SERIOUS BREACHES OF OBLIGATIONS ARISING FROM PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW & CONSEQUENCES FOR INSTITUTIONAL COOPERATION WITH UNIVERSITIES IN ISRAEL

Legal Brief written in the individual capacities of authors Gamze Erdem Türkelli, Koen De Feyter[1] and Thalia Kruger from the Law & Development Research Group, Faculty of Law, University of Antwerp (30 August 2024)
Revised by authors Gamze Erdem Türkelli and Thalia Kruger (18 June 2025)[2]

Executive Summary

Jus Cogens norms, also called **peremptory norms of international law**, are recognized by the international community as norms from which no derogation is permissible. These norms are so fundamental that they bind all States – even without contractual/treaty obligations– without exceptions or objections. They include the prohibition of **genocide**, **crimes against humanity**, **racial discrimination and apartheid**, as well as the **right to self-determination** and **basic rules of international humanitarian law**. Peremptory norms give rise to obligations owed to the entire international community, *i.e. erga omnes* obligations. Neither consent, self-defence, countermeasures in respect of an internationally wrongful act, force majeure, distress nor necessity can be invoked to disrespect peremptory norms.

The **ongoing conflict in Gaza** has left over 54.000 Palestinians confirmed dead, while the number of estimated persons missing or dead is much higher, and over 123.000 injured.[3] The entire population (100%) of the Gaza strip (an estimated 2.1 million persons) is facing high levels of acute food insecurity as a result of the total blockade imposed by Israel since 2 March 2025, and 470,000 Palestinians are facing catastrophic levels of food insecurity. 90% of the population (an estimated 1.9 million persons) has been internally displaced, and the Israeli defence forces continues to displace persons, using the limited access to food to reach this goal. According to UN Office for the Coordination of Humanitarian Affairs (UN OCHA), since 7 October 2023, at least 452 aid workers, including 315 UN staff, have been

[1] Professor Koen De Feyter, former Dean of the Faculty of Law and the Chair of International Law at the Faculty of Law of the University of Antwerp passed away suddenly on 20 September 2024. We have tried to revise this legal brief trying to stay true to Professor De Feyter's tireless advocacy for global justice and for the respect for international law.

[2] Since the first publication of this brief, many words, legal and political, have been spoken and written about the position of universities vis à vis Israeli institutions. In Belgium, the university rectors wrote to the Belgian minister of foreign affairs to urge him to join the call for the suspension of the EU-Israel Association Agreement, in light of Israel's violation of its Art. 2 on the respect for human rights (letter of 13 May 2025). A group of more than 7000 academics in an open letter to called for halting cooperation with Israeli institutions (14 January 2025). A group of 800 British lawyers in an open letter emphasised the United Kingdom's legal duty to break ties with Israel (May 2025). There have also been academics that consider that universities should not be taking steps, such as Pier d'Argent (in *Le Soir* on 16 January 2025) and Raf Geenens (in *De Standaard* on 2 June 2025).

[3] See the UNRWA Situation Report #173 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem (28 May 2025), https://www.unrwa.org/resources/reports/unrwa-situation-report-173-situation-gaza-strip-and-west-bank-including-east-jerusalem. When this legal brief was first penned on 30 August 2025, the death toll stood at more than 40.000 Palestinians with more than 93.000 Palestinians injured, and 495,000 Palestinians were facing catastrophic levels of food insecurity.

killed alongside a reported 1,400 healthcare workers who have been killed.[4] UN OCHA reports also confirm that fatalities and injuries have also increased significantly in the Occupied West Bank since 7 October 2023.[5]

The International Court of Justice (ICJ) found on 26 January 2024 that Palestinians in Gaza were a significant part of the protected group of Palestinians, whose intentional destruction would 'have an impact on the group as a whole'. Therefore, 'the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts' under the Genocide Convention was plausible. Due to the urgency and in order to prevent irreparable prejudice, the Court ordered provisional measures: Israel had to take all possible measures to prevent **genocide** and to enable the provision of basic services and humanitarian aid. In later additional provisional measures, the ICJ ordered Israel to ensure immediate access to food supplies and to halt its military offensive in Rafah as well as any other action which may result in the physical destruction in whole or in part of the Palestinian group in Gaza. These court orders indicate that there is an exacerbating risk of genocide against the Palestinian population in Gaza. In a separate legal procedure, the ICJ found 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, which amounts to a violation of the prohibition of **racial segregation and apartheid**. The ICJ also found that Israel was violating the integrity of the Occupied Palestinian Territory, as an essential element of the Palestinian people's **right to self-determination**. It moreover found that Israeli policies and practices in the Occupied Palestinian Territories are contrary to peremptory norms of **international humanitarian law**. A third process, a process for an advisory opinion requested by the UN General Assembly, on the 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 is ongoing at the ICJ with public hearings held between 28 April and 2 May 2025.

The Prosecutor at the International Criminal Court (ICC) applied for arrest warrants against both the Hamas leadership and the Prime Minister and Defence Minister of Israel based on allegations of criminal responsibility for **war crimes and crimes against humanity**. This procedure is ongoing.

These findings have consequences for **other States**. All States must cooperate with the United Nations (UN) to end Israel's illegal presence in the Occupied Palestinian Territory and attain the right of the Palestinian people to self-determination. All States must abstain from relations or dealings with Israel that recognize its illegal presence in the Occupied Palestinian Territories. They may not aid in recognizing this illegal presence in any manner. All States must refrain from providing support (material/logistical/military/economic) that can be used in the commission of violations or that can be used to 'legalize' violations by normalizing their context. They must also take all effective measures to respond to violations of peremptory norms of international law, including diplomatic measures and targeted economic, military or other sanctions.

The current and ongoing serious violations of peremptory norms of international law also bring consequences for the **University of Antwerp**. Universities are organs of society endowed with the

[4] UN OCHA, Humanitarian Situation Update #292 | Gaza Strip, 28 May 2025, https://www.ochaopt.org/content/humanitarian-situation-update-292-gaza-strip (this brief is updated every week, as killings and injuries take place daily).
[5] Ibid.

responsibility to teach and educate. They must avoid aiding and assisting the commission of serious breaches of peremptory norms of international law created by Israel's illegal presence in the Occupied Palestinian Territory, and address such aid and assistance when it occurs. Israeli universities as institutions are embedded in the exclusivist nature of the Israeli political system and benefit from the occupation. They have put their expertise at the disposal of governmental measures aimed at maintaining and expanding the occupation. Institutional cooperation with these universities thus amounts *prima facie* to aid and assistance in maintaining a situation that breaches peremptory norms of international law. Moreover, there is a strong argument that as a public university, the University of Antwerp is an organ of State under international law. The university was created by a Flemish Decree and is supervised by a government commissioner. Thus, the Belgian State is internationally responsible for the conduct of the university, and the Belgian State's international obligations apply to the university.

For **research cooperation**, European model Grant Agreements and Consortium Agreements exist. The **General Model Grant Agreement** provides that project partners must commit to and ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities). Aiding and assisting the violation of human rights is thus breach of the agreement. These agreements explicitly state that they are subject to international law, as well as to Belgian law. International law is considered part of Belgian law. In case of breaches, the funder may reduce or suspend the grant, or terminate the grant in whole or with respect to one beneficiary. The Coordinator may request a suspension or amendment to the funder if exceptional circumstances make implementation impossible or excessively difficult. The Coordinator may also request termination of the grant agreement or of the participation of a beneficiary, giving reasons and in the latter case submitting the opinion of the beneficiary concerned. The grant agreement will then be amended concerning the tasks and payments.

Recommendations

The conclusion of this policy brief is that the University of Antwerp must:

1. Ensure full compliance with obligations of Belgium under international law, international human rights law and international humanitarian law as well as its obligations under Belgian domestic law. This includes *erga omnes* obligations:
- not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory
- not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory.

2. End all collaborations with academic and other institutions directly or indirectly implicated in the violations of international law, international human rights law and international humanitarian law in Gaza and in the Occupied Palestinian territories, more generally.

3. Put on the agenda and discuss with other partners in research collaborations the legal consequences of cooperating with Israeli universities, examine the correct ways to terminate the participation of Israeli institutions, and communicate the issue to the funder of the research project.

3. Depart from a precautionary principle and not initiate any new collaborations with Israeli academic and other institutions until such a time that the violations of international law by Israel are brought to an end.

4. (By way of a single exception) Set up of a credible form of carefully negotiated inter-university cooperation that aims specifically at bringing to an end serious breaches by Israel of obligations arising under a peremptory norm of general international law as recently established by the International Court of Justice.

Purpose of the Brief

The purpose of this legal brief is to set out recommendations to the University of Antwerp with respect to peremptory norms of international law, also referred to as *jus cogens*, particularly in light of the proceedings before the International Court of Justice (ICJ) including the recent Advisory Opinion of the ICJ in respect of the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East* Jerusalem (19 July 2024) and the ongoing genocide case *(Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel))*.

In this first section, the legal brief first shortly explains the concept of peremptory norms of international law. In a second section, it sets out the content of the peremptory norms of general international law most relevant to the policies and practices of Israel in the Occupied Palestinian Territory. It then reviews the application of these norms by the International Court of Justice and the International Criminal Court to the policies and practices of Israel in the OPT and the consequences for third States in Section 3. In Section 4, it elaborates on the consequences for the University of

Antwerp with respect to cooperation with universities in Israel. In Section 5, the brief discusses the consequences for the University of Antwerp, and in particular, for its institutional cooperation with universities in Israel. For this purpose, it considers the model Grant and Consortium Agreements for research cooperation, as well as bilateral agreements of student and staff mobility (exchange). Section 6 concludes with recommendations.

1. Norms of a higher order international law: *Jus Cogens*

Jus Cogens norms are recognized by the international community as norms from which no derogation is permissible. These norms under international law are of a higher order and exist both independently of and concomitantly with obligations under various international legal regimes, including international human rights law. These **norms are so fundamental that they bind all States -even without contractual/treaty obligations- and do not allow exceptions or objections.**

The International Law Commission [6] recently drew up the following non-exhaustive list of peremptory norms of general international law [7] :

(a) The prohibition of aggression;
(b) the prohibition of genocide;
(c) the prohibition of crimes against humanity;
(d) the basic rules of international humanitarian law;
(e) the prohibition of racial discrimination and apartheid;
(f) the prohibition of slavery;
(g) the prohibition of torture;
(h) the right of self-determination.

According to the International Law Commission, serious breaches of such norms have the following particular consequences (Conclusion 19):

1. States shall cooperate to bring to an end through lawful means any serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens).
2. No State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens), nor render aid or assistance in maintaining that situation.
3. A breach of an obligation arising under a peremptory norm of general international law (jus cogens) is serious if it involves a gross or systematic failure by the responsible State to fulfil that obligation.
4. This draft conclusion is without prejudice to the other consequences that any breach by a State of an obligation arising under a peremptory norm of general international law (jus cogens) may entail under international law.

[6] The International Law Commission (ILC) was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (a) of the Charter of the United Nations to "initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification".
[7] International Law Commission, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (ius cogens), A/77/10 (12 August 2022), para. 43-44. According to the Commentary to the earlier ILC Articles on the Responsibility of States for Internationally Wrongful Acts § ARSIWA, the peremptory norms of international law included the prohibition of genocide, the prohibition of aggression, of racial discrimination, of crimes against humanity and torture, and the right to self-determination. (International Law Commission, ARSIWA with Commentary, 2001).

No circumstance precluding wrongfulness under the rules on the responsibility of States for internationally wrongful acts may be invoked with regard to any act of a State that is not in conformity with an obligation arising under a peremptory norm of general international law (jus cogens). (Conclusion 18). Thus, neither consent, self-defense, countermeasures in respect of an internationally wrongful act, force majeure, distress nor necessity can be invoked to disrespect an obligation attached to a peremptory norm.

Peremptory norms of general international law (*jus cogens*) also give rise to obligations owed to the international community as a whole (obligations *erga omnes*), in relation to which all States have a legal interest (Conclusion 17). *Erga omnes* obligations are binding for every state and actor under international law. This means that compliance with peremptory norms of international law, the prevention of violations of peremptory norms of international law and the prohibition of such violations are obligations owed to the international community as a whole.

Individual responses by States Parties, with a view to upholding erga omnes obligations, avoiding aiding or assisting in the internationally wrongful acts (of genocide, of the violation of the right to self-determination, of apartheid, of torture, certain humanitarian law violations etc.) and avoiding complicity (in genocide, in the violations of the right to self-determination, in apartheid, in violations of humanitarian law) include as obligations of negative character: refraining from providing support (material/logistical/military/economic) that can be used in the commission of violations or that can be used to 'legalize' violations by normalizing the context in which violations have been occurring.

Obligations of positive character include taking all effective measures at the disposal of a State Party to respond to violations of peremptory norms of international law and may include, for instance, taking diplomatic measures (ranging from downgrading diplomatic representation, recalling diplomats or severing diplomatic relations) and imposing targeted economic, military or other sanctions. The choice of which measures to take remains at the discretion of the State Party but should be of a nature to be reasonably effective, keeping in mind necessity and proportionality.

2. Relevant Peremptory Norms of General International Law

2.1 The Prohibition of Genocide

The definition of genocide appears in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) and has remained unchanged in subsequent treaties, including the Rome Statute of the International Criminal Court. The prohibition of genocide applies both to States and to persons:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

The related prohibited acts under Art. III include: 'conspiracy to commit genocide (Art. III, para. (b)), direct and public incitement to commit genocide (Art. III, para. (c)), attempt to commit genocide (Art. III, para. (d)) and complicity in genocide (Art. III, para. (e))'.

2.2. The Prohibition of Racial Discrimination and of Apartheid

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (21 December 1965) defines racial discrimination as:

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In Article 3 CERD, 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.

The International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973) defines the crime of apartheid as including "similar policies and practices of racial segregation and discrimination as practised in southern Africa" and applying to a list of inhuman acts "committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them" (Article II of the Convention, with the relevant acts listed in subparagraphs (a) to (f)).

The crime of apartheid is also included in the Rome Statute of the International Criminal Court (17 July 1998) as a crime against humanity (in Article 7(2h)) where it is defined as inhumane 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".

2.3. The Right of Self-Determination

The right of self-determination is noted in Chapter 1, Article 1(2) of the UN Charter, which states the purpose of the Charter:

> "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

The right of self-determination is further included in joint Article 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic Social and Cultural Rights (both 16 December 1966):

> 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

2.4. Crimes against Humanity

Article 7 of the Rome Statute of the International Criminal Court, to which Belgium is also a party, defines crimes against humanity as acts enumerated below when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack":
murder, extermination, enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender (…), or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2.5. The Basic Rules of International Humanitarian Law

No generally agreed definition of 'the basic rules' of international humanitarian law exists. The concept is therefore open to interpretation. The International Court of Justice has referred to "a great many rules of humanitarian law applicable in armed conflict so fundamental to the respect of the human person and 'elementary considerations of humanity'" that they "incorporate obligations which are essentially of an erga omnes character"[8], while stopping short from categorizing these rules as jus cogens rules.

Following the International Law Commission's 2022 approach on the criteria that apply for the identification of peremptory norms, the pertinent international humanitarian law rules would be rules accepted and recognized by the international community of States as norms from which no derogation is permitted; they would need to be based on customary law and possibly on treaty law as well.[9] Many rules of humanitarian law applicable in armed conflict arguably pass this test.

A more conservative interpretation of the basic rules of international humanitarian law includes the rules in Common Article 3 of the Geneva Conventions (that today is often read as the minimum to be

[8] ICJ, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), para 157.
[9] International Law Commission, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (ius cogens), A/77/10 (12 August 2022), Conclusions 4 and 5.

applied in all armed conflicts) and those rules in the Geneva Conventions and Additional Protocol I that when violated fall into the category of grave breaches.

3. Policies and practices of Israel

3.1. The Prohibition of Genocide

The ongoing armed conflict in Gaza has resulted in the death of at least 40,534 Palestinians in Gaza as reported by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) on 28 August 2024, while more than 93,700 people have been injured.[10] According to figures reported by UN OCHA, 90% of the population of the Gaza Strip (an estimated 1.9 million persons) is internally displaced and 495,000 people are facing catastrophic levels of food insecurity (IPC Phase 5).[11] Health scientists have estimated that, even when '[a]pplying a conservative estimate of four indirect deaths per one direct death' to the armed conflict in the Gaza Strip, 'up to 186 000 or even more deaths could be attributable to the current conflict in Gaza', which corresponds to 7-9% of the total population of the Gaza Strip.[12]

The Republic of South Africa brought a case against Israel at the International Court of Justice (ICJ) on 29 December 2023 alleging that Israel has violated and continues to violate the Genocide Convention in relation to its conduct in the Gaza Strip and sought provisional measures to protect the Palestinian population in the Gaza Strip. On 26 January 2024, the ICJ delivered its first Order on the Request for the indication of provisional measures in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*. The provisional measures were requested by South Africa 'to protect against further, severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention' and 'to prevent any aggravation or extension of the dispute, pending the determination of the merits of the issues raised by the Application'.[13]

The Court concluded that Palestinians in Gaza, whose numbers comprise over 2 million people according to UN sources, were a significant part of the protected group of Palestinians, whose intentional destruction would 'have an impact on the group as a whole' (paras 44 and 55). The Court cited facts and circumstances including 'a large number of deaths and injuries, as well as the massive destruction of homes, the forcible displacement of the vast majority of the population, and extensive damage to civilian infrastructure'.[14] (para 46) The Court also relied on the statements of various UN officials on the gravity of the humanitarian crisis in Gaza as well as statements by Israeli officials using dehumanizing language and indicating the lack of any restraints in its military action as well as the alarm raised by 37 Special Rapporteurs, Independent Experts and members of Working Groups part

[10] UN OCHA, Reported impact snapshot | Gaza Strip (28 August 2024), https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-28-august-2024.
[11] Ibid.
[12] Rasha Khatib, Martin McKee and Salim Yusuf, "Counting the dead in Gaza: difficult but essential", *The Lancet*, www.thelancet.com , 5 July 2024, DOI: https://doi.org/10.1016/S0140-6736(24)01169-3.
[13] ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Provisional Measures (Order of 26 January 2024*), https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf#page=72.
[14] While the Court noted these figures could not at the time be verified, they were reported by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in its report *Hostilities in the Gaza Strip and Israel - reported impact, Day 109* (24 Jan. 2024)).

of the Special Procedures of the UN Human Rights Council on the use of genocidal and dehumanizing rhetoric by Israeli government officials (paras 47-53).

Based on these observations, the Court concluded that, 'the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts' under the Genocide Convention was plausible. (para 54) It then ordered a number of Provisional Measures. The ICJ can only indicate Provisional Measures in cases where it finds there is 'urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision' (para 61). In ordering Provisional Measures, the Court must consider that there is a risk that the acts that may lead to irreparable prejudice 'can occur at any moment' before a final decision is rendered by the Court.[15] In the current case, the Court ascertained urgency, drawing attention to the fact that 'the civilian population in the Gaza Strip remains extremely vulnerable' with 'many Palestinians in the Gaza Strip have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating'. (para 70) The Court considered that the already 'catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further before the Court renders its final judgment' (para 72) and opined that Israel's statement about the steps taken to alleviate the humanitarian situation to be 'insufficient to remove the risk' of irreparable prejudice (para 73).

The ICJ's Provisional Measures of 26 January 2024 ordered Israel to 'take all measures within its power to prevent the commission of all acts' within the scope of the definition of genocide under the Genocide Convention, to ensure with immediate effect that its military also does not commit any such acts, to take all measures within its power to prevent and punish direct and public incitement to commit genocide, to take immediate and effective measures to enable the provision of basic services and humanitarian aid and to prevent the destruction of evidence related to allegations of genocidal acts.

Upon the announcement of an Israeli military ground invasion in Rafah, South Africa made two requests for additional measures. While the Court did not issue additional measures in response to the first request[16], on 28 March 2024, the Court adopted additional emergency measures given the fact that famine had been settling in the Gaza Strip and Israel was ordered to ensure that the Palestinian population in Gaza have access to food supplies immediately.[17] A third request was made by South Africa on 10 May 2024 given the catastrophic situation that the Palestinian population in Rafah was facing as a result of the Israeli attacks in the area. The Court ruled on 24 May 2024 that Israel's ongoing Rafah offensive would constitute a violation of the rights of the Palestinian population under the Genocide Convention and ordered Israel to immediately halt its military offensive in Rafah as well as any other action which may result in the physical destruction in whole or in part of the

[15] ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, p. 227, para. 66).

[16] ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Decision of the Court on South Africa's request for additional provisional measures – 16 February 2024, https://www.icj-cij.org/sites/default/files/case-related/192/192-20240216-pre-01-00-en.pdf.

[17] ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 26 January 2024 indicating provisional measures – Order of 28 March 2024, https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf.

Palestinian group in Gaza.[18] It also ordered Israel to maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance and take effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide.

While the proceedings in the case are expected to go on for a number of years before a final verdict is reached, with the South African memorial submitted to the ICJ on 28 October 2024, and the Israeli response set for 28 July 2025, the series of increasingly farther reaching Provisional Measures ordered by the Court is an important indication that there is an exacerbating risk of genocide against the Palestinian population in Gaza, particularly in relation to the impacts of the armed conflict on the civilian Palestinian population and the restriction of humanitarian assistance by Israel.

The *erga omnes* character of the obligations under the Genocide Convention also mean that the compliance with the Provisional Measures is not only a matter of concern for the respondent State Israel for which the Provisional Measures have been ordered, but also for all parties to the Genocide Convention.

Given that the ICJ has ordered progressively more stringent and more comprehensive Provisional Measures citing urgency and imminent risk of irreparable harm, the measures taken by third states to induce compliance with the Provisional Measures and the Genocide Convention can lawfully become more stringent and/or comprehensive overtime.

3.2. The Prohibition of Racial Discrimination and Apartheid

In the Advisory Opinion on *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East* Jerusalem (19 July 2024), the International Court of Justice held that the prohibition of discrimination is part of customary international law (para 189).[19] The Court found 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.

According to the Court, this differentiation of treatment could not be justified with reference to reasonable and objective criteria nor to a legitimate public aim. Accordingly, the Court was 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 (para 223). The Court also assessed the compliance of Israel with Article 3 CERD that deals with "two particularly severe forms of racial discrimination: racial segregation and apartheid" (para 225). The Court found 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, and thus constitute a breach of Article 3 of CERD (para 229). The Opinion does not elaborate on whether Israel's legislation and measures amount to racial segregation or to apartheid. It is clear from

[18] ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the modification of the Order of 28 March 2024 indicating provisional measures - Order of 24 May 2024, https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf.
[19] ICJ, Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (19 July 2024).

the declarations and separate opinions by members of the Court attached to the Opinion that there was some difference of opinion within the Court on this matter. What is beyond doubt, however, is that Israel's legislation and measures were held to amount to a severe form of systemic racial discrimination.

3.3. The Right of Self-determination

In the *Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (19 July 2024) the International Court of Justice the Court confirmed that the Palestinians are a people (para 190) that hold the right of self-determination (para 230). For the first time in its jurisprudence, the Court stated that "in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law". (para 233)

The Court found that Israel violated several elements of the right of self-determination:

- Israel's annexation of large parts of the Occupied Palestinian Territory violates the integrity of the Occupied Palestinian Territory, as an essential element of the Palestinian people's right to self-determination (para 238);
- Israel's strict restrictions on movement between the Gaza Strip, the West Bank and East Jerusalem, undermining the integrity of the Palestinian people in the Occupied Palestinian Territory, significantly impede the exercise of its right to self-determination (para 239);
- In depriving the Palestinian people of its enjoyment of the natural resources in the Occupied Palestinian Territory for decades, Israel has impeded the exercise of its right to self-determination (para 240);
- Israel's policies and practices frustrating the Palestinians' economic, social and cultural development and impairing their human rights obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development (para 242).

According to the Court, the prolonged character of Israel's unlawful policies and practices "aggravates their violation of the right of the Palestinian people to self-determination" (para 243).

3.4. Crimes against Humanity

On 20 May 2024, the Prosecutor at the International Criminal Court applied for arrest warrants in the situation in the State of Palestine against both the Hamas leadership and against the Prime Minister and the Defence Minister of Israel.[20] The Prosecutor put forward that that there are reasonable grounds to believe Mr. Benjamin NETANYAHU, and Mr. Yoav GALLANT as co-perpetrators and superiors bear criminal responsibility for war crimes and crimes against humanity committed on the territory of the State of Palestine (in the Gaza strip) from at least 8 October 2023.

[20] Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine available at: https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state.

The Prosecutor's Office submitted that the crimes against humanity charged were committed as part of a widespread and systematic attack against the Palestinian civilian population pursuant to State policy. The evidence collected arguably showed that Israel intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival. The Office further submitted that these acts were committed as part of a common plan to use starvation as a method of war and other acts of violence against the Gazan civilian population as a means to (i) eliminate Hamas; (ii) secure the return of the hostages which Hamas has abducted, and (iii) collectively punish the civilian population of Gaza, whom they perceived as a threat to Israel.

On 21 November 2024, the Pre-Trial Chamber of the ICC rejected the State of Israel's challenges to its jurisdiction and issued three arrest warrants against Mr. Netanyahu and Mr. Gallant as well as Mr. Deif, a leader of HAMAS who was later ascertained to be dead, hence charges brought against him on crimes against humanity and war crimes were dropped. The Chamber found reasonable grounds to believe that Mr Netanyahu, Prime Minister of Israel at the time of the relevant conduct, and Mr Gallant, Minister of Defence of Israel at the time of the alleged conduct, each bear criminal responsibility for the following crimes as co-perpetrators for committing the acts jointly with others: the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution, and other inhumane acts." The Chamber also found reasonable grounds to believe that Mr Netanyahu and Mr Gallant each bear criminal responsibility as "civilian superiors for the war crime of intentionally directing an attack against the civilian population."

3.5. Basic rules of international humanitarian law

In the Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (19 July 2024), the International Court of Justice confirmed its earlier position that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory. The Court reiterated that a great many rules of that Convention are so fundamental to the respect of the human person, and elementary considerations of humanity that they constitute intransgressible principles of international customary law and incorporate obligations which are essentially of an *erga omnes* character. The Court also observed that the Hague Regulations have become part of customary international law and that they are thus binding on Israel (para 96).

The Court subsequently found that a significant number of Israeli policies and practices in the Occupied Palestinian Territories are contrary to the Fourth Geneva Convention and the Hague Regulations. These include *inter alia*:

- the transfer of settlers to the West Bank and East Jerusalem as well as the maintenance of their presence (para 119);
- not ensuring availability of water in sufficient quality and quantity in the Occupied Palestinian Territories (para 133);
- the extension of Israel's law to East Jerusalem and the West Bank (para 139); the forcible transfer of the protected population (para 147); and
- violations of the right the life (para 149). On the latter point, the Court noted that Israel's has systematically failed to prevent or to punish attacks by settlers against the life or bodily integrity of Palestinians, and has used excessive use of force against Palestinians (para 154).

The dire humanitarian crisis in Gaza exacerbated by Israel's refusal to allow adequate humanitarian assistance to the Palestinian population has prompted a third process at the ICJ. The UN General Assembly requested an urgent Advisory Opinion on 19 December 2024 on the obligations of Israel in relation to the presence and activities of the United Nations, other international organizations and third States, particularly with respect to Israel's outlawing the activities of UNRWA, The United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The UN General Assembly asked the Court the following question:

> *What are the obligations of Israel, as an occupying Power and as a member of the United Nations, in relation to the presence and activities of the United Nations, including its agencies and bodies, other international organizations and third States, in and in relation to the Occupied Palestinian Territory, including to ensure and facilitate the unhindered provision of urgently needed supplies essential to the survival of the Palestinian civilian population as well as of basic services and humanitarian and development assistance, for the benefit of the Palestinian civilian population, and in support of the Palestinian people's right to self-determination?*

The Secretariat of the United Nations transferred material related to this examination to the Court. The Court set the deadline of 28 February 2025 as the time limit to receive written statements and received written statements from 41 states, including Palestine and Israel but also Belgium, as well as the Secretary-General of the UN, the Organisation of Islamic Cooperation and an authorized late submission by the African Union. The public hearings were held between 28 April 2025 and 2 May 2025 in the Hague. The process is ongoing.

3.6. The role of Israeli Universities in the violations by the Israeli State

Israeli universities as institutions are embedded in the exclusivist nature of the Israeli political system and the prolonged occupation this system has maintained. First, as institutions, they inevitably benefit from the occupation. They rely on finances by a State that has been ascertained by the ICJ to unlawfully occupy the Palestinian territories and to use systematic racial discrimination; some institutions have structures or campuses located on illegally occupied territory while others enjoy the use of illegally occupied land for their research (such as archaeology), which are well documented as depriving the Palestinian people of the use of their land.

Second, they put their expertise at the disposal of governmental policies and measures aimed at maintaining and expanding the occupation. There are numerous accounts of the assistance by Israeli universities to the State. To name but a few: Bar-Ilan's BESA centre researches hybrid warfare and cooperates with the IDF, co-hosting a conference for instance;[21] the Australian friends of the Hebrew University advertises on its website that "The Hebrew University is not only Israel's first and foremost university but it is also the university that has the most important ties and collaboration with the Israel Defence Force";[22] Tel Aviv University has itself advertised on social media that it operates an

[21] According to Bar-Ilan's President's 2023 Report, available at https://www.digipage.co.il/projects/2023/biu/president/12/, p. 12.

[22] See the website of the Australian Friends of the Hebrew University, https://austfhu.org.au/when-duty-calls-the-hebrew-university-is-always-there/#:~:text=The%20Hebrew%20University%20is%20not,on%20the%20Givat%20Ram%20campus.

"engineering war room to assist Israeli soldiers in Gaza";[23] Ben Gurion University is located close to the IDF Technology campus, which led the university's President Prof. Daniel Chamovitz to state: "The future growth and development of Ben-Gurion University of the Negev into the North Campus is intimately tied to our growing relationship with the nascent IDF technology and intelligence bases springing up in and around Be'er-Sheva…";[24] the University of Haifa leads the Military Academic Complex, which houses three military colleges.[25]

3.7. Legal consequences of Israel's internationally wrongful acts in the Occupied Palestinian Territory for other States

In the Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (19 July 2024), the Court engaged in an overall assessment of the legal consequences of the whole of Israel's breaches of international law[26], resulting in a finding that Israel's occupation of the Palestinian territories is unlawful.

The Court did not state explicitly that Israel committed serious breaches of obligations arising from peremptory norms of general international law, but the legal consequences for other States that the Court attaches to Israel's international wrongful act include the legal consequences for other States attached to serious breaches of obligations arising from peremptory norms of general international law.[27]

The 2004 Wall Advisory Opinion of the ICJ had noted already two decades ago in relation to the wall Israel was constructing in the Occupied Palestinian Territories that "all States [were] under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem", "not to render aid or assistance in maintaining the situation created by such construction" and to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end". (para 159)

Two decades later, in 2024, the International Court of Justice further identified the following obligations for other States:[28]

- All States must cooperate with the United Nations to put into effect 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;
- UN Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory

[23] See the news item on Youtube: https://www.youtube.com/watch?v=aRKaEsY_3T4/.
[24] See Israel Defence news item (27 June 2019), https://www.israeldefense.co.il/en/node/39140.
[25] Heights, University of Haifa Magazine (Winter 2018), https://magazine.haifa.ac.il/index.php/winter-2018/113-university-of-haifa-to-lead-israel.
[26] When discussing the legal consequences for other States, the Court stresses three categories of obligations violated by Israel that have an *erga omnes* character: the obligation to respect the right of the Palestinian people to self-determination, the obligation arising from the prohibition of the use of force to acquire territory as well as certain of its obligations under international humanitarian law and international human rights law. Idem, para 274.
[27] Compare Article 41 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts and Conclusion 19 of the ILC Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law.
[28] ICJ, Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (19 July 2024), para 275-279.

occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. This includes 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 Territories;

- All States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory;
- All States are under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory;
- All States are required to ensure while respecting the UN Charter and international law 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. In addition, all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.

The unusually broad range of obligations for third States identified by the ICJ is directly connected to the finding that Israel engages in ***serious*** **breaches of** ***a variety of*** **peremptory norms of international law (including but not limited to human rights norms)** ***over a lengthy period of time*****.** This distinguishes the circumstances at hand from most other contexts in which human rights violations occur, but where violations are not as widespread, not as severe and not as prolonged.

4. Consequences for the University of Antwerp with respect to cooperation with universities in Israel

4.1. The role of the university in society

The preamble Universal Declaration of Human Rights perceives of human rights as:

> "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction".

Universities are organs of society endowed with the responsibility to teach and educate. They have an important social responsibility in securing the universal and effective recognition and observance of human rights. This is *a fortiori* the case when universities are faced with a finding by the International Court of Justice, the principal judicial organ of the United Nations, that serious breaches of a variety of peremptory norms

of international law (including but not limited to human rights norms) over a lengthy period of time have been committed by a given State. As an organ of society, the University of Antwerp is required to avoid aiding and assisting the commission of serious breaches of peremptory norms of international law created by Israel's illegal presence in the Occupied Palestinian Territory, and to address such aid and assistance when it nevertheless occurs.[29] As noted above, Israeli universities are plausibly linked to the violations by the Israeli State of international law given the nature of their close ties as enumerated above based on publicly available statements by the institutions themselves. Institutional cooperation with these universities thus amounts *prima facie* to aid and assistance in maintaining a situation that has resulted in serious and prolonged breaches of peremptory norms of international law.

4.2. The status of the public university (such as the University of Antwerp)

In addition, a strong argument can be made that for the purposes of public international law, the University of Antwerp is an organ of the State. While we acknowledge that more research is needed on the status of entities such as universities under international law, we believe universities cannot be absolved from duties under international law duties. This is particularly true as regards negative obligations – to refrain from involvement in violations of international law, just because the State itself does not take measures or impose sanctions in a particular situation.

This does not mean that the university cannot set its own policies. It does mean that the Belgian State is internationally responsible for the conduct of the university, and that the Belgian State's international obligations apply to the university.

The ILC Articles on State Responsibility indicate that an organ of the State may "exercise legislative, executive, judicial or any other" functions. State organs definitely include entities that have the status of an organ under domestic law, but are not limited to them.[30] In Belgian administrative law, the terminology of "organ of the State" is not used, so domestic law is not particularly helpful in determining under what conditions universities are organs of the State. The European Court of Human Rights has held that whether an act by a legal entity is an act attributable to the State depends on factors such as "[the entity's] legal status, the rights that such status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the authorities". [31]

Practically speaking, arguing that universities cannot take any measures or do not have legal capacity to decide what partners they collaborate with would leave us in the untenable position that no-one can do anything: the university cannot do anything until the State acts, the State cannot do anything until the European Union agrees, etc. This cannot be the correct position under international law while the ICJ has pronounced *erga omnes* obligations binding the entire international community and stated that all States must take all effective measures to respond to violations of peremptory norms of international law, including diplomatic measures and targeted economic, military or other sanctions.

[29] Compare *mutatis mutandis* article 13 of the UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.
[30] Article 4, ILC Articles on the Responsibility of States for Internationally Wrongful Acts.
[31] European Court of Human Rights, *Yershova v. Russia*, Judgment of 8 April 2010, para 55.

States may not provide any support of whatever nature that could be used in the commission of violations, the continuation of violations or that could be used to 'legalise' violations by normalising their context.[32] Continuing business as usual, where Israeli institutions have access to financing among other benefits by cooperating with universities in Belgium, amounts to legalising and normalising the unlawful situation in the Occupied Palestinian Territory.

The question of who is an 'organ of State' can be approached from the perspective of national (constitutional) or international law.

From a **constitutional law perspective**, in some countries the status of public universities under national law is clear (with instance in South Africa: Constitutional Court, Niekara Harriellal v University of Kwazulu-Natal, 31 October 2017). In Belgium, public universities are set up by decrees of the communities (Flemish or French), to perform a public function. For many of their activities, they must act like a state organ, for instance in their procurement practices, in rules on gender quotas, and in the treatment of some of their employees as civil servants. They have government commissioners to guard over their management. The University of Antwerp is a public institution of higher education. The university was created by a Decree of the Flemish Government and is supervised by a government commissioner who monitors the implementation of the laws and decrees with regard to higher education and the financial management. The institution's activities consist of providing a service of importance to the public. Its operational and institutional independence is limited by its reliance on the State allocation of funding.

The question under **international law** is distinct from the position under national law, as explained by Ago, in his position as Special Rapporteur on State Responsibility:[33]

> [I]nternational law is completely free when it takes into consideration the situation existing in the internal legal order. The attribution of an act to a State in international law is clearly wholly independent of the attribution of that act in national law.208 In the context of the national legal system, it may be logical to attribute to the State (for example, for the purpose of imposing an administrative responsibility upon it) only the acts performed by persons having the *de jure* status of organs and to preclude such attribution when those organs act outside the limits fixed by the rules of that system. However, these limitations have no *raison d'etre* in the context of international law. As we have already pointed out, international law is perfectly free to make or not to make the attribution of some particular conduct to the State subject of international law dependent on the fact that the individual who engaged in that conduct is or is not regarded as an organ of the State by national law. The consideration of certain acts as acts of the State in international law may be based on criteria which are both wider and more limited than the corresponding consideration in municipal law. Indeed, we shall see that in international practice the conduct of persons who are organs of public institutions other than the State and the conduct engaged in by organs of the State or other entities outside the limits of the competence attributed to them by municipal law is treated as an act of the State subject of international law. This is not surprising and does not call for exceptional justification through recourse to any explanation or

[32] ICJ Advisory Opinion of 19 July 2024, paras 275-279.

[33] Document A/CN.4/246 AND ADD.1-3, Third report on State responsibility, by Mr. Roberto Ago, Special Rapporteur, "The internationally wrongful act of the State, source of international responsibility" *Yearbook of the International Law Commission*, 1971, Vol. II, Part One, p. 238. See also B.K.J. Vitanyi, "Internationale aansprakelijkheid door Staten voor hun rechtsbedeling. Afscheidscollege gegeven op 6 mei 1983 bij het aftreden als hoogleraar in het volkenrecht aan de Katholieke Universiteit te Nijmegen, Radboud Respository, available at https://repository.ubn.ru.nl/bitstream/handle/2066/306683/306683.pdf?sequence=1 (accessed 22 January 2025), p. 5.

> excuse. At the same time, however, it does not indicate any intention on the part of international law to insert into that State machinery "organs" which the State itself has not designated as such or to make any change in the organization of the State from the outside.

This analysis is in line with the Principles on Responsibility of States for Internationally Wrongful Acts (Article 4).[34] The European Court of Human Rights (ECtHR) also affirmed the distinction between international and national law.[35] The ECtHR went on to clarify in *Yershova v Russia* in respect of a municipal company set up as a separate legal entity that the Russian state is to be held responsible for the acts and omissions of the former based on the 'public nature of the company's functions', 'significant control' by public entities of the company as well as 'existence of strong institutional links' between the company and the public authorities.[36]

From an international law perspective, the question is whether the State can be held accountable for the acts of the organ. The answer depends on the nature of the institution (university) as well as on the nature of the acts performed.[376] Universities perform a wide range of activities, including providing education, a right guaranteed by the International Covenant on Economic, Social and Cultural Rights (Article 13). They also arrange international exchanges for their students; they get State funding and some funding from the European Union. Brems, Lavrysen and Verdonck argue that "public universities are part of the public sector constituting the abstract entity of 'the state' " and that they are "in principle bound by legal obligations under international human rights law."[38]

4.3. The status of the private university

We acknowledge that the situation of private universities is different. However, even if they are not organs of State, there are two compelling arguments concerning their duties and eventual responsibility they may incur for breaching such duties. First, in a hybrid setting, they might be exercising public functions by providing higher education and using public funds to do so. Second, there is a growing recognition that private entities (such as businesses) have a duty to respect human rights. These duties are clearly elaborated in the UN Guiding Principles on Business and Human Rights (also known as the Ruggie Principles).[39] These principles should apply by analogy also to private universities. They too are thus bound to respect human rights and certainly humanitarian law and peremptory norms of international law. It would run contrary to the meaning and spirit of international legal norms that embody *erga omnes* obligations — meaning they are owed by all to all others — to argue that these norms create no consequences for universities. As stated above, universities are at the very minimum organs of society and may also be argued to be organs of state when they have a public nature.

---

[34] Adopted by the International Law Commission in 2001 and by UN General Assembly Resolution of 12 December 2001, A/56/589; available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf (accessed 22 January 2025).

[35] For instance in *Yershova v Russia*, Application no. 1387/04), 8 April 2010, ECLI:CE:ECHR:2010:0408JUD000138704.

[36] *Ibid*, paras 53-63.

[37] See Vitanyi (n 29 above) at 2.

[38] Eva Brems, Laurens Lavrysen and Liselot Verdonck, "Universities as Human Rights Actors" Journal of Human Rights Practice, 11, 2019, 229–238 at 232 and 238.

[39] The UN Human Rights Council unanimously endorsed these principles by Resolution 17/4 of 16 June 2011.

4.3. Autonomy and academic freedom

Arguing that universities have duties and may incur responsibility under international law, in no way reduces their position as autonomous organs. The clearest example to illustrate this point, is the judiciary: in a democracy the judiciary is independent of government, yet still an organ of State.[40] similarly, a public broadcaster can be considered an organ of State, yet it may criticise the actions and policy of the executive branch. However, institutional decisions (such as signing cooperation agreements, accepting funding, investing and contracting) are still subject to the limits of international law, either because they correlate with the State's obligations and the State may be responsible for their breach or because private entities (as well as public entities) are also bound to respect international law, particularly preemptory norms of international law and international legal norms that create *erga omnes* obligations.

Moreover, saying that universities must respect international law does not prejudice the academic freedom of the members of the university community. Academics still maintain their right to freedom of speech, as well as academic freedom. They may still voice their own opinions and conduct their own research without institutional interference.

Cooperation with individual academics in Israel who denounce these breaches and support the end of the occupation should not be ruled out. On the contrary, cooperation with academics that are critical of the regime, and that work on ways to end the violations of international law is commendable.

4.4. The international obligations of the university

The second point is that universities –public or private – must measures within the domains of their legal competence (namely, research, education and investment decisions) to ensure compliance with international law, and to prevent aiding or assisting the commission of internationally wrongful acts. This duty to take measures in no way substitutes for or contravenes the measures that ought to be taken by States themselves in order to discharge their international legal obligations. Naturally, States have a general competence to enact broad diplomatic, economic or military measures (unless these have been delegated to a supranational authority, for instance in the case of trade measures and the European Union having exclusive legal competence).

A strong case can thus be made that the international obligations of the Belgian State are binding for the university as well, and that any violation of such obligations would result in the attribution of responsibility to the State. Among these obligations is, as the International Court of Justice has established, an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory.

- ***Taking into account the International Court of Justice's finding of a broad range of serious breaches of the highest norms of public international law over a significant period of time;***

[40] Permanent Court of International Justice, *Lotus*, 7 September 1927, Series A, No 10, p. 24; see also Vitanyi (n 29 above) at 7. This is also the approach by the European Court of Human Rights, which can find, and which has found on various occasions, that a State violated an individual's right because of a mistake made by the judiciary (such as a procedure that was not fair or which lasted excessively long.

- ***Given that Israeli universities as institutions have failed to make a meaningful contribution to halting these breaches and have on the contrary implemented the governmental policies that have resulted in said breaches;***
- ***Taking into account also that the University of Antwerp is both an organ of society and an organ of the State and is thus required not to render aid or assistance to maintain a situation that results in serious breaches of jus cogens norms;***

  Institutional cooperation with universities in Israel should not be initiated, and existing institutional cooperation should be halted.

The next section will consider the consequences of the international law obligations discussed above for contracts in which the University of Antwerp is engaged. It will explain that these peremptory norms of international law are also relevant for obligations under contract law.

5. Research and other cooperation agreements with Israeli institutions

Contractual engagements between the University of Antwerp and Israeli universities take different forms. Mainly, we distinguish research cooperation agreements and mobility agreements.

Research cooperation agreements can be bilateral, but are often multilateral. If they are multilateral, they are embedded in larger cooperation with various partner institutions, often funded by the European Union (EU).[41] Research projects that include various partners and that are funded by the EU are usually subjected to two agreements. These are the **Grant Agreement** and the **Consortium Agreement**. In the Grant Agreement the (EU) funder agrees to pay a specific amount over a defined period for specified tasks, to attain research results. This agreement sets out how much funding each partner will receive, which tasks each partner will undertake, and how the research results will be disseminated. It is based on the research proposal by the project partners and also contains rules on management and reporting throughout the research project. The EU has a model for this agreement.[42]

The Consortium Agreement is an agreement between all the partners, i.e. the universities or other research institutions that are beneficiaries of the funding. The funder is not party to this agreement. The agreement regulates the obligations between the partners, its management, and the way in which partners share the background and new knowledge relevant to or produced by the research. The most common model for this agreement is DESCA,[43] but partners can also use simplified agreements.

Mobility agreements, sometimes merely Memoranda of Understanding, facilitate student and sometimes staff exchange. Co-operation can be long-term but its intensity can vary over time; in some instances these agreements are not used for a long period of time. Some include the use of EU funding, others do not cover funding, but simply grant exemptions of enrolment fees.

[41] Israeli institutions can benefit from EU-funding, a privilege not granted to many countries outside the EU.

[42] General Model Grant Agreement for the Horizon Europe Programme (Version I.2., 1 April 2024), available at https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/agr-contr/general-mga_horizon-euratom_en.pdf. While the agreement refers to the Horizon Europe Programme, it is also sometimes used for other EU-funded projects.

[43] Desca Model Consortium Agreement for Horizon Europe (Version 2.0, February 2024), available at www.desca-agreement.eu.

For mobility agreements and for research cooperation agreements, separate **model agreements** exist. This brief will focus on the model agreements used by the EU and by the University of Antwerp. This section will first discuss specific contractual terms in them, then turn to the applicable law. As the applicable law is often Belgian law, the section will give a brief overview of the relevant provisions of Belgian law and lastly explain the situation if Belgian law is not applicable.

5.1. Specific terms of model agreements

Apart from the specific arrangement regarding funding and reporting, the General Model Grant Agreement also refers to ethics and values.

Article 14.2 on **values** provides:

> *The beneficiaries must commit to and ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities).*

Beneficiaries from any State are thus held to respect human rights. Where beneficiaries do not respect human rights or contribute to the violation of such rights by their State or arms of their State, they are thus violating their obligations under the contract with the funder.

Annex 5 of the General Model Grant Agreement further specifies that:

> *The beneficiaries must carry out the action in compliance with:*
>
> - *ethical principles (including the highest standards of research integrity)*
>
> *and*
>
> - *applicable EU, international and national law, including the EU Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Supplementary Protocols.*
>
> *No funding can be granted, within or outside the EU, for activities that are prohibited in all Member States. No funding can be granted in a Member State for an activity which is forbidden in that Member State.*
> *…*
> *The beneficiaries must ensure that the activities under the action have an exclusive focus on civil applications.*

This Annex is considered of high importance in the interpretation of the grant agreement, as it takes precedence over the terms and conditions (Art. 37).

If a beneficiary **breaches** any of these obligations, the funder may reduce (Art. 18.2 and Art. 28) or suspend (Art. 31.2) the grant, or terminate the grant in whole or with respect to one beneficiary (Art. 32.3). The conditions and procedure for such reduction, suspension and termination are set out in Articles 28, 31.2 and 32.3 respectively. Annex 5 specifically refers to the possibility to reduce the grant concerning a breach of its obligations (on ethics and values). It does not refer to suspension, but

Article 31.2 on suspension and Article 32.3 on termination by the funder refer to a *serious breach of obligations under this Agreement (including… breach of ethics…)*. Art. 32.3 also refers to *gross professional misconduct.* These provisions do not explicitly refer to breaches of Belgian (including international) law, but such breaches should be covered as the agreement operates under Belgian law and peremptory norms of international law cannot be permitted.

The Coordinator may request a **suspension** or amendment to the funder if exceptional circumstances make implementation impossible or excessively difficult (Art. 39). The Coordinator may also request termination of the grant agreement (Art. 32.1) or of the participation of a beneficiary (Art. 32.2), giving reasons and in the latter case submitting the opinion of the beneficiary concerned. The grant agreement will then have to be amended concerning the tasks and payments.

The Desca Model Consortium Agreement does not enlist the same obligations as those in Annex 5 of the Model Grant Agreement, but provides that [*e*]*ach party undertakes to… perform and fulfil, promptly and on time, all of its obligations under the Grant Agreement…* (Art. 4.1). It thus **incorporates** as between the partners the obligations set out in the Grant Agreement. The Desca Model Consortium agreement further provides that the General Assembly is responsible for identifying any breach of the obligations by the partners (Art. 6.3.7). The General Assembly consists of a representative of each partner and is chaired by the coordinator (art. 6.2).

Both the Model Grant Agreement (Art. 7, second paragraph) and the Desca Model Consortium Agreement (Art. 4.1) provide that parties have to fulfill their obligations in **good faith**. This concept is a cornerstone of contract law in various legal systems based on civil law, including Belgian law[44] (see 5.3. below on Belgian law).

Both model agreements contain clauses on ***force majeure*** (Model Grant Agreement Art. 35; Desca Model Consortium Agreement Art. 5.4). If a party cannot fulfil its obligations because these have become impossible, the party will not be held liable under the contract. Invoking *force majeure* require a high bar. While economic embargoes can amount to *force majeure*, only the obligations that have become impossible will be released.[45] *Force majeure* refers to supervening impossibility, i.e. a situation that arose after the conclusion of the contract. As explained above, some of the violations of international law have been incremental. However, the increase in transgressions of international law since October 2023 is clear. Contractual parties can argue that they have not foreseen the current state of affairs.

The Model Grant Agreement allows parties to **terminate** the contract or to terminate the participation of a beneficiary (Art. 32). The DESCA Model Consortium Agreement sets out the procedure for decision-making within the consortium (Art. 6). The General Assembly, in which every partner is represented, is the decision-making body (Art. 6.1 and 6.2). The coordinator is the intermediary between the partners and the funder (art. 6.4.1). Therefore, the General Assembly should discuss issues concerning the continued participation of Israeli partners and the performance of the research in good faith and in accordance with Belgian, EU and international law.

[44] Sophie Stijns en Sébastien De Rey, "Het nieuwe vebintenissenrecht in Boek 5 BW" *Rechtskundig Weekblad* (24 & 25) 2022-2023, 923 at §36.
[45] Belgian Court of Cassation, 21 January 2011, ECLI:BE:CASS:2011:ARR.20110121.5, on the embargo against Iraq.

The model cooperation agreement used by the University of Antwerp is much less detailed. It deals mainly with **practicalities** of student (and sometimes staff) exchange. It provides that a party may **terminate** the agreement with six months' notice to the other party (Sec. XI). Thus, even in the absence of breach, it is easy for the University of Antwerp to terminate these agreements.

5.2. Law applicable to agreements

Both the **Model Grant Agreement** and the **Desca Model Consortium Agreement** contain choices of the applicable law.

The Model Grant Agreement provides (Art. 43.1):

> *The Agreement is governed by the applicable EU law, supplemented if necessary by the law of Belgium.*

The reference to **EU law** includes Article 2 of the Treaty on European Union (TEU):

> *The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

EU law also includes Article 21 TEU:

> *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.*

This provision deals with the EU's action on the international scene. Granting funding for research to institutions outside the EU could be considered Union action.[46]

EU law also includes the EU Charter of Fundamental Rights. EU institutions (such as the funder in the case of Horizon research projects) are bound by the Charter. So are Member States[47] in their implementation of EU law (Art. 51 of the Charter).

To the extent that EU law does not unambiguously recognise horizontal application,[48] i.e. the obligations of universities under EU law, the remaining gaps must be filled with **Belgian law.** Belgian Law has a monist system. This means that international law is considered part of Belgian law. The Belgian Court of Cassation confirmed already in 1906 that international law is part of the Belgian legal

[46] See also Art. 186 of the Treaty on the Functioning of the EU, explicitly allowing cooperation in EU research with third countries (external action).
[47] And thus universities; see section 4 above.
[48] See Mariana Melo Egídio, "The horizontal direct effect and the Charter: A comment", *Revista Eletrónica de Direito Público* I (3), 2014, 194-203.

order.[49] Peremptory norms of international law are therefore included in this choice of law that is generally found in Consortium Agreements.

In line with the Grant Agreement, the DESCA model Consortium Agreements provides (Art. 11.7):

> *This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.*

It adds (Art. 11.5):

> *Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.*

In addition (though not strictly necessary), the Desca Model Consortium Agreement explicitly refers to Belgian law where it imposes the obligation of good faith.

The choice of law in the **model mobility agreements** that the University of Antwerp uses, is less clear. It provides that the law of the defending party shall apply (Art. IX). If this is the University of Antwerp, Belgian law is applicable. Thus, if the counterparty takes a dispute to court, the Belgian court would have to apply Belgian law. On the other hand, if the University of Antwerp wishes to take the dispute to court, that would be the court in the counterparty's country and the law of that country would apply. The Agreement on student exchange between the University of Bar-Ilan and the University of Antwerp (currently *on hold*), for example, also contains this clause. Thus, if the University of Antwerp wishes to take a dispute to court, this will be the Israeli court and Israeli law will apply. However, peremptory norms of international law shall always prevail (see Section 5.4 below).

5.3. Relevant provisions of Belgian contract law

A **new version** of the Belgian Civil Code is in the process of being introduced. The introductory part (Book I) as well as the part on the law of obligations (Book V) entered into force on 1 January 2023.[50] Contracts concluded before this date, fall under the old law; contracts concluded on or after 1 January 2023 are subject to the new law. The new law is not a complete departure of the old, but to a large extent incorporates case law that modernised the old law.[51]

Article 1.1. sets out the **sources** of private law.[52] It provides that the civil code is subject to custom and general principles of law. Specifically on obligations, the civil code reiterates this principle: the content of a contract is not limited to its explicit terms. Contracts are supplemented by the law, good faith

---

[49] Court of Cassation, *Drecoll,* 25 January 1906, *Pasicrisie belge 2006* (3.ser), I, 95-111, at 109. See also Jan Wouters and Dries Van Eeckhoutte, "Doorwerking van internationaal recht in de Belgische rechtsorde: een overzicht van bronnen en instrumenten" in Jan Wouters en Dries Van Eeckhoutte, *Doorwerking van internationaal recht in de Belgische rechtsorde. Recente ontwikkelingen in een rechtstakoverschrijdend perspectief* (Antwerp/oxford: Intersentia, 2006) 3-81, at 14-17.

[50] Acts of 28 April 2022, published in the Belgian Official Journal on 1 July 2022. Art. 5 of both Acts provide that they enter into force on the first day of the sixth month after publication.

[51] See S. De Rey, "De hercodificatie van het privaatrecht in België: overzicht, werkwijze en krachtlijnen", *Maandblad voor Vermogensrecht* 2024 (issue 6), 189-201 (doi: 10.5553/Mv V/157457672024034006001).

[52] Art. 1.1. of the civil code in the official Dutch text: *Onverminderd de bijzondere wetten, de gewoonte en de algemene rechtsbeginselen regelt dit Wetboek het burgerlijk recht en ruimer het privaatrecht. Het is van algemene toepassing onder voorbehoud van de regels die eigen zijn aan de uitoefening van het openbaar gezag. […]*

(see below) and customs (Art. 5.71 civil Code; Art. 1135 old civil code).[53] Reference to the law includes public policy and mandatory law.[54] Therefore, it is clear that peremptory norms of international law are part of and cannot be discarded by a contract governed by Belgian law.

Article 1.3. of the Introductory Part of the Civil Code provides that **public policy** cannot be derogated from.[55] The provision further sets out that public policy includes legal rules that touch upon the essential interests of the State, as well as rules that determine in private law the legal foundations of the society, such as the moral, economic, social and environmental order. This would include peremptory norms of international law. The Part on Obligations echoes the principle of public policy. It provides that the performance of a contract is illegal if it creates or maintains a situation that is contrary to public policy (Art. 5.51).[56]

The requirement of **good faith** is the subject of a separate provision in the new Civil Code (art. 5.71). This requirement already existed in the old civil code (Art. 1134(3)). The requirement entails that each party must conduct themselves in a cautious and reasonable manner. It means that a party is not only obliged to comply with the terms of the contract but also with all consequences attributed by the law, good faith and customs attributed to it.[57]

Belgian law sets requirements for the **termination** of agreements, but these are subject to the specific terms of the contract. As explained above (Section 5.3), the model grant and model consortium agreement set out how these agreements can be terminated.

5.4. Situation if Belgian law is not applicable

Even if a contract is governed by a law other than Belgian law, the Code on Private International Law[58] provides that foreign law may be set aside if the application of that foreign law would lead to a result that is manifestly incompatible with **public policy**.[59] This public policy includes fundamental principles

[53] Art. 5.71 of the civil code in the official Dutch text: *Een contract verbindt niet alleen tot hetgeen daarin overeengekomen is, maar ook tot alle gevolgen die door de wet, de goede trouw of de gebruiken eraan, volgens de aard en de strekking ervan, worden toegekend.*

[54] Art. 1.3., 5.51 and 5.56 of the civil code; Wannes Buelens, "De interpretatie en de uitvoering te goeder trouw van het contract" in Thierry Vansweevelt and Britt Weyts (eds), *Handboek Verbintenissenrecht* (2nd edn) (2023, Antwerp: Intersentia), para 469.

[55] Art. 1.3. of the civil code in the official Dutch text: […] *Er kan niet worden afgeweken van de openbare orde, noch van de regels van dwingend recht.*
Is van openbare orde de rechtsregel die de essentiële belangen van de staat of van de gemeenschap raakt of die in het privaatrecht de juridische grondslagen bepaalt waarop de maatschappij berust, zoals de economische orde, de morele orde, de sociale orde of de orde van het leefmilieu. […]

[56] Art. 5.51 of the civil code in the official Dutch text: *De prestatie is ongeoorloofd wanneer zij een toestand doet ontstaan of in stand houdt die in strijd is met de openbare orde of met dwingende wetsbepalingen.*

[57] Court of Cassation, 5 June 2014, ECLI:BE:CASS:2014:ARR.20140605.6.

[58] Act of 16 July 2004, published in the Belgian Official Journal on 27 July 2004; unofficial English translation available at https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf.

[59] Art. 21 of the Code on Private International Law in the official Dutch text: *De toepassing van een bepaling uit het door deze wet aangewezen buitenlands recht wordt geweigerd voor zover zij tot een resultaat zou leiden dat kennelijk onverenigbaar is met de openbare orde.*
Bij de beoordeling van deze onverenigbaarheid wordt inzonderheid rekening gehouden met de mate waarin het geval met de Belgische rechtsorde is verbonden en met de ernst van de gevolgen die de toepassing van dat buitenlands recht zou meebrengen […].

of Belgian law. While the word 'manifestly' means that the bar is higher for qualifying a legal rule as pertaining to public policy, it seems clear that peremptory norms of international law are included.

If a foreign court issues a judgment applying Israeli law, and that judgment is not in conformity with peremptory norms of international law, such judgment will **lack enforcement** in Belgium, due to the exception in Art. 25 of the Code on Private International Law: foreign judgments will not be enforced in Belgium if the effect would manifestly breach public policy. This could be the case of an Israeli judgment where that court has jurisdiction according to the terms of a mobility agreement.

6. Conclusions

The occupation of the Palestinian Territories by Israel has been deemed illegal by the International Court of Justice and has led to serious breaches of obligations arising from several peremptory norms of general international law over an extended period of time, including but not limited to the current leadership of the Israeli government.

The recent Advisory Opinion of the International Court of Justice attests that a number of peremptory norms of international law, without a doubt including the prohibition of racial discrimination (including the prohibition of racial segregation and apartheid), the right to self-determination and basic norms of international humanitarian law have been violated by Israel. Decisions on the prohibition of genocide and crimes against humanity are still pending.

This is quite a unique situation in which the International Court of Justice has found serious prevalent and long-term breaches of multiple peremptory norms of international law. In this context, cooperation with institutions in Israel *that operate within a legal and political context that entails and has for a long period of time entailed violations of jus cogens norms* present an extremely high risk of complicity and may amount to aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory.

The University of Antwerp (as well as other universities in Flanders, in Belgium and around the world) have a duty to act within a strict due diligence framework, departing from a precautionary principle in assessing the risk of complicity in such grave violations of peremptory norms of international law as well as other breaches such as violations of international humanitarian law and international human rights law, including the ongoing illegal occupation of Palestinian territories, the credible evidence as outlined by the Office of the Prosecutor of the International Criminal Court in relation to the commission of war crimes and crimes against humanity as well as the plausible risk of a genocide as outlined in the three Provisional Measures orders of the International Court of Justice to date.

Accordingly, in order to avoid all risks of complicity in these breaches of peremptory norms of international law as well as of other norms of international humanitarian law and international human rights law, the University of Antwerp should take effective measures as have been taken by some other higher education institutions in Europe and beyond to:

1. Ensure full compliance with obligations of Belgium under international law, international human rights law and international humanitarian law as well as its obligations under Belgian domestic law which as the ICJ order outlines, includes *erga omnes* obligations:

- not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory
- not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory;

2. End any and all collaborations with academic and other institutions directly or indirectly implicated in the violations of international law, international human rights law and international humanitarian law in Gaza and in the Occupied Palestinian territories, more generally;

3. Put on the agenda and discuss with other partners in research collaborations the legal consequences of cooperating with Israeli universities, examine the correct ways to terminate the participation of Israeli institutions, and communicate the issue to the funder of the research project;

3. Depart from a precautionary principle and not initiate any new collaborations with Israeli academic and other institutions until such a time that the violations of international law by Israel are brought to an end.

4. (By way of single exception) Set up of a credible form of carefully negotiated inter-university cooperation that aims specifically at bringing to an end serious breaches by Israel of obligations arising under a peremptory norm of general international law as recently established by the International Court of Justice. Examples of such positive measures include: the development of a scheme for the transition towards the end of the occupation; the development of laws, practices and policies that ensuring compliance with the prohibition of racial discrimination and the respect of basic rules of international humanitarian law; measures ensuring the enforcement of obligations to prosecute individuals that have committed international crimes; the setting up of reparation schemes for persons having suffered from breaches of peremptory norms of general international law; practices and policies aiming at preventing such breaches in the future and at reconciliation.