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QRP

# JURISDICTION

# Recent Jurisdiction Relevant for the Contexts of Migration and Displacement
# A Compilation of Court Cases[1]

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*This compilation of case law samples, summarizes and refers to recent jurisdiction of international relevance for the application of legal standards in the field of refugee and complementary protection.*

## 1. United Nations

### 1.1 International Court of Justice, Request for an Advisory Opinion in respect to climate change submitted by the General Assembly of the United Nations (A/77/L.58), No. 2023/20, and Call to a public hearing, Press Release of August 16, 2024.

Climate change develops into a main root cause for migration (see the editorial of this issue (Emmert, 2024). More and more courts get involved in individual cases or as illustrated below and in section 2.1 in requests for advisory opinions. The first is on request by the UN General Assembly (UNGA Res. 77/276) and summarized by the Court as such

> "On 29 March 2023, the General Assembly of the United Nations adopted resolution A/RES/77/276 in which, referring to Article 65 of the Statute of the Court, it requested the International Court of Justice to give an advisory opinion on "the obligations of States in respect of climate change". The following questions are put to the Court by the General Assembly in its resolution:
>
> > "Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,
> >
> > (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;


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> (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
>
> (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
>
> (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

Meanwhile, the time limit for written statements by the United Nations and its Member States has expired, a number of organizations have been authorized to participate and the Court scheduled the public hearings to open on 2/12/2024 (International Court of Justice, 2023).

### 1.2 International Court of Justice, Advisory Opinion of 19/7/2024 in respect to the Legal Consequences Arising form the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem

On 30/12/2022 the United Nations General Assembly had adopted Resolution 77/247 in respect to Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem. Among others, it requested an advisory opinion from the International Court of Justice:

> "18. Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 6 5 of the Statute of the Court, to render an advisory opinion on the following questions, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004:
>
> (a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?
>
> (b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?" (UNGA Res. 77/247).

The International Court of Justice delivered its advisory opinion on July 19, 2024. The Court, first, argues "that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly (paras 30-49). The Court confirms that the Palestinian territories are still to be considered under *occupation* (paras. 86-94). Therefore, the applicable rules and principles of international law include the prohibition of the acquisition of territory by threat or use of force and the right of peoples to self-determination (para. 95), humanitarian law and human rights obligations (para. 96-101). "[T]he Oslo Accords cannot be understood to detract from Israel's obligations under the pertinent rules of international law applicable in the Occupied Palestinian Territory" (para. 102).

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The Court then puts Israel's policies and practices in the occupied Palestinian territory under scrutiny. It starts with stressing: "The fact that an occupation is prolonged does not in itself change its legal status under international humanitarian law." (para. 109).

> "The fact of the occupation cannot result in the transfer of title, regardless of the duration of the occupation. Therefore, the passage of time does not release the occupying Power from the obligations that it bears, including the obligation to refrain from exercising acts of sovereignty, nor does it expand the limited and enumerated powers that international humanitarian law vests in the occupying Power" (para. 108).

*Settlement Policy*

The ICJ then turns to the Israeli s*ettlement policy* that is seen as a continuum "throughout its occupation of the Occupied Palestinian Territory" (para. 113). It obseres a violation of Art. 49 para. 6 of the Fourth Convention that requires: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

Israel's policy of *confiscation and requisitioning of land*, is found to be in contradiction of Art. 46, 52 and 55 Hague Regulations, calling for protection of private property (Art. 46), limiting requisitions (Art. 52) and establishing the "duty to administer public property for the benefit of the local population or, exceptionally to meet the demands of army of occupation" (Art. 55) (para. 122)s

Regarding the Israeli *exploitation of natural resources* of the occupied territories, the Court finds more violations of international law:

> "On the basis of the evidence before it, the Court considers that Israel's use of the natural resources in the Occupied Palestinian Territory is inconsistent with its obligations under international law. By diverting a large share of the natural resources to its own population, including settlers, Israel is in breach of its obligation to act as administrator and usufructuary. In this connection, the Court recalls that the transfer by Israel of its own population to the Occupied Palestinian Territory is contrary to international law (see paragraph 119 above). Therefore, in the Court's view, the use of natural resources in the occupied territory cannot be justified with reference to the needs of that population. The Court further considers that, by severely restricting the access of the Palestinian population to water that is available in the Occupied Palestinian Territory, Israel acts inconsistently with its obligation to ensure the availability of water in sufficient quantity and quality (Article 55 of the Fourth Geneva Convention)" (para. 133).

The Opinion recalls that the occupying Power must in principle *respect the laws in force* in the occupied territory unless absolutely prevented (Art. 43 Hague Regulations), namely "to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them" (Art. 64 of the Fourth Geneva Convention) (para. 134). The Court concludes:

> "In the present case, the Court is not convinced that the extension of Israel's law to the West Bank and East Jerusalem is justified under any of the grounds laid down in the second paragraph of Article 64 of the Fourth Geneva Convention. In this connection, the Court recalls that the transfer by Israel of its civilian population to the West Bank and East Jerusalem is contrary to the Fourth Geneva Convention (see paragraph 119 above); therefore, it cannot be invoked as a ground for regulation in these territories. Furthermore, the comprehensive application of Israeli law in East Jerusalem, as well as its application in relation to settlers throughout the West Bank,

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> cannot be deemed "essential" for any of the purposes enumerated in the second paragraph of Article 64 of the Fourth Geneva Convention.
>
> The arrangements agreed upon between Israel and the PLO in the Oslo Accords point in the same direction. […] It follows that Israel may not rely on the Oslo Accords to exercise its jurisdiction in the Occupied Palestinian Territory in a manner that is at variance with its obligations under the law of occupation" (paras. 139, 140).

Related to *forced displacement of the Palestinian population*,

> "[t]he Court observes that the large-scale confiscation of land and the deprivation of access to natural resources divest the local population of their basic means of subsistence, thus inducing their departure. Furthermore, a series of measures taken by Israeli military forces has exacerbated the pressure on the Palestinian population to leave parts of the Occupied Palestinian Territory against their will (see paragraphs 180-229 below)" (para 143).
>
> "The Court considers that Israel's policies and practices, which it discusses in greater detail below (see paragraphs 180-229), including its forcible evictions, extensive house demolitions and restrictions on residence and movement, often leave little choice to members of the Palestinian population living in Area C but to leave their area of residence. The nature of Israel's acts, including the fact that Israel frequently confiscates land following the demolition of Palestinian property for reallocation to Israeli settlements, indicates that its measures are not temporary in character and therefore cannot be considered as permissible evacuations. In the Court's view, Israel's policies and practices are contrary to the prohibition of forcible transfer of the protected population under the first paragraph of Article 49 of the Fourth Geneva Convention" (para. 147).

The Court further notes that Israel's settlement policy has given *rise to violence by settlers and security forces against Palestinians* (para. 148).

> "The Court considers that the violence by settlers against Palestinians, Israel's failure to prevent or to punish it effectively and its excessive use of force against Palestinians contribute to the creation and maintenance of a coercive environment against Palestinians. In the present case, on the basis of the evidence before it, the Court is of the view that Israel's systematic failure to prevent or to punish attacks by settlers against the life or bodily integrity of Palestinians, as well as Israel's excessive use of force against Palestinians, is inconsistent with the obligations identified in paragraph 149 above" (para. 154).

Summing up, it concludes:

> "In light of the above, the Court reaffirms 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" (para. 154).

*Annexation of the Occupied Palestinian Territory*

The ICJ then looks at the question of annexation and defines the term:

> "By the term "annexation", in the present context, the Court understands the forcible acquisition by the occupying Power of the territory that it occupies, namely its integration into the territory of the occupying Power. Annexation, then, presupposes the intent of the occupying Power to exercise permanent control over the occupied territory" (para.158).

It stresses that the law requires the occupier to preserve the status quo in the occupied territory.

> "Regardless of the circumstances in which the occupation was brought about, the fact of the occupation alone cannot confer sovereign title to the occupying Power. Consequently, conduct

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> by the occupying Power that displays an intent to exercise permanent control over the occupied territory may indicate an act of annexation" (para. 159).
>
> "[The Court is of the view that Israel's policies and practices, including the maintenance and expansion of settlements, the construction of associated infrastructure, including the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel's capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel's control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank. These policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground. Consequently, the Court considers that these policies and practices amount to annexation of large parts of the Occupied Palestinian Territory" (para. 173).

The ICJ confirms that any annexation of occupied territory would be unlawful, deriving this principle from the non-intervention principle of Art. 2 para. 4 UN Charta and the so called Friendly Relations Declaration of the UN General Assembly, Res. 2625 (XXV) of 24/10/1970 (para. 175), and pointing to several relevant resolutions of the Security Council (para. 176) and the General Assembly (para. 177) emphasizing the principle. Thus, "the Court has found that Israel's policies and practices amount to annexation of large parts of the Occupied Palestinian Territory" (para. 179).

*Discriminatory Legislation and Measures*

At the outset, the Court refers to a vast set of norms of international law prohibiting discrimination and giving proof of a clause of customary international law (para. 185-189).

> "Common to all of these provisions is the concept of differential treatment between persons belonging to different groups. The Court observes, in this connection, that the existence of the Palestinian people is not at issue. Thus, in the Court's view, differential treatment of Palestinians can give rise to discrimination" (para. 190).
>
> "However, not all differentiation of treatment constitutes discrimination. Accordingly, if the Court affirms the existence of differential treatment, it must, at a second stage, determine whether this differentiation of treatment is nevertheless justified, in that it is reasonable and objective and serves a legitimate public aim" (para. 191).

After investigating the different aspects in details, it comes to the following conclusions:

- *Residence permit policy:*

> "In the Court's view, the differential treatment imposed by Israel's residence permit policy in East Jerusalem is not justified, because it does not serve a legitimate public aim. In particular, the permit system is implemented as a result and in furtherance of Israel's annexation of East Jerusalem, which the Court has already considered to be unlawful (see paragraph 179 above). The Court thus considers that no differential treatment can be justified with reference to the advancement of Israel's settlement policy or its policy of annexation" (para. 196).
>
> " In light of the above, the Court is of the view that Israel's residence permit policy amounts to prohibited discrimination under Articles 2, paragraph 2, 23 and 26 of the ICCPR, and Articles 2, paragraph 2, and 10, paragraph 1, of the ICESCR" (para. 197).

- *Restrictions on movement:*

> "On the basis of the evidence before it, the Court considers that, through its practice of restricting movement, Israel differentiates in its treatment of Palestinians with reference to their freedom of movement. With respect to the question of the potential justification of Israel's differentiation in treatment, the Court has taken note of Israel's security concerns, as identified by some

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participants in the proceedings, that might justify restrictions on movement. To the extent that such concerns pertain to the security of the settlers and the settlements, it is the Court's view that the protection of the settlers and settlements, the presence of which in the Occupied Palestinian Territory is contrary to international law, cannot be invoked as a ground to justify measures that treat Palestinians differently. Moreover, the Court considers that Israel's measures imposing restrictions on all Palestinians solely on account of their Palestinian identity are disproportionate to any legitimate public aim and cannot be justified with reference to security" (para. 205).

"In the Court's view, the entire régime of restrictions on the movement of Palestinians throughout the Occupied Palestinian Territory has a discriminatory effect on their enjoyment of these rights, as well as to the right to be protected from arbitrary or unlawful interference with family life, as guaranteed under Article 17 of the ICCPR. In light of the above, the Court is of the view that Israel's policies restricting freedom of movement amount to prohibited discrimination under Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD" (para. 207).

- *Demolition of property:*

"Israel's practice of punitive demolitions of Palestinian property, being contrary to its obligations under international humanitarian law, does not serve a legitimate public aim. The Court considers that, because this practice treats Palestinians differently without justification, it amounts to prohibited discrimination under Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD" (para. 213).

"On the basis of the evidence before it, the Court considers that Israel's planning policy in relation to the issuance of building permits, and its practice of property demolition for lack of a building permit, constitutes differential treatment of Palestinians in the enjoyment of their right to be protected from arbitrary or unlawful interference with privacy, family and home, as guaranteed under Article 17, paragraph 1, of the ICCPR.

In the Court's view, this practice cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim. In particular, there is nothing in the material before the Court to indicate that the refusal of building permits to Palestinians, or the demolition of structures for lack of such permits, at such a sweeping scale, serves a legitimate aim. This conclusion is further supported by the fact that, in so far as Israel grants building permits for settlers and settlements, it acts in breach of international law (see paragraphs 119 and 155 above).

In light of the above, the Court considers that Israel's planning policy in relation to the issuance of building permits, and in particular its practice of property demolition for lack of a building permit, which treats Palestinians differently from settlers without justification, amounts to prohibited discrimination, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD" (para. 220-222).

- *Conclusion:*

In the light of these findings, the ICJ concludes:

"that a broad array of legislation adopted and measures taken by Israel in its capacity as an occupying Power treat Palestinians differently on grounds specified by international law. As the Court has noted, this differentiation of treatment cannot be justified with reference to reasonable and objective criteria nor to a legitimate public aim (see paragraphs 196, 205, 213 and 222). Accordingly, the Court is of the view that the régime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on, inter alia, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD.

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It finally turns to the allegation of a number of parties calling Israel's policies segregation or apartheid according to Art. 3 CERD. The court confirms racial segregation and therefore already for this reason a breach of said provision relieving it to further argue about the alternative normative element of apartheid:

> A number of participants have argued that Israel's policies and practices in the Occupied Palestinian Territory amount to segregation or apartheid, in breach of Article 3 of CERD.
>
> Article 3 of CERD provides as follows: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." This provision refers to two particularly severe forms of racial discrimination: racial segregation and apartheid.
>
> The Court observes that Israel's policies and practices in the West Bank and East Jerusalem implement a separation between the Palestinian population and the settlers transferred by Israel to the territory.
>
> This separation is first and foremost physical: Israel's settlement policy furthers the fragmentation of the West Bank and East Jerusalem, and the encirclement of Palestinian communities into enclaves. As a result of discriminatory policies and practices such as the imposition of a residence permit system and the use of distinct road networks, which the Court has discussed above, Palestinian communities remain physically isolated from each other and separated from the communities of settlers (see, for example, paragraphs 200 and 219).
>
> The separation between the settler and Palestinian communities is also juridical. As a result of the partial extension of Israeli law to the West Bank and East Jerusalem, settlers and Palestinians are subject to distinct legal systems in the Occupied Palestinian Territory (see paragraphs 135-137 above). To the extent that Israeli law applies to Palestinians, it imposes on them restrictions, such as the requirement for a permit to reside in East Jerusalem, from which settlers are exempt. In addition, Israel's legislation and measures that have been applicable for decades treat Palestinians differently from settlers in a wide range of fields of individual and social activity in the West Bank and East Jerusalem (see paragraphs 192-222 above).
>
> The Court observes that Israel's legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities. For this reason, the Court considers that Israel's legislation and measures constitute a breach of Article 3 of CERD" (paras. 224-229).

*Self-determination*

Last but not least, the Court addresses the question of the effects of Israeli's policies and practices on the exercise of the Palestinian people's right to self-determination, "one of the essential principles of contemporary international law" and "owed *erga omnes*" (para. 231).

> "The Court considers that Israel, as the occupying Power, has the 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." (para. 237).

The Court then affirms violations of four significant elements of self-determination of particular relevance in the present case, namely territorial integrity, integrity as a people, the right to exercise permanent sovereignty over natural resources, and the right to freely determine its political status and to pursue its economic, social and cultural development.

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> "In addition to the injury inflicted on individual persons, the violation of Palestinians' rights — including the right to liberty and security of person, and the freedom of movement — has repercussions on the Palestinian people as a whole, frustrating its economic, social and cultural development. […] The Court thus considers that Israel's policies and practices obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development.
>
> "The prolonged character of Israel's unlawful policies and practices aggravates their violation of the right of the Palestinian people to self-determination. As a consequence of Israel's policies and practices, which span decades, the Palestinian people has been deprived of its right to self-determination over a long period, and further prolongation of these policies and practices undermines the exercise of this right in the future. For these reasons, the Court is of the view that Israel's unlawful policies and practices are in breach of Israel's obligation to respect the right of the Palestinian people to self-determination. The manner in which these policies affect the legal status of the occupation, and thereby the legality of the continued presence of Israel in the Occupied Palestinian Territory, is discussed below (see paragraphs 255-257)" (paras. 242, 243).

*Effects of Israel's Policies and Practices on the Legal Status of the Occupation*

The General assembly had also asked whether and, if so, the manner in which the policies and practices of Israel have affected the legal status of the occupation. In this regard, the Court concludes:

> "The Court considers 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.
>
> This illegality relates to the entirety of the Palestinian territory occupied by Israel in 1967. This is the territorial unit across which Israel has imposed policies and practices to fragment and frustrate the ability of the Palestinian people to exercise its right to self-determination, and over large swathes of which it has extended Israeli sovereignty in violation of international law. The entirety of the Occupied Palestinian Territory is also the territory in relation to which the Palestinian people should be able to exercise its right to self-determination, the integrity of which must be respected.
>
> Three participants have contended that agreements between Israel and Palestine, including the Oslo Accords, recognize Israel's right to maintain its presence in the Occupied Palestinian Territory, inter alia, in order to meet its security needs and obligations. The Court observes that these Accords do not permit Israel to annex parts of the Occupied Palestinian Territory in order to meet its security needs. Nor do they authorize Israel to maintain a permanent presence in the Occupied Palestinian Territory for such security needs.
>
> The Court emphasizes that the conclusion that Israel's continued presence in the Occupied Palestinian Territory is illegal does not release it from its obligations and responsibilities under international law, particularly the law of occupation, towards the Palestinian population and towards other States in respect of the exercise of its powers in relation to the territory until such time as its presence is brought to an end. It is the effective control of a territory, regardless of its legal status under international law, which determines the basis of the responsibility of a State for its acts affecting the population of the territory or other States (see Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West

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Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 54, para. 118)" (paras. 261-264).

*Legal Consequences for Israel*

The ICJ draws the following legal consequences for Israel:

- to end the illegal continued presence in the Occupied Palestinian Territory "as rapidly as possible" (para. 267).
- "to immediately cease all new settlement activity" (para. 268).
- "to repeal all legislation and measures creating or maintaining the unlawful situation, including those which discriminate against the Palestinian people in the Occupied Palestinian Territory, as well as all measures aimed at modifying the demographic composition of any parts of the territory" (para. 268).
- "to provide full reparation for the damage caused by its internationally wrongful acts to all natural or legal persons concerned. […] Reparation includes restitution, compensation and/or satisfaction" (para. 269)
    - "Restitution includes Israel's obligation to return the land and other immovable property, as well as all assets seized from any natural or legal person since its occupation started in 1967, and all cultural property and assets taken from Palestinians and Palestinian institutions, including archives and documents. It also requires the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence" (para. 270).
    - "In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons, and populations, where that may be the case, having suffered any form of material damage as a result of Israel's wrongful acts under the occupation" (para. 271).

*Legal Consequences for other States*

The ICJ draws the following legal consequences from obligations *erga omnes* violated by Israel for other States

- to cooperate with the United Nations to pronounce on the modalities required to ensure an end to Israel's illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination (para. 275).
- "not to recognize 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, except as agreed by the parties through negotiations" (para. 278)
- "to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967" encompassing 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

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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"
  - "to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory" (para. 278)
- "not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory" (para. 279)
- "not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory" (para. 279)
- "to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end" (para. 279)
- to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

*Legal Consequences for the United Nations*

Finally, the Court outlines the following legal consequences for the United Nations

- "not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory" (para. 280)
- "to distinguish in their dealings with Israel between the territory of Israel and the Occupied Palestinian Territory" (para. 280)
- "specifically 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" (para. 281).

# 2. America

## 2.1 Inter-American Court of Human Rights, Request for an Advisory Opinion on the Climate Emergency and Human Rights submitted by Chile and Colombia of January 9, 2023, OC-32, and Call for a public hearing, Order of the President of February 22, 2024.

Climate change becomes a dominant topic for juridical procedures not only on the universal level (cf. section 1.1) but also on the regional one. On January 9, 2023, the Republic of Chile and the Republic of Colombia presented to the Inter-American Court of Human Rights a request for advisory opinion on nothing less than

> "to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet" (Republic of Colombia & Republic of Chile, 2023).

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Outlining the climate emergency and its consequences from a human rights perspective and deriving from this the need for inter-American standards to accelerate the response to the climate emergency, the questions posed were manifold (Republic of Colombia & Republic of Chile, 2023; footnotes omitted):

> *A. Regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency*
>
> Bearing in mind the State duty of prevention and the obligation to guarantee the right to a healthy environment, together with the scientific consensus reflected in the reports of the Intergovernmental Panel on Climate Change (IPCC) concerning the severity of the climate emergency and the urgency and duty to respond adequately to its consequences, as well as to mitigate its pace and scale:
>
> 1. What is the scope of the State's duty of prevention with regard to climate events caused by global warming, including extreme events and slow onset events, based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5°C?
>
> 2. In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention? In this regard, what differentiated measures should be taken in relation to vulnerable populations or based on intersectional considerations?
>
> 2.A. What should a State take into consideration when implementing its obligations: (i) to regulate; (ii) to monitor and oversee; (iii) to request and to adopt social and environmental impact assessments; (iv) to establish a contingency plan, and (v) to mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency?
>
> 2.B. What principles should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities?
>
> *B. Regarding State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights*
>
> Taking into account the right of access to information and the obligations concerning the active production of information and transparency reflected in Article 13 and derived from the obligations under Articles 4(1) and 5(1) of the American Convention, in light of articles 5 and 6 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement):
>
> 1. What is the scope that States should give to their obligations under the Convention vis-à-vis the climate emergency, in relation to:
>
> i) Environmental information for every individual and community, including such information related to the climate emergency;
>
> ii) The climate adaptation and mitigation measures to be adopted to respond to the climate emergency and the impacts of such measures, including specific "just transition" policies for groups and individuals who are particularly vulnerable to the effects of global warming;
>
> iii) Responses to prevent, minimize and address economic and non-economic damage and losses associated with the adverse effects of climate change;

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iv) Production of information and access to information on greenhouse gas emissions, air pollution, deforestation, and short-lived climate forcers; analysis of activities and sectors that contribute to emissions, or other factors, and

v) Determination of human impacts, such as human mobility – migration and forced displacement – effects on health and on life, non-economic losses, etc.?

2. Pursuant to State obligations under the American Convention, to what extent does access to environmental information constitute a right the protection of which is necessary to guarantee the rights to life, property, health, participation, and access to justice, among other rights that are negatively affected by climate change?

*C. Regarding the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency Pursuant to Article 19 of the American Convention, in light of the corpus iuris of international human rights law, including article 12 of the Convention on the Rights of the Child, and recognizing the consensus of the scientific community which identifies children as the group that is most vulnerable in the long term to the imminent risks to life and well-being as a result of the climate emergency:*

1. What is the nature and scope of the obligation of a State Party to adopt timely and effective measures with regard to the climate emergency in order to ensure the protection of the rights of children derived from its obligations under Articles 1, 4, 5, 11 and 19 of the American Convention?

2. What is the nature and scope of a State Party's obligation to provide children with significant and effective means to express their opinions freely and fully, including the opportunity to initiate or, in any other way, to participate in any administrative or judicial proceedings concerning prevention of the climate change that represents a threat to their lives?

*D. Regarding State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency*

Based on Articles 8 and 25 of the American Convention, and taking into account that scientific research has indicated that there is a limit to the amount of greenhouse gases that we can continue to emit before reaching dangerous and irreversible climate change, and that we could reach this limit within the current decade:

1. What is the nature and scope of a State Party's obligation in relation to the establishment of effective judicial remedies to provide adequate and timely protection and redress for the impact on human rights of the climate emergency?

2. To what extent should the consultation obligation take into account the consequences of an activity on the climate emergency or the emergency projections?

*E. Regarding the Convention-based obligations of prevention and the protection of territorial and environmental defenders, as well as women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency*

Pursuant to the obligations arising from Articles 1(1) and 2 of the American Convention and in light of article 9 of the Escazú Agreement:

1. What measures and policies should States adopt to facilitate the work of environmental human rights defenders?

2. What specific considerations should be taken into account to guarantee the right of women human rights defenders to defend a healthy environment and the territory in the context of the climate emergency?

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> 3. What specific considerations should be taken into account to guarantee the right to defend a healthy environment and the territory based on intersectional factors and differentiated impacts, inter alia, of indigenous peoples, peasant farmer communities, and Afro-descendant persons in the context of the climate emergency?
>
> 4. With regard to the climate emergency, what type of information should the State produce and publish in order to establish the capability to investigate different offenses committed against defenders, including, reports of threats, kidnappings, murders, forced displacements, gender-based violence, and discrimination?
>
> 5. What are the measures of due diligence that the States should take into account to ensure that attacks and threats against environmental defenders in the context of the climate emergency do not go unpunished?

*F. Regarding the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency*

> Taking into account that the climate emergency affects the entire world, and that obligations to cooperate and also to provide redress arise from the American Convention and other international treaties:
>
> 1. What considerations and principles should States and international organisations take into account, collectively and regionally, when analyzing shared but differentiated responsibilities in the context of climate change, from the perspective of human rights and intersectionality?
>
> 2. How should States act, both individually and collectively, to guarantee the right to redress for the damage caused by their acts and omissions in relation to the climate emergency, taking into account considerations of equity, justice and sustainability?
>
> Bearing in mind that the climate crisis has a greater impact on some regions and populations, including the Caribbean countries and territories, as well as on the coastal areas and islands of our region and their inhabitants:
>
> 1. How should inter-State cooperation obligations be interpreted?
>
> 2. What obligations and principles should guide State actions in order to ensure the right to life and survival of the most affected regions and populations in the different countries and in the region?
>
> Considering that one of the impacts of the climate emergency is to intensify the factors that lead to human mobility – migration and forced displacement:
>
> 3. What obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?"

Following this request, according to the Court, it "received an unprecedented number of briefs with relevant observations on the request for an advisory opinion, within the established time frame, all duly signed and accompanied by the required documentation" (Inter-American Court of Human Rights, Order of the President of 22/2/2024).

The President of the Court considered that

> "[t]he importance and breadth of the questions submitted to the Court's consideration suggest the need for diverse and participative opportunities for direct dialogue that will contribute to informing the Court" (Inter-American Court of Human Rights, Order of the President of 22/2/2024).

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also giving the opportunity to those OAS Member States that had not yet presented written observations to present them during the oral phase of the procedure.

Therefore, on February 22, 2024, the President decided "to hold two in-person public hearings during the 166th and 167th regular sessions of the Court. The first of these hearing was supposed to be held in Bridgetown, Barbados, on April 23, 24 and 25, 2024. The second was scheduled for Brasilia, Brazil, on May 24, 2024, and for Manaus, Brazil, on May 27, 28, and 29, 2024.

Given the universal impact of the climate change in all its dimensions and having become a dominant root cause also for global migration the expected opinion of the Court is likely to become a most significant reference point for the international judicial and political discourse.

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