, and East Jerusalem to be unlawful as a whole**—thus going beyond the traditional position in international humanitarian law (IHL) according to which occupation is a state of fact, neither lawful nor unlawful. The ICJ concluded that as a consequence, **Israel must withdraw from the OPT as swiftly as possible and provide full reparation for its unlawful acts to all natural and legal persons injured thereby**, including restitution of land and property. **The ICJ also outlined obligations for third States and other international actors, including the duty not to recognise the legal validity of Israel's unlawful presence in the OPT, not to furnish aid or assistance in maintaining it, and to co-operate to bring the situation of illegality to an end.**

In what follows, we detail the ICJ's primary findings in four points: Israel's policies amounting to overarching annexation despite the prohibition on the acquisition of territory by force; Israel's breach of the fundamental rights of Palestinians (including the significance of the ICJ's finding of a violation of Article 3 of CERD); the illegality of Israel's

occupation as a whole; and the legal consequences of Israel's policies and practices in the OPT for other States and international actors.

2.3.1 Policies amounting to overarching annexation: Settlement policy and transfer of population, exploitation of natural resources, prevention and punishment of attacks on local population

The ICJ was highly critical of specific Israeli policies in respect of the OPT, in particular with respect to carrying out its ongoing settlement policy after 1967, under which Israeli settlers have been transferred into the West Bank and East Jerusalem; and, until 2005, into the Gaza Strip.[31] As it had done already in 2004, **the ICJ reconfirmed a number of serious violations of IHL**. First, it found that this settlement policy is contrary to the prohibition found in the sixth paragraph of Article 49 of the Fourth Geneva Convention,[32] namely, the transfer by an Occupying Power of its own civilian population into occupied territory.[33] Secondly, it determined that the confiscation or requisitioning of Palestinian land in the West Bank and East Jerusalem is in breach of Articles 46, 52, and 55 of the Hague Regulations on the respect for private property.[34] Thirdly, the ICJ declared Israel's exploitation of the natural resources in the OPT a violation of IHL, calling particular attention to the restriction of access of the Palestinian population to water.[35]

The ICJ drew further attention to a number of serious violations of international humanitarian law by Israel. These include the forced displacement of the Palestinian population[36] and, in breach of Israel's responsibility as the Occupying Power to protect Palestinians from settler violence, a 'systematic failure to prevent or punish attacks by settlers against the life or bodily integrity of Palestinians, as well as Israel's excessive use of force against Palestinians'.[37] By so doing, the ICJ reaffirmed its holding in *Construction of a Wall* in relation to the extraterritorial application of human rights by a State exercising jurisdiction beyond its territory.[38] The ICJ found that the 'prolonged' character of Israel's occupation of the OPT did not in itself change the legal status of the said occupation under IHL, but that the legality of Israel's occupation depended on other rules, in particular, 'the prohibition of territorial acquisition resulting from the threat or use of force, as well as […] the right to self-determination.'[39] The ICJ further concluded that '[t]hese policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground.'[40] It also bears noting that the Court dismissed the argument that the Gaza Strip was no longer under occupation, on the basis that Israel had 'remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone, despite the withdrawal of its military presence in 2005.'[41]

The finding that Israel's conduct 'amount[s] to annexation of large parts of the [OPT]', whether *de jure* and/or *de facto*, is striking: 'to seek to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and

the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force.'[42] **This finding of creeping annexation through the settlement policy is a core element of the ICJ's reasoning and remains ongoing**: on 29 May 2025, Israeli Defence Minister Israel Katz announced that it will establish 22 new Israeli settlements in the West Bank, and will proceed with the legalisation of existing 'wildcat' settlements (those have been already built but without government authorisation).[43]

2.3.2 Breach of the fundamental rights of Palestinians, in particular the right to self-determination and certain fundamental rights under international human rights law and international humanitarian law

In the 2024 Advisory Opinion, the ICJ found that Israel breached the fundamental rights of the Palestinians, including their right to self-determination (2.3.2.1), and committed severe forms of racial discrimination amounting to a breach of Article 3 of CERD (2.3.2.2).

2.3.2.1 Self-determination in situations of foreign occupation

In addition to finding that Israel's conduct amounts to annexation, a second violation observed by the ICJ relates to the policies and practices by Israel in the OPT, with respect to a 'broad array of legislation adopted and measures taken by Israel'; when taken as a whole, these policies were taken to constitute unjustified differentiation of treatment of Palestinians, and thus a breach of Article 2 of CERD.[44]

The ICJ moreover determined that, when taken as a whole, Israel's construction of settlements, forced displacement of Palestinians, and extraction and use of natural resources exacerbated the overarching policy of annexation, and thus constituted **a breach of Israel's 'obligation not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory**.'[45] Crucially, the Court added that, 'in situations of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law.'[46]

2.3.2.2 Severe forms of racial discrimination: racial segregation and apartheid

Perhaps the most radical finding of the 2024 Advisory Opinion is of a violation of Article 3 of CERD, which proscribes racial segregation and apartheid: the ICJ held that 'Israel's legislation and measures impose and serve to maintain near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities', and in so doing, constitute a breach of Article 3 of CERD.[47] It is important to draw attention to the fact that the ICJ did not explicitly highlight which of the two prohibitions embodied in Article 3—racial discrimination and apartheid—was violated.[48] Nevertheless, in CERD it

is recognised that both racial segregation and apartheid are 'particularly severe forms of racial discrimination'.[49]

The UN Committee on the Elimination of Racial Discrimination has confirmed **the universal application of Article 3 of CERD**, by which all parties, including Israel, undertake 'to prevent, prohibit and eradicate all practices of racial segregation and apartheid in territories under their jurisdiction'.[50] The interpretation of this provision is further clarified by the definition of apartheid in the 1973 Apartheid Convention,[51] as a detailed list of 'acts committed with the purpose of domination or systematic oppression of one racial group over another racial group.'[52]

Apartheid, of course, is a deeply emotive term,[53] introduced from the Afrikaans language (literally, 'the quality of separateness') to describe the regime of racial supremacy legally imposed in South Africa from 1948 to 1994, which institutionalised racial discrimination, unequal access to social services, political repression, and eventually, territorial separation.[54] Because Israel is not a State Party to the 1973 Apartheid Convention, it is not bound by the provisions therein, which require States Parties to enact legislative measures to suppress, prevent, and punish the crime of apartheid.

However, the 1973 Convention recognises apartheid as a criminal offence, a 'crime against humanity' subject to universal jurisdiction.[55] This characterisation is further retained in the 1998 Rome Statute of the International Criminal Court;[56] and pursuant to Additional Protocol I, apartheid is a crime amounting to a 'grave breach' of the Geneva Conventions in situations of international armed conflict.[57] Moreover, the **International Law Commission has consistently maintained that a violation of the prohibition against 'racial discrimination and apartheid' constitutes a violation of a peremptory norm of general international law, or a norm of *jus cogens*.**[58] As a result, the prohibition of apartheid and racial discrimination applies to States even if they are not a party to the 1973 Convention, such as Israel, and the violation of either prohibition embodied in Article 3 CERD—to recall, racial segregation or apartheid—would qualify as a breach of a peremptory norm.

The Court's findings on these points ascertain the violation of distinct peremptory norms: to recall, the right to self-determination in situations of foreign occupation, in particular in situations concerning the annexation of territory occupied through the use of force, and the prohibition on racial segregation and/or apartheid. Peremptory norms—a term used interchangeably herein with 'norms of *jus cogens*'—are hierarchically superior norms of international law and are recognised by the international community of States as a whole as norms from which no derogation is permitted, thus having the effect of invalidating a treaty in conflict with such norms.[59] All peremptory norms, including the prohibitions against genocide, torture, slavery, apartheid, war crimes, crimes against humanity, and aggression, are hierarchically equal. More pertinently, as recognised in previous decisions of the Court, a breach of a peremptory norm by one actor gives rise to obligations owed to the international community as a whole, known as obligations *erga omnes*; and because all States are considered to have a legal interest in the respect for such rules, any State is entitled to invoke the responsibility of another State for the breach of a peremptory norm.[60] We return to this *erga omnes* character below.[61]

2.3.3 The legal status of Israel's presence in the Occupied Palestinian Territory

Based on all of the above considerations, the ICJ arrived at the key finding in the 2024 Advisory Opinion that, **in the light of the 'sustained abuse' of its obligations as Occupying Power,[62] and multiple violations of international law committed by Israel during its occupation of the OPT, the presence of Israel in the OPT constitutes an internationally wrongful act and must be brought to an end 'as rapidly as possible'**.[63] This finding of 'unlawful occupation' is unusual, and a marked departure from the traditional concept of occupation within IHL as a situation of fact.

The framework of the law of belligerent occupation under IHL acknowledges the presence of an Occupying Power in territory over which it is not sovereign and takes no position as to whether it is intrinsically or inherently unlawful. Sovereignty does not attach to the last State holding title prior to occupation; rather, sovereignty is vested in the population under occupation.[64] Occupation, even if prolonged, is thus an impermanent phenomenon, an exceptional factual situation whereby the application of IHL stipulates a minimum ground of obligations owed to the civilian population under occupation. The unusual feature of the ICJ's conclusion, that **Israel's sustained abuse of its position as Occupying Power has rendered its overall presence in the OPT to be unlawful**, is particularly pertinent because it departs from the general paradigm in which an occupation may not generate the legal effects of sovereignty but is not automatically unlawful, instead being merely a state of exceptional control over territory and its resident population.

Under the traditional view prevailing in IHL, even a prolonged occupation is neither lawful nor unlawful: though an Occupying Power may not assert sovereignty over the occupied territory, it is otherwise only required to comply with certain basic obligations in relation to the administration of the territory and the protection of the interests of the civilian population. This traditional situation characterises Morocco's presence in Western Sahara, that of Turkey in Northern Cyprus, and even, given the lack of a definitive legal finding of unlawfulness by the ICJ or the United Nations Security Council (UNSC), the presence of Russia in Crimea after 2014 and the eastern *oblasts* of Ukraine after 2022. Whatever grave violations of international law might have been giving rise to the situation of occupation, which are usually in relation to *jus ad bellum* but not necessarily so, these do not affect the legal status of the occupation and the overall applicability of IHL.

Against this background, the ICJ has made the remarkable finding that **the legal status of Israel's occupation was not to be determined under IHL but in the light of general international law**. Specifically,

> ...the rules and principles of general international law and of the Charter of the United Nations on the use of force in foreign territory (*jus ad bellum*) have to be distinguished from the rules and principles that apply to the conduct of the occupying Power under international humanitarian law (*jus in bello*) and international human rights law. The former rules determine the legality of the continued presence of the occupying Power in the

> occupied territory; while the latter continue to apply to the occupying Power, regardless of the legality or illegality of its presence. It is the former category of rules and principles regarding the use of force, together with the right of peoples to self-determination, that the Court considers to be applicable…[65]

In this light, the ICJ concluded that

> the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful.[66]

The characterisation of Israel's 'sustained abuse' of its position as Occupying Power is one of the most categorical findings in the 2024 Advisory Opinion. The sole precedent in the ICJ's case law is perhaps the ICJ's *Namibia* Advisory Opinion in 1971 in which, following the revocation by the UNGA and the UNSC of the Mandate bestowed upon South Africa in respect of Namibia, the ICJ determined South Africa's presence in that territory had *become* unlawful.[67] Importantly, the basis for the illegality of South Africa's continued presence in Namibia was not merely the revocation of South Africa's Mandate by the UNGA and the UNSC but the finding that South Africa's introduction of apartheid into Namibia (then South West Africa) was a 'flagrant violation' of the purposes and principles of the UN Charter.[68]

In a striking parallel between the *Namibia* opinion and the situation under discussion here, the ICJ did not merely examine the legality of South Africa's policies and practices in relation to racial discrimination, political repression, or apartheid alone. Instead, on the basis of these violations, the ICJ arrived at a determination with respect to the legal status of South Africa's presence, deducing its illegality as a whole from the revocation of the Mandate.[69]

Eyal Benvenisti has suggested that a presumption exists to the effect that an occupation that has not been abused, for example by establishing an indefinite exercise of power or by refusing to negotiate withdrawal, retains legal validity.[70] The question thus arises as to whether, as with Special Rapporteur John Dugard's acknowledgment that 'violations of human rights are a necessary consequence of military occupation',[71] the legal status of an occupation under IHL can pass from being neutral, or not *per se* unlawful, into unlawfulness due to the conduct of the Occupying Power. Ardi Imseis argued in 2020 that systematic and cumulative violations of *jus cogens* norms arising both from IHL and international human rights law (IHRL) could, over time, render an occupation illegal—the approach endorsed by the Court.[72]

The Court's reasoning rests on a conception of belligerent occupation that in turn rests on certain basic precepts, namely, that even prolonged occupation cannot give rise to a valid

transfer of sovereignty.[73] Recalling the prohibition on the acquisition of territory through the use of force, irrespective of whether that force might be claimed to have been lawful[74] (e.g. in self-defence, as Israel has contended in respect of the 1967 'Six-Day War'), it bears recalling that all States and other international actors are under an obligation not to recognise title thus acquired.[75] Occupation is thus a state of exception, an exception which emerges when an Occupying Power is in effective control over territory and a civilian population over which it is not sovereign, and thus bears obligations in relation to how that occupation is conducted.

It is true that, save for its claimed annexation of East Jerusalem after 1967,[76] Israel has not formally asserted sovereignty over the OPT. Instead, Israel has long justified its occupation, and actions thereunder, through the language of what it deems its 'essential' or 'legitimate security concerns' in relation to the suppression of terrorist attacks and especially suicide bombings, and that the atrocities of 7 October 2023 have led to an emphatic assertion of such security needs.[77] Though the law of occupation explicitly recognises such security concerns, it does not allow for security concerns to justify breaches of the law of occupation. For example, in 2004, the ICJ concluded that Israel's settlement policies could not be justified through such security considerations, as the prohibition embodied in Article 49, paragraph 6, of the Fourth Geneva Convention, on the transfer of the civilian population of the Occupying Power into the occupied territory, was without exception.[78] In 2024, the ICJ has gone further, concluding that security needs do not permit Israel to annex parts of the OPT nor to maintain a permanent presence within it, **dismissing explicitly the notion that Israel's security concerns might 'override the principle of the prohibition of the acquisition of territory by force'**.[79]

What is more, the law of occupation requires that security measures be taken purely on a *temporary* and exceptional basis. Orders for the seizure of territory 'requisitioned for military needs',[80] but that have amounted to the confiscation of Palestinian land and the indefinite transfer of title to Israeli settlers, were deemed by the ICJ to have led to a permanent demographic shift in the West Bank and East Jerusalem.[81] Because occupation comes with temporal constraints, purely to respond to military necessity, it cannot transfer title of property to the Occupying Power;[82] to do otherwise renders the occupation 'intrinsically illegal'.[83]

The legal consequences of the finding that the occupation has become unlawful due to Israel's 'sustained abuse' of its situation as the Occupying Power has legal consequences for Israel as well as for all other States and international actors. We turn to these consequences in the next section.

2.3.4 Legal consequences of Israel's policies and practices for other States and international actors

*2.3.4.1 The characterisation of Israel's violations of international law by the Court as violations of peremptory norms (*jus cogens*) and obligations* erga omnes

As we recalled above, the 2024 Advisory Opinion contains the finding that the policies and practices of Israel in the OPT are wrongful acts in breach of prohibitions of a peremptory nature (*jus cogens*). For reasons of concision and clarity, we avoid here heated academic debates as to the source or nature of peremptory norms.[84] We focus instead on the legal consequences of this finding. Indeed, the specific character of peremptory norms requires us to analyse the international legal consequences arising from such violations, before turning in Sections 4 and 5 to their specific application in respect of the EU and its specific agreements, policies, and practices in relation to Israel and/or to the OPT.

We recall quickly the three key findings of the ICJ's Opinion in respect of Israel.[85] The Court declared that **Israel's continued presence within the OPT is an internationally wrongful act of a continuing character, putting Israel under an obligation to end its unlawful acts**: specifically, 'immediately' to cease all new settlement activity and to repeal all legislation and measures creating or maintaining the occupation as well as any measures aimed at modifying the demographic composition of the OPT.[86] **Israel is also under the obligation to provide full reparation for these unlawful acts**, including the restitution of land and other assets taken from Palestinians and Palestinian institutions, the evacuation of all settlers from existing settlements in the OPT, and the dismantling of the wall within the OPT.[87] Finally, **Israel remains under a continuing duty to respect the Palestinian people's right to self-determination, as well as to abide by its obligations under IHL and IHRL**.[88]

One key point addressed only implicitly by the ICJ is the fact that when a peremptory norm has been violated, international law excludes the invocation by a State of a circumstance precluding the wrongfulness (a 'defence') of its acts, for example, to invoke a state of necessity.[89] This is because peremptory norms embody the most fundamental principles of the international legal system and are universally accepted and recognised by the international community as rules from which no derogation is permitted. These norms are so important that no State can deviate from them. Accordingly, **Israel's security interests cannot serve as a potential justification for any breach of a peremptory norm**, even after the atrocities committed on 7 October 2023.

Additionally, Section VII.B. of **the 2024 Advisory Opinion identifies the violation by Israel of several obligations owed *erga omnes***: specifically, its violation of the right of the Palestinian people to self-determination, its violation of the prohibition on the use of force to acquire territory, and its violation of the obligations under IHL and IHRL described above.

2.3.4.2 Legal consequences for other States and international actors arising out of Israel's breaches of the international obligations identified by the Court

The key distinction that must be highlighted here is that, in contrast with the breach of obligations that are not *erga omnes*, **the breach of obligations *erga omnes* gives rise to three additional sets of obligations on the part of all other States—a category that *a fortiori* includes the 27 Member States of the EU—even if they did not themselves contribute to the breach**.[90]

2.3.4.2.1 Obligation of co-operation to bring an unlawful situation to an end

First, the ICJ recalled that all States are under **an obligation to co-operate with the United Nations** to implement any modalities necessary, and through lawful means, to 'ensure an end of Israel's illegal presence in the Occupied Palestinian Territory and to ensure the full realization of the Palestinian people's right to self-determination'.[91] The Court also mentioned that 'the precise modalities to bring to an end Israel's unlawful presence … is a matter to be dealt with by the General Assembly, which requested this opinion, as well as the Security Council. **Therefore, it is for the General Assembly and the Security Council to consider what further action is required to put an end to the illegal presence of Israel, taking into account the present Advisory Opinion.**'[92] The Court's explicit reference to the role of the General Assembly in establishing precise modalities suggests that as part of the obligation to co-operate, **there exists also a duty—flowing from the Opinion itself—to take due account of the views of the General Assembly as set out in Resolution ES-10/24**. For example, amongst the measures suggested by the Assembly is a proposal to create 'an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as to the Palestinian people, caused by the internationally wrongful acts of Israel in the Occupied Palestinian Territory, as well as to promote and coordinate evidence-gathering and initiatives aimed at securing such reparation by Israel'.[93]

Moreover, though the obligation to co-operate is one of conduct and is ideally achieved through collective actions within the UN framework, **this obligation may be implemented by individual States or a group of States acting together to bring to an end a breach of a peremptory norm**.[94]

2.3.4.2.2 The duty of non-recognition and the duty to abstain from any aid and assistance that might maintain the unlawful situation

Second, pursuant to the general duty not to recognise as lawful any situation created by a breach of a peremptory norm, and with specific application to the acquisition of territory by force, the ICJ called upon all States not to recognise 'any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem'.[95] Crucially, the ICJ referred to UNSC resolutions 465 (1980) and 2334 (2016), in which the Security Council has declared any such measures or policies to be legally invalid. **Taken together, these**

resolutions give rise to the third obligation arising for all States, namely, the duty not to render any aid and assistance that might maintain the unlawful situation caused through the breach of a peremptory norm, and which is linked to the obligation to co-operate with the UN and its organs, as well as with other international actors, to take lawful measures to bring the violations by Israel of its obligations to an end.

In application of these linked obligations of non-recognition and the prohibition on aid and assistance, the ICJ enumerated, in paragraph 278, a series of specific obligations for all other States, including:

- to abstain from treaty relations with Israel in cases where Israel purports to act on behalf of the OPT, or a part thereof;
- to abstain from economic or trade dealings with Israel concerning the OPT that might entrench its unlawful presence there;
- to abstain, in establishing or maintaining its diplomatic missions, from any recognition of Israel's unlawful presence; and
- to take steps to prevent trade or investment relations that assist in the maintenance of Israel's unlawful presence.

These conclusions of the Court are particularly striking: though the concept of 'differentiation' has been understood by some to prohibit only economic dealings directly linked to Israeli settlements in the OPT, **the Court's conclusions are broader, and also apply to economic relations with Israel**: specifically, economic or trade dealings that might entrench its unlawful presence, and trade or investment relations that assist in the maintenance of the unlawful situation.[96] These findings acknowledge the deeply entangled economies of Israel and the OPT and suggest that mere differentiation is legally inadequate. We will return to these points in Section 4 below.

In paragraph 279, the Court summarised as follows: **'in view of the character and importance' of the obligations involved**, 'all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel [in the OPT]' and under a further obligation 'not to render aid or assistance in maintaining' the said situation, adding that **it falls to all States 'to ensure that any impediment resulting from the illegal presence of Israel [in the OPT] to the exercise of the Palestinian people of its right to self-determination is brought to an end'. The Court added further that all States parties to the Fourth Geneva Convention have the obligation 'to ensure compliance by Israel with international humanitarian law as embodied in that Convention'**.[97]

2.3.4.2.3 Legal consequences applicable to international organisations and the specific case of the European Union

In paragraph 285, the Court added that 'the duty of non-recognition specified above also applies to international organisations, including the UN, in view of the serious breaches of obligations *erga omnes* under international law', and pointed out that a range of UNGA resolutions have called on international organisations and specialized agencies not 'to recognize, or co-operate with or assist in any manner in, any measures undertaken by

Israel to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories'. The gravity and character of the obligations concerned was emphasised again in paragraph 285, the Operative Clause.[98]

Here, the key question arises as to whether the EU is a mere 'international organisation', and thus only bound to the duty of non-recognition like other international organisations including the UN; or **whether the obligation to refrain from providing aid and assistance may also be binding on international actors such as the EU, to the extent to which they are bestowed with powers or competences in their constituent instrument that might engage such obligations**.[99] To give but a single recent illustration of the range of measures available in a situation where the EU has decided to respond in pursuance of obligations arising out of a breach of a peremptory norm that are analogous to those found in Section VII.B of the 2024 Advisory Opinion, in response to the military aggression of Russia against Ukraine, the EU has enacted key regulations to enable the preservation of evidence by Eurojust.[100]

Though the Court does not enumerate the full range of available non-forcible measures and restrictions that can also be taken to induce an end of the breaches of international law, under the law of international responsibility, certain general principles of responsibility apply. Foremost, if the EU or its Member States were already aware of a breach of their international obligations to respond to Israel's unlawful acts, as enumerated above, they would be under an obligation to cease the wrongful conduct immediately and to provide due reparation to the parties that are injured by its unlawful act.

For the purposes of the present Expert Legal Opinion, we presume that given the factual complexity of EU-Israel relations, the EU and its Member States are not at present aware that any of their existing conduct, policies and practices with respect to Israel are in breach of their obligations under the 2024 Advisory Opinion. Even if this is the case, the findings of the ICJ have now established that Israel's unlawful policies and practices are of a character, gravity and scale that they give rise to international obligations on third parties, including the EU and its Member States, to respond. For this reason, the EU and its members must reassess and review EU-Israel relations in situations where they might fall within the scope of the 2024 Advisory Opinion, and to confirm that the EU and its Member States remain in compliance with their international obligations. If any such review were to reveal that they were in breach of their international obligations, the EU and its Member States would be under the obligations to cease such unlawful conduct and/or to provide due reparation to the victims of its unlawful acts.

2.3.4.2.4 Measures proposed in furtherance of the 2024 Advisory Opinion by United Nations organs and bodies

As discussed earlier in this section, the ICJ Advisory Opinion has identified several obligations for third parties that are triggered by Israel's unlawful acts and determined

general legal consequences for such third parties. One of these obligations is to co-operate with the United Nations, and in particular the General Assembly and the Security Council, to bring Israel's unlawful presence to an end. In this respect, the EU and its Member States ought carefully to take due account of the General Assembly's observations in Resolution ES-10/24. Besides endorsing the Court's conclusions with respect to all States in operative paragraph 4, the Assembly went further in operative paragraph 5, and called upon 'all States … consistent with their obligations under international law':

> (a) To take steps to ensure that their nationals, companies and entities under their jurisdiction, as well as their authorities, do not act in any way that would entail recognition or provide aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory;
> (b) To take steps towards ceasing the importation of any products originating in the Israeli settlements, as well as the provision or transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory;
> (c) To implement sanctions, including travel bans and asset freezes, against natural and legal persons engaged in the maintenance of Israel's unlawful presence in the Occupied Palestinian Territory, including in relation to settler violence;
> (d) To support accountability efforts for all victims.[101]

Moreover, in September 2024, the United Nations Independent International Commission of Inquiry, created by the UN Human Rights Council in relation to the OPT, published a 'Position Paper',[102] outlining a series of financial and economic measures that would be consistent with the responsibilities on third States (and other international actors) arising from the 2024 Advisory Opinion, including:

- to '**cease** all financial, trade, investment and economic relations with Israel that maintain the unlawful occupation or contribute to maintaining it';[103]
- to '**review** their trade and economic agreements with Israel that involve products and produce of the unlawful settlements'; [104]
- to '**examine** private enterprises incorporated in their territory and non-profit or non-governmental organisations registered in their territory and their dealings with Israel and the OPT, undertaking a thorough due-diligence review';[105] should such entities be engaging in activities that maintain the unlawful occupation, to '**take all reasonable measures to prevent them**, such as revoking a corporation's articles of incorporation or a non-profit organisation's registration'; [106]
- to '**carefully review** NGOS that are financially or politically supporting the unlawful occupation', and to abstain from supporting such organisations through tax exemptions or tax deductibility for donations; [107] and
- to '**ensure** the cessation of financial contributions to support the unlawful occupation, including settlements and settlers.'[108]

Though neither the General Assembly's resolution nor the Commission of Inquiry's position paper are formally binding, their conclusions are fully consistent with the obligations identified by the Court in its 2024 Advisory Opinion. In keeping with this, and bearing in mind that the present Expert Legal Opinion is not aimed to produce specific

policy suggestions, we consider these constructive proposals in good faith. Accordingly, in our analysis of the potential implications of the Advisory Opinion on EU-Israel relations, we will seek to identify specific aspects of that relationship which require reassessment in the light of the ICJ's findings in the 2024 Advisory Opinion. Section 3 will summarily review the international legal position of the EU and its potential international obligations in the face of the violations of international law addressed in the 2024 Advisory Opinion. Section 4 will address the specific framework of EU-Israel relations, both in respect of the obligations of the EU (in Sections 4.4 and 4.5) and the obligations on EU Member States (in Section 4.6). We will analyse particularly closely whether the obligations recognised in the 2024 Advisory Opinion go further than those binding upon States and international actors, and arise from situations of occupation that have not been declared to be—or to have become—unlawful by the ICJ or the UNSC. Such situations of occupation where the EU and its institutions (and, notably, the CJEU) have already taken action include Morocco's presence in Western Sahara and Turkey's presence in Northern Cyprus.

* * *

3. The international legal status of the EU and the ICJ's 2024 Advisory Opinion: general considerations

To flesh out the legal and policy implications of the 2024 Advisory Opinion for the EU, it is necessary, first, to ascertain the nature of the relationship between the EU and international law (Section 3.1) and secondly, to analyse the external competences of the EU vis-à-vis third States as well as the EU's potential responsibility for internationally wrongful acts (Section 3.2).

3.1 The EU's international legal status and relation to international law

The very first question to be answered is **whether the EU is bound by international law in general and, more specifically, by certain conclusions found in the 2024 Advisory Opinion**. After all, the EU is not a State and not a member of the UN. As mentioned in Section 2.3.4, the ICJ made reference to specific obligations addressed to all States, and others to all States and to all international organisations. The *sui generis* nature of the EU and the place of international law within the EU legal order, however, open the possibility that the EU must also comply with certain obligations not necessarily addressed to all international organisations. So as to proceed to identify the legal consequences on the EU of the ICJ's findings (see in particular Sections 4.4 and 4.5), the following section briefly revisits the status of the EU in the international legal order.

3.1.1 The EU's international legal status

The EU is a creation of international law, constituted under international treaties concluded between its Member States, in application of the law of treaties as codified in the 1969 Vienna Convention on the Law of Treaties (VCLT).[109] The EU's status in the international legal system is related to its international legal personality (Article 47 of the Treaty on European Union (TEU)), through which the EU exists as a self-standing legal subject of international law, with its own capacity to act independently and its own rights and obligations. Accordingly, **the EU is a distinct legal entity, operating separately but alongside its Member States**.

At the same time, the relationship between EU law and international law has always been complicated. A striking tension underlies the abundant case law on the status, hierarchical rank, and effects of international law within the EU legal order, with solutions oscillating between autonomy and inter-dependence.[110] To make certain key principles of EU law function (including primacy and direct effect), the EU needs to stress its legal order's autonomy vis-à-vis international law. At the same time, as an international actor, **there is a duty for the EU to comply with rules of the international legal order that are binding on it** (see further below).

3.1.2 The 'autonomous' legal order of the EU as an obstacle?

The question of whether the EU is bound by international law is very much related to the Union's claim to 'autonomy'. In practice, the principle of autonomy has, to a large extent, surfaced in relation to the exclusive jurisdiction of the Court of Justice of the European Union (CJEU) to decide on the validity of EU law and on its interpretation and thus affects the possibilities for the Union to participate in international dispute settlement mechanisms.[111] In theory, such exclusive jurisdiction of the CJEU might exclude or at least supersede findings of other international courts (including the ICJ). However, the notion of '**autonomy' does not imply that the EU is not bound by international law; it refers to the exclusive competence of the CJEU in deciding on the validity of EU rules and on their interpretation**.[112]

The case law of the CJEU has consistently confirmed that international law that binds the Union is equally valid within the Union's legal order, without any act of transformation or incorporation. And, also in the famous *Kadi* cases, the Court found that **the Union is bound by international law, including the decisions of the UNSC, but that in the implementation of those decisions it reserves the right to maintain the internal (human rights) standards to which it is also bound**.[113] Such human rights obligations are not just relevant internally but also in the Union's engagement with other actors, in particular due to the inclusion of human rights clauses in many agreements signed by the EU. This includes 'Association Agreements' concluded between the EU (and its Member States) on the one hand, and another State or group of State on the other, and which

establish a more comprehensive form of co-operation. The EU concluded an Association Agreement with Israel that we will address below.[114]

3.1.3 International law binding the EU and the EU's duty to respect international law

This open attitude of the EU towards international law has indeed always been the starting point. **Autonomy of EU law does not mean that international treaties that are binding on the Union are not to be considered a part of EU law**. Their binding nature within the EU legal order was already indicated by the CJEU in the 1970s[115] and is clearly visible in Article 216(2) of the Treaty on the Functioning of the European Union (TFEU): '[a]greements concluded by the Union are binding upon the institutions of the Union and on its Member States'. **International agreements concluded by the EU thus form 'an integral part' of Union law**. As we will see below, this status of international law is not restricted to international agreements (including mixed agreements[116]), but also holds true for customary law[117] and secondary international law created in the framework of international agreements, such as decisions of 'Association Councils',[118] the bodies—composed of representatives of the parties—that govern the above-mentioned Association Agreements.

Accepting that international law forms part of the EU legal order raises the question of where to place it in the EU's hierarchy of norms. The EU founding Treaties provide almost no guidance as to the status of international law within the EU legal order (save Articles 216 and 218 TFEU). Instead, the CJEU's case law which, over time, has frequently dealt with this question, has clarified that international law ranks between EU primary and secondary law.[119] This implies that **all decisions taken by the EU will have to be in conformity with any rule of international law that is binding on the EU**.

In addition, **the EU Treaties not only reflect a general openness to international law but even see a clear role for the EU in promoting international law**. Articles 3(5) and 21 TEU mention the key external objectives of the Union. Article 3(5) TEU, first, provides that:

> In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, **as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter**.[120]

Article 21 TEU adds that:

> The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and

> solidarity, and **respect for the principles of the United Nations Charter and international law**.[121]
>
> […]
>
> The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. **It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations**.

Article 21 TEU further makes reference to the 'purposes and principles of the United Nations Charter' and the promotion of 'an international system based on stronger multilateral co-operation and good global governance'. What is more, the Union has an obligation to 'ensure consistency between the different areas of its external action and between these and its other policies.'

The EU is thus bound by international treaties to which it is a party and has also committed itself to upholding the 'purposes and principles of the UN Charter', despite not being a party to it. More broadly, EU Treaties emphasise the Union's mandate to pursue multilateral solutions and to uphold and advance international law. In addition to obligations arising from treaties binding on the EU, **decisions of international organisations of which the EU is a member are also binding within EU law**. However, while the EU is a member of several international organisations, the UN—of which the ICJ is the principal judicial organ—is not among them.[122]

Articles 3(5) and 21 TEU also lead to another important conclusion: **the human rights standards that are found in the EU legal order are also relevant in shaping due diligence obligations of the EU towards individuals located outside the territory of the Member States**.[123] It has been argued that in relation to the question of the extraterritorial application of the EU's Charter of Fundamental Rights, territorial criteria bear no relevance in determining the Charter's applicability. What matters in this context is whether the situation at hand is covered by an EU competence. Contrary to other human rights instruments, the Charter does not contain a superadded jurisdictional condition for its applicability and this approach undermines the Charter's aspiration to create an autonomous fundamental rights regime. Thus **a duty of due diligence clearly exists as an obligation under EU law pertaining to the need to examine the potential impact of EU instruments and policies on the human rights situation in a third state**.[124]

3.1.4 The EU and customary international law

The previous section mainly dealt with the question of whether, and to what extent, the EU is bound by the treaties to which it is a party and to decisions of international organisations of which it is a member. However, **other (unwritten) sources of international law are likewise binding on the Union**, given that the EU is a subject of international law, endowed with distinct international legal personality (Article 47 TEU).[125] This is a

manifestation of the generally accepted position of international law, echoed by the ICJ, according to which international organisations are bound to respect, *inter alia*, the 'general rules of international law', which refers to customary international law.[126] This has also been accepted by the EU. **As a general practice, the CJEU has considered unwritten international law as binding upon the EU**. In the above-mentioned *Kadi* case, the General Court even reviewed the acts of the UNSC against peremptory norms of international law.[127] In contrast to express rules on the binding force of agreements concluded by the EU under Article 216(2) TFEU, the EU Treaties are silent on the status of customary international law in the EU legal order. Yet, in general terms, Article 3(5) TEU hints at the idea that **the EU considers itself bound by international law in general**.[128]

Over the years, the CJEU accepted the fact that **the Union is bound by international law 'in its entirety, including customary international law, which is binding upon the institutions of the European Union'**—to quote Advocate General (AG) Kokott.[129] The idea that respect for international law relates to both written and unwritten law had already been underlined by the CJEU in *Poulsen*, in which references were made to the customary law rules in the law of the sea.[130] **This expands the scope of international law binding on the EU, including the substance of treaties to which the EU is not a party to the extent that they reflect customary international law**. Clear examples are the VCLT, the 1986 Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations (which is not in force),[131] and core UN human rights conventions such as CERD, the Apartheid Convention, or the Convention on the Rights of the Child, all of which are largely considered to reflect international customary norms.[132]

In the landmark case of *Racke*, the CJEU for the first time shed some light on the effects of customary international law in the EU legal order and the possibilities for individuals to invoke it to challenge an EU regulation. The judgment suggests that there is not much of a difference between the effects of written and unwritten law: **'[i]t follows that the rules of customary international law […] are binding upon the Community institutions and form part of the Community legal order'**.[133] While the case only concerned certain rules of customary law, one commentator concluded that, '[b]ased on these observations, one can proceed on the assumption that **it is unlikely that the EU system should adopt a very different approach in its relationship with international agreements and custom**'. [134]

A fortiori, the obligation to respect customary international law holds with respect to relations with third States (compare also Article 3(5) TEU, referred to above). Moreover, the EU may depart from general international law, with the exception of peremptory norms from which there may be no deviation, to regulate the relationship with and *between* its Member States through its primary law and secondary law.[135]

These obligations resulting from international law are strengthened by EU law itself. The provisions of Articles 3(5) and 21 TEU indicate that the Union must contribute to the strict observance and development of international law. Therefore, **the duty to respect international law is not only an international obligation but amounts to a constitutional principle of the EU itself**.[136]

3.1.5 The doctrine of consistent interpretation

Tensions may nevertheless occur between EU rules and international obligations flowing from international agreements to which the EU is a party. It is in this context that the doctrine of 'consistent interpretation' emerged. In the eyes of the CJEU, **EU legal provisions must, so far as is possible, be interpreted in a manner that is consistent with those international agreements**.[137] The doctrine offers an elegant solution to (potential) conflicts between EU law and international obligations when international agreements lack direct effect (as is the case with the World Trade Organisation agreements and the UN Convention on the Law of the Sea). The principle of consistent interpretation not only applies in relation to the international agreements themselves but also to decisions flowing from those agreements.[138]

This duty of consistent interpretation can also be derived from the law of treaties, where the interpretative principle of 'systemic integration' is enshrined in Article 31(3)(c) VCLT and has customary law character,[139] hence binding the EU. In short, systemic integration can be perceived 'as a procedural obligation to at least engage with and pay special regard to other areas of international law in order to avoid conflict between them'.[140]

3.2 EU external competences and the EU's responsibility for internationally wrongful acts

Having clarified the relationship between the EU and the international legal system, we turn to the external competences of the EU vis-à-vis the competences of its Member States (Section 3.2.1), and the question of the potential responsibility of the EU for internationally wrongful acts (Section 3.2.2).

3.2.1 Existence and nature of EU competences in relation to third States

The process of European integration has led to a division of competences between the EU and its Member States in respect of external relations. Unlike sovereign States, which possess inherent treaty-making authority, the EU's capacity to conclude treaties is limited to the competences conferred upon it. This capacity is defined in Article 216 TFEU, which permits the Union to enter into agreements with third countries or international organisations when such authority is explicitly provided by the Treaties or secondary legislation, or when an agreement is necessary to achieve an objective outlined in the Treaties.

In practice, the EU can conclude international agreements primarily in areas where it also holds internal legislative competence.

The EU is a party to over 1,200 international agreements.[141] The increased breadth of EU internal competences has been reflected in its external relations activities beyond the exclusive domain of Member States. However, only a few competences are exclusive to the EU, such as **trade, governed by the Common Commercial Policy, where the EU can conclude agreements independently as 'EU-only agreements,' without Member States as co-signatories**. More commonly, external relations require concertation between the EU and Member States to address the matters at hand comprehensively. This practice results in 'mixed agreements,' where both the Union and its Member States must become parties to the agreement to cover the full scope of external action.[142]

The TEU designates the Common Foreign and Security Policy (CFSP) as a 'Union competence,' supported by the Member States. However, this policy area is not exclusively controlled by the EU: Member States retain the ability to pursue their own national foreign policies, provided they adhere to the principle of sincere co-operation and respect the Union's decisions and policies in this domain.[143] This implies that even in the area of CFSP, Member State action cannot hamper Union's policies or actions.[144]

The exclusive competence of the EU in trade and its wide-ranging, albeit shared, competence over foreign policy, underscores the fact that the Union itself bears obligations under international law. Decisions in these fields are made either by the Council of the European Union (for the CFSP), or jointly by the EP and the Council of the European Union (for Common Commercial Policy/trade matters), on behalf of the Union. In both cases, international agreements with third parties are concluded with the EU only, that is, without the Member States being parties in their own right. **Regardless, even when Member States are not parties themselves, they are still bound by the obligations contained in the international agreements concluded by the EU** by virtue of Article 216(2) TFEU ('[a]greements concluded by the Union are binding upon the institutions of the Union and on its Member States').

3.2.2 The international responsibility of the EU in the context of this study

To recall, the separate international legal personality of the European Union as a distinct legal actor implies that **in its relations with third States and other international organisations the EU must adhere to the norms that make up the international legal order**. Crucially, the question arises of whether and to what extent the EU may be held responsible for a violation of international law. This question may arise in relation to all international obligations of the Union but is particularly salient in the context of the CFSP.[145] In particular, the international responsibility of the EU can also be invoked by EU citizens and Member States under EU law itself, and the regular procedures are available to challenge or to seek the interpretation of a decision adopted by the EU or flowing from its conduct.

From an international law perspective, it is logical to consider the EU as an international organisation[146] and hence falling within the scope of the ILC Articles on the Responsibility of International Organisations (ARIO).[147] The ARIO regulate not only the responsibility of an international organisation, but also the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organisation. The latter paragraph is meant to, *inter alia*, incorporate those cases of State responsibility for internationally wrongful acts by an international organisation where a State is a member of that organisation, such as the Member States of the EU.[148]

That said, the provisions of ARIO must be used cautiously: the EU is not a regular international organisation and the general rules on the responsibility of international organisations sit uneasily with the complex (and indeed unique) division of competences between the Union and its Member States. [149]

In any case, it is widely accepted that as an international organisation, pursuant to Article 3 of ARIO, **the EU as such may bear international responsibility for an internationally wrongful act**. But what conduct can be attributed to the Union? Article 6(1) ARIO indicates that **conduct by organs and agents of an organisation can engage the international responsibility of the Union**. According to Article 6(2) ARIO, the 'rules of the organisation' have to be applied so as to determine these 'organs and agents'. In view of elaborate EU structures on 'internal' responsibility, the TFEU provisions on 'institutions, bodies, offices and agencies and their servants' are emblematic of the relevant rules of the organisation.[150]

The complex division of competences between the Union and its Member States may be relevant in respect of distinguishing between the EU's responsibility and that of EU Member States. In particular, the EU's 'normative control' over the actions by its Member States in a particular setting often plays an essential role.[151] The formal division of competences does not always reveal the ways in which Member States are actually implementing EU rules in their international activities, or whether, for example, they merely act as agents of the Union that may have a competence it is unable to exercise in an international (State-centred) setting.

Finally, it is worth keeping in mind that even though conceptually, the EU may be held responsible for internationally wrongful acts, enforcement remains difficult. The immunity of international organisations in domestic courts renders these relatively ineffective, and this is not different in the case of the EU.[152] Crucially, in most international courts, following the approach of the ICJ, only States may appear; international organisations lack standing (*locus standi*) and thus can neither appear to uphold their rights, nor answer to breaches of their obligations.

* * *

4. Legal and policy implications of the ICJ's Advisory Opinion and other norms of international law for the EU and its Member States

The ICJ's Advisory Opinion, read together with other norms of international law, carries numerous potential legal and policy implications for the EU and its Member States. We begin by introducing the applicable legal framework, namely, the EU-Israel Association Agreement and certain connected agreements (Section 4.1), before a rapid review of two key CJEU judgments that relate to Israel and the OPT (Section 4.2). This is followed by reviewing the legal implications of the ICJ's Advisory Opinion in general terms (Section 4.3) before turning to the concrete legal consequences on the EU (Section 4.4). Then, we review how these obligations come to bear on existing EU-Israel co-operation commitments (Section 4.5), before addressing possible additional obligations on EU Member States (Section 4.6).

4.1 EU-Israel relations: applicable legal framework

4.1.1 General background of bilateral EU-Israel relations

The EU and Israel share a long-standing relationship with a range of trading and co-operation agreements that mark it out as one of the most comprehensive relationships the EU maintains with any third country.[153] Two particular instruments provide a framework for these relations, which extend beyond trade, and both make reference to a number of 'shared values' in relation to democracy, human rights, the rule of law, and fundamental freedoms:

- the EU-Israel Association Agreement, in force since 2000, which provides the legal framework for bilateral co-operation; and
- the EU-Israel Action Plan, adopted in 2005 and extended until January 2025, which promotes Israel's integration into European policies and programs.

4.1.2 The EU-Israel Association Agreement: Background

The legal basis for the EU's relationship with Israel is the EU-Israel Association Agreement (AA), which entered into force in June 2000.[154] The Agreement's aims include the strengthening of political and economic ties between the EU and Israel. The Agreement establishes a framework for regular political dialogue to enhance mutual understanding, solidarity, and co-operation. Key objectives include expanding trade in goods and services, liberalising investment and public procurement, promoting financial stability, and advancing science and technology collaboration. Finally, the Agreement also

encourages the parties to align positions on international issues, improve living and employment conditions, and encourage regional co-operation for peace and stability.

The EU's practice with respect to Association Agreements is that these are concluded as mixed agreements, so both the Union and its Member States are parties and bear obligations related to their respective competences. This is specifically the case with the EU-Israel Association Agreement. Like most Association Agreements, the EU-Israel Agreement combines mechanisms for political dialogue with trade objectives. Article 2 of the Agreement lays down what is known as the 'essential elements' clause:

> Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.

Despite the obvious political sensitivity connected to invoking such essential elements clauses in Association Agreements, from a legal perspective, **serious violations of the above-mentioned obligations are precisely the reason why these clauses are included, as they serve to enable the parties to terminate or suspend fully or partially the agreement**, on the basis of the conditions on 'material breach' codified in Article 60 of the VCLT and of a customary nature. These are restrictive in nature, with the salient condition in the present case being the 'violation of a provision essential to the accomplishment of the object and purpose of that treaty'.[155] In practice, the EU has acted on the essential elements clause in other instances, particularly with respect to the Cotonou Agreement in response to serious violations in more than 20 cases, for instance by suspending funding support under the Agreement.[156] It is unclear why Association Agreements should be assessed any differently from other international agreements such as the Cotonou Agreement. Further, in 2011 the EU partially suspended the 1977 Co-operation Agreement with Syria, despite the absence of a formal 'essential elements' clause, thus setting a precedent that closely mirrors one potential option in respect of the EU-Israel Association Agreement regarding the situation in the OPT.[157] The very use by the EU of the term 'essential elements' to refer to the terms of Article 2 might provide evidence of the importance given by the EU to its conditions.

Article 79 of the EU-Israel Association Agreement allows the parties to take 'appropriate measures', which could involve suspending the agreement in part or in full. In cases of 'special urgency', the EU can take such measures directly without dialogue with Israel.[158] In addition, Article 82 of the EU-Israel Association Agreement enables the EU to withdraw from it without having to invoke any grounds for termination, with six months' notice:

> Each of the Parties may denounce the Agreement by notifying the other Party. The Agreement shall cease to apply six months after the date of such notification.

The issue of Article 2 has been addressed recently. In February 2024, Spain and Ireland asked the European Commission to review Israel's compliance with Article 2—without a positive response.[159] In November 2024, then High Representative Josep Borrell proposed to suspend EU-Israel political dialogue under the Association Agreement, writing that 'the

risk of a worsening of the humanitarian catastrophe in Gaza, in particular in northern Gaza, when added to the aforementioned elements, creates a special urgency for the Union to react within the meaning of Article 79(2) of the EU-Israel Association Agreement. Bearing all of this in mind, I propose to suspend the political dialogue with Israel under Article 1, Title I of the agreement by a unilateral act of the European Union. This act must be notified to the EU-Israel Association Council.'[160] Borrell's proposal was rejected by Member States. However, at the Foreign Affairs Council on 20 May 2025, 17 Member States supported a new Dutch proposal for a review of Israel's compliance with Article 2.[161] This led current High Representative Kaja Kallas to launch such a review, which remains ongoing.[162]

Hence, while the provisions on free trade of the EU-Israel Association Agreement contain binding obligations on the parties, **the 'essential elements' clause of the EU-Israel Association Agreement offers an express mechanism to reassess the relationship between the EU and Israel and even bring it to an end**. As indicated above, **the violations identified in the 2024 Advisory Opinion include severe violations of IHL and of IHRL, including violations of peremptory norms of international law (*jus cogens*). Even if not accounting for the additional alleged serious violations in the context of the present Gaza conflict, the ICJ's conclusions justify the invocation of the 'essential elements' clause and the adoption of appropriate responsive measures, which could include suspending the Agreement in part or in full. Inaction by the EU in the face of such conclusions would be in violation of the EU's international legal obligations and its duty under the EU-Israel Association Agreement to ensure that the parties comply with their commitment to respect human rights and democratic principles embodied in Article 2**. In the context of the review announced by High Representative Kallas, it will thus be necessary to take proper account of the findings of the 2024 Advisory Opinion.

4.2 Relevant case law of the Court of Justice of the European Union

Within the EU legal order, the legal status of the OPT and the obligations of the EU (and its Member States) in relation to trade in products originating from the OPT have already been addressed by the CJEU. These are consistent with the view that Israel's presence in the OPT was a form of belligerent occupation, the prevailing international law position prior to the ICJ's 2024 Advisory opinion (see Section 2.3.3. above), and acknowledge the economic aspects of Israel's occupation within the OPT.

The *Brita* judgment addressed whether, under the EU-Israel Association Agreement, Member State authorities were entitled to question the actual origin of products entering the EU.[163] A German national court had referred the case to the CJEU for clarification on the scope of the EU-Israel Association Agreement, particularly in situations where products were believed to originate from occupied territory and thus fall outside the scope of the Agreement. The Court ruled that national authorities had the right to verify the origin of such products.

The *Brita* judgment is also significant for its affirmation of the inclusion of customary international law—specifically the VCLT—within the EU's legal framework, even if neither the EU nor all its Member States are parties to the Convention. While future cases involving the EU, its institutions, and Member States may present unique challenges regarding occupied or disputed territories, the *Brita* decision offers valuable insight into how the Court incorporates international law into its rulings. The Court determined that while a certain level of trust is generally required between contracting parties to the EU-Israel Association Agreement, this does not prevent Member State authorities from going beyond a simple verification of goods to resolve any doubts about their actual origin.

In *Brita*, the Court also held that **the parallel Association Agreements concluded by the Union with Israel and with the Palestine Liberation Organisation (PLO), on behalf of the Palestinian Authority, both addressed trade matters but applied to mutually exclusive territorial areas**. The Court also emphasised that **Israel must not extend its competences to the OPT**: 'to interpret Article 83 of the EU-Israel Association Agreement as meaning that the Israeli customs authorities enjoy competence in respect of products originating in the West Bank would be tantamount to imposing on the Palestinian customs authorities an obligation to refrain from exercising the competence conferred upon them by virtue of the abovementioned provisions of the EU-PLO Protocol.'[164] The Court held that this would create an obligation for a third party without its consent, and would thus be contrary to the principle of general international law '*pacta tertiis nec nocent nec prosunt*'.

In the *Brita* judgment, the CJEU also confirmed another relevant aspect: **although the EU is not a State, the customary law rules codified in the VCLT are equally relevant to the types of agreements—such as Association Agreements—to which the EU is a party**.[165]

In a similar vein, the *Organisation juive européenne and Vignoble Psagot (OJE)* case addresses the labelling of products from Israeli settlements in the Golan Heights, East Jerusalem, and the West Bank.[166] The CJEU interpreted Regulation 1169/2011 on food information, ruling **that products from these territories must clearly indicate their origin and state they come from 'Israeli settlements'**. This ruling aimed to ensure that consumers are informed about the origin of products, acknowledging that purchasing decisions may be influenced by IHL considerations. By requiring such labels, the CJEU empowers consumers to support respect for international law, potentially discouraging the purchase of goods from occupied territory. The judgment stipulates how the existing regulations must be interpreted and applied **to ensure consistent, clear labelling of products from the above-mentioned occupied territories, reinforcing consumer awareness and responsibility**.

With regard to the legal status of the territories occupied by the State of Israel since 1967 and, more specifically, the West Bank, including East Jerusalem, and the Golan Heights, the CJEU also clearly noted that:

> **Under the rules of international humanitarian law, these territories are subject to a limited jurisdiction of the State of Israel, as an occupying power, while each has its own international status distinct from that of that State**. The West Bank is a territory whose

people, namely the Palestinian people, enjoy the right to self-determination, as noted by the International Court of Justice in its Advisory Opinion of 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Reports 2004, p. 136, paragraphs 118 and 149). The Golan Heights form part of the territory of a State other than the State of Israel, namely the Syrian Arab Republic.

Rulings like these not only confirm **the legality of the policy of differentiation** (see Sections 4.3.2 and 4.3.3 below) but also underscore the **importance for the EU (and its Member States) to comply with their international law obligations—including those authoritatively laid out by the ICJ in its judgments or advisory opinions—when applying the EU-Israel Association Agreement and other applicable agreements**.

4.3 Legal consequences of the 2024 Advisory Opinion for EU Member States and the EU: General observations

Despite not being a member of the UN, the EU Treaties provisions binding the EU and its institutions to 'strictly observe and further develop international law', and its specific Treaty references to the Charter of the UN, in conjunction with other Treaty obligations and interpretations by the CJEU, broadly pave the way to assess the legal consequences of the 2024 Advisory Opinion on the EU itself. Because the 2024 Advisory Opinion draws several new conclusions in respect of international obligations which are binding on the EU, this in turn **requires the EU to review its relevant policies and practices and ensure that it complies with the said international obligations**.

Moreover, because in certain cases Member States have transferred certain external competences to the EU, this transfer also entails the assumption of international obligations by the EU itself. This is particularly the case in respect of exclusive competences (such as in the field of trade agreements and policies, described above in Section 3.2.1.) but also applies to other policies under the EU's purview, including—as indicated above—foreign and security policy.

Given that in such situations, international obligations are binding on the EU, the EU must engage in good faith with the legal consequences authoritatively identified by the principal judicial organ of the UN and further endorsed by the UNGA in Resolution ES-10/24.[167] Though formally these do not bind the EU and its Member States, they authoritatively identify binding legal obligations. Accordingly, if 'the strict observance and further development of international law' is among the Union's purposes and objectives, it is a gross derelict for the EU simply to ignore the 2024 Advisory Opinion. In short, we consider that **in the interpretation and application of international law, the EU is under an obligation to take due account of ICJ advisory opinions when these may be relevant in respect of international obligations binding the EU and its Member States**.

This position accords exactly with the settled practice of the CJEU: beyond the many cases in which international law is relevant,[168] in two judgments the CJEU clearly relied on an

ICJ advisory opinion to determine the scope of international legal obligations. In the *Front Polisario* and *Western Sahara* cases,[169] **the CJEU based itself explicitly on the ICJ's *Western Sahara* Advisory Opinion**[170] to guide its interpretation of 'the customary principle of self-determination referred to in particular in Article 1 of the Charter of the United Nations'.[171] Similarly, the assessment of the legal status of the people of Western Sahara under international law was founded on the ICJ's advisory opinion. As the CJEU explained, '*In the light of that information*, the people of Western Sahara must be regarded as a "third party"'.[172] Along the same lines, in the *Western Sahara* case, AG Wathelet made extensive reference to two ICJ's advisory opinion—in relation to Western Sahara and to South Africa's presence in Namibia, respectively—to guide his interpretation of the right of self-determination.[173]

A further illustration is found in the *Psagot* case,[174] which concerned the requirement that foodstuffs originating in territory occupied by the State of Israel bear the indication of their territory of origin. The CJEU held that:

> 35. The West Bank is a territory whose people, namely the Palestinian people, enjoy the right to self-determination, **as noted by the International Court of Justice in [its 2004 Advisory Opinion on *Construction of a Wall in the Occupied Palestinian Territory*]**. The Golan Heights form part of the territory of a State other than the State of Israel, namely the Syrian Arab Republic.
>
> 36. In the light of the foregoing, it must be held that displaying, on foodstuffs such as those at issue in the main proceedings, the indication that the State of Israel is their 'country of origin', when those foodstuffs actually originate in one of the territories referred to in paragraph 33 above, would be liable to deceive consumers.[175]

These examples trace the **direct influence of ICJ Advisory Opinions on the judgments of the CJEU**. CJEU judgments such as *Psagot* demonstrate not only the authoritative interpretative impact of AOs but also **the practical influence of the ICJ's advisory opinions on how the CJEU interprets both international and EU law**. This is in line with the general observations as to the international legal consequences of advisory opinions as explained in Section 2.1.1. above.

4.4 Specific obligations for the EU flowing from the 2024 Advisory Opinion

Following the 2024 Advisory Opinion, a presumption thus arises that the European Union is under the duty to give effect to certain of its international obligations, in keeping with the conclusions in Section 2.3 above:

- The European Union is under a general duty to **review its existing legal instruments, policies and practices, and its future acts, in compliance with the crucial findings of the ICJ, which have clarified the legal consequences of Israel's presence in the OPT**:

- The policies and practices of Israel, as reviewed by the ICJ (see above), are in violation of international law and in some cases, of peremptory norms (*jus cogens*). Accordingly, Israel's international responsibility is engaged; moreover, the maintenance of these policies and practices is an unlawful act of a continuing character further engaging Israel's international responsibility.[176]
- The continued presence of Israel in the OPT has been found to be unlawful and must be brought to an end 'as rapidly as possible'. [177]
- Critically, Israel's settlement activities must end 'immediately'.[178]

- Though certain conclusions in the 2024 Advisory Opinion are addressed to 'States' only, the allocation of competences under EU law described in Section 3.2.1, coupled with the *erga omnes* nature of certain obligations as analysed in Section 2.3.2, entail together that **EU Member States cannot circumvent their international legal obligations through reference to EU membership. Specifically, the EU itself—as exercising the powers of EU Member States in respect of certain key competences (including trade)—has assumed these obligations independently**. To recall (see Section 2.3.4, above), such obligations include:
  - **The obligation to respect the right of the Palestinian people to self-determination, which is a peremptory obligation in situations of occupation**, and the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under IHL and IHRL.[179] The EU and its Member States are also under an obligation to ensure that their public authorities, as well as natural and legal persons, do not engage in acts that impede this right.
  - Alongside its Member States, the EU must co-operate with the UNGA and the UNSC to put modalities into effect to **ensure an end to Israel's unlawful presence in the Occupied Palestinian Territory and the full realisation of the right of the Palestinian people to self-determination**.[180]
  - The EU must **distinguish, in its relevant dealings, between the territory of the State of Israel and the territories occupied since 1967**[181] and **refrain from recognising any changes to the pre-1967 borders**, including with regard to Jerusalem, other than those agreed by the parties through negotiations, including by ensuring that agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967.[182] This includes **refraining from recognising any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem**.[183]
  - Also for the EU, the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia*, **the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in**

Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and **to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.**[184]

- The EU is under an obligation **not to recognise as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory** and **not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory**. It should ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end. Importantly, the EU is also bound by the customary international obligation, as codified in the Fourth Geneva Convention, 'to ensure compliance by Israel with international humanitarian law as embodied in that Convention'.[185]

As also underlined in the Legal Analysis provided by the Director of the Legal Service of the EEAS on 22 July 2024, **the obligation of non-recognition applies to both States and international organisations, *a fortiori* including the European Union.**[186] This has also been acknowledged by the EU as it has a long-standing policy of not recognising any changes to the 1967 borders between Israel and the West Bank. It has also committed to working within the framework of the UN toward a just and lasting two-State solution to the conflict—one that includes the establishment of a Palestinian State and, consequently, the end of Israeli occupation of the OPT. The EU's official position on recognition remains as follows:

> An agreement on the borders of the two states, based on 4 June 1967 lines with equivalent land swaps as may be agreed between the parties. The EU will recognize changes to the pre-1967 borders, including with regard to Jerusalem, only when agreed by the parties.[187]

As we will also see below, **all EU-Israel policies and programmes must comply with the 2013 EU Guidelines on the eligibility of Israeli entities and activities in territories occupied since June 1967**. The 2013 Guidelines have as their primary aim 'to ensure the respect of EU positions and commitments in conformity with international law on the non-recognition by the EU of Israel's sovereignty over the territories occupied by Israel since June 1967 […]'.[188] To be eligible for funding or financial support, Israeli entities must have their place of establishment (legal domicile) within Israel's pre-1967 borders, and they may only conduct their activities within those borders—and not within the OPT.

The non-recognition of any changes to the 1967 borders is reflected in a number of EU policies that will be addressed below, such as the non-preferential treatment of imports from Israeli settlements in the OPT, guidelines with respect to the exclusion of funding in respect of such settlements, and guidelines on the labelling of products so as to distinguish between those produced within Israel, within Israeli settlements, or by Palestinian communities in the OPT. Over time, the CJEU has analysed these policies in a series of judgments and, in so doing, has provided clarification as to its understanding of the

territorial scope of application of the EU-Israel and the EU-PLO Agreements as discussed above.

Arguments that these measures sufficiently address the interpretation of the relevant rules of international law as provided in the Advisory Opinion, that EU policy is therefore in line with the obligations under international law and that 'it is a matter of political appreciation of whether further measures are needed in this respect'—as phrased in the above-mentioned EEAS Legal Analysis—are further assessed below.

4.5 Existing EU policies in relation to Israel, in the light of the Advisory Opinion

The general legal and policy implications of the 2024 Advisory Opinion suggest **certain concrete obligations exist in respect of the EU and will come to bear specifically on a range of existing practices, policies, and other co-operation mechanisms between the EU and Israel**. These relate to trade in goods produced in Israeli settlements (Section 4.5.1), as well as EU funding programmes and policies in which Israel participates (Section 4.5.2), certain financial programmes, including investment relations (Section 4.5.3), and additional bilateral agreements (Section 4.5.4).

4.5.1 Trade in goods produced in settlements

Under the EU-Israel Association Agreement, **goods originating in Israeli settlements located in territories under Israeli administration since June 1967 are ineligible for preferential tariff treatment**; this is equally the case under the Interim Association Agreement on Trade and Cooperation with the Palestine Liberation Organization (PLO) on behalf of the Palestinian Authority.[189] The CJEU confirmed the validity of this policy in its case law.[190] Under Article 29, paragraph 1, of the Association Agreement, the differentiation policy also applies with respect to trade in services covered thereunder.[191]

To differentiate between products originating from Israel and those from settlements, a 'Technical Arrangement' in place since 2004 between the EU and Israel requires Israel-issued proofs of origin to specify the exact location of production.[192] Israeli certificates of origin must indicate, through postal codes, the place of production, enabling EU Member States' customs authorities to verify a product's actual origin. The European Commission (EC) maintains a list of names and postcodes for the areas occupied by Israel since 1967, and updates the list of ineligible locations regularly, with the most recent version dating from June 2024.[193]

Goods and services originating from these ineligible locations must be excluded from preferential tariff treatment.[194] The responsibility for enforcing proper origin declarations lies with Member States' customs authorities and should be discharged in good faith. In May 2023, a new customs code (Y864) was introduced for preferential imports specifically

from Israel. The new code allows EU Member States to collect statistics on trade with Israeli settlements located within the OPT, and its introduction aimed to improve importers' diligence in verifying their eligibility, and a wrong declaration could constitute customs fraud.[195] However, importers are not required to make use of the trade preferences and for many exporters, it may be less burdensome to avoid the formalities to obtain such certificates of origin.

In addition to being excluded from preferential trade terms, goods and services originating from settlements must be correctly labelled at the point of sale. In 2015, the European Commission issued the 'Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967'.[196] The notice provides an interpretation of existing EU consumer legislation with respect to products from Israeli settlements and stipulates that they must not be labelled as 'Product from Israel' nor as 'Product from the West Bank' or 'Product from the Golan Heights'. Instead, they should be labelled as 'Product from the West Bank (Israeli settlement)' or 'Product from the Golan Heights (Israeli settlement)' or equivalent. The 2019 CJEU judgment in *Psagot* confirmed this interpretation and indicated that it is binding on all Member States.

While the existing EU policies—that is, the Technical Arrangement and the Interpretative Notice—are aimed at correct tariff treatment and labelling of settlement products, neither is aimed at preventing trade with settlements. Moreover, neither appears fully and effectively to enforce their stated objectives of preventing preferential treatment, nor the incorrect labelling of products originating from Israeli settlements.

With regard to the exclusion of settlement products from preferential tariffs, the monitoring and enforcing compliance with trading rules under the Association Agreement falls to the customs agencies of individual Member States. Determining their effectiveness or accurately estimating the rate of intercepted non-compliant products remains extremely challenging. The reason lies in how customs procedures function in practice. Due to the high volume of goods and the operational structure of customs, only a small fraction of origin certificates that include postcodes are actually inspected—primarily based on risk analysis. This is because while electronic import declarations are processed automatically, certificates of origin are paper-based and require manual verification. As a small illustration, according to Dutch parliamentary responses, between 2017 and 2021, only 2.8% of shipments of Israeli goods claiming preferential treatment underwent documentary checks, and just 0.4% were subject to physical inspections. As the Dutch Government has explained, import declarations do not include the postcode of the location where the product underwent its origin-conferring process. Therefore, Dutch Customs cannot automatically verify postcodes. Preferential origin documents are checked either at the time of import declaration or afterward, based on risk assessments or at random.[197]

Moreover, EU regulations do not automatically exclude Israeli products containing material sources that originate from the OPT. Such products may still benefit from preferential tariffs, provided these materials have undergone substantial processing or transformation within Israel.[198] By way of illustration, it has been observed that Israeli wine exports to the EU can continue to benefit from the preferential tariff rates by using

a postcode from an eligible area, despite sourcing grapes from settlements in the West Bank.[199]

With regard to labelling, enforcement of the rules depends on Member State agencies that are responsible for consumer protection. The agencies act in response to complaints from consumers about incorrectly labelled products, but do not necessarily do so proactively and systematically, amidst many competing consumer protection priorities. A 2019 study of wine from settlements sold online in the EU found that only 10% of such wines had a correct or partially correct origin indication in accordance with the EU's Interpretative Notice.[200] This points to a low level of compliance with the established labelling rules for settlement products.

More generally, precise data on the extent of trade between the EU and Israeli settlements remain unavailable, making it nearly impossible to assess the actual volume of settlement products entering the European market.[201] One cannot extrapolate, for example, from reported trade with Israel that does not benefit from preferential treatment, as many small and medium enterprises might simply avoid the formalities required to obtain certificates of origin. However, in the 2024 Advisory Opinion the ICJ has noted—with grave concern—the rapid expansion of Israeli settlements, referring explicitly to the recent decision of the Israeli parliament from December 2022 approving the establishment of an additional minister within the Ministry of Defence vested with governing powers in the West Bank, including land designations, planning and co-ordination of demolitions, which would expedite the approval process for new settlements.[202] Moreover, the 2024 Advisory Opinion draws attention to Israel's 2018 Basic Law that underlines 'Jewish settlement as a national value' and the considerable expansion of Israeli settlements, as well as the prohibition of Palestinian construction in 70% of the OPT.[203] Coupled with subsequent Israeli government decisions, and in particular the recent announcement that more than twenty new settlements will be constructed,[204] such findings point to an intensification of settlement activities within the OPT as well as the expansion of Israel's control and assertion of jurisdiction over the OPT[205] **As presently designed, the EU's policies do not prevent ongoing trade relations between the EU and its Member States, on the one hand, and Israeli settlements, on the other. In failing to do so, and in the light of the intensification of settlement activities, the volume of trade with Israeli settlements is at serious risk of intensifying accordingly.**

Moreover, in its 2024 Advisory Opinion, the ICJ outlined the duty to 'abstain from entering into economic or trade dealings with Israel concerning [the OPT] and part thereof which may entrench its unlawful presence in the territory'.[206] UNGA Resolution ES-10/24 provides further detail with respect to this obligation, adding the provision that it is 'including with regard to the settlements and their associated regime.[207] **However, the EU's existing policies on differentiation are not designed to prevent trade dealings with respect to Israeli entities based within Israel's pre-1967 borders that assist or otherwise contribute to the maintenance or entrenchment of Israel's unlawful presence.** As such, t**he EU and its Member States must also review their existing trade policies and practices to ensure compliance within the findings of the ICJ on this point**. The outcome of this review might imply further restrictions—or an outright ban—on trade with respect to economic

activities that take place within the OPT and, if contributing to the entrenchment of Israel's unlawful presence, even those taking place within Israel's internationally recognised borders.[208]

Any review conducted by the EU in relation to these obligations, finally, must take due account of the findings by the ICJ in its 2024 Advisory Opinion of serious violations by Israel of its obligations under the law of occupation, and specifically, the Fourth Geneva Convention. As addressed in Section 2.3.1 above, the ICJ concluded that the confiscation or requisitioning of Palestinian land in the West Bank and East Jerusalem is in breach of Articles 46, 52, and 55 of the Hague Regulations on the respect for private property.[209] Under Articles 55 of the Fourth Geneva Convention, when requisitioning foodstuffs, articles or medical supplies, an Occupying Power may only do so for use by occupation forces, and not deriving any economic or financial benefit from such requisitioning; and must ensure that 'fair value is paid' for any goods so requisitioned.[210]
Accordingly, a failure by the EU effectively to review its existing policies would **allow for economic and financial benefit to accrue to Israel, an Occupying Power that has engaged in 'sustained abuse' of its position, and could be regarded as a further breach of the obligation 'to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the [OPT]'** (see above, Section 2.3.4).[211]

The ICJ's general conclusion in the 2024 Advisory Opinion requires the EU **to abstain from all economic or trade dealings that would entrench Israel's presence in the OPT.** We consider that this general requirement **applies across all trading relations with Israeli settlements, as well as any other forms of trade with Israel and Israeli entities within its pre-1967 borders that would entrench the occupation.**

4.5.2 EU funding programmes, particularly Horizon Europe

4.5.2.1 Israeli participation in EU funding programmes and the 2013 Guidelines

The Association Agreement and associated Protocol of 15 April 2008 together lay the foundation for Israel's participation in a range of EU programmes and policies from which it derives political and financial assistance. Some of these are through framework programmes open to non-EU Member States as 'associated countries', such as Horizon Europe (covered in Section 4.5.2.2 below), which provides funding to universities and other entities to support research, development, and innovation.[212] The European Commission also allocates funding to specific projects under other schemes: for example, under the European Neighbourhood Policy, €18 million in 2023 and €10 million in 2024 were allocated for Israel, in support of the 'Abraham Accords' (to facilitate Israel's normalisation process with several Arab States) and the Yad Vashem Holocaust Museum in western Jerusalem.[213]

Such funding programmes are subject to the European Commission's 2013 Guidelines (see Section 4.3 above), which restrict the scope of their application to Israel's pre-1967 borders and which prohibit the funding or support of any activities with respect to Israeli 'applicants and beneficiaries' established in the occupied territories or activities by Israeli entities that would take place within these territories,[214] unless such activities are aimed at 'benefiting protected persons under the terms of international humanitarian law who live in these territories and/or at promoting the Middle East Peace Process in line with EU policy'.[215] **However, under Article 6(a) of the 2013 Guidelines, the exclusions do not apply to any 'contractors or subcontractors selected by grant beneficiaries', which means that the downstream activities of the latter are not excluded even if they would be operating in the occupied territory.**

Moreover, under Article 11(b) of the 2013 Guidelines, an exception for public authorities is made, and certain co-operative projects have availed themselves of this exception and have provided funding to Israeli public authorities located in the OPT. The exception is legally problematic: in the light of the obligations identified by the ICJ in paragraph 278 of the 2024 Advisory Opinion (as enumerated in Section 2.3.4, above), **an exception for public authorities operating in the OPT may be a violation of the obligation of the EU to abstain from treaty relations with Israel in all cases in which Israel purports to act on behalf of the OPT, as well as the obligation of the EU to refrain from entering into economic or trade dealings with Israel that may entrench its unlawful presence therein**. Accordingly, the EU must urgently reassess the exception found in Article 11(b) of the 2013 Guidelines.

Furthermore, Israel's participation in all existing programmes must be reviewed to address possible funded activities that entrench Israel's unlawful presence in the OPT, even if they take place inside Israel's pre-1967 borders. As a precautionary measure, the EU may need to suspend funding provided to Israeli entities pending such review; however, while we consider that the 2024 Advisory Opinion lays down grounds that would justify a decision to suspend such funding, it does not go so far as to establish an obligation to suspend funding programmes pre-emptively.

4.5.2.2 EU research funding through Horizon Europe

The Horizon Europe programme (2021-2027) and its predecessor, Horizon 2020 (2013-2020), are multi-year 'Framework Programmes' designed to provide funding for research and innovation. Israel has been associated with the Horizon programmes since 1996, concluding programme-specific agreements for each separate programme in order to participate as an 'associated country'.[216] Under the current Horizon Agreement between Israel and the EU, Article 9(8) provides that:

> In accordance with EU policy, this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967. This position should not be construed as prejudicing Israel's principled position on this matter. Accordingly, the Parties agree that the application of this agreement is without prejudice to the status of those areas.

Since 2013, any funds disbursed through the Horizon Europe Framework Programme are also required to comply with the 2013 Guidelines as mentioned above.

In April 2025, the European Commission announced during the 4th EU-Israel Joint Committee meeting that Israeli universities, public authorities and private entities have collectively received approximately €831 million under Horizon Europe and €1.3 billion under Horizon 2020.[217] The European Commission's 'Financial Transparency System' provides finely-grained data (from 2014 to 2023) on the allocation of such research funding,[218] and provides more specific data on precisely which Israeli universities, public authorities and private entities have received funding under Horizon Europe[219] and under Horizon 2020.[220] Though the primary objective of the Horizon framework programmes is to advance research and innovation, **Israeli research institutions and universities have come under scrutiny for their close ties with actors in the Israeli security sector,[221] including joint research projects with the Israeli military**.[222]

Since Framework Programme 7 (2007-2013), security research has been included as a full-fledged topic, and since 2007, Israel ranks only behind Norway as the largest non-EU beneficiary of security research funding.[223] Notably, the EU permits funding for technologies that possess both military and civilian applications—'dual-use'—provided that their declared purpose is civilian.[224] It is important to highlight that the notion of 'dual-use' is not a legal concept known in IHL, and the military and civilian functions of a dual-use object are assessed on a case-by-case basis.[225] Recently, a group of European scholars have adopted a precautionary approach and have called upon the EU to suspend funding on this basis, arguing that many projects extend beyond pure scientific inquiry and are tightly enmeshed in what has been termed 'the Israeli military-academic complex', supporting weapons development and military advancements that are pivotal in the maintenance of Israel's unlawful presence in the OPT.[226]

What is more, the Framework Programmes have provided funding to projects involving Israeli public authorities central to maintaining Israel's occupation. These include the Ministry of Defence, under which the IDF operates and the acts of which were studied across the 2024 Advisory Opinion, and the state-owned *Israeli Aerospace Industries*, that constructs aerial and aeronautic systems for both military and civilian usage, including drones, fighter aircraft, and missiles.[227] Finally, the Ministry of National Security, which is responsible for law enforcement, police and prison services,[228] has been linked to a range of acts that have served to entrench Israel's occupation of the OPT,[229] and that have been found to be breaches of IHL and IHRL in the 2024 Advisory Opinion.

Horizon Europe research funding also distributes funds to corporations and other private entities. It has been asserted that **several companies that have received EU funds through Horizon 2020 programmes maintain links to operations in the Israeli settlements**, ranging from Elbit Systems,[230] IBM Science and Technology LTD,[231] Motorola Solutions,[232] Siemens,[233] Mehadrin,[234] and Teva Pharmaceutical Industries.[235] A significant risk therefore exists that these entities have engaged in unlawful settlement-related activities while simultaneously benefitting from EU research funding.[236] In principle, such

disbursements would only fall afoul of the Commission's 2013 Guidelines if EU funding were being directed to settlement-related activities of those entities. However, without sufficient scrutiny, there remains an inherent risk of a breach of the obligation found in paragraph 278 of the 2024 Advisory Opinion (discussed in Section 2.3.4, above), to distinguish between dealings involving Israel within its own territory and within the OPT, as well as the more far-reaching obligation to abstain from any economic or trade dealings that might entrench Israel's unlawful presence in the OPT. **The EU is under a duty to review such programmes for compliance with the EU's international legal obligations and, as a potential precautionary measure, might suspend disbursements pending review.** Such precaution might be warranted to ensure the exclusion from EU-funded projects of entities engaged in activities that are in violation of the obligations identified by the Court in its 2024 Advisory Opinion.

In conclusion, **a range of crucial issues arise with respect to EU-funded programmes and policies in which Israel and Israeli entities may participate**. These relate to the provision of funding for public authorities in the OPT, including East Jerusalem; funding for projects involving (sub)contractors active in settlements; funding for military institutions and corporations and for dual-use projects with potential military application; funding for a further range of entities active in settlements (outside the framework of EU funded projects). On these issues there is **an urgent need to reassess the appropriateness of the 2013 Guidelines and potentially to incorporate more effective means to ensure and check compliance with the obligations identified in the 2024 Advisory Opinion**, for example by adding further requirements to the existing ethics checks for all new projects with Israeli participation. **A suspension of all Horizon funding for Israel cannot be excluded as the outcome of any such review process, and may also be justified as a precautionary measure**, given the gravity of violations of international law established by the ICJ and as part of the general obligations binding on the EU and its Member States in accordance with paragraph 279 of the Advisory Opinion. Finally, though raising complex procedural issues of standing, **it is not implausible that if EU institutions fail to take any meaningful action, judicial claims might arise in which a failure to act by EU institutions is alleged**. Such a failure to review or to take additional precautions might lead to further controversy with respect to Israel's continued participation in the Association Agreement or Horizon Europe, particularly in the light of the serious violations of international law identified in the 2024 Advisory Opinion.

4.5.3 Other financial instruments and investment relations

Regarding investment policy, it is important to note that, beyond the EU-Israel Association Agreement, there is no single instrument that governs international investment relations, excluding the frameworks that can affect investment flows. Though the Association Agreement covers some areas that are closely related to investment, the international aspects of investment protection—which in other contexts can be found in what are known as Bilateral Investment Treaties (BITs)—are not part of the Association Agreement. Instead, Articles 31 and 32 of the EU-Israel AA encourage the gradual liberalisation of establishment and investment. The policies and programmes established

pursuant to the Association Agreement—the European Neighbourhood Policy (ENP) and Horizon Europe, for instance—are not Foreign Direct Investments (FDI, see further below), as the EU does not take control or ownership of Israeli entities. Such policies can be regarded as 'financial commitments' to support Israel in the area of research and innovation, as Horizon Europe aims to do; and the ENP provides financial aid. Though the underlying rationale is that such support creates conditions that encourage foreign investment, in a legal sense, they are not formally 'investments' by the EU in Israeli business entities.

Having said this, and in support of the EU's long-held position that Israeli settlements in the OPT are internationally unlawful and that it will not recognise any changes to the pre-1967 borders, the EU EEAS, as well as most EU Member States, have published 'business advisories' in relation to Israeli settlements in the occupied territory in which they have warned EU citizens and EU business of the risks relating to economic and financial activities therein. Such business advisories apply broadly to all economic and investment dealings with Israel and are not limited to foreign direct investments. Specifically, such activities:

> … entail legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognised as a legitimate part of Israel's territory. This may result in disputed titles to the land, water, mineral and other natural resources which might be the subject of purchase or investment.
>
> Possible violations of international humanitarian law and human rights law should also be borne in mind.[237]

A further relevant issue in this context concerns the role of the European Investment Bank (EIB), which provides finance for investment projects within and beyond the EU. The EIB does so primarily through lending, guarantees, equity investments, and technical assistance. Under certain circumstances, the EIB acquires equity stakes that constitute 'direct equity investments'. In the main, the EIB's financing is predominantly loan-based, where it acts as a development financier rather than a direct investor. Some notable examples where the EIB has made equity investments in Israeli entities include its investment in BiondVax Pharmaceuticals in order to support the development of a global flu vaccine.[238] Furthermore, through the European Investment Fund (EIF), the EIB participated in the ICV II Fund, financing early-stage technology ventures in Israel.[239]

In its policies, the EIB is committed to respect human rights in line with the EU Charter of Fundamental Rights and other international instruments, and is subject to the EU's 2013 Guidelines and applies them to all its financing in Israel.[240] The issues with the Guidelines and the need for their reassessment were discussed in the preceding chapter. In one important respect, the Guidelines go further in the case of loans, provided by the EIB, as compared to grants (provided by the EU). Under point 12(b) of the Guidelines, loans are prohibited for all Israeli entities that operate in the occupied territory, whether in the framework of the funded projects or otherwise.

As a separate legal person distinct from the EU itself, the EIB now has a duty to review whether its economic and investment activities with Israeli entities are in breach of the obligations outlined by the Court in paragraph 278 of the 2024 Advisory Opinion. Despite its commitment to respect for human rights, it is questionable whether the EIB's loan distribution aligns with human rights due diligence requirements.[241] It is reported that the EIB has provided €1.23 billion in loans to companies involved in supplying arms to Israel, including firms such as Leonardo and Rolls-Royce.[242]

Furthermore, the EIB has extended financing to BNP Paribas, the largest European creditor offering loans and underwriting services to multiple companies that are listed in the UN database of businesses involved in activities in the settlements.[243] The UN database was designed to help businesses and States to 'investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem'. Enterprises listed in the UN database are deemed to play a role in the expansion and maintenance of Israel's presence in the OPT. Though the BNP Paribas example concerns 'indirect' financing of settlement activities through the EU and EIB, one could argue such **indirect financing may fall afoul of the obligations laid out in the 2024 Advisory Opinion in respect of abstaining from trade or investment relations that assist in the maintenance of Israel's unlawful presence**.

Another case includes the EIB funding schemes involving Israeli Bank Leumi, listed in the UN database, as an 'intermediary' (in turn providing funding to SMEs—the final recipients).[244] Yet another case is a €250 million EIB loan that was approved for the Tel Aviv Green Line light rail project in 2023, which involves, among others, contractors such as Alstom S.A. and Electra Ltd, both of which are listed in the UN database of companies benefitting illegal settlements.[245] While these cases may be eligible under the 2013 Guidelines, this may no longer be tenable in the light of the 2024 Advisory Opinion.

UNGA resolution 32/161, cited by the Court on this point,[246] explicitly called on investment corporations neither to recognise nor to cooperate with or assist in any measures undertaken by Israel to exploit the resources of the OPT. Furthermore, the 2024 Advisory Opinion referred to the obligation of third States to take steps in order to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the OPT.

Given the EIB's status as a public institution, partly owned by EU Member States, its investment activities must comply with the EU and individual Member States' obligations under international law. UNGA resolution ES-10/24 and the 2024 Advisory Opinion clearly establish that third States and other parties must not contribute to the exploitation of resources or the maintenance of the illegal situation in the OPT. Any loans or equity investments by the EIB that risk facilitating the exploitation of resources or entrenching the occupation contravene these obligations. Thus, it could be argued that **any EIB financing activities that conflict with the obligations set forth by the UNGA and ICJ must be suspended or terminated**. Furthermore, since after the 2007 Lisbon Treaty, FDI has become an exclusive competence of the Union, therefore the responsibility for ensuring the

compliance of such investments with international law and the international obligations of the Union lie with the Union itself. The presumption then is that **such activities by the EIB or EIF, or any European financial institution, that perpetuate the illegal situation in the OPT must come to an end immediately, in order to uphold the EU's international legal obligations that under the EU Treaties are equally binding on the Union as a matter of European law**.

4.5.4 Policies and agreements relating to visa exemptions for EU and Israeli nationals

A potential further response might be to differentiate between Israeli nationals residing within Israel's pre-1967 borders and those living in the OPT. Though the 2024 Advisory Opinion focusses on the policies and practices of Israel, it is also true that 'the Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law', and that 'all settlers [must be evacuated] from existing settlements'.[247] All settlers residing in the OPT are contributing to Israel's breach of its international obligations. They are the direct beneficiaries of policies relating to the confiscation of property and land from Palestinians and the maintenance of Israeli settlements in the OPT.

Moreover, the Court has observed that 'settlers often subject Palestinians in [the OPT] to extensive violence',[248] which not only goes unpunished, but has intensified in recent years amidst a general lack of access to justice or to available remedies for Palestinians that has created a 'culture of impunity'.[249] **At present, Israeli nationals settled unlawfully in the OPT benefit from visa-free access, but Palestinian residents—protected persons residing in occupied territory, and with no route to Israeli citizenship—must apply for visas.** Such a practice might inadvertently reinforce Israel's policies and practices that the Court determined were a form of racial segregation and/or apartheid under Article 3 of CERD.[250]

Accordingly, **the EU could determine that holders of an Israeli passport who reside in the OPT are ineligible for visa-free travel**. This would be in keeping with the general duty of the EU to abide by its obligation identified in the 2024 Advisory Opinion 'to distinguish in [its] dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967' and 'not to recognize as legal the situation arising from the unlawful presence of Israel in the [OPT]'.[251]

One means to do so may be found in EU Regulation 2018/1806,[252] Article 1 of which provides that exemptions from the visa requirement are determined on 'a case-by-case assessment of a variety of criteria' that expressly includes 'considerations of human rights and fundamental freedoms'. Paragraph 11 of the preamble to the Regulation provides that, in 'specific cases where special visa rules are warranted', it should be possible for EU Member States to impose the visa requirement on 'certain categories of persons' when it is 'in accordance with public international law or custom'. A second potential solution lies in the EU's own guidance, which suggests that the EU visa exemptions may be suspended

on the basis that Israel 'no longer satisfies the conditions of the agreement'.[253] For example, when in 2022 the European Council suspended the EU-Russia Visa Facilitation Agreement, it justified this decision as a response to Russia's 'unjustified military aggression'.[254] However, these are not identical situations: it must be cautioned that no EU-Israel agreement on visa exemptions has been published, so it is possible that no such agreement exists and that the visa exemption for Israel has been implemented simply on the basis of reciprocity.[255] As such, even though according to its website, the EU can suspend visa waiver or visa facilitation agreements 'when a non-EU country no longer satisfies the conditions of *the agreement*';[256] it is unclear as to whether a partial suspension (only in relation to Israeli nationals resident in the OPT) would be possible.

Enforcement may prove an obstacle, as Israeli passports do not disclose the place of residence of the passport holder. A potential workaround lies, however, in the implementation (expected by the end of 2026) of ETIAS, the European Travel Information and Authorisation System. EU Regulation 2018/1240, under which ETIAS has been established, provides that all applicants (including nationals from visa-exempt countries) will be asked to provide a range of personal data, including their home address 'or, if not available, his or her city and country of residence.'[257]

It is true that Israeli passports do provide information as to the issuing local authority, though there remains uncertainty as to whether passports requested through offices in Israeli settlements in the OPT will disclose that location or will instead refer to a generic location such as 'Jerusalem' or 'Tel Aviv'. Even so, certain inspiration might be found within a document circulated by the European Commission and the EEAS in 2019, in which they provided non-public guidance to Member States on how to handle visa applications lodged by issuing authorities in areas of Ukraine, specifically Donetsk and Luhansk, which were not under the control of the Ukrainian Government.[258] The location of the local issuing authority was also relevant in EU practice with respect to Russia in the Commission Implementing Decision of 2023, in which a different solution was adopted: the documents of the Russian Federation are not accepted if issued in, or to residents of, areas considered under occupation.[259] Again, an issuing authority may not be itself determinative, as insufficient controls may exist with respect to where applicants will file their application, or with respect to the accuracy of the information. Nevertheless, it may well provide some indication of a connection with an Israeli settlement.

Since such applicants would have to apply for visas, based on the duty of third parties to distinguish between the territory of Israel and the OPT, **a further policy might envisage the refusal of visas to Israeli nationals living in illegal settlements. Alternatively, the EU could take the decision not to recognise Israeli passports or travel documents issued in the OPT,** as was taken in respect of Russian documents issued in occupied zones of Ukraine and Georgia.[260] In either case, any decision on differentiation would have to be implemented in pursuance of Regulation 2018/1806, and is not expressly required from third States in the text of the 2024 Advisory Opinion. Enforcement would remain a challenge, as applicants might simply lie about their address or apply for travel documents within Israel's pre-1967 borders, and further verification might be impossible to enforce fully. Nevertheless, the value of such a policy would be declaratory: if circumvented, such

persons would be present in the EU without a valid visa and thus subject to deportation or other enforcement measures.

4.5.5 Other bilateral arrangements with Israel

The previous sections dealt with existing bilateral arrangements between the EU and Israel. Yet, the question now to be addressed is the extent to which pending or future agreements or other arrangements might be affected by the conclusions of the ICJ that are found in the 2024 Advisory Opinion.

A useful example is the 2022 Draft Agreement between the EU and Israel on the exchange of Personal Data in the area of criminal co-operation.[261] Whereas a distinction is indeed made between the territories of Israel and the OPT, the Draft Agreement also allows for derogations. Thus, Article 7(2) provides that the competent authorities of Israel 'may exceptionally use such Personal Data in the geographic areas that came under the administration of the State of Israel after 5 June 1967, in accordance with the conditions and safeguards set out in this Agreement'. Similarly, other sentences are simply ambiguous as in the expression 'geographic areas that came under the administration of the State of Israel after 5 June 1967' could be read to suggest that the geographic areas in question also include parts of the OPT. **Such exceptions that allow for a blurring between the applicable territories would be contrary to the obligation of the EU not to have its instruments apply to the territories occupied by Israel since 1967**.

This example points to the need for a strict scrutiny of all instruments that are used for EU-Israel co-operation. This would also include co-operation based on the so-called 'Twinning projects'. An example of such a project is the past twinning project on waste management from 2019-2020. The twinning supported an Israeli national waste strategy, which involved building a waste facility in the settlement of Maale Adumim. While the Commission argued that the EU did not violate the 2013 Guidelines because it did not fund the waste facility directly, the conclusions of the 2024 Advisory Opinion might suggest that such 'indirect' support may still be a breach of the EU's obligations, in that it would constitute the side-stepping of direct funding through indirect constructions.[262]

More generally, the argument could be made that, in the light of the findings identified in the ICJ's 2024 Advisory Opinion, **there is a need for a stricter, and potentially broader, check for conformity against the EU's international legal obligations, in particular to check all co-operation activities against Israel's policies and practices that are in breach of international law**.

4.6 Possible obligations at EU Member State level

Following the 2024 Advisory Opinion and other norms of international law, there may be additional obligations on EU Member States, including obligations having to do with

bilateral treaty obligations (Section 4.6.1), investments (Section 4.6.2), arms trade (Section 4.6.3), and the location of diplomatic missions (Section 4.6.4).

4.6.1 Bilateral treaty relations with Israel

Paragraphs 278 and 279 of the 2024 Advisory Opinion refer to the obligations not to render aid or assistance to Israel in furtherance of the illegal situation in the OPT, not to recognise this illegal situation, and to "prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel [in the OPT]."[263] These obligations fall on other states including EU Member States.

Most EU Member States have bilateral relations with Israel, which are set out in numerous bilateral treaties. As reported by the 'Differentiation Tracker' of the think tank European Council on Foreign Relations, many of these treaties do not have clear provisions relating to their territorial scope.[264] For example, the Agreement on film co-production concluded by Spain and Israel in 2012 contains no territorial definition of any kind.[265]

On the basis of the 2024 Advisory Opinion, it can at least be concluded that any such bilateral agreements between EU Member States and Israel must be interpreted and applied in conformity with the obligation to prevent bilateral relations that assist in the maintenance of the illegal situation created by Israel in the OPT. In this light, **under international law, EU Member States must clarify the scope of the bilateral treaties they ratified with Israel in order to make sure the OPT is excluded from their application. Such clarification could take the form of a general declaration from each EU Member State that past and future bilateral agreements relate to the territory of the State of Israel only, and not the territories occupied since 1967**, as was made by the Government of Belgium in November 2021.[266]

4.6.2 Investments: national enterprises

To recall, paragraph 278 of the 2024 Advisory Opinion refers to an obligation to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the OPT. The EU and almost twenty of its Member States have issued business advisories to raise awareness among EU citizens and businesses regarding activities in the settlements.[267] In the light of the findings in the ICJ's Advisory Opinion, **it is necessary to review these business advisories and to strengthen these to ensure that their addressees are aware of the risk of their activities if operating in breach of the obligations identified by the Court.**

4.6.2.1 Bilateral investment treaties in force between EU Member States and Israel

A key objective of the Association Agreement is the liberalisation of investment and thus to make it easier for EU companies to invest in Israel. At the same time, the Association Agreement does not include a specific chapter on investment, nor has a specific investment agreement been concluded between the EU and Israel.

Though since the 2007 Treaty of Lisbon, EU Member States no longer have external competence in relation to direct investments, many BITs concluded before 2007 are still in force between individual EU Member States and third States covering various dimensions of investment. In order to ensure that such BITs are not in conflict with EU law, a 2012 EU Regulation[268] allows Member States to maintain bilateral investment agreements signed before the entry into force of the Lisbon Treaty and sets the conditions for EU Member States to modify those agreements, and to negotiate or conclude new ones.

Several BITs are currently in force between EU Member States and Israel. These include the agreements with Croatia, Slovakia, Romania, Slovenia, the Czech Republic, Lithuania, Estonia, Latvia, Bulgaria and Poland.[269] The above-mentioned Differentiation Tracker—which provides a more general snapshot of state relations with Israel—reveals that most BITs do not have clear territorial clauses. We refer to this research for specific BITs, but to provide an example: the BIT with Croatia defines the applicable territory with respect to the State of Israel as 'the territory of the State of Israel including the territorial sea, as well as the continental shelf and the exclusive economic zone in which the State of Israel exercises sovereign rights or jurisdiction in conformity with international law.' (Art. 5b) The references to 'sovereign rights' and 'international law' are made but also run the risk of being interpreted differently by the parties. On the basis of the 2024 Advisory Opinion, it can at least be concluded that **any investment agreements must be interpreted and applied in conformity with the obligation to prevent investment relations that assist in the maintenance of the illegal situation created by Israel in the OPT. This may require review and reassessment of the application of the relevant BITs and does not exclude their possible suspension and/or termination in situations where they breach the obligations identified by the ICJ.**

4.6.2.2 Obligations on EU enterprises and entities engaged in economic relations in relation to the OPT

More generally, the extent to which enterprises based in the EU, but that operate within or provide services to Israeli settlements, play a role in the establishment, expansion, and maintenance of Israel's unlawful presence in the OPT including Israeli settlements, is relevant with a view to the conclusions in the 2024 Advisory Opinion.

With regard to companies directly involved in or with settlements, **Member State governments should restrict and/or move to end any dealings with companies listed in the UN database of enterprises benefitting Israeli settlements, as well as reinforce their existing advisories for businesses and citizens regarding economic activities in**

settlements. The UN database includes 8 EU-based companies involved in settlements (3 in France, 1 in Luxembourg, 4 in The Netherlands, as well as 3 in the United Kingdom).[270] The enterprises are involved in one of the 'listed activities that raise particular human rights concerns', which is the criterion for inclusion in the database.[271]

Furthermore, pursuant to research by NGOs in the 'Don't Buy Into Occupation Coalition' (DBIO), it has been claimed that between January 2021 and August 2024, 822 European financial institutions have had a financial relationship with 58 companies that are involved in unlawful Israeli settlements in the OPT.[272] During this period, approximately €183 billion in the form of loans and underwriting was provided to these enterprises and an additional €159 billion in shares and bonds in these companies was held by European investors.[273]

The Advisory Opinion referred back to the UNGA resolution 32/161, which underlines **the obligations of investment corporations—and all other institutions—to not cooperate or assist in any way to Israel's exploitation of the resources of the OPT**.[274] The UNGA resolution ES-10/24, adopted following the outcome of the Advisory Opinion, calls directly on the obligation of the UN Member States under international law. It urges States:

> (a) To take steps to ensure that their nationals, and companies and entities under their jurisdiction, as well as their authorities, do not act in any way that would entail recognition or provide aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory[.][275]

In view of the existence of binding human rights due diligence requirements under European and national law, there is a need to review the conduct of financial institutions and businesses operating in or with the Israeli settlements. A failure to ensure compliance of these entities with international law might be a breach of the obligation in paragraph 278 of the Advisory Opinion to refrain from providing any aid or assistance in the maintenance of Israel's unlawful presence in the OPT.

To reduce the risk of falling afoul of their obligations, Member State governments should strengthen their review and compliance measures with respect to the regulation and oversight over companies or other entities that trade in, or for the benefit of, Israeli settlements. More concretely, **for EU Member States to comply with their obligations of due diligence as identified in paragraph 279 of the 2024 Advisory Opinion,[276] our recommendation is that they undertake all necessary measures to ensure due review and reassessment of the operations of EU-based financial institutions and businesses.** Such review and reassessment are necessary to ensure that such EU-based entities do not aid and assist in the maintenance of the Israeli settlements in the OPT, or other serious breaches of international law as identified by the ICJ with respect to the OPT.

In the light of the obligations further identified in the UNGA Resolution 32/161, financial institutions must also refrain from co-operation in, or the facilitation of, any exploitation of the resources of the OPT. UNGA Resolution ES-10/24 recognises **that an obligation exists on all States to ensure that their nationals, companies, and other entities do not**

engage in actions that would amount to recognition of, or the provision of aid to, illegal settlements and resource exploitation. These requirements reflect the broader obligation to abstain from providing aid or assistance in situations that contravene international law. In the light of the exclusive and shared competences of the EU as described in Section 3.2 above, a failure to take necessary measures may also constitute a breach of the EU's own international obligations.

Against this backdrop—and in addition to the above-mentioned due diligence obligations for the EU to take the effects of its policies on individuals abroad into account—due diligence obligations binding within the EU and its Member States have been established within the European Union legal order under the Corporate Sustainability Due Diligence Directive (CSDDD), which enshrines a set of obligations for corporate entities regarding the actual and potential human rights adverse impacts and environmental adverse impacts of their operations, as well as those of their subsidiaries, business partners and subcontractors.[277] In February 2025, the Commission adopted an Omnibus package to simplify due diligence requirements to better support responsible business practices.[278] Member States have until 26 July 2026 to adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. These include designating an authority to supervise and enforce the rules, including through injunctive orders and effective, proportionate and dissuasive penalties (in particular fines). At European level, the Commission will set up a European Network of Supervisory Authorities that will bring together representatives of the national bodies to ensure a co-ordinated approach.

While due diligence obligations for companies are not explicitly cited by the ICJ Advisory Opinion, the relevance of the CSDDD lies in the fact that it transposes into EU law certain key principles found in the UN Guiding Principles on Business and Human Rights.[279] Besides the recognition of a general duty of due diligence in respect of business entities, the CSDDD acknowledges that in 'conflict-affected and high-risk areas … human rights violations are more likely to occur and to be severe.' Business entities are called upon to take into account this 'heightened' degree of risk and to ensure their policies and risk management systems are adapted to conflict-affected and high-risk areas 'in a manner that is consistent with the Geneva Conventions of 1949 and their additional protocols.'[280] The CSDDD makes specific reference to the UN Development Programme's guidance on 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts',[281] a detailed practical guide suggesting a range of practical steps to be taken in conflict situations. Their relevance in respect of the 2024 Advisory Opinion lies in the factual determination that serious violations of human rights and international humanitarian law are taking place across the OPT. Put more simply, **the 2024 Advisory Opinion triggers heightened due diligence obligations on all EU entities that conduct activities with respect to the OPT, and under the CSDDD, they would be required to cease any activities that are found to cause or contribute to the violations identified by the Court**.

It must be cautioned, however, that the Directive has only limited application to the financial sector.[282] The CSDDD focuses primarily on the institutions' internal operations and supply chains rather than their downstream business activities. Financial institutions

are thus not formally under an obligation to consider 'the impacts of investments, loans, insurance or other financial services'.[283] This is a potential shortcoming of the Directive, as it does not address these downstream business activities where the potential risks of adverse human rights impacts are highest with respect to the Palestinian population. Left unaddressed, such a gap would allow financial entities to prolong or benefit from settlement-related economies without proper monitoring and responsibility.

We submit, however, that Article 36(1) of the CSDDD offers a potential route towards addressing this regulatory gap. Article 36(1) requires the European Commission to submit a report to the EP and to the Council by July 2026, examining the necessity of additional, tailored sustainability due diligence obligations for the provision of financial services and investment activities. Any such report must also explore the potential impacts and practicality of such requirements.

As mentioned above, European financial institutions contribute indirectly, but significantly, to the maintenance and expansion of Israeli settlement economies, which are a central element of the unlawful presence of Israel identified in the 2024 Advisory Opinion. Their investments, loans, and shares enable the maintenance of the unlawful situation in the OPT and thus may engage the responsibility of EU Member States and the EU itself for their failure to ensure respect for international law. **At the EU level this may require amending the CSDDD to encompass fully the financial sector and to ensure that as with other sectors, it is subject to the obligation to consider the downstream impacts of their activities**. A harmonised approach across Member States would guarantee that financial institutions within the EU operate in accordance with their obligations flowing from international law and diminish the burden of individual Member States in drafting national legislation to ensure compliance.

4.6.3 Member State obligations in the area of arms trade

Though the 2024 Advisory Opinion does not address them explicitly, recent debates have also identified a need to re-assess export licences provided by EU Member States in relation to arms transfers to Israel. The above-mentioned UN Commission of Inquiry considered, for example, that third States have a duty 'to conduct a due diligence review of all transfer and trade agreements with Israel'.[284] Crucially, under Article 6, paragraph 3, of the 2013 Arms Trade Treaty, a party 'shall not authorize any transfer of conventional arms … if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes.' [285] All EU Member States are parties to the Treaty, and the EU Council has adopted a decision committing the EU to strengthen its effective implementation and universalisation.[286]

As the EU Council's Common Position on Arms Exports recalls in its Article 2 ('Criteria'), EU Member States must respect their international obligations embodied in relevant treaties, including the Arms Trade Treaty (*lit.* 1 (bb)), ensure respect for human rights

and international humanitarian law by the recipient State ('Criterion Two'), and 'exercise special caution and vigilance in issuing licences … to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe' (*lit.* 2(b)).[287]

The above provisions of the Arms Trade Treaty and the EU's Common Position are relevant within the context of the 2024 Advisory Opinion. Though strictly speaking, the 2024 Advisory Opinion does not directly concern the events in Israel on 7 October 2023 and the ensuing hostilitied in the Gaza Strip, several of its conclusions in respect of armed violence against Palestinians have potential implications in respect of arms exports.[288] The ICJ recalled that armed settlers subject Palestinians in the OPT to 'extensive violence',[289] sometimes in the presence of Israeli security forces who fail to intervene or, indeed, even support settlers in their attacks' (para 151); and that Israeli security forces 'intervene with unnecessary or disproportionate force against Palestinians in the aftermath of settler attacks', also referring to a 2023 report by the UN Secretary-General concluding that such forces apply 'military tactics to law enforcement operations in the West Bank'.[290] In the light of the ICJ's determination that such violent acts were unlawful and thus must be brought to an end,[291] the transfer of arms to Israel that would enable such violations would be a breach of the duty of third parties not to render aid and assistance in the maintenance of the unlawful situation.[292]

A claim explicitly dealing with this question is currently pending in a case before the Dutch Supreme Court,[293] and contains key arguments to assess the legality of arms transfers to Israel. The Dutch case concerns parts for certain F-35 fighter jets for which the Netherlands functions as an export hub to other States, including Israel. These parts are considered 'military goods', which means a licence is required to export them from the Netherlands. That licence was granted in 2016. Following Israel's attacks in the Gaza Strip, the Minister for Foreign Trade and Development Cooperation evaluated whether the export licence for F-35 parts to Israel could be maintained. The Minister decided not to intervene in the licence and to continue exports of the parts to Israel. In response, NGOs Oxfam Novib, Vredesbeweging PAX Nederland, and The Rights Forum (hereinafter 'Oxfam Novib et al.') instituted preliminary relief proceedings against the State. These organisations regard themselves as aiming to protect the interests of the civilian population in Gaza. Their claims before national courts aim to prohibit the Dutch State from exporting the F-35 parts from the Netherlands to Israel because there is a clear risk that Israel is violating IHL in its attacks in the Gaza Strip using F-35 fighter jets.

At its core, the case is about whether the courts can order the State to intervene in the licence permitting the supply of F-35 parts to Israel if there is a clear risk that these parts will be used in the commission of serious violations of IHL which are of a peremptory nature, as with several findings of the Court in the 2024 Advisory Opinion.

The District Court rejected Oxfam Novib et al.'s claim; the Court of Appeal ruled otherwise and decided in their favour. Because of the latter decision, the Netherlands must cease exports of F-35 parts to Israel. The Dutch State has lodged an appeal in cassation against this decision with the Supreme Court. On 29 November 2024, the Advocate General of the

Supreme Court upheld the argumentation of the Court of Appeal, referring to the EU's Common Position (2008/944/GBVB) and the Arms Trade Treaty. According to the Advocate General, it follows from these and other international instruments as well as from national regulations (i) that in the given circumstances, the Minister did have an obligation to review the licence, (ii) that this review must test for the mandatory criteria of international treaties to which the Netherlands is a party, and (iii) that in the case of a clear risk that the F-35 parts would be used in the commission of serious violations of IHL, the Minister was obliged to intervene in respect of the licence. According to the Advocate General, the Court of Appeal was therefore right to find that the Minister's decision not to intervene in the export licence was in breach of international obligations.

Irrespective of the final outcome, both the judgment of the Court of Appeals and the Opinion of the Advocate General contain a large number of arguments that lead to the conclusion that **EU Member States are under an obligation to re-assess any licences to export arms to Israel, in situations where there exists a risk that these arms would be used in the commission of serious violations of IHL, which are of the same peremptory status as the violations committed by Israel according to the ICJ in the 2024 Advisory Opinion**.

4.6.4 EU and Member States' diplomatic missions and other practices in relation to (non-)recognition

As mentioned above, in paragraph 278, the Advisory Opinion refers to the obligations '**to abstain, in the establishment and maintenance of diplomatic missions in Israel**, from any recognition of its illegal presence in the Occupied Palestinian Territory'. As diplomatic relations are primarily exercised by EU Member States, but also for the EU itself, **the EU and its Member States must abstain from diplomatic acts that would purport to recognise the unlawful effects of Israel's presence in the OPT**. The EU's delegations are at present territorially differentiated: the EU Delegation in Tel Aviv is only accredited to the State of Israel, while the EU Representative Office in East Jerusalem is responsible for relations with the entire OPT, also including the illegal settlements.

Though there are no signs at present that the EU or any of its Member States have considered relocating their diplomatic missions to the OPT (including East Jerusalem), such a move would nearly certainly constitute a form of recognition. Moreover, in the light of General Assembly and Security Council Resolutions that have called upon States not to relocate their diplomatic missions to any part of Jerusalem, the obligation of States to co-operate with the United Nations, as to the modalities through which Israel's unlawful presence in the OPT can be brought to an end, might be engaged.[294] Apart from acts such as the creation or relocation of diplomatic or consular missions to Israel in the OPT (including East Jerusalem), the accreditation of diplomatic or consular personnel to Israel in the OPT, or the provision of consular services in respect of Israeli settlers in the OPT are also covered by this obligation, were any such acts to imply any recognition of Israel's attempts at annexation.[295]

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5. Legal opinions on and options for bringing EU policies into compliance with the ICJ's 2024 Advisory Opinion

There exist several avenues for ensuring that current EU policies are in compliance with the EU's international law obligations pursuant to the 2024 Advisory Opinion. We address some of these below by presenting the views of several EU institutions (Section 5.1) and the views of selected EU Member States (Section 5.2).

5.1 Views from EU Institutions

The leaked legal advice, referenced above, includes an assessment by the Head of the EEAS Legal Service. The assessment suggests that current EU policy is already in compliance with the ICJ's Advisory Opinion, and characterises any reconsideration of EU policy on imports from settlements as a 'matter of political appreciation' rather than arising out of legal obligations.[296] In the present Expert Legal Opinion we have set out, in Section 2, the legal obligations identified by the Court which bind all States and other international actors to a range of measures. In Section 3, we reviewed the extent to which these may also bind the European Union in respect of its specific competences over several issue areas, in particular trade. Finally, in Section 4, **we have analysed the Court's conclusions with respect to existing EU policies and have identified a range of adjustments to existing policies that are legally required, and which may further constrain future policy choices**.

The present Expert Legal Opinion has engaged in a detailed review of existing EU policies in the light of the conclusions in the 2024 Advisory Opinion, and especially its paragraphs 278 and 279 (see Section 2.3.4, above) relating to: the obligation of all other States not to recognise any changes in the physical character or demographic composition of the OPT; the obligation to abstain from a range of practices or dealings with Israel which might aid or assist in the maintenance of the unlawful presence of Israel therein; and according to paragraph 275, the obligation to co-operate with the UN to ensure that the modalities put into place to end Israel's illegal presence in the OPT are realised. Paragraph 285, the Operative Clause of the 2024 Advisory Opinion, lays down in sub-paragraph (8) that all international organisations (and thus, *a fortiori*, the EU) are under an obligation not to recognise as legal the situation arising from the unlawful presence of the State of Israel in the OPT. Unlike the EEAS legal advice however, **the position taken in the present Opinion is that the consequences are not just a matter of political discretion, but that there are clear international legal obligations for the European Union and its Member States to review certain policies.**

The EEAS' assessment that policies are in line with international law obligations can be found more broadly among EU institutions. In January 2025, the Commission's response to a question by an MEP on banning trade with settlements was:

> EU positions and policies are fully aligned on the United Nations resolutions regarding the status of the Occupied Palestinian Territory and are therefore overall consistent with the conclusions of the Advisory Opinion of the ICJ.[297]

And in February 2025, an EU-27 Statement at the 13th EU-Israel Association Council Meeting contains the following phrase:[298]

> The EU is gravely concerned that the occupation of the Palestinian territory that began in 1967 continues to this day, underlining in particular that the International Court of Justice has found that the continued presence of Israel in the occupied Palestinian territory is unlawful. […] **The EU and its Member States are committed to fully comply with international law and to implement EU legislation as well as the bilateral technical arrangement applicable to settlement products accordingly.** The EU and its Member States count on cooperation between the EU and Israel for an effective implementation of the technical arrangement. **The EU expresses its commitment to ensure that—in line with international law—all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territory occupied by Israel in 1967.** This does not constitute a boycott of the State of Israel, which the EU strongly opposes.

It is interesting to note that the initial EEAS draft of the latter paragraph included the following phrase: '[t]his policy is in line with the Advisory Opinion of the International Court of Justice of 19 July 2024.' This was replaced during Council negotiations with the present sentence. Pertinently, there was no consensus that the current policies are in line with the Advisory Opinion. Perhaps ironically, the words 'comply with international law' were added at that stage. According to an Irish media report, Ireland supposedly requested this modification in view of its plan to adopt a national ban on trade with settlements, and as an additional justification to avoid a conflict with the EU rules and case law.[299]

The Council's consistent position—aligned with Article 21 TEU—is that international law must be respected concerning the territories occupied by Israel since 1967. This stance was clearly expressed in the Council conclusions on the Middle East Peace Process as early as 10 December 2012, which state: '[t]he EU expresses its commitment to ensure that—in line with international law—all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967.' The same position has been consistently held and was again reaffirmed by the EU during the most recent EU-Israel Association Council meeting, as discussed above. This principle is also reflected in territorial clauses included in EU-Israel agreements adopted since 2012. The clauses specify: 'In accordance with EU policy, this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967.'

5.2 Views from selected EU Member States on their obligations

As it goes beyond the scope of the present Expert Legal Opinion to assess all 27 Member States' perceptions on the Advisory Opinion, we limit ourselves to two illustrative viewpoints.

The evolution of the position of the Netherlands is interesting. In 2024, it had taken a position that it was not necessary to consider suspension of the EU-Israel Association Agreement,[300] suggesting that the obligations of third countries as laid down in the 2024 Advisory Opinion did not require any changes, though the Dutch Government then stated that the occupation of the territories as such is illegal.[301] However, in May 2025, the Netherlands' Minister for Foreign Affairs initiated, through a formal letter to the High Representative, discussion in the EU Council to review Israel's compliance with Article 2 of the Association Agreement. As indicated above, this review was ongoing at the time of the publication of this Expert Legal Opinion.

A particularly nuanced debate has taken place in Ireland. Since 2018, Ireland has debated the proposed Occupied Territories Bill that seeks to ban trade with Israeli settlements at national level.[302] The Irish Government had long opposed the Bill, citing potential legal challenges from the EU due to its exclusive competence on trade policy. However, after the ICJ Advisory Opinion was rendered in July 2024, the government has changed its position on the Bill.

In August, the government asked for legal advice from Ireland's Attorney General on the implications of the Advisory Opinion for the Bill. The Attorney General wrote that while there is still a risk that Ireland could lose a challenge before the CJEU over a compatibility of the Bill with EU law, there is now a stronger legal basis for introducing such legislation on the basis of a "public policy exception" under EU law, albeit in a revised form.[303] In October, after receiving the Attorney General's advice, the government decided that "in light of the Advisory Opinion and the advice of the Attorney General, the Bill will be reviewed and amendments will be prepared in order to bring it into line with the Constitution and EU law."[304] In May 2025, the government agreed to draft new legislation for the banning of imports from settlements instead of amending the Bill.[305]

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6. Conclusion

The analysis in this Expert Legal Opinion underscores **that the question of how the Advisory Opinion of the ICJ affects the EU's current and future policies not only warrants a political answer but also a legal one**. The EU must respect the international legal order in the exercise of its functions and powers, and **the EU is bound by rules of general international law, including universally accepted customary international law, which is**

binding on EU institutions. In addition, **EU law must be interpreted in light of the relevant rules of international law** and, as far as possible, in a manner which is consistent with those rules.

This implies that **the EU is bound to take advisory opinions of the ICJ into account**. After all, as explained in this Expert Legal Opinion, these constitute an authoritative recognition of the international legal obligations that are binding on the EU and its member States, and the 2024 Advisory Opinion merely clarifies and underlines existing rules of international law.

The 2024 Advisory Opinion thus affects current and future EU policies in a number of ways. This leads to the following general findings:

- **The 2024 Advisory Opinion necessitates an urgent and comprehensive reassessment of all instruments, agreements, and operational practices between the EU and Israel to ensure full compliance with binding international legal obligations**, including **ending Israel's unlawful presence in the OPT as soon as possible**, with particular regard to the serious breaches of international law committed by Israel that were identified by the ICJ, in particular the denial of self-determination to Palestinians, the annexation that breaches the prohibition on the acquisition of territory occupied pursuant to the use of force, and the imposition of racial segregation and/or apartheid in the OPT. Compliance of all legal agreements, programmes and policies with the EU's international obligations also needs to form the basis for future EU policies and actions.
- The Court identified the following breaches of obligations *erga omnes* by Israel:
    - the obligation to respect the right of the Palestinian people to self-determination;
    - the obligation arising from the prohibition of the acquisition of territory through the use of force; and
    - a range of obligations under IHL and IHRL, including the obligation not to transfer settlers into occupied territory, the forced displacement of the inhabitants of the territory, and the breach of the prohibition against racial segregation and/or apartheid.
- **Both the EU and its Member States are thus under the duty not to recognise the result of Israel's unlawful presence in the OPT; the obligation not to aid or assist in the maintenance of this situation of illegality; and a duty to co-operate with the UNGA and the UNSC** as they put modalities into effect to ensure an end to Israel's illegal presence in the OPT and the full realisation of the right of the Palestinian people to self-determination.
- The EU and its Member States are, under EU law, obliged to **distinguish, in their dealings with Israel, between the territory of the State of Israel as established on 4 June 1967 and the territories it has occupied after 5 June 1967**. As an effect of the obligations identified in the 2024 Advisory Opinion, in such dealings, **they are obliged to abstain from recognising any attempts of annexation in the OPT beyond the pre-1967 borders, including with regard to East Jerusalem.** This obligation can be met by ensuring that any agreements or practices with respect to Israel do not

imply recognition of Israeli sovereignty, nor recognising any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967. **It is not sufficient simply to distinguish between goods and services originating in Israeli settlements in the OPT and from within Israel's pre-1967 borders.**

- The EU and its Member States are under an obligation **not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the OPT**. They should ensure that any impediment resulting from the illegal presence of Israel in the OPT to the exercise of the Palestinian people of its right to self-determination is brought to an end.
- In accordance with the principle of consistent interpretation and the EU's duty to uphold international law as enshrined in Articles 3(5) and 21 TEU, **the conclusions of the 2024 Advisory Opinion must inform the interpretation and application of EU law, its external relations instruments, and any other policies and practices**.

To clarify its position, we believe **the EU should declare how it aims to live up to the conclusions of the ICJ in the 2024 Advisory Opinion**, including the unequivocal recognition of the illegality of Israel's continued presence in the OPT, the unlawfulness of Israeli settlements in the OPT, and the unlawfulness of any attempt to advance annexation in the OPT, as well as to other relevant rules of international law with regard to its dealings with Israel.

To abide by the above-mentioned obligations, the EU and its Member States must revisit and reassess a number of instruments, policies, and activities, including the following:

- With regard to the EU-Israel Association Agreement as the overarching framework for bilateral EU-Israel relations, **the EU's ongoing review of Israel's compliance with the 'essential elements' (or 'human rights') clause enshrined in Article 2 of the Agreement must properly take into account the findings of serious violations of international humanitarian and human rights law in the 2024 Advisory Opinion. These findings justify the invocation of Article 2 and the adoption of appropriate responsive measures. These measures could include suspending the Agreement in part or in full, given the serious violations of peremptory norms of international law by Israel identified in the Advisory Opinion** (and not accounting for the additional alleged serious violations in the context of the present hostilities in Gaza).
- With respect to EU economic and trade dealings with Israel:
    - The existing EU policy measures aimed at ensuring the ineligibility of products (goods and services) originating in Israeli settlements in the OPT for preferential tariff treatment and the correct labelling of such goods, do not allow for full and effective enforcement. **More fundamentally, these policies were not designed by the EU to abstain from economic or trade dealings with Israeli settlements and/or other forms of trade with Israel that would entrench its unlawful presence in the OPT, as required by the Advisory Opinion.**
    - **The EU must therefore reassess its policies regarding products originating in the Israeli settlements in order to abide by these obligations. This likely requires further restrictions—and potentially an outright ban—on trade or economic dealings with entities based in Israeli settlements in the OPT as well**

as on such trade dealings with entities based within Israel's pre-1967 borders that would entrench its unlawful presence in the OPT.

- With respect to EU funding programmes and financial instruments:
    - The Commission must carry out a review of Israel's participation in EU funding programmes such as Horizon Europe and financial instruments including the European Investment Bank, to ensure compliance with the 2024 Advisory Opinion. In connection with this, the EU's 2013 Guidelines that aim to prevent EU funding for Israeli entities and activities in the occupied territories under these programmes and instruments must be reassessed in the light of the obligations laid down in the Advisory Opinion. With respect to the Guidelines, it is particularly necessary to **address the activities of contractors and subcontractors selected by grant beneficiaries, the exceptional eligibility for funding of public authorities operating in the OPT, and the possibility of funding for projects and entities inside Israel that nevertheless support Israel's unlawful presence in the OPT, including 'dual-use' projects with a potential military application**. The EU must also consider the potential for inadvertent or 'indirect' financing of projects that assist in the maintenance of the unlawful occupation.
    - **As a potential precautionary measure, the EU may need to suspend disbursements pending such review.** Suspending Israel from funding programmes and financial instruments could also be an **'appropriate measure' in response to the ICJ's findings of serious violations falling within the scope of the 'essential elements' clause found in Article 2 of the Association Agreement.**
- With regard to investment relations and other economic dealings with Israel and Israeli entities:
    - The EU and its Member States are required to **review and, if necessary, adopt measures to prevent investment relations** by EU-based companies and other entities, particularly financial institutions, that might assist in the maintenance of Israel's presence in the OPT, and in particular, to review existing investment policies and their implementation that might fall afoul of this duty.
    - The EU and its Member States are under a duty to **restrict and/or to end any dealings with companies listed in the UN database of enterprises benefitting Israeli settlements. They must also review and reinforce their existing advisories for businesses and citizens** regarding economic activities in settlements to ensure that their addressees are aware of the risk of operating in breach of the obligations identified by the Court.
- With regard to visa exemptions for travel by Israeli nationals to EU Member States:
    - The EU and its Member States are competent under EU law to revoke the exemption for visa-free travel that currently also applies to Israel's nationals residing in the OPT, thus requiring settlers to apply for a visa. Through the forthcoming ETIAS travel authorisation system, they could request relevant personal data so as to distinguish Israeli settlers and other Israeli nationals on the basis of place of residence or, if practicable, through the local passport issuing authority. The EU could also adopt a decision not to recognise passports and travel documents issued in the OPT.

- With regard to arms trade with Israel:
    - EU Member States are under an obligation to re-assess their own policies in relation to Israel (including export permits), in the light of armed violence committed against Palestinians by Israeli settlers and Israeli security forces in the OPT. In particular, they **must not authorise arms exports if they have knowledge that the arms would be used to violate international human rights law or international humanitarian law, and must exercise special caution and re-assess any licences to export arms to Israel, due to the risk that these arms would be used in the commission of serious violations of international humanitarian law, as identified in the 2024 Advisory Opinion.**

With regard to diplomatic relations and the location of diplomatic missions:

- The EU and its Member States must abstain from any diplomatic acts, such as the relocation of diplomatic premises or the operation of diplomatic or consular services, that might be regarded as recognition of the effects of Israel's unlawful presence in the OPT. **Accordingly, the EU and its Member States should maintain current policies with respect to the relocation of diplomatic missions** into the OPT or Jerusalem, as this would constitute unlawful recognition of Israel's illegal presence in the territories and/or a potential failure to co-operate with United Nations organs having already taken a position on the question.

- With respect to the risks occasioned by a failure by the EU or EU Member States to comply with their obligations under international and European law:
    - **A breach of the obligations identified in the Advisory Opinion may have consequences for the EU and its Member States, and might engage their international responsibility**. While judicial proceedings in inter-State courts are not practicable due to the EU's lack of *legal standing* in bodies such as the ICJ and the European Court of Human Rights, the accusation that the EU is violating international law is politically harmful for the Union, and a violation of the EU's commitment, as embodied in its own Treaties, to uphold and promote international law.
    - Under strict conditions, it is also possible for individuals or NGOs to challenge EU legal instruments or policies before the Court of Justice of the EU (or in some situations before national courts) in view of the EU's compliance with the 2024 Advisory Opinion. These possibilities also exist with respect to the EU's own Member States and institutions. **The European Parliament, in particular, has the possibility to challenge adopted legislation before the** CJEU in case of 'infringement of the Treaties or of any rule of law relating to their application' (Art. 263 TFEU). Similarly, a lack of action by the Commission could trigger the 'failure to act' procedure (Article 265 TFEU). Furthermore, it would also be possible for the European Parliament to assert its role as co-legislator **to prevent instruments from being adopted when these would be in conflict with international law as clarified by the 2024 Advisory Opinion**. With regard to non-legislative instruments, the Parliament should continue its activities to influence proposed policies and make the Commission and/or the Council aware of possible violations of international law.

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References

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[2] EEAS Legal Department, *Note for the Attention of Josep Borrell Fontelles, High Representative* (Final Version of 22 July 2024).
[3] Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part (signed 20 November 1995, entered into force 21 June 2000) Official Journal, L 147/3, p 3, 21 June 2000 [hereinafter 'EU-Israel Association Agreement'].
[4] See J Borrell, 'War in Gaza: we cannot continue with business as usual', published on the EEAS blog *A Window on the World* (15 November 2024), https://www.eeas.europa.eu/eeas/war-gaza-we-cannot-continue-business-usual_en (accessed 19 June 2025).
[5] See M Psara and S Aktan, 'EU fails to reach unanimous agreement on ending dialogue with Israel' Euronews (18 November 2024), https://www.euronews.com/my-europe/2024/11/18/eu-fails-to-reach-unanimous-agreement-on-suspending-dialogue-with-israel (accessed 19 June 2025).
[6] See Press Remarks of Kaja Kallas after the meeting of the EU Foreign Affairs Council (20 May 2025), https://www.eeas.europa.eu/eeas/foreign-affairs-council-press-remarks-high-representative-kaja-kallas-after-meeting-2_en (accessed 19 June 2025).
[7] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, ICJ Expert Legal Opinions 2004, p 136 [hereinafter '*Construction of a Wall*'].
[8] Charter of the United Nations, 1 UNTS xvi (signed 26 June 1945, entry into force 26 October 1945), including Annex 1, 'Statute of the International Court of Justice'.
[9] See e.g. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion, ICJ Reports 1950, p 65, 71*; Applicability of Article VI Section 22 of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, ICJ Reports 1989, p 177, 189, para 31 (hereinafter '*Mazilu*').
[10] Statute of the International Court of Justice, as annexed to the United Nations Charter (n 8), art 59.
[11] See the discussion in ILC, 'Second Report on Subsidiary Means for the Determination of Rules of International Law' (CC Jalloh, Special Rapporteur), UN Doc A/CN.4/769 (30 January 2024), paras 89-96; H Thirlway, *The Sources of International Law* (2nd edn, Oxford University Press, 2019), 137-38; and G Hernández, *International Law* (3rd edn, Oxford University Press, 2025), 54-56.
[12] L M Goodrich, 'The Nature of the Advisory Opinions of the Permanent Court of International Justice' (1938) 32 *American Journal of International Law* 738, 758.
[13] Comp. T F Mayr and J Mayr-Singer, 'Keep the Wheels Spinning: The Contributions of Advisory Opinions of the International Court of Justice to the Development of International Law' (2016) 76 *ZaöRV* 425, 430.
[14] Examples abound, but to invoke a recent case, see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)*, Judgment (Preliminary Objections), ICJ Reports 2022, p 477, para 108, which cites to the classic phrase on the 'common interests' in the Genocide Convention in *Reservations to the Convention on Genocide*, Advisory Opinion, ICJ Reports 1951, p 15, at 23. See further G Hernández, 'Precedent as Retrospection: The Practice of the International Court of Justice' in A Gattini (ed), *Time and International Adjudication: The Temporal Factor in Proceedings before International Courts and Tribunals* (Brill/Nijhoff, 2025), 412; and G Hernández, *The International Court of Justice and the Judicial Function* (Oxford University Press, 2014), ch VI. The Court's systematic references in its 2024 Advisory Opinion to its earlier findings in *Construction of a Wall* (n 7) will be further addressed in the present Expert Legal Opinion.
[15] UNGA, *Advisory opinion of the ICJ on the legal consequences arising from Israel's policies and practices in OPT, including East Jerusalem, and from the illegality of Israel's continued presence in OPT*, General Assembly Resolution (A/RES/ES-10/24), 18 September 2024.
[16] See, for example, our analysis of the case law of the Court of Justice of the European Union in Section 3.1.6.
[17] ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment (Preliminary Objections), ITLOS Reports 2020-2021, p 17.

[18] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, p 95.
[19] Negotiations between Mauritius and the United Kingdom recently led to the adoption of an agreement between the two countries relating to Mauritius' sovereignty over the Archipelago: Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia (signed 22 May 2025, not yet into force), available at https://assets.publishing.service.gov.uk/media/682f25afc054883884bff42a/CS_Mauritius_1.2025_Agreement_Chagos_Diego_Garcia.pdf (accessed 19 June 2025).
[20] *Delimitation of the Maritime Boundary between Mauritius and Maldives* (n 17) para 203 (emphasis added).
[21] *Ibid*, para 246 (emphasis added).
[22] *Construction of a Wall* (n 7) para 70 et ss.
[23] *Policies and Practices of Israel* (n 1) para 67.
[24] *Policies and Practices of Israel* (n 1) para 78, referring to General Assembly Resolution 77/247, para 12; Article XI of the Oslo II Accord; General Assembly Resolution ES-10/20 (2018), sixteenth preambular paragraph; Security Council Resolution 1860 (2009), second preambular paragraph; and Security Council resolution 2720 (2023), fourth preambular paragraph.
[25] *Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)*, Application instituting proceedings, 28 September 2018.
[26] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Application instituting proceedings, 1 March 2024.
[27] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings, 29 December 2023 [hereinafter '*South Africa v Israel*'].
[28] *Genocide in the Gaza Strip (South Africa v Israel)*, Order on Provisional Measures of 26 January 2024; *ibid.*, Order on Provisional Measures of 28 March 2024; *ibid.*, Order on Provisional Measures of 5 April 2024.
[29] *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*, Request for advisory opinion, 23 December 2024.
[30] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969), 600 UNTS 195 [hereinafter 'CERD'].
[31] *Policies and Practices of Israel* (n 1) paras 111-114.
[32] Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950), 75 UNTS 287 (hereinafter 'Fourth Geneva Convention').
[33] *Policies and Practices of Israel* (n 1) paras 115-119; *Construction of a Wall* (n 7) para 120.
[34] *Policies and Practices of Israel* (n 1) paras 122-123; *Construction of a Wall* (n 7) paras 132-135.
[35] *Policies and Practices of Israel* (n 1) paras 124-133.
[36] *Policies and Practices of Israel* (n 1) paras 142-147.
[37] *Policies and Practices of Israel* (n 1) para 154 (see reasoning in paras 148-153).
[38] *Policies and Practices of Israel* (n 1) paras 90-97.
[39] *Policies and Practices of Israel* (n 1) para 109.
[40] *Policies and Practices of Israel* (n 1) para 173. This echoes the Court's 2004 conclusion that the construction of the wall in the OPT would create a 'fait accompli' on the ground that it might become permanent, and thus, 'it would be tantamount to *de facto* annexation': see *Construction of a Wall* (n 7) para 121.
[41] *Policies and Practices of Israel* (n 1) para 93. See further G Le Floch, 'Un rappel sans complaisance à la règle de droit : l'avis de la Cour internationale de justice dans l'affaire des Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est' (2025/3) *Journal du droit international* (forthcoming), paras 8-9.
[42] *Policies and Practices of Israel* (n 1) para 179. See further I Brunk and M Hakimi, 'The Prohibition of Annexations and the Foundations of Modern International Law' (2024) 118(3) *American Journal of International Law* 417.

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[45] *Policies and Practices of Israel* (n 1) para 237.
[46] *Policies and Practices of Israel* (n 1) para 233.
[47] *Policies and Practices of Israel* (n 1) para 229.
[48] ILC, 'Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), With Commentaries': see Report of the International Law Commission on the Work of its 73rd Session, UN Doc A/77/10 (2022) GAOR 77th Session Supp 10, chap IV, Commentary to Draft Conclusion 23, para 11 [hereinafter, 'Draft Conclusions on *Jus Cogens*'].
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[51] International Convention on the Suppression and Punishment of the Crime of Apartheid (signed 30 November 1973, in force 18 July 1976), 1015 UNTS 243. See M Jackson, 'The Definition of Apartheid in Customary International Law and the International Convention on the Elimination of All Forms of Racial Discrimination' (2022) 71 *ICLQ* 831.
[52] 1973 Apartheid Convention, *ibid*, art II.
[53] See J Dugard and J Reynolds, 'Apartheid, International Law, and the Occupied Palestinian Territory' (2013) 24 *EJIL* 867.
[54] Dugard and Reynolds, *ibid*, at 872-875.
[55] *Ibid*, at 877.
[56] Art. 7(1)(j), Rome Statute of the International Criminal Court (signed 17 July 1998, entered into force 1 July 2002), 2187 UNTS 90. Article 7(2)(h) refers to apartheid as criminal acts 'committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.'
[57] Art. 85(4)(c), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (signed 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3 (hereinafter, 'AP I'). Though Israel is not a party to AP I, Israel is a party to the four Geneva Conventions.
[58] ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) II(2) Yearbook of the International Law Commission [hereinafter 'ARSIWA'] at 31, Commentary to Article 40, at p. 112; ILC, Draft Conclusions on *Jus Cogens* (n 48) at Draft Conclusion 23.
[59] Art. 53, Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331 [hereinafter 'VCLT']; see also ILC, Draft Conclusions on *Jus Cogens* (n 48), Draft Conclusion 3, p 27.
[60] *Separation of the Chagos Archipelago* (n 18) para. 180; *Construction of a Wall* (n 7) para 159.
[61] See section 2.3.4.
[62] *Policies and Practices of Israel* (n 1) para 261.
[63] *Policies and Practices of Israel* (n 1) para 267.
[64] O Ben-Naftali, AM Gross and K Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory' (2005) 23(3) *Berkeley Journal of International Law* 551, 555; citing to E Benvenisti, 'The Security Council and the Law of Occupation: Resolution 1483 on Iraq in Historical Perspective' (2003) 1 *Israel Defence Forces Law Review* 19.
[65] *Policies and Practices of Israel* (n 1) para 251.
[66] *Policies and Practices of Israel* (n 1) para 261 [emphasis added].
[67] See SC Resolution 276, UN Doc S/RES/276 (30 January 1970), as analysed in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276* (1970), Advisory Opinion, ICJ Reports 1971, p 16 [hereinafter, '*Namibia*'].
[68] *Ibid*, para 131.

[69] *Ibid.* See in particular Separate Opinion of Judge Ammoun, paras 71-72, in which he contended that the Court's reasoning extended beyond the stipulations of the Mandate and gave 'due consideration' of the right of peoples to self-determination as well as to violations of their human rights by South African authorities.
[70] E Benvenisti, *The Law of Occupation* (Cambridge University Press, 2005), at 36-38.
[71] Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967 (John Dugard, Special Rapporteur), UN Doc A/57/366 (29 August 2002), para 21.
[72] See A Imseis, 'Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020' (31)(1) *European Journal of International Law* 1055, esp 1071-1073.
[73] Benvenisti (n 70) at 5.
[74] *Construction of a Wall* (n 7) para 87; see Security Council's Resolution 678 (29 November 1990) on Iraq's aggression against Kuwait; General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, Friendly Relations Declaration (1970), A/RES/2625(XXV); Security Council's Resolution 242 (22 November 1967).
[75] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo,* Advisory Opinion, ICJ Reports 2010, p 403, para 81, with specific reference to Rhodesia and Northern Cyprus.
[76] See the Security Council's Resolution 478 (20 August 1980), which declared that the Council would not recognise Israel's 'Jerusalem Law', claiming Jerusalem as its 'complete and united capital'.
[77] *Policies and Practices of Israel* (n 1) para 263, rejects an argument made by several States that pursuant to the Oslo Accords, Israel had a right to maintain its presence in the OPT 'in order to meet its security needs and obligations', adding that the Oslo Accords 'do not permit Israel to annex parts of the [OPT] in order to meet its security needs.'
[78] *Construction of a Wall* (n 7) para 135.
[79] *Policies and Practices of Israel* (n 1) para 254. This reasoning was challenged in the Joint Separate Opinion of Judges Tomka, Abraham and Aurescu, para 52, who suggested that a different approach could have sought a balance between Palestinian self-determination and Israeli security concerns. See further Le Floch (n 41) para 45, who suggests that the Court's majority 'a écarté d'un revers de main cet argument' (the argument relating to security concerns).
[80] As explained in *Policies and Practices of Israel* (n 1) para 122.
[81] An enumeration of the relevant Israeli policies, legislation and orders is given in *Policies and Practices of Israel* (n 1) paras 120-123. The Government of Israel also supports the indirect financing of settler outposts in the OPT through NGOs that support 'agricultural activities' that lead to the takeover of land: see Report of the UN High Commissioner for Human Rights, UN Doc A/HRC/55/72 (1 February 2024), para 7.
[82] *Policies and Practices of Israel* (n 1) para 105.
[83] O Ben-Naftali, AM Gross and K Michaeli (n 64), at 605.
[84] A concise and accessible overview of the main debates has been given by one of the present authors: see G. Hernández, *International Law* (n 11) chapter 3, pp 63-87.
[85] These conclusions are reaffirmed in the Operative Clause of the Opinion (*Policies and Practices of Israel* (n 1) para 285).
[86] *Policies and Practices of Israel* (n 1) para 268.
[87] *Policies and Practices of Israel* (n 1) paras 269-270.
[88] *Policies and Practices of Israel* (n 1) para 272.
[89] ILC, Draft Conclusions on *Jus Cogens* (n 48), Draft Conclusion 18, pp 69-70; see also ILC, ARSIWA (n 58), Commentary to Article 26, p 85, para 4.
[90] ILC, Draft Conclusions on *Jus Cogens* (n 48), Draft Conclusion 19, p 70; see ILC, ARSIWA (n 58), Article 41, pp 111-112.
[91] *Policies and Practices of Israel* (n 1) para 275; see also *Construction of a Wall* (n 7) para 159; and *Separation of the Chagos Archipelago* (n 18) para 182.
[92] *Policies and Practices of Israel* (n 1) para 281.
[93] UNGA, Resolution ES-10/24 (n 15), para 10.
[94] *Construction of a Wall* (n 7) para 159. ILC, Draft Conclusions on *Jus Cogens* (n 48), Commentary to Draft Conclusion 19, pp 74-75, paras 9-10.
[95] *Policies and Practices of Israel* (n 1) paras 276-279.

[96] See G Fernández Arribas, 'The European Union and the Violation of the Right to Self-Determination: The Cases of Western Sahara and the Occupied Palestinian Territory' (2024) (1) *Polish Review of International and European Law* 81, at 101-102.
[97] *Policies and Practices of Israel* (n 1) para 279.
[98] *Policies and Practices of Israel* (n 1) paras 285.
[99] See Treaty on European Union (consolidated version), Official Journal, C 326, p 13, 26 October 2012, arts 21, para 2, and 29. See further Treaty on the Functioning of the European Union (consolidated version), Official Journal, C 326, p 47, 26 October 2012, art 215.
[100] See further Regulation (EU) 2018/1727 of the European Parliament and the Council of 14 November 2018, replacing and repealing Council Decision 2002/187/JHA, Official Journal, L 295, p 138, 21 November 2018, and Regulation (EU) 2022/838 of the European Parliament and the Council of 30 May 2022 amending Regulation (EU) 2018/1727, Official Journal, L 148, p 1, 31 May 2022.
[101] UNGA, Resolution ES-10/24 (n 15), para 5.
[102] See 'Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel' (18 October 2024), esp paras 11-35 <https://www.ohchr.org/sites/default/files/documents/hrbo (accessed 19 June 2025).
[103] Ibid, at para 29.
[104] Ibid.
[105] Ibid, at para 30.
[106] Ibid.
[107] Ibid, at para 31.
[108] Ibid, at para 31.
[109] P Andrés Sáenz de Santa María, 'The European Union and the Law of Treaties: A Fruitful Relationship' (2019) 30(3) *EJIL* 721.
[110] RA Wessel and S Blockmans (eds), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (TMC Asser Press/Springer, 2013) 297–312. See also recently T Molnár and RA Wessel, *Interactions between EU Law and International Law: Juxtaposed Perspectives* (Edward Elgar Publishing, 2024).
[111] See M Cremona, A Thies and RA Wessel (eds), *The European Union and International Dispute Settlement* (Hart Publishing, 2017).
[112] P Koutrakos, 'More on autonomy – Opinion 1/17 (CETA)' (2019) 44 *European Law Review* 294. For a theoretical approach, see also the special issue of *European Papers* on *Legal Theory, the Autonomy of EU Law and European Integration* (2023, vol. 8(3)).
[113] Case C-402/05, *Kadi and Al Barakaat International Foundation v Council and Commission of the European Communities,* ECLI:EU:C:2008:461 [hereinafter, '*Kadi and Al Barakaat*']; Case T-512/12, *Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) v Council of the European Union*, ECLI:EU:T:2015:953 [hereinafter, '*Front Polisario*'].
[114] E Kassoti and RA Wessel, 'The EU's Duty to Respect Human Rights Abroad: The Extraterritorial Applicability of the EU Charter and Due Diligence Considerations' (2020) 2 *CLEER Papers*.
[115] See Alessandro Petti and Joanne Scott, 'International Agreements in the EU Legal Order: International Fruit' in G Butler and RA Wessel (eds), *EU External Relations Law: the Cases in Context* (Hart Publishing, 2022) 21-34; RA Wessel, 'International Agreements as an Integral Part of EU Law: *Haegeman*' in Graham Butler and Ramses A Wessel (eds), *EU External Relations Law: the Cases in Context* (Hart Publishing, 2022) 35-44.
[116] In Case C-239/03, *Commission v France (Étang de Berre)*, ECLI:EU:C:2004:598, para 25, the Court held that mixed agreements have the same status in the EU legal order as EU-only agreements.
[117] Case C-162/96, *Racke GmbH & Co v Hauptzollamt Mainz*, ECLI:EU:C:1998:293, para 45 [hereinafter, '*Racke*']; Case T-115/94, *Opel Austria GmbH v Council*, ECLI:EU:T:1997:3; as well as Case C-84/95, *Bosphorus Hava Yollari Turizm ve Ticaret AS v Minister for Transport, Energy and Communications and Others*, ECLI:EU:C:1996:312.
[118] See for instance: Case C-192/89, *Sevince v Staatssecretaris van Justitie*, ECLI:EU:C:1990:322.
[119] See for instance: Case C-179/97, *Spain v Commission*, ECLI:EU:C:1999:109; *Racke* (n 117) para 45.
[120] Emphasis added.

[121] Emphasis added.
[122] See RA Wessel and J Odermatt (eds), *Research Handbook on the European Union and International Organisations* (Edward Elgar Publishing, 2019).
[123] See also Case C-104/16 P, *Council of the European Union v Front Polisario*, EU:C:2016:677, Opinion of AG Wathelet, paras. 254-269.
[124] See more extensively E Kassoti and RA Wessel, 'The EU's Duty to Respect Human Rights Abroad: The Extraterritorial Applicability of the EU Charter and Due Diligence Considerations' (2020), *CLEER Papers*.
[125] F Bordin et al. (eds.), *The European Union and Customary International Law* (Cambridge University Press, 2022); as well as P Merkouris, RA Wessel and I de Vries-Zou (eds.), 'The European Union and the Interpretation of Customary International Law' (2024) 1 *CLEER Papers*.
[126] *Interpretation of the Agreement of 25 March 1951 between WHO and Egypt*, Advisory Opinion, ICJ Reports 1980, p 73, 89-90, para 37.
[127] *Kadi and Al Barakaat* (n 113), paras 87-88. See further Art 53 VCLT (n 59), discussed above in Section 2.3.2.
[128] E Kassoti and RA Wessel, 'The Normative Effect of Article 3(5) TEU: Observance and Development of International Law by the European Union' in P García Andrade (ed), *Interacciones entre el Derecho de la Unión Europea y el Derecho Internacional Público* (Tirant lo Blanch 2023), 19-46. Case C-366/10, *Air Transport Association of America and Others* (ECLI:EU:C:2011:864) forms a good example of a judgment in which the CJEU dealt extensively with this issue.
[129] Case C-398/13, *P Inuit Tapiriit Kanatami v Commission*, ECLI:EU:C:2015:190, Opinion of Advocate General Kokott delivered on 19 March 2015, para 86.
[130] Case C-286/90, *Anklagemindigheden v Poulsen and Diva Navigation*, ECLI:EU:C:1992:453, para 10.
[131] Vienna Convention on the Law of Treaties between States and International Organizations (signed 21 March 1986, not yet in force), 25 ILM 543.
[132] A long-standing position: see e.g. the classic B Simma and P Alston, 'The Sources of Human Rights Law: Custom, *Jus Cogens* and General Principles' (1988) 5 *Australian YBIL* 82.
[133] *Racke* judgment (n 117), para 46.
[134] A Gianelli, 'Customary International Law in the European Union' in E Cannizzaro, P Palchetti and RA Wessel (eds) *International Law as Law of the European Union* (Martinus Nijhoff, 2012) 99. A similar reasoning can be found in Case T-115/94, *Opel Austria v Council*, ECLI:EU:T:1997:3.
[135] *Ibid*.
[136] *Ibid*, 105.
[137] Case C-61/94, *Commission v Germany*, ECLI:EU:C:1996:313, para 52.
[138] See also Case 30/88, *Greece v Commission*, ECLI:EU:C:1989:422.
[139] *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France)*, Judgment, ICJ Reports 2008, p 177, 219.
[140] K Ziegler, 'The Relationship between EU Law and International Law' in D Patterson and A Södersten (eds), *A Companion to European Union Law and International Law* (Wiley, 2016) 42, 48. See also the view of the ILC that a judicial institution like the CJEU, constituted by international treaty, 'must always *interpret and apply* that instrument in the context of its relationship to its normative environment – that is to say other relevant rules of international law' (ILC, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' Report of the Study Group of the International Law Commission, Finalised by Martti Koskenniemi (13 April 2006) UN Doc A/CN.4/L.682, para 423).
[141] See the Treaties Office Database of the European External Action Service, available at: http://ec.europa.eu/world/agreements/default.home.do.
[142] See for a more complete categorisation: J Heliskoski and G Kübek, 'A Typology of EU Mixed Agreements Revisited' in N Levrat, Y Kaspiarovich, C Kaddous and RA Wessel (eds), *The EU and Its Member States' Joint Participation in International Agreements* (Hart Publishing, 2022) 23.
[143] See more extensively on the legal nature of the CFSP competences: R.A. Wessel, 'Legality in EU Common Foreign and Security Policy: The Choice of the Appropriate Legal Basis' in C Kilpatrick and J Scott (eds), *Contemporary Challenges to EU Legality* (Collected Courses of the Academy of European Law) (Oxford University Press, 2021) 71.
[144] RA Wessel, 'Resisting Legal Facts: Are CFSP Norms as Soft as They Seem?' (2015) 20 *European Foreign Affairs Review* 123.

[145] For international responsibility under international humanitarian law, see for instance A Bosman, 'The EU as a Crisis Manager: Ensuring Accountability Under IHL' (2023) 28(3) *European Foreign Affairs Review* 243.

[146] P Palchetti and RA Wessel, 'Our Love for the EU (But is it an International Organization?)' (2024) 21(3) *International Organizations Law Review* 499; and earlier C. Eckes and R.A. Wessel, 'The European Union: An International Perspective' in T. Tridimas and R. Schütze (eds.), *Oxford Principles of European Union Law – Volume 1: The European Union Legal Order* (Oxford University Press, 2019) 74.

[147] ILC, 'Draft Articles on the responsibility of international organizations, with commentaries 2011', Adopted by the ILC at its sixty-third session, in 2011, and submitted to the General Assembly as part of the Commission's report covering the work of that session (A/66/10) (2011) Yearbook of the International Law Commission, vol II, Part Two, 5 [hereinafter, 'ARIO']. The EU indeed seems to fit the definition of an international organisation adopted in Article 2(a): '"international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality' and which 'may include as members, in addition to States, other entities.'

[148] See, in particular, Part Six of the ARIO (n 147) where the Commentary specifically refers to ILC, ARSIWA (n 58), art 57.

[149] A Ott, 'EU External Competence' in RA Wessel and J Larik (eds), *EU External Relations Law: Text, Cases and Materials* (2nd edn, Hart Publishing, 2020) 61. See extensively on the question of responsibility in this context: A Delgado Casteleiro and C Contartese, 'International Responsibility of the EU and/or its Member States in International Agreements: From Joint Participation to "Participation"' in N Levrat et al (eds), *The EU and Its Member States' Joint Participation in International Agreements* (Hart Publishing, 2022) 171; also E Carli, 'Multiple Attribution of Conduct in EU Security Missions' (2021) 18(2) *International Organizations Law Review* 236; J De Coninck, 'Effective Remedies for Human Rights Violations in EU CSDP Military Missions: Smoke and Mirrors in Human Rights Adjudication?' (2023) 24(2) *German Law Journal* 342.

[150] Cf F Hoffmeister, 'Litigating Against the European Union and its Member States' (2010) 21 *EJIL* 723, 740, who refers to arts 340(2) and 263 TFEU as well as to art 51(1) of the EU Charter of Fundamental Rights. Article 10(2) ARIO (n 147) confirms that also 'the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization' is included in the ARIO.

[151] Cf also C Contartese, 'Competence-Based Approach, Normative Control, and the International Responsibility of the EU and Its Member States' (2020) 17(2) *International Organizations Law Review* 418.

[152] RA Wessel, 'Immunities of the European Union' (2014) 10 *International Organizations Law Review* 395.

[153] In terms of trade relations, the following facts are relevant:

- Israel is the EU's 25th largest trading partner, accounting for 0.8% of the EU's total trade in goods.
- The EU is Israel's largest trade partner, representing 28.8% of its total trade in goods.
- EU imports from Israel include machinery and transport (€7.6 billion (43.5%)), chemicals (€3.5 billion (20.1%)), and other manufactured goods (€1.9 billion (11.1%)).
- Israel's exports to the EU contain 25.6% of Israel's total exports, valued at €9.8 billion.

[154] EU-Israel Association Agreement (n 3).

[155] See further VCLT (n 58) art 60. The conditions for material breach are high: see the ICJ's statement **in** *Gabčíkovo-Nagymaros (Hungary/Slovakia)*, Merits, ICJ Reports 1997, p 7, and Hernández, *International Law* (n 11) 207-209, Section 7.5.2.3.1 ('Material breach').

[156] Answer given by Vice-President Mogherini on behalf of the Commission, 5 August 2015, available at https://www.europarl.europa.eu/doceo/document/E-8-2015-008626-ASW_EN.html (accessed 19 June 2025See for a more detailed overview also the JOINT STAFF WORKING DOCUMENT - Evaluation of the Cotonou Partnership Agreement, 18 July 2016; https://www.parlament.gv.at/dokument/XXV/EU/112067/imfname_10647445.pdf.

[157] Council Decision 2011/523/EU of 2 September 2011 partially suspending the application of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic, Official Journal, L 228, p 19, 3 September 2011.

[158] See e.g. Lorand Bartels, 'Assessment of the implementation of the human rights clause in international and sectoral agreements', In-Depth Analysis Requested by the DROI Subcommittee, European Parliament, 15 May 2025, available at https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA(2023)702586 (accessed 19 June 2025).

[159] Letter to the European Commission from the President of the Government of Spain and the Prime Minister of Ireland, 14 February 2024, available at https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2024/20240214-letter-to-eu-commission.aspx (accessed 19 June 2025).

[160] T Connelly, 'EU should suspend political dialogue with Israel – Borrell' *RTE* (14 November 2024), available at https://www.rte.ie/news/middle-east/2024/1114/1480972-eu-israel-gaza/ (accessed 19 June 2025).

[161] The letter has not been published, but has been acknowledged publicly: see https://www.politico.eu/article/israel-eu-relationship-must-reviewed-over-gaza-aid-dutch-foreign-minister-veldcamp-kallas/ (accessed 19 June 2025). See the earlier Letter to the European Commission from the President of the Government of Spain and the Prime Minister of Ireland, 14 February 2024, available at https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2024/20240214-letter-to-eu-commission.aspx (accessed 19 June 2025). The EU special representative for human rights Olof Skoog, tasked by Borrell, has already conducted a sort of assessment but it is a mere compilation of sources without conclusion (see A Nelsen, 'EU Officials Will Claim Ignorance of Israel's War Crimes. This Leaked Document Shows What They Knew' *The Intercept* (23 December 2024), available at https://theintercept.com/2024/12/23/eu-report-israel-war-crimes-complicity/ (accessed 19 June 2025).

[162] European Parliament resolution (2024/2080(INI)) of 2 April 2025 on the implementation of the common foreign and security policy – annual report 2024, available at https://www.europarl.europa.eu/doceo/document/TA-10-2025-0057_EN.html (accessed 19 June 2025).

[163] Case C-386/08, *Firma Brita GmbH v Hauptzollamt Hamburg-Hafen*, ECLI:EU:C:2010:91 [hereinafter, '*Firma Brita*']. See P. Cardwell, 'The Application of an EU International Agreements to Occupied and Disputed Territories: *Brita'* in G Butler and RA Wessel (eds), *EU External Relations Law: The Cases in Context* (Hart Publishing, 2022) 609.

[164] *Firma Brita*, *ibid*, para 52.

[165] Cardwell (n 163).

[166] Case C-363/18, *Organisation juive européenne and Vignoble Psagot Ltd v Ministre de l'Économie et des Finances*, ECLI:EU:C:2019:954. S. Poli, 'Ensuring Respect for International Humanitarian Law through Labelling Requirements: *OJE and Vignoble Psagot*' in G Butler and RA Wessel (eds), *EU External Relations Law: The Cases in Context* (Hart Publishing, 2022).

[167] See above, Section 2.1.

[168] T Molnár and RA Wessel, I*nteractions between EU Law and International Law: Juxtaposed Perspectives*, Edward Elgar Publishing, 2024, ch 5; as well as G Butler and RA Wessel (eds), *EU External Relations Law: The Cases in Context* (Hart Publishing, 2022).

[169] Case T-512/12, *Front Polisario* (n 113); Case C-104/16 P, *Front Polisario*, ECLI:EU:C:2016:973; Case C-266/16, *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, ECLI:EU:C:2018:118 [hereinafter, '*Western Sahara Campaign UK*'].

[170] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p 12.

[171]Case C-104/16 P, *Front Polisario* (n 169), paras 88 and 104-105. See also E Kassoti, 'The Compatibility of EU International Agreements Extending to Occupied Territories with International Law: Front Polisario and Western Sahara Campaign UK' in G Butler and RA Wessel (eds), *EU External Relations Law: The Cases in Context* (Hart Publishing, 2022).

[172] *Ibid,* para 106; emphasis added.

[173] *Western Sahara Campaign UK* (n 169), Opinion of AG Watelet, paras 151 and 182.

[174] Case C-363/18, *Organisation juive européenne and Vignoble Psagot Ltd v Ministre de l'Économie et des Finances*, ECLI:EU:C:2019:954. See also S Poli, 'Ensuring Respect for International Humanitarian Law Through Labelling Requirements: *OJE and Vignoble Psagot*' in G. Butler and R.A. Wessel (eds), *EU External Relations Law: The Cases in Context* (Hart Publishing, 2022).

[175] Emphasis added.

[176] *Policies and Practices of Israel* (n 1) para 268.

[177] *Policies and Practices of Israel* (n 1) para 267.

[178] *Policies and Practices of Israel* (n 1) para 268.

[179] *Policies and Practices of Israel* (n 1) para 274.

[180] *Policies and Practices of Israel* (n 1) para 275.
[181] *Policies and Practices of Israel* (n 1) para 276.
[182] *Policies and Practices of Israel* (n 1) para 277.
[183] *Policies and Practices of Israel* (n 1) para 278. As mentioned in Section 2.3.4 above, para 280 of the 2024 Advisory Opinion explicitly extends the obligation of non-recognition to all international organisations.
[184] *Policies and Practices of Israel* (n 1) para 278.
[185] *Policies and Practices of Israel* (n 1) para 279.
[186] A Neslen, 'EU "Bending" Rules to Allow Trade with Israeli Settlements, Leaked Report Shows', *The Intercept* (23 October 2024), available at https://theintercept.com/2024/10/23/eu-israel-settlements-trade-gaza/ (accessed 19 June 2025).
[187] This position was repeated in the EU Statement on its position with respect to the 13th meeting of the EU-Israel Association Council with Israel: see EU Council Document 6511/25 (24 February 2025).
[188] Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards (2013/C 205/05), Official Journal, C-205/9, p 9, 19 July 2013.
[189] Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, Official Journal, C 375, p 4, 12 November 2015.
[190] See, *generally, Firma Brita* (n 163).
[191] EU-Israel Association Agreement (n 3), art 29, para 1: 'The Parties agree to widen the scope of the Agreement to cover the right of establishment of firms of one Party in the territory of another Party and the liberalisation of the provision of services by one Party's firms to consumers of services in the other.'
[192] Arrangement between the EU and the Government of Israel concerning the implementation of Protocol 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, on the other part, Ref. TAXUD 267 1/60 (13 December 2004, available at https://taxation-customs.ec.europa.eu/document/download/77e0765a-b3fd-4c7a-9766-400f3b3d2680_en?filename=EU-Israel%20Technical%20Arrangement%20of%202005.pdf (accessed 19 June 2025).
[193] The list is available at https://taxation-customs.ec.europa.eu/document/download/7b0df9b7-cbdb-48aa-a98f-172ae9513336_en?filename=Settlements%20Zipcodes%20Final%20%28004%29.pdf (accessed 19 June 2025).
[194] The Israeli Government reimburses the extra costs for settlement exporters who are obligated to pay EU import duties, thus actively undermining the purpose of the Technical Arrangement, and protecting Israeli settlers and settlement enterprises against the consequences of falling outside the scope of the non-preferential trade; ACT Alliance EU, *Trading Away Peace: How Europe Helps Sustain Illegal Israeli Settlements* (October 2012), available at https://actalliance.eu/wp-content/uploads/2012/09/20120901_trading-away-peace.pdf (accessed 19 June 2025).
[195] https://trade.ec.europa.eu/access-to-markets/en/news/new-code-y864-goods-imported-eu-preferential-origin-israel-16-may-2023 (accessed 19 June 2025).
[196] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC1112(01)&from=FR (accessed 19 June 2025).
[197] Answers to questions raised by MP Kuzu, 21 October 2022; https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2022Z16157&did=2022D43213 (accessed 19 June 2025).
[198] Decision No 2/2005 of the EU-Israel Association Council of 22 December 2005 amending Protocol 4 to the Euro-Mediterranean Agreement, concerning the definition of the concept of originating products and methods of administrative cooperation, Official Journal, L 20, p 1, 24 January 2006.
[199] Hugh Lovatt and Mattia Toaldo, 'EU Differentiation and Israeli Settlements' (2015) 140 European Council on Foreign Relations, available at https://ecfr.eu/wp-content/uploads/EuDifferentiation-final3.pdf (accessed 19 June 2025), at 5.
[200] See EuMEP Report, 'Waiting for Settlement': Origin indication of Israeli settlement wines on sale in the EU, available at https://eumep.org/wp-content/uploads/EuMEP_research_settlement_product_origin_v2.pdf (accessed 19 June 2025); https://www.haaretz.com/israel-news/2019-11-13/ty-article/.premium/eu-fails-to-

enforce-requirement-to-label-settlement-products-study-shows/0000017f-ea2b-da9b-a1ff-ee6f8e400000 (accessed 19 June 2025).

[201] Though dated, the most recent numbers provided by the Israeli government to the World Bank in 2012 suggest that the EU imports from the settlements were valued at approximately €230 million per year: see ACT Alliance EU, *Trading Away Peace: How Europe Helps Sustain Illegal Israeli Settlements* (2012), available at https://actalliance.eu/wp-content/uploads/2012/09/20120901_trading-away-peace.pdf (accessed 19 June 2025).

[202] *Policies and Practices of Israel* (n 1) para 156.

[203] *Policies and Practices of Israel* (n 1) para 166; J-L Arcand and P Chen, 'The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above' (2022), available at https://unctad.org/system/files/official-document/gdsapp2022d1_en.pdf (accessed 19 June 2025); 'Israel to Ramp up Settlement Expansion in Occupied West Bank' *Al Jazeera* (18 June 2023), available at https://www.aljazeera.com/news/2023/6/18/israeli-minister-given-sweeping-settlement-building-powers (accessed 19 June 2025); 'Israel Plans 1,000-Unit Expansion for Occupied West Bank Settlement: NGO' *Al Jazeera* (17 February 2025), available at https://www.aljazeera.com/news/2025/2/17/israel-plans-1000-unit-expansion-for-occupied-west-bank-settlement-ngo (accessed 19 June 2025).

[204] See above, n 43 (Statement of Israeli Defence Ministry of 29 May 2025).

[205] See 2023 *Report on Israeli settlements in the occupied West Bank, including East Jerusalem (January December 2023)*, EEAS, 2 August 2024, available at https://www.eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/2023-report-israeli-settlements-occupied-west-bank-including-east-jerusalem-january-december-2023_en?utm_source=chatgpt.com (accessed 19 June 2025), as well as the UN Report *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan* (Report of the United Nations High Commissioner for Human Rights to Human Rights Council, 1 February 2024, available at https://docs.un.org/en/A/HRC/55/72 (accessed 19 June 2025)).

[206] *Policies and Practices of Israel* (n 1) para 278.

[207] UNGA, Resolution ES-10/24 (n 15), para 4.

[208] Y Al Tamimi, 'Implications of the ICJ Advisory Opinion for the EU-Israel Association Agreement', *EJIL: Talk!* (30 July 2024), available at https://www.ejiltalk.org/implications-of-the-icj-advisory-opinion-for-the-eu-israel-association-agreement/ (accessed 19 June).

[209] *Policies and Practices of Israel* (n 1) paras 122-123; *Construction of a Wall* (n 7) paras 132-135.

[210] Fourth Geneva Convention (n 32) art 55; Convention (IV) respecting the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910), 205 CTS 277, arts 46 and 55 [hereinafter, 'Hague Convention IV'].

[211] *Policies and Practices of Israel* (n 1) para 278.

[212] European Parliamentary Research Service, *EU-Israel Trade Relations* (Briefing No. 608727, European Parliament, 2017), available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608727/EPRS_BRI(2017)608727_EN.pdf (accessed 19 June 2025).

[213] See Action Document for "Regional EU-Israel cooperation in support of the Abraham Accords, and fight against antisemitism and fostering Jewish life" annexed to the Commission Implementing Decision on the financing of the 2023 action plan part III in favour of the Regional South Neighbourhood, available at https://enlargement.ec.europa.eu/system/files/2023-11/C_2023_8324_F1_ANNEX_EN_V2_P1_3131129.PDF (accessed 19 June 2025); and Action Document for Support to the European Neighbourhood Policy Action Plan with Israel - 2024 annexed to the Commission Implementing Decision on the Special Measure in favour of Israel for 2024, https://enlargement.ec.europa.eu/document/download/59b502da-4e49-45a0-8bde-0ad156141316_en?filename=C_2024_8291_F1_ANNEX_EN_V3_P1_3769833.PDF (accessed 19 June 2025).

[214] See 2013 *Guidelines on the Eligibility of Israeli Entities and Their Activities in the Territories Occupied by Israel Since June 1967* (n 188), point 6(a).

[215] *Ibid*, point 15. See also Neth-ER, 'EU's scientific ties with Israel under threat', available at https://neth-er.eu/onderzoek/eu-s-scientific-ties-with-israel-under-threat (accessed 19 June 2025).

[216] In respect of Horizon Europe, see EU-Israel Agreement on the participation of Israel in the Union Programme 'Horizon Europe—the Framework Programme for Research and Innovation', (2022/L 95/143), Official Journal, L-95/144, p 9, 23 March 2022.

[217] European Commission, Directorate-General for Research and Innovation, 'EU-Israel Research and Innovation Collaboration', Press Release (accessed 19 June 2025).

[218] See European Commission, 'Financial Transparency System - Analyse' [Financial Transparency System], available at https://ec.europa.eu/budget/financial-transparency-system/analysis.html (accessed 19 June 2025). The data are also available in a different format, but over a longer period of time, with fewer filters at: https://cordis.europa.eu/search?q=relatedRegion%2Fregion%2FeuCode%3D%27IL%27%20AND%20startDate%3E%3D2023-10-07&p=1&num=10&srt=Relevance:decreasing (accessed 19 June 2025). In the light of the 2013 Guidelines, the data have been cross-referenced with the reports of 'Who Profits', a research centre that provides data on private sector activity in the OPT. See 'Who Profits - The Israeli Occupation Industry' (*Who Profits - The Israeli Occupation Industry*) <https://www.whoprofits.org/> (accessed 19 June 2025).

[219] In order of amount of funds received: Weizmann Institute of Science, Tel Aviv University, The Hebrew University of Jerusalem, Technion – Israel Institute of Technology, Bar Ilan University, Ben-Gurion University
of the Negev, University of Haifa, Reichman University CC; see Financial Transparency System database, *ibid*.

[220] Seven research institutions and universities claim the highest share of funding. In order, these are Tel Aviv University, The Hebrew University of Jerusalem, Weizmann Institute of Science, Technion – Israel Institute of Technology, Weizmann Institute of Science LTD, and Bar-Ilan University. See Financial Transparency System database, *ibid*.

[221] Statewatch, *European money for the war in Gaza: How EU research funding supports the Israeli arms industry* (available at https://www.statewatch.org/analyses/2024/european-money-for-the-war-in-gaza-how-eu-research-funding-supports-the-israeli-arms-industry/#_ftn18 (accessed 19 June 2025)).

[222] Haaretz, 'Israeli University to Host Israeli Army Base on Campus' (14 April 2019), https://www.haaretz.com/israel-news/2019-04-14/ty-article/.premium/hebrew-university-to-host-israeli-army-base-on-campus/0000017f-dbe6-d856-a37f-ffe6bf330000 (accessed 19 June 2025).

[223] The data are available at https://opensecuritydata.eu (accessed 19 June 2025).

[224] Federica Marsi, 'EU Research Funds Flow to Israel despite Outrage over Gaza War', *Al Jazeera* (18 December 2024), available at https://www.aljazeera.com/news/2024/12/18/eu-horizon-funding-israel (accessed 19 June 2025).

[225] Article 52(3) of the First Additional Protocol to the Geneva Conventions stipulates only that if doubt exists as to the civilian or military character of a target, it shall be presumed not to be used for military purposes, which suggests that if being used for military operations, such a 'dual-use' object can be a legitimate target of military operations. See further Hernández, *International Law* (n 11) 440.

[226] European Scholars for Human Rights, 'Thousands of European Academics Ask for the Termination of European Support for Israeli Academia – Aurdip', AURDIP (30 July 2024), available at https://aurdip.org/en/thousands-of-european-academics-ask-for-the-termination-of-european-support-for-israeli-academia/ (accessed 19 June 2025). See also Al Jazeera, *EU research funds flow to Israel despite outrage over Gaza war* (available at https://www.aljazeera.com/news/2024/12/18/eu-horizon-funding-israel (accessed 19 June 2025)).

[227] According to data available in 'Financial Transparency System - Analysis', available at https://ec.europa.eu/budget/financial-transparency-system/analysis.html (accessed 19 June 2025), IAI attracted €5.33 million in funding through Horizon 2020 and Horizon Europe.

[228] See 'Financial Transparency System - Analysis', *ibid*.

[229] See further *Partners in Crime: EU complicity in Israel's genocide in Gaza* (available at https://www.tni.org/en/publication/partners-in-crime-EU-complicity-Israel-genocide-Gaza (accessed 19 June 2025)), at 30-32.

[230] Elbit Systems received an amount of €3.86 million in funding through Horizon 2020 and Horizon Europe: see 'Financial Transparency System - Analysis' (n 227). According to 'Who Profits - The Israeli Occupation Industry - Elbit Systems', available at https://www.whoprofits.org/companies/company/3794?elbit-systems (accessed 19 June 2025), Elbit Systems is a major Israeli military technology and electronic firm which

provides surveillance and security equipment integral to controlling Palestinians in the West Bank and Gaza. It supplied the Israeli military with detection fences, cameras, UAVs (drones), and other systems for monitoring movement at checkpoints and along the separation barrier. These technologies help enforce border control and limit the freedom of movement of Palestinian, while simultaneously enabling military operations in the OPT.

[231] IBM Israel—Science & Technology Ltd received €8.75 million in funding through Horizon 2020 and Horizon Europe: see 'Financial Transparency System - Analysis', *ibid.* According to 'Who Profits - The Israeli Occupation Industry - IBM', available at https://www.whoprofits.org/companies/company/7236 (accessed 19 June 2025), the technology subsidiary operates the computing system that stores biometric information on Palestinians living in the OPT on behalf of the Israeli Population Registry. The data in stored in the registry is systematically used for the implementation of discriminatory policies against Palestinians who are being given different rights under Israeli control.

[232] The Israeli subsidiary of Motorola Solutions received €3.52 million in funding through Horizon 2020 and Horizon Europe: see 'Financial Transparency System - Analysis' *ibid.* According to 'Who Profits - The Israeli Occupation Industry - Motorola Solutions', available at https://www.whoprofits.org/companies/company/3808?motorola-solutions (accessed 19 June 2025), Motorola Solutions provides communications infrastructure and advanced surveillance systems for Israeli security forces and settlements in the West Bank. Its 'MotoEagle' perimeter intrusion detection system is used in certain settlements, enabling round-the-clock monitoring of Palestinian movement. The company's technologies also support Israeli military and police operations at checkpoints and along the separation barrier, further entrenching control over Palestinian mobility.

[233] Siemens received an amount of €0.99 million in funding through Horizon 2020 and Horizon Europe: see 'Financial Transparency System - Analysis', *ibid.* According to 'Who Profits - The Israeli Occupation Industry – Siemens', available at https://www.whoprofits.org/companies/company/3958?siemens (accessed 19 June 2025). Siemens is involved in various infrastructure projects in Israel that extend into the OPT, including potential roles in railway or energy ventures crossing the Green Line. The company has provided technology and equipment used in constructing or maintaining systems that service illegal settlements in the West Bank. By supplying infrastructure components within these projects, Siemens' operations facilitate and normalize Israel's continued presence in occupied Palestinian land.

[234] Mehadrin's contracted amount equalled €0.26 million across Horizon 2020 and Horizon Europe: see 'Financial Transparency System - Analysis', *ibid.* According to 'Who Profits - The Israeli Occupation Industry - Mehadrin', available at https://www.whoprofits.org/companies/company/4108? (accessed 19 June 2025), The company is Israel's largest grower and exporter of fruits and vegetables and operates in settlements within the West Bank, particularly the Jordan Valley. It cultivates and packages produce, such as citrus and dates, on land seized from Palestinians and employs water resources denied to local communities.

[235] Teva received €0.26 million across Horizon 2020 and Horizon Europe: see Financial Transparency System, *ibid.*. According to 'Who Profits - The Israeli Occupation Industry – Teva', available at https://www.whoprofits.org/companies/company/4212?teva-pharmaceutical-industries (accessed 19 June 2025), the company enjoys a dominant position in the Israeli pharmaceutical industry and the Israeli occupation of Palestinian land allows them to exploit the Palestinian markets.

[236] *Horizon Europe: Israeli Military/Dual Use Technology Companies* (available at https://complicitymap.eu/military/IL/ (accessed 19 June 2025)).

[237] See e.g. 'Common messages aimed at raising awareness among EU citizens and business regarding involvement in financial and economic activities in the settlements', EEAS, available at https://www.eeas.europa.eu/sites/default/files/documents/2024/EEAS_Common_Messages_for_EU_citizens_and_businesses.pdf (accessed 19 June 2025).

[238] 'BIONDVAX UNIVERSAL FLU VACCINE (IDFF)', European Investment Bank, available at https://www.eib.org/en/projects/all/20150572 (accessed 19 June 2025); BiondVax Pharmaceuticals Ltd, 'BiondVax and European Investment Bank Sign Definitive Amendment Extending Maturity of Loan until December 2027 with Additional Terms in Support of BiondVax's New Strategy', available at https://www.prnewswire.com/news-releases/biondvax-and-european-investment-bank-sign-definitive-amendment-extending-maturity-of-loan-until-december-2027-with-additional-terms-in-support-of-biondvaxs-new-strategy-301603463.html (accessed 19 June 2025).

[239] Reuters, 'European Investment Fund Makes First Equity Investment in Israel' Reuters (13 September 2018), available at https://www.reuters.com/article/business/media-telecom/european-investment-fund-makes-first-equity-investment-in-israel-idUSL5N1VZ304/ (accessed 19 June 2025).
[240] Answer given by Ms Gabriel on behalf of the European Commission, 16 April 2024, available at https://www.europarl.europa.eu/doceo/document/E-9-2021-000497-ASW_EN.html (accessed 19 June 2025).
[241] OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, 2023).
[242] Lama Almoayed, 'How the Largest Multilateral Development Bank Finances Conflict', *Accountability Console* (6 August 2024), available at https://www.accountabilityconsole.com/newsletter/articles/how-the-largest-multilateral-development-bank-finances-conflict/ (accessed 19 June 2025).
[243] OHCHR, 'Database of Business Enterprises Pursuant to Human Rights Council Resolutions 31/36 and 53/25', available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/database-hrc3136 (accessed 19 June 2025). BNP Paribas has reportedly invested €5 billion in companies supplying military equipment to Israel and remains the only European bank to continue financing Elbit Systems, a company involved in the unlawful Israeli settlements and a Horizon 2020 fund recipient. See also *Don't Buy into Occupation: European Financial Institutions' Continued Complicitly in the Illegal Israeli Settlement Enterprise* (3rd edn, 2023), available at https://dontbuyintooccupation.org/wp-content/uploads/2023/12/2023_DBIO-III-Report_11-December-2023.pdf (accessed 19 June 2025).
[244] See https://www.eib.org/en/projects/all/20230550 (accessed 19 June 2025).
[245] 'Database of Business Enterprises Pursuant to Human Rights Council Resolutions 31/36 and 53/25', OHCHR, available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/database-hrc3136 (accessed 19 June 2025).
[246] *Policies and Practices of Israel* (n 1) paras 277, 279.
[247] *Policies and Practices of Israel* (n 1) paras 155 and 270.
[248] *Policies and Practices of Israel* (n 1) para 150.
[249] *Policies and Practices of Israel* (n 1) para 151.
[250] *Policies and Practices of Israel* (n 1) paras 226-229.
[251] *Policies and Practices of Israel* (n 1) paras 278–9.
[252] Regulation (EU) 2018/1806, Official Journal, L 303/39 (14 November 2018). In Annex II, there is a list of countries whose nationals are exempt from the requirement to hold a visa, which includes Israel.
[253] EU Council, 'EU Visa Agreements with non-EU Countries' available online at https://www.consilium.europa.eu/en/infographics/eu-visa-agreements-with-non-eu-countries/ (accessed 19 June 2025).
[254] See Council Decision (EU) 2022/1500 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (6 September 2022), Official Journal, L 234I (accessed 19 June 2025).
[255] At the time of publication of this Expert Report, the EU-Israel Agreement was not found through the usual sources, including the EU's own list: see https://eur-lex.europa.eu/EN/legal-content/summary/visa-waiver-agreements.html (accessed 19 June 2025).
[256] A summary of the conditions for suspension of visa waiver or visa facilitation agreements is available online at https://www.consilium.europa.eu/en/policies/eu-visa-policy/#visafree (emphasis added; accessed 19 June 2025). At present the Council only enumerates three conditions: non-reciprocity or 'lack of alignment' with the EU; the operation of an 'investor citizenship scheme'; and 'hybrid threats and deficiencies in document security legislation or procedures'. None are apposite in the present context.
[257] Regulation (EU) 2018/1240, Official Journal, L 238 (19 September 2018) Art 17(2)(f).
[258] See European Commission, 'Press Release: EU guidance on the handling of visa applications from residents of Ukraine's Donetsk and Luhansk regions' (3 October 2019), available online at : https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_19_5975/IP_19_5975_EN.pdf (accessed 19 June 2025).
[259] See Commission Implementing Decision (EU) 2023/1061, Official Journal, C/2023/3468 (31 May 2023), according to which travel documents of the Russian Federation are not accepted if issued in or to residents of: the Autonomous Republic of Crimea and the city of Sevastopol after 18 March 2014; the Donetsk region after

24 April 2019; the Luhansk region after 24 April 2019; the Kherson region after 25 May 2022; the Zaporizhzhia region after 25 May 2022; the Kharkiv region after 1 August 2022; Abkhazia after 26 August 2008; South Ossetia after 26 August 2008.

[260] Decision (EU) 2022/2512 on the non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia, Official Journal, L 326 (21 December 2022).

[261] Full title: 'Draft Agreement between the European Union, of the one part, and the Government of the State of Israel, of the other part, on the exchange of Personal Data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of Israel competent for fighting serious crime and terrorism' (2022).

[262] See EP question and Commission answer: https://www.europarl.europa.eu/doceo/document/P-9-2020-006668_EN.html; as well as: https://www.btselem.org/settlements/20191030_israeli_waste_to_energy_plant_to_be_established_unlawfully_in_west_bank (accessed 19 June 2025).

[263] *Policies and Practices of Israel* (n 1) paras 278–279.

[264] See European Council on Foreign Affairs, *Differentiation Tracker*, available at https://ecfr.eu/special/differentiation-tracker/ (accessed 19 June 2025).

[265] Agreement on film co-production between the Kingdom of Spain and the Government of the State of Israel (signed 17 December 2012, entered into force 30 June 2016), 3131 UNTS 79.

[266] See Belgian Chamber of Representatives, Relations extérieures (Magritte) : Note de politique générale - 2294/17 (Wilmès Sophie), available at https://media.lachambre.be/meeting/55-013336-U2223?offset=15676 (accessed 19 June 2025).

[267] See Common messages aimed at raising awareness among EU citizens and businesses regarding involvement in financial and economic activities in the settlements (2013), available athttps://www.eeas.europa.eu/eeas/common-messages-aimed-raising-awareness-among-eu-citizens-and-businesses-regarding-involvement_en (accessed 19 June 2025); as well as Hugh Lovatt, 'EU member state business advisories on Israeli settlements', ECFR (2016), available at https://ecfr.eu/article/eu_member_state_business_advisories_on_israel_settlements/ (accessed 19 June 2025).

[268] Regulation (EU) 1219/2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries (12 December 2012), Official Journal, L 351, p 40, 12 December 2012.

[269] See https://investmentpolicy.unctad.org/international-investment-agreements/countries/102/israel (accessed 19 June 2025).

[270] https://www.ohchr.org/en/business/bhr-database (accessed 19 June 2025).

[271] 'Database of Business Enterprises Pursuant to Human Rights Council Resolutions 31/36 and 53/25', OHCHR, available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/database-hrc3136 (accessed 19 June 2025).

[272] The financial institutions include banks, asset managers, insurance companies, and pension funds. The companies are: Airbnb, Alon Blue Square, Alstom, Altice International, Ashtrom Group, Axel Springer, Bank Hapoalim, Bank Leumi, Bezeq Group, Booking Holdings, Bright Dairy & Food, Construcciones y Auxiliar de Ferrocarriles (CAF), Carlsberg, Carrefour, Caterpillar, Cellcom Israel, Cemex, Cisco Systems, CNH Industrial, Danya Cebus, Delek Group, Delta Galil Industries, eDreams ODIGEO, Elbit Systems, Electra Group, Expedia Group, Hamat Group, Heidelberg Materials, Hewlett Packard Enterprise (HPE), HikVision, Hilan, Hyundai Heavy Industries, IBM, Israel Chemicals (ICL Group), Israel Discount Bank, MAN Group, Matrix IT, Mivne Group, Mizrahi Tefahot Bank, Motorola Solutions, Orbia, Partner Communications, Paz Oil Company, Rami Levy Chain Stores Hashikma Marketing 2006, RE/MAX Holdings, Shapir Engineering and Industry, Shikun & Binui, Shufersal, Siemens, Syensqo, The Coca-Cola Company, TKH Group, Tripadvisor, TUI Group, Villar International, Vinci / SEMI, Volvo Group, WSP Global. See Don't Buy into Occupation, *Don't Buy into Occupation: Exposing the Financial Flows into Illegal Israeli Settlements* (4th edn, 2024), available at https://dontbuyintooccupation.org/wp-content/uploads/2024/11/2024_DBIO-IV-report.pdf (accessed 19 June 2025).

[273] Amounts stated in the report are in USD, 211 and 182 billion. Exchange rate conversion done on 10 June 2025. See *Don't Buy into Occupation: European Financial Institutions' Continued Complicitly in the Illegal*

Israeli Settlement Enterprise (3rd edn, 2023), available https://dontbuyintooccupation.org/wp-content/uploads/2023/12/2023_DBIO-III-Report_11-December-2023.pdf (accessed 19 June 2025), 4-7.

[274] *Policies and Practices of Israel* (n 1) para 277.

[275] UNGA Res ES-10/24 (n 15), para 5(a).

[276] See, *supra,* Section 2.3.4.

[277] Directive 2024/1760 of the European Parliament and Council, Official Journal, L 1760 (5 July 2024) ('CSDDD').

[278] https://finance.ec.europa.eu/news/omnibus-package-2025-04-01_en (accessed 19 June 2025).

[279] United Nations, 'Guiding Principles on Business and Human Rights' (2011) UN Doc A/HRC/17/31.

[280] CSDDD (n 277) para 42.

[281] UNDP, 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide' (2022) https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide (accessed 19 June 2025).

[282] Danish Institute for Human Rights, *The EU Corporate Sustainability Due Diligence Directive* (2023), available at https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf (accessed 19 June 2025), 16.

[283] *Ibid*.

[284] See 'Position Paper of the Commission of Inquiry' (n 102), para 26.

[285] Arms Trade Treaty (signed 2 April 2013, entered into force 24 December 2014), 3013 UNTS 269.

[286] Council Decision (CFSP) of 29 May 2017 on Union outreach activities in support of the implementation of the Arms Trade Treaty, 2017/915/CFSP, Official Journal, L 139/38.

[287] Council Common Position of 8 December 2008 defining common rules governing control of exports of military technology and equipment, 2008/944/CFSP, Official Journal, L 335/99.

[288] In relation to settler violence after 7 October 2023, see Expert Opinion by Dr Alice Panepinto, 'Legal Responsibility of the Occupying Power under International Humanitarian Law (IHL) and International Human Rights Law (IHRL) for the displacements of Palestinian Communities in Area C due to settler violence', Norwegian Research Council, 22 March 2024, available at https://www.nrc.no/globalassets/pdf/legal-opinions/expert-opinion-on-settler-violence.pdf (accessed 19 June 2025).

[289] *Policies and Practices of Israel* (n 1) para 150.

[290] *Policies and Practices of Israel* (n 1) para 152. See further UNHCHR, 'Israel settlements in the Occupied Palestinian Territory', Report of 15 March 2023, UN Doc A/HRC/52/76, paras 36, 41.

[291] *Policies and Practices of Israel* (n 1) para 268.

[292] *Policies and Practices of Israel* (n 1) paras 274, 277.

[293] The text below is based on the Summary provided by the Supreme Court of 29 November 2024, available at https://www.hogeraad.nl/actueel/nieuwsoverzicht/2024/november/advocate-general-recommendation-to-supreme-court-court-appeal-decision/#:~:text=The%20Hague%20Court%20of%20Appeal's,the%20opinion%20he%20delivered%20today (accessed 19 June 2025).

[294] See SC Resolution 478 (n 76); and 'Status of Jerusalem', General Assembly Resolution ES-10/19 (21 December 2017), in which the UN General Assembly voted 128:9:35 also to call upon States not to establish diplomatic missions in any sector of the historic city of Jerusalem.

[295] For example, see the Application of the State of Palestine in *Relocation of the United States Embassy to Jerusalem* (n 25). The United States' Embassy in Jerusalem is in the Talpiot neighbourhood located beyond the 'Green Line' that demarcated Israel's pre-1967 borders.

[296] Allegedly, a more detailed note was prepared by the Head of the EEAS Legal Service in August 2024, which does acknowledge the need to review existing policies and legal instruments.

[297] Answer given by Mr Šefčovič on behalf of the European Commission (15 January 2025), available at https://www.europarl.europa.eu/doceo/document/E-10-2024-002150-ASW_EN.html#:~:text=Answer%20given%20by%20Mr%20%C5%A0ef%C4%8Dovi%C4%8D%20on%20behalf%20of%20the%20European%20Commission&text=The%20EU%20took%20good%20note,East%20Jerusalem%5B1%5D (accessed 19 June 2025).

[298] EU position for the Association Council's 13th meeting (n 187).

[299] *Ibid.*

[300] Governmental reaction, AIV briefadvies 'Naar een nieuwe koers voor Nederland in het Israëlisch-Palestijnse conflict', 9 December 2024.

[301] Question by MP Van Baarle DENK on the AO Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory including East Jerusalem (4 September 2024), available at https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2024Z12914&did=2024D31525 (accessed 19 June 2025).

[302] Grinne N Aodha, 'Irish Government Urged to Enact Trade Ban with Israeli Settlements within a Year', *The Independent* (10 February 2025), available at https://www.independent.co.uk/news/uk/home-news/micheal-martin-irish-israeli-bill-palestinian-b2695329.html (accessed 19 June 2025).

[303] https://www.ontheditch.com/lt-would-be-a-political-choice-attorney-general/ (accessed 19 June 2025).

[304] https://www.gov.ie/en/department-of-foreign-affairs/press-releases/statement-by-t%c3%a1naiste-miche%c3%a1l-martin-on-the-occupied-territories-bill/ (accessed 19 June 2025).

[305] https://www.irishtimes.com/politics/2025/05/27/tanaiste-hopes-other-eu-countries-will-join-ireland-in-planning-ban-on-trade-from-occupied-palestinian-territories/ (accessed 19 June 2025).