

Comparing the CERD Conciliation Mechanism and the ICJ's Advisory Opinion on Israel's Racial Discrimination Policy in the Occupied Palestinian Territories: Towards the Judicialization of the Israel/Palestine Conflict via Strategic Means of Dispute Settlement Before the UN System

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Abstract

The Article examines the recent wave of ‘judicialization’ of the protracted Israel/Palestine conflict with particular emphasis on the 2024 ICJ Advisory Opinion (AO) and Conciliatory Proceedings under the Convention on the Elimination of all forms of Racial Discrimination. Specifically, it investigates how such UN legal tools and bodies are employed to advance legal claims, with the ultimate goal of using law to settle disputes. Subsequently, it argues that Palestine has strategically opted for these procedures to obtain authoritative pronouncements from (quasi-) judicial fora on aspects of its dispute with Israel, which does not consent to third-party settlement. To develop this principal position on Palestine’s lawfare, the Article advances its main argument, namely that the ICJ Advisory Proceedings and the Conciliation Procedure under the CERD framework are integral to the dispute settlement methods outlined in Article 33 Charter and should be considered viable litigation strategies for addressing bilateral disputes like the Israel/Palestine conflict that cannot be resolved via direct contentious proceedings. To achieve this goal, the Article explores the twofold reasons underlying Palestine’s strategic petitions. It first argues that through such procedures Palestine circumvented jurisdictional obstacles prevalent in contentious cases, including its contested statehood and limited standing as well as Israel’s lack of consent. The Article addresses the influence of Israel’s lack of consent on the organs’ jurisdiction, admissibility and standard of proof. Further, the Article explores the long-term, legal and political consequences of such pronouncements, by clarifying their so-called ‘authoritativeness’. It argues that they have a *lato sensu* binding character and are capable of influencing negotiations and shaping policy on an international level. The Article concludes by addressing pressing concerns relating to the protection of the fora’s (quasi-) judicial integrity and contends that such procedures were intended as (quasi-) judicial methods within the UN system to facilitate the settlement of inter-State disputes, manifesting the Organization’s ideal of ‘peace through law’.

A. Introduction: The Israel/Palestine Conflict in the UN Peace Architecture

The Israel-Palestine conflict, a multidimensional dispute encompassing legal and political controversies like Palestine's statehood¹ and self-determination,² Israel's alleged right to self-defense,³ its violent⁴ and segregational practices in the occupied Palestinian territory ('OPT'),⁵ is a tale as old as time. The continuously deteriorating situation,⁶ and its bloody history⁷ reflect probably the biggest paralysis -if not failure- of the United Nations ('UN') system to uphold the fundamental purposes and guiding principles of the Organization enshrined in Articles

- 1 J. Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (2012); Y. Ronen, 'Recognition of the State of Palestine: Still too Much too Soon?' in C. Chinkin & F. Baetens (eds), *Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford* (2015), 229-247.
- 2 UNHRC Res. 55/30, UN Doc. A/HRC/RES/55/30, 5 April 2024. See also Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, F. Albanese, *Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, UN Doc. A/77/356, 21 September 2022.
- 3 For the debate following the 7th October attacks by Hamas see inter alia N. Tsagourias, 'Israel – Hamas 2023 Symposium – Israel's Right to Self-Defence Against Hamas', Lieber Institute West Point (1 December 2023), available at <https://lieber.westpoint.edu/israels-right-self-defence-against-hamas/> (last visited 14 February 2025); Y. Shany & A. Cohen, 'Israel – Hamas 2023 Symposium – International Law "Made in Israel" v. International Law "Made for Israel"', Lieber Institute West Point (22 November 2023), available at <https://lieber.westpoint.edu/international-law-made-in-israel-international-law-made-for-israel/> (last visited 14 February 2025); M. Milanovic, 'Does Israel Have the Right to Defend Itself?', EJIL:Talk! (14 November 2023), available at <https://www.ejiltalk.org/does-israel-have-the-right-to-defend-itself/> (last visited 14 February 2025).
- 4 For an examination of Israel's use of force in OPT see Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel*, UN Doc. A/78/198, 5 September 2023.
- 5 For Israel's racial segregation and apartheid practices see Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, M. Lynk, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, UN Doc. A/HRC/49/87, 12 August 2022, paras 35-49.

1 and 2(3) of the Charter: the development of friendly relations among nations based on the self-determination principle, the prevention of armed conflict and the promotion of peaceful dispute resolution.

Given that long-standing unsettled disputes akin to the Israel/Palestine one ultimately threaten international peace and security,⁸ the principle of peaceful settlement constitutes the cornerstone of the modern peace architecture encapsulated in the Charter. As coercion is unlawful both under the non-intervention principle⁹ and the principle of non-use of force¹⁰, an alternative mechanism of conflict resolution is mandated.

Mindful of that, Article 2(3) must be interpreted in context with the institutional arrangements provided for by the Charter.¹¹ The General Assembly ('GA'), the Security Council ('SC'), the International Court of Justice ('ICJ' or 'Court') and the Secretary General as principal UN organs are all required to contribute to the resolution of international disputes, within their competences as provided for in the Charter. Particularly, Article 33 - constituting a detailed elaboration of Article 2(3) in terms of available dispute-resolution methods - materializes the institutional responsibility of the Organization.¹² The Charter's architecture is further supported by the robust UN's Human Rights Treaty System,¹³ coordinated by the Office of the High Commissioner for Human Rights. Major international human rights treaties entail unique dispute resolution and concilia-

6 For the impact of the ongoing hostilities on Palestinians' rights see Special Committee to Investigate Israeli Practices, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, UN Doc. A/79/363, 20 September 2024.

7 For a brief historic overview see UN, 'History of the Question of Palestine' (2025), available at <https://www.un.org/unispal/history/> (last visited 10 February 2025).

8 C. Tomuschat, 'Article 2(3)' in B. Simma *et al.* (eds), *The Charter of the United Nations: A Commentary*, 4th ed. (2024), 263, 267.

9 *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)*, Judgment, ICJ Reports 1986, 14, 108, para. 205; GA Res. 2625 (XXV), UN Doc. A/RES/2625(XXV), 24 October 1970.

10 *Ibid.*; *Charter of the United Nations*, 26 June 1945, 1 UNTS XVI [Charter], Art. 2(4); See also C. Tams, 'Article 2(4)' in Simma *et al.*, *supra* note 8, 289, 293-298 for the principle's characterization as "cornerstone".

11 Tomuschat, *supra* note 8, 267.

tion avenues, via the creation of treaty-based human rights bodies with quasi-judicial competence to decide upon inter-state complaints regarding the implementation of each treaty.¹⁴

UN's involvement in the Palestine question dates back to the 1947 Partition Plan.¹⁵ GA Resolution 57/107 unequivocally recognized "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy".¹⁶ Albeit this responsibility has been manifested within the UN framework with many resolutions or through the establishment of *ad hoc* missions,¹⁷ the efficacy of the UN's peace architecture is continuously challenged.

It is beyond the scope of this Article to assess the UN's overall response.¹⁸ It suffices, though, to note that the Security Council — the so-called 'executive organ' entrusted with the primary responsibility of maintaining international peace and security — has time and again found itself in deadlock, unable to promote negotiations or take decisive action, especially during ongoing hostilities. In response and often using as a legal basis the *Uniting For Peace* mechanism,¹⁹

12 Specifically, para. 1 is connected to disputes which can be brought before the competent UN organs, so long as they pose a threat to international peace and security. Interestingly, the provision's very wording contemplates the connection between the responsibility of the parties involved and the responsibility of the Organization. Primarily, it is incumbent upon the parties to a dispute to take remedial action, and in case their efforts fail, the procedures of Chapter VI or of Chapter VII can be utilized. See also, C. Tomuschat, 'Article 33' in Simma *et al.*, *supra* note 8, 1402, 1404.

13 L. Oette, 'The UN Human Rights Treaty Bodies: Impact and Future' in G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts* (2018), 95, 96.

14 Human Rights Committee, *General Comment No. 33: Obligations of States Parties Under the Optional Protocol to the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/GC/33, 31 October 2008, 3, para. 11.

15 GA Res. 181(II), UN Doc. A/RES/181(II), 29 November 1947.

16 GA Res. 57/107, UN Doc. A/RES/57/107, 14 February 2003.

17 GA Res. 302 (IV), UN Doc. A/RES/302(IV), 8 December 1949, establishing the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

18 For an extensive analysis on UN's involvement in the question of Palestine see A. Imseis, *The United Nations and the Question of Palestine* (2023).

19 GA Res. 377(V), UN Doc. A/RES/377(V), 3 November 1950.

the GA has adopted a vast number of resolutions, albeit with non-legally binding character.²⁰ The Secretary-General ('SG') has likewise reached the limit of his authority by invoking the rarely-used Article 99 in December 2023.²¹

Against this backdrop, States - whether acting individually or collectively - have increasingly sought other avenues to resolve the Israel/Palestine dispute, turning to UN organs with (quasi-) judicial function. The so called 'judicialization' of the Israel/Palestine dispute has started as early as 2003, when the GA requested for the first time an ICJ Advisory Opinion (AO) on this matter.²² In the last decade, three contentious cases - one by Palestine itself, and one where it intervened - have been brought before the Court in an effort to judicially address the legality of Israel's presence and practices in the OPT.²³ The International Criminal Court, after a landmark decision recognizing Palestine as a 'state' for the purposes of the Rome Statute,²⁴ issued arrest warrants against the Israeli Prime Minister and the Minister of Defense in 2024.²⁵ Additionally, Palestine has utilized the compulsory inter-state communication mechanism encapsulated in Article 11 of the International Convention on the Elimination of all forms of Racial Discrimination ('ICERD' or 'Convention'), in order to address Israel's segrega-

- 20 See the most recent one calling on a ceasefire and the unhindered distribution of humanitarian aid, GA Res. 10L.33, UN Doc. A/ES-10/L.33, 5 December 2024.
- 21 UNSG, *Letter Dated 6 December 2023 From the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/2023/962, 6 December 2023.
- 22 GA Res. ES-10/14, UN Doc. A/RES/ES-10/14, 12 December 2003.
- 23 The first includes Palestine's application against the USA with respect to the relocation of the latter's embassy, *Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)*, Order, ICJ Reports 2018, 708. In the aftermath of the 7th October attacks and the escalation of hostilities, South Africa was the first to initiate proceedings before the ICJ with respect to the Genocide Convention, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order, ICJ Reports 2024, 3 [*South Africa v. Israel Case*]. A few months later Nicaragua filed an application against Germany, accusing the latter of complicity with Israel's alleged genocidal violence, *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Order, ICJ Reports 2024, 560.
- 24 *Situation in the State of Palestine*, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' ICC-01/18-143 05-02-2021 1/60 (Pre-Trial Chamber I), 5 February 2024, 50, para. 112.

tional and apartheid practices, and in April 2021 an *ad hoc* Conciliation Commission was established.²⁶ Similarly, the GA continues to seek a constructive dialogue with the Court and has requested additionally two Advisory Opinions.²⁷

The ability to appeal before (quasi-) judicial bodies constitutes an indispensable part of the UN peace architecture, being one of the available pathways for the pacific settlement of disputes under Article 33 Charter. Article 36(3) Charter particularly demonstrates the preference for referring ‘legal disputes’ to the ICJ. This is because the provision is inexorably linked with Article 92 Charter, identifying the ICJ as the principal judicial UN organ; and Article 1(1) Charter, outlining the primary purpose of the Organization as being “to bring about by peaceful means, and in conformity with the principles of justice and international law ... settlement of international disputes”. Ergo, having recourse to the ICJ, or any other (quasi-) judicial body for that matter, is the most obvious way to materialize the UN’s cardinal purpose.

Despite that, the Court has sought to address the thorniest issues of international law via Advisory Opinions.²⁸ However, such opinions have not, traditionally, been perceived as part of the dispute settlement architecture.²⁹ The Court

- 25 ICC, ‘Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant’, Press Release, 21 November 2024, available at <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> (last visited 30 September 2025).
- 26 Office of the High Commissioner for Human Rights, ‘Inter-State Communications’ (2024), available at <https://www.ohchr.org/en/treaty-bodies/cerd/inter-state-communications> (last visited 15 January 2025).
- 27 GA Res. 77/247, UN Doc. A/RES/77/247, 30 December 2022; GA Res. 79/232, UN Doc. A/RES/79/232, 19 December 2024.
- 28 These include the legality of nuclear weapons’ use, the right to self-determination, the right to self-defense against non-State actors etc. see *inter alia* *Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019, 95 [*Chagos Opinion*]; *Accordance With International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, 403 [*Kosovo Opinion*]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136 [*Wall Opinion*]; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, 226 [*Nuclear Weapons Opinion*].
- 29 J. G. Merrills, *International Dispute Settlement*, 6th ed. (2017), 142.

has clarified that its Advisory Opinions are given to the organs requesting them and not to the affected States. More fundamentally, conceiving Advisory Opinions as litigation avenues for bilateral disputes would contravene the principle of consensual jurisdiction, echoed in the (infamous) *Eastern Carelia* doctrine.³⁰ As a matter of its wide margin of discretion, the Court must decline to render an Opinion when “to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent”.³¹

Consequently, while the 2024 rulings of both the ICJ and the *ad hoc* Conciliation Commission constitute the culmination of judicial efforts to solve the ongoing dispute peacefully, they were subjected to rigorous debate.³² As international procedural law has an old-fashioned bilateral structure, remaining consent-based and directed at the preservation of individual state interests,³³ a hardly unnoticed tension of jurisdiction and judicial propriety arose, once the two organs were asked to adjudicate public interest norms associated with a bilateral dispute in Israel’s absence. Israel protested the Committee’s jurisdiction in light of its unilateral statement precluding treaty relations between itself and Palestine. It simultaneously, raised propriety objections in the advisory hearings, because the question addressed its bilateral dispute with Palestine; so that rendering an Opinion would circumvent its consent.

30 *Eastern Carelia*, Advisory Opinion, PCIJ Series B No. 5 (1923) [*Eastern Carelia Opinion*].

31 *Western Sahara*, Advisory Opinion, ICJ Reports 1975, 12, para. 33 [*Western Sahara Opinion*].

32 See M. Rhades, ‘The Discretion That Wasn’t: The ICJ’s Exercise of Judicial Propriety in its Latest Advisory Opinion’, EJIL:Talk! (18 September 2025), available at <https://www.ejiltalk.org/the-discretion-that-wasnt-the-icjs-exercise-of-judicial-propriety-in-its-latest-advisory-opinion/> (last visited 21 January 2025); N. Tsagourias, ‘The ICJ’s Advisory Opinion on the Occupied Palestinian Territory and the Court’s Discretion’, Lieber Institute West Point (9 August 2024), available at <https://lieber.westpoint.edu/icjs-advisory-opinion-occupied-palestinian-territory-courts-discretion/> (last visited 21 January 2025) [Tsagourias, ‘The ICJ’s Advisory Opinion’].

33 J. A. Hofbauer, ‘Not Just a Participation Trophy? Advancing Public Interests Through Advisory Opinions at the International Court of Justice’, 22 *The Law & Practice of International Courts and Tribunals* (2023) 2, 234.

In light of these, this Article critically compares the advisory and conciliatory proceedings as strategic means of dispute settlement and investigates how such UN legal tools and bodies may be employed to advance legal claims, with the ultimate goal of using law to settle the Israel/Palestine dispute. Unlike other judicial means, these two procedures share 4 fundamental elements: firstly, they are legal tools operating under the auspices of the UN system; secondly, they have a non-adversarial character, since there are no 'litigant-parties'; thirdly, they are the only ones requested to assess discrimination, segregation and apartheid claims in the OPT; and finally, the pronouncements issued are not binding.

Drawing from these, the Article argues that Palestine has strategically opted for the advisory and conciliatory procedures in its wider effort to resolve the pending dispute with Israel. To develop this principal position on Palestine's lawfare, the Article advances its main argument, namely that the ICJ advisory proceedings and the conciliation procedure under the ICERD framework are integral to the dispute settlement methods outlined in Article 33 Charter and should be considered viable adjudication strategies for addressing bilateral disputes like the Israel/Palestine conflict that cannot be addressed via direct contentious proceedings. Accordingly, the remainder of this Article unfolds as follows: In Section B, the Article explores the reasons underlying the strategic character of the advisory and conciliatory proceedings. Firstly, it argues that through such procedures, Palestine circumvented jurisdictional obstacles prevalent in contentious cases, including its contested statehood and limited standing as well as Israel's lack of consent. Secondly, the Article demystifies the pronouncements' 'authoritativeness', proposing that they in fact possess a *lato sensu* binding nature and are capable of influencing negotiations and shaping policy on an international level. The Article concludes by addressing pressing concerns relating to the protection of the fora's (quasi-) judicial integrity and contends that such procedures were intended as (quasi-) judicial methods within the UN system to facilitate the settlement of inter-State disputes, manifesting the Organization's ideal of 'peace through law'.

B. In Quest for a Suitable Procedure to ‘Adjudicate’ the Dispute: Advisory and Conciliatory Proceedings as Strategies to Obtain Authoritative Pronouncements on the Israel/Palestine Conflict

Mapping the exact motives behind every petition is a difficult quest, as States’ goals vary depending on the nature of the process, the wording of the question put before the organ, the timing of the request, etc.³⁴ It can be assumed that Palestine’s -and the coalition of States supporting it – main hope is for a judicial decision affirming the former’s statehood. On a second level, stakeholders may expect the resolution of aspects of the underlying controversy, while overcoming serious power imbalances.³⁵ These petitions may also help raising awareness on Israel’s atrocities and as such constitute tools of political pressure on an international level.³⁶

Instead of focusing on the *motif* behind the aforementioned procedures, this section adopts a different approach and explores their strategic procedural advancements. Having outlined the similarities and unique elements of the advisory and conciliatory proceedings in contrast to other judicial methods, this section will answer a twofold question: what advancement do these procedures offer to Palestine and how do they contribute to settling the dispute?

Subsequently, it will be, firstly, argued that in such proceedings the two main jurisdictional barriers prevalent in contentious proceedings, namely Palestine’s statehood and legal standing and Israel’s consent, can be bypassed. Secondly, the Article will investigate their normative and political impact in resolving aspects of the ongoing conflict, by clarifying their so called ‘authoritativeness’ and outlining their practical implications.

34 See A Kulick, ‘Between Advice and Miracle: Expectations and Persuasiveness of ICJ Advisory Opinions’, 27 *International Community Law Review* (2025), 1-2, 33, 38-39, where the author identifies 6 ‘types’ of Advisory Opinions depending on the goal behind each request.

35 *Ibid.*, 44-47.

36 *Ibid.*, 47-48.

I. Bypassing the Difficulties in Contentious Proceedings

The difficulties faced by Palestine in its effort to judicialize its conflict with Israel are twofold: First, Palestine, whose statehood remains contested, is confronted with serious legal standing obstacles as an observer UN State and a non-member to the ICJ Statute.³⁷ Second, there is no jurisdictional basis -may that be an optional clause, a compromissory clause or a *compromis*³⁸ for the institution of contentious proceedings before the Court against Israel, regarding the latter's prolonged and unlawful presence and practices in the OPT. Israel's lack of consent is emblematic of a general lack of will to resolve the underlying dispute. Especially with regard to racial discrimination, which as showcased by UN reports constitutes an essential aspect of the overall dispute,³⁹ albeit both parties are CERD signatories, Israel has deposited a reservation to the compromissory clause entailed in Article 22, blocking, thus, its invocation. Under such circumstances, advisory proceedings and the *ad hoc* conciliation mechanism appear to be Palestine's only

37 On Palestine's standing before the Court see ICJ, 'States not Parties to the Statute to Which the Court may be Open', available at <https://www.icj-cij.org/index.php/states-not-parties> (last visited 13 February 2025). See also A. Papanastasiou, 'Statehood as an Incidental Issue in International Adjudication: Reflections on Palestine's Intervention Request in South Africa v Israel', EJIL:Talk! (11 November 2024), available at <https://www.ejiltalk.org/statehood-as-an-incident-issue-in-international-adjudication-reflections-on-palestines-intervention-request-in-south-africa-v-israel/> (last visited 20 February 2025).

38 *Statute of the International Court of Justice*, 26 June 1945, 33 UNTS 993 [Statute], Art. 36.

39 See Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, *supra* note 5, paras 13, 35-49; See also CERD, *Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel*, UN Doc. CERD/C/ISR/CO/17-19, 27 January 2020, paras 11-14, 21-23.

formal option for addressing Israel's discriminatory policy.⁴⁰ In fact, as this Article explores, these procedures entail many legal and practical advantages, making Palestine's case justiciable and plausible.

As to the question of Palestine's statehood, it was not directly addressed by the two organs. In the ICJ context, it fell outside the scope of the GA's request. Besides, rendering an Opinion does not in any way presuppose such affirmation for the purposes of jurisdiction or propriety. In the CERD context, Palestine's contested statehood appeared as a basis to challenge its valid accession to the Convention. Unwilling to engage in the heated debate that preceded,⁴¹ the CERD considered Palestine 'a State-party' for the purpose of the Convention by virtue of its membership to United Nations Educational, Scientific and Cultural Organization since 2011 and its status as a UN non-member observer State without elaborating further.⁴²

The main issue in both proceedings was Israel's lack of consent and the deriving questions of jurisdiction and judicial propriety. Specifically, Israel challenged the CERD's jurisdiction on the ground that it had excluded treaty relations with Palestine, by virtue of the official communication it deposited to the SG in May 2014,⁴³ alleging that it was not bound by the CERD's enforcement mechanism vis-à-vis Palestine.⁴⁴ In the advisory proceedings, Israel's lack of consent to third-party-settlement served as an agitating question of judicial propriety.⁴⁵ That the Court may not exercise its advisory discretion if the question asked

40 M. Stavridi, 'The Advisory Function of the International Court of Justice: Are States Resorting to Advisory Proceedings as a "Soft" Litigation Strategy?' *Journal of Public and International Affairs* (22 April 2024) available at <https://jpia.princeton.edu/news/advisory-function-international-court-justice-are-states-resorting-advisory-proceedings-%E2%80%9Csoft%E2%80%9D> (last visited 20 January 2025); Hofbauer, *supra* note 33, 243-245.

41 CERD, *Inter-State Communication Submitted by the State of Palestine Against Israel*, UN Doc. CERD/C/100/3, 12 December 2019, paras 32-41, 50-53, 72 [CERD, *Inter-State Communications Submissions*].

42 CERD, *Inter-State Communication Submitted by the State of Palestine Against Israel*, UN Doc. CERD/C/100/5, 12 December 2019, para. 26. [CERD, *Inter-State Communications Conclusions*].

43 *Depositary Notification*, C.N.293.2014.TREATIES-IV.2, 22 May 2014.

44 CERD, *Inter-State Communications Submissions*, *supra* note 41, paras 73-78, 81-84.

“was directly related to the main point of a dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties, and that at the same time it raised a question of fact which could not be elucidated without hearing both parties”,⁴⁶ appears as a precedent in the Court’s Opinions.

The ICJ’s and CERD’s jurisprudence has evolved in a way that Israel’s lack of consent would not ultimately obscure the issuance of the rulings. This is one of the strategic procedural advancements presented in these proceedings.

1. Establishing CERD’s Jurisdiction in View of Israel’s Unilateral Statement: the Obligatory Nature of the Conciliatory Mechanism and its Functional Relation to *Erga Omnes* Obligations

In a novel decision for the protection of communitarian norms,⁴⁷ the CERD dealt with two major issues deriving from Israel’s communication deposited after Palestine acceded to the Convention, that reads: [t]he Government of Israel [...] does not consider ‘Palestine’ a party to the Convention and regards the Palestinian request for accession as being without [...] effect upon Israel’s treaty relations under the Convention.”⁴⁸ The statement raises issues on the validity of Palestine’s accession to the Convention, and the legal effects of

45 *Legal Consequences Arising From The Policies And Practices Of Israel In The Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, General List No. 186, 19 July 2024, paras 30-49 [*Legal Consequences Opinion*].

46 *Interpretation of Peace Treaties*, Advisory Opinion, ICJ Reports 1950, 65, 72 [*Peace Treaties Opinion*].

47 J. Eiken, ‘Breaking new ground? The CERD Committee’s decision on jurisdiction in the inter-State communications procedure between Palestine and Israel’, EJIL:Talk! (29 January 2020), available at <https://www.ejiltalk.org/breaking-new-ground-the-cerd-committees-decision-on-jurisdiction-in-the-inter-state-communications-procedure-between-palestine-and-israel/> (last visited 10 February 2025).

48 *Depositary Notification*, *supra* note 43.

Israel's statement regarding the accession. While the answer to the first was straightforward,⁴⁹ the second point was more troubling, leading to the expression of divergent views by the CERD members.

The majority departed from the general treaty law considerations pleaded by Israel under which a State-party to a multilateral treaty may exclude treaty relations with an entity it does not recognize, via a unilateral statement.⁵⁰ Instead, it highlighted that ICERD's objective and non-synallagmatic nature, as a human rights convention, precludes the severability of treaty relations via unilateral statements.⁵¹ As to whether CERD's inter-State communications mechanism requires the existence of bilateral treaty relations between the disputing parties, the Com-

49 CERD, *Inter-State Communication Conclusions*, *supra* note 42, para 26: "With respect to the first point, the Committee notes that by resolution 67/19, the General Assembly decided to accord to Palestine non-member observer State status in the United Nations. The Committee further notes that given that the applicant has been a member of the UNESCO since 2011, it complies with the conditions established in articles 17 and 18 of the Convention. In addition, the Committee notes that following the receipt, on 21 March 2018, of initial and second periodic reports submitted by the State of Palestine under article 9 of the Convention, the Committee adopted the concluding observations on such reports during its ninety-ninth session. Therefore, the Committee considers that the applicant is a State party to the Convention."

50 See, Conclusion 1.5.1 and accompanying commentary of the International Law Commission's 'Guide to Practice on Reservations to Treaties'. in *Report of the International Law Commission to the Sixty-third Session (26 April-3 June and 4 July-12 August 2011)*, UN Doc. A/66/10/Add.1, 9-97. It is beyond the scope of this Article to characterize Israel's statement as a reservation and explain in detail its treaty-law implications or comment upon the International Law Commission's Conclusion 1.5.1 from its Reservations Guide. Suffice it to quote the CERD, *Inter-State Communications Conclusions*, *supra* note 42, para. 35, on the relevant points: "The Committee agrees with the respondent that its statement falls under the second category. The Committee, however, notes that the International Law Commission, after having adopted the text indicating that such a unilateral statement is outside the scope of the Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity, had recourse to an accompanying commentary. Such a commentary, which confirms that the second type of statement "clearly purports to have (and does have) a legal effect", appears to have the effect of a non sequitur, considering that such a confirmation would lead to the undoing of the approved formal stand of the Commission, according to which the questioned unilateral declaration is outside the scope of the Guide to Practice".

51 CERD, *Inter-State Communications Conclusions*, *supra* note 42, paras 51-53, 67(d).

mittee stressed the functional link between the *jus cogens* norms⁵² and the *erga omnes* obligations⁵³ established in the Convention and the enforcement mechanism, which is tailored to ICERD's special and collective character.⁵⁴ In contradistinction to the ICJ's latest order in the *Sudan v. UAE* case,⁵⁵ the Committee did not isolate the procedural mechanism but construed it as a necessary way of realizing the Convention's *raison d'être*, which was established for the protection of collective interests and as such requires collective action when it comes to enforcement.⁵⁶ To accept that Israel may void such collective enforcement by not recognizing Palestine would defeat ICERD's object and purpose. This is further attested by the unique nature of the procedure entailed in Articles 11-13, which has two elements: it is automatic⁵⁷ and conciliatory, going beyond the characteristics of classical conciliation procedures,⁵⁸ in that its effectiveness cannot depend on the prior will of States.⁵⁹

CERD's approach is unsurprising and must be read in the broader context of the 'constitutionalization of international law'⁶⁰ and as fully consistent with the established 'humanizing' and 'protective' approach of other human rights tri-

52 See ILC's Draft Conclusions on peremptory norms of general international law (*jus cogens*) in *Report of the International Law Commission Seventy-first session (29 April–7 June and 8 July–9 August 2019)*, UN Doc. A/74/10, 20 August 2019, 147; CERD, *Inter-State Communications Conclusions*, *supra* note 42, para 39.

53 *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, ICJ Reports 1970, 3, para. 33.

54 J. Eiken & D. Keane, 'Towards an Amicable Solution: The Inter-State Communications Procedure Under ICERD', 21 *The Law and Practice of International Courts & Tribunals* (2022) 2, 302, 313-315 While the authors appear sceptic towards the Committee's reasoning, they stress the compulsory nature of the mechanism.

55 *Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In Sudan (Sudan v. United Arab Emirates)*, Order, General List No 197, 5 May 2025.

56 CERD, *Inter-State Communication Conclusions*, *supra* note 42, para 54.

57 Unlike the mechanism in the Convention against Torture which is optional.

58 Eiken & Keane, *supra* note 54, 315.

59 CERD, *Inter-State Communication Conclusions*, *supra* note 42, para. 58; Eiken & Keane, *supra* note 54, 314

60 B.-O. Bryde, 'Institution Building in the UN-Human Rights-System – the Committee on the Elimination of Racial Discrimination (CERD)', in H. Hestermeyer *et al.* (eds), *Coexistence, Cooperation and Solidarity – Liber Amicorum Rüdiger Wolfrum*, Vol. I (2012), 333, 342.

bunals and bodies.⁶¹ That CERD's enforcement mechanism does not depend upon Israel's consent perfectly advances Palestine's procedural position and transforms the conciliation mechanism in a proper quasi-judicial platform to advocate for community interests without considerable jurisdictional barriers.⁶² Following this much welcomed and successful decision, an *ad hoc* Commission was established that would rule on the merits few years later. The substantive findings, which were not equally assertive, and their impact are discussed in the following sections.

2. An Advisory Opinion on an Alleged Bilateral Dispute and the Issue of Judicial Propriety: Deconstructing *Eastern Carelia*

In the advisory proceedings, the ICJ had to consider the familiar but still controversial question of whether Advisory Opinions are the proper procedure to address the dispute between Israel and Palestine, when the former does not consent to third-party-settlement. The position that State consent serves as a 'judicial propriety' requirement in advisory proceedings appears as a precedent in the Court's advisory jurisprudence,⁶³ but is in fact ill-defined, mistakenly stemming from the PCIJ's ruling in the *Eastern Carelia Advisory Opinion*.⁶⁴

61 European Commission of Human Rights, *Application No. 788/60, Austria v. Italy* (1961); *Ireland v. United Kingdom*, ECtHR Application No. 5310/71, Judgment of 18 January 1978, 82, para. 239; European Commission of Human Rights, *Application No. 8007/77, Cyprus v. Turkey* (1983), para. 48; *Loizidou v. Turkey*, ECtHR Application No. 15318/89, Judgment of 23 March 1995, paras 90-98; *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75)*, Advisory Opinion OC-2/82 of 24 September 1982, IACtHR Series A, No. 2, para. 29; *Ivcher Bronstein v. Peru*, Judgment of 24 September 1999, IACtHR Series C, No. 54, para. 42; Human Rights Committee, *General Comment No. 24 (52) on Issues Relating to Reservations Made Upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations Under Article 41 of the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.6, 2 November 1994, para. 17.

62 *Contra* D. Tamada, 'Inter-State Communication Under ICERD: From ad hoc Conciliation to Collective Enforcement?', 12 *Journal of International Dispute Settlement* (2021) 3, 405, 425, who argues that the CERD inter-state procedure is designed as a bilateral means for reaching an agreed solution to bilateral disputes between two states parties, by balancing their bilateral interests.

The *Eastern Carelia Opinion* was requested in the aftermath of the 1920 war between Finland, a Member-State, and the USSR, a non-Member-State to the League of Nations. Acting under Article 14 of the League's Covenant,⁶⁵ the League's Council requested an Opinion from the PCIJ on whether Russia's Declaration annexed to the Treaty of Dorpart between Finland and Soviet Russia, created obligations for the former, with respect to the autonomy and self-determination of Eastern Carelia. The Soviet Union objected to the Court's Advisory Jurisdiction on the basis of Article 17 Covenant. That Article explicitly provided that in disputes between a Member of the League and a non-Member State the dispute settlement methods envisaged in Articles 12-16 Covenant would be applicable, insofar the non-Member State accepted the obligations of membership in the League for the purposes of that dispute. Accordingly, the USSR argued that the Council, by requesting an Opinion, sought to impede it through the dispute settlement procedures of the Covenant, in defiance of Article 17.⁶⁶

Not surprisingly, the PCIJ found it "impossible to give its Opinion on a dispute of this kind".⁶⁷ Reflecting on the underlying principle of consent, the PCIJ ruled that the submission of a dispute between Member-States and States not participating in the League for settlement under the methods provided for in the Covenant, could take place only by virtue of the latter's agreement.⁶⁸ With Russia refusing to consent, the Court had no other option but to decline an Opinion.

63 *Peace Treaties Opinion*, *supra* note 46, 71; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, 16, 27; *Western Sahara Opinion*, *supra* note 31, 20 para. 21; *Wall Opinion*, *supra* note 28, 157-159, paras 46-50; *Kosovo Opinion*, *supra* note 28, paras 29-48; *Chagos Opinion*, *supra* note 28, paras 85-90.

64 *Eastern Carelia Opinion*, *supra* note 30, 27-29.

65 *Covenant of the League of Nations*, 28 June 1919, 225 CTS 195, Art. 14: "The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

66 *Eastern Carelia Opinion*, *supra* note 30, 27

67 *Ibid.*, 27-28.

68 *Ibid.*, 27.

Further, it stated that lack of evidence due to Russia's non-participation constituted another compelling reason not to decide what was essentially a "question of fact".⁶⁹

It follows that the *Eastern Carelia Opinion* has a limited rationale, underpinning issues of advisory jurisdiction – and not of propriety/admissibility – in a very narrowly-defined set of circumstances, that bear no resemblance with the situation at hand.⁷⁰ The PCIJ decided on its jurisdictional incompetence to deliver an Opinion and rejected the Council's request, because the latter did not possess the authority to make the request in the first place, due to Russia's lack of consent to having its dispute settled through the League's system, including via advisory opinions.⁷¹ In the UN context, such an objection on behalf of Israel has no legal merit. Simply by virtue of its membership, Israel has already recognized and expressed its consent to the advisory function of the Court,⁷² while its lack of consent to third-party settlement has "no bearing to the Court's jurisdiction to give an Advisory Opinion" even on the Palestinian question.⁷³

Therefore, no general rule can be deduced from that Opinion, because all PCIJ's pronouncements on state consent, the bilateral character of a dispute, lack of evidence etc. are strictly understood in the context of USSR's non-League membership.⁷⁴ However, even if one were to assume the opposite, the PCIJ underscored that rendering an Opinion under such circumstances would have been inexpedient, not incompatible with its judicial character as the Court later misstated in the *Western Sahara Opinion*.⁷⁵

69 *Ibid.*, 28.

70 See M. Lando, 'Advisory Opinions of the International Court of Justice in Respect to Disputes', 61 *Columbia Journal of Transnational Law* (2023) 1, 67, 102 [Lando, 'Advisory Opinions']; *Nuclear Weapons Opinion*, *supra* note 28, Dissenting Opinion of Judge Oda, para. 48.

71 *Ibid.*; J. Wagner, 'The Chagos request and the role of the consent principle in the ICJ's advisory jurisdiction, or: What to do when opportunity knocks', 55 *Questions of International Law* (2018), 177, 182.

72 Charter, Art. 95; Statute, Art. 65.

73 *Wall Opinion*, *supra* note 28, 157, para. 47; Generally see Lando, 'Advisory Opinions', *supra* note 70, 83; For the irrelevance of a similar objection in the Chagos Advisory Opinion see Wagner, *supra* note 71, 182.

Although the ICJ has made several clarifications in its *Western Sahara Opinion*, it has failed to revise the misconstruction espoused in *the Interpretation Opinion* and continuously entrenches state-consent as a propriety requirement. Similarly States like the United States, United Kingdom, Hungary invoked the *Eastern Carelia* doctrine in their written submissions and oral statements.⁷⁶ It follows that an unjustified procedural obstacle has been created, that is troubling for multiple reasons.

First, it requires the identification of the circumstances amounting to an unwarranted type of circumvention. In that regard, the Court's 'broader frame' approach⁷⁷ is not of much help in the Israel/Palestine context and in fact has been silently revisited as of the first AO in 2003.⁷⁸ In light of the Resolution's 77/247 wording,⁷⁹ the Court is seized to assist the UN in exercising its dispute-settlement powers over the current situation in Palestine,⁸⁰ and not to secure a general

74 *Contra* T. Sparks, 'Reassessing State Consent to Jurisdiction', 91 *Nordic Journal of International Law* (2022) 2, 216, 235, who contends that this argument has been overruled by the *Interpretation of Peace Treaties Opinion* (*supra* note 46), where the Court was asked to interpret peace treaties concluded between the allied powers, Bulgaria, Hungary and Romania which were not members of the UN, and all vociferously objected to the Court's treatment of their peace treaties. Against Sparks criticism, it is argued that the question brought before the Court in the *Peace Treaties Opinion* had a clear procedural character, namely the activation of the arbitration procedures established in the conventions and did not touch upon the substance of the dispute. Most importantly, the Treaties directly authorised the UN Secretary-General, to appoint the third member of the arbitration commission in the absence of agreement between the parties in respect of this appointment. The Court was precisely seized for a procedural matter directly involving the powers of UN organs, therefore no general rule can be deduced from that Opinion.

75 *Eastern Carelia Opinion*, *supra* note 30, 29; *Western Sahara Opinion*, *supra* note 31, para. 33; Lando, 'Advisory Opinions', *supra* note 70, 82.

76 Statement of Hungary in ICJ, *Public sitting held on Wednesday 21 February 2024, at 3 p.m., at the Peace Palace, President Salam presiding, on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for advisory opinion submitted by the General Assembly of the United Nations)*, Verbatim Record CR 2024/8, 47, para. 15; Statement of the UK in ICJ, *Public sitting held on Friday 23 February 2024, at 3 p.m., at the Peace Palace, President Salam presiding, on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for advisory opinion submitted by the General Assembly of the United Nations)*, Verbatim Record CR 2024/12, 12-16, paras 1-15.

advice on its e.g. decolonization duties. Inevitably, the Court's answers to the particular questions put before it cannot be severed from the dispute's broader context;⁸¹ they are an answer to the dispute itself. As President Higgins had pointed 20 years earlier, this revises, rather than applies the existing case-law on consent and judicial propriety.⁸² Besides, the *Mauritius/Maldives case*⁸³ submitted before the International Tribunal for the Law of the Sea (ITLOS) in the aftermath of the *Chagos Opinion* showcases that the Court's 'broader framework' approach cannot fully prevent the circumvention of State-consent, when another judicial organ is requested – even incidentally – to address the Opinion's legal effects on the substance of another bilateral dispute pending before it.⁸⁴

77 *Western Sahara Opinion*, *supra* note 31 para. 39: “The object of the General Assembly has not been to bring before the Court, by way of a request for advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court’s opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy. The object of the request is an entirely different one: to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory.” *Chagos Opinion*, *supra* note 28, para. 88: “The Court therefore concludes that the opinion has been requested on the matter of decolonization which is of particular concern to the United Nations. The issues raised by the request are located in the broader frame of reference of decolonization, including the General Assembly’s role therein, from which those issues are inseparable”. The ‘emptiness’ of the broader frame has been criticized by President Donoghue in her Dissenting Opinion in the *Chagos Opinion*, *supra* note 28, Dissenting Opinion of President Donoghue, 265, para. 20 “[s]urely any bilateral dispute that attracts sufficient support in the General Assembly so as to lead that organ to request an advisory opinion could be described as falling within a ‘broader frame of reference’”.

78 *Wall Opinion*, *supra* note 28, Separate Opinion of Judge Higgins, 210, paras 12-13.

79 See GA Res 77/247, *supra* note 27, para. 18, “what are the legal consequences that arise for [...] the United Nations from this status”.

80 *Ibid.*, “What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?”. See also, *Legal Consequences Opinion*, *supra* note 45, paras 36-37.

81 Lando, ‘Advisory Opinions’, *supra* note 70, 85.

82 Separate Opinion of Judge Higgins, *supra* note 78, paras 12-13.

Secondly, the approach recycles an old-fashioned conception of international law as having a strict bilateral nature, in defiance of recent developments including the institutionalised pursue and protection of community interests through the adoption of the UN Charter and the recognition of *jus cogens* norms and obligations *erga omnes (partes)*.⁸⁵ The historical engagement of the UN towards the question of Palestine and most importantly the legal interest of the international community as a whole in the fulfilment of Israel's obligations *erga omnes* (e.g. racial segregation, apartheid) attest to the fact that the nature of the Israel/Palestine dispute exceeds strict bilateralism, putting into question the applicability of the *Eastern Carelia* formula.

Lastly, the *Eastern Carelia* formula's emphasis on consent leads to an unwarranted assimilation of the requirements in advisory and contentious proceedings; lack of jurisdiction over a contentious matter may determine the inadmissibility of a relevant Opinion. Although in the former consent is a matter of competence/jurisdiction and in the latter a matter of propriety/admissibility, this distinction is artificial in practice, leading to the same result, the Court's refusal to decide/opine. Entrenching consent as a requirement in both proceedings runs counter to the Statute's *travaux préparatoires*. The deletion of the provision governing PCIJ's advisory jurisdiction that stated "[w]hen it shall give an opinion upon a question which forms the subject of an existing dispute, shall do so under the same conditions as if the case had been actually submitted to it for decision" asserts that the conditions for exercising advisory and contentious jurisdiction are not the same. Article 68 Statute stating that "in the exercise of its advisory func-

83 *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Judgment on Preliminary Objections of 28 January 2021, ITLOS Lists of cases No. 28 [*Mauritius/Maldives*]; M. Lando, 'Binding Advisory Opinions' in R. Buchan, D. Franchini & N. Tsagourias (eds), *The Changing Character of International Dispute Settlement: Challenges and Prospects* (2023), 124 [Lando, 'Binding Advisory Opinions']; S. Thin, 'The Curious Case of the 'Legal Effect' of ICJ Advisory Opinions in the Mauritius/Maldives Maritime Boundary Dispute', EJIL:Talk! (5 February 2021), available at <https://www.ejiltalk.org/the-curious-case-of-the-legal-effect-of-icj-advisory-opinions-in-the-mauritius-maldives-maritime-boundary-dispute/> (last visited 16 February 2025).

84 Lando, 'Binding Advisory Opinions', *supra* note 83, 124.

85 Lando, 'Advisory Opinions', *supra* note 70, 87-88.

tions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable” strictly concerns the assimilation of procedural not jurisdictional requirements (e.g. appointment of Judges *ad hoc*).

In the present case – as in any AO for that matter-, although the Court did not decline to exercise its advisory jurisdiction, its misinterpretation and misapplication of the *Eastern Carelia* doctrine continue to cause legal confusion. The Court appears particularly “indulgent” with arguments surrounding its discretion which after all has a very narrow scope.⁸⁶ A refusal requires the identification of a *compelling* reason, the threshold for which is, in fact, so high that the Court has never characterized a reason compelling enough to refuse a request. Therefore, discretion to not render Opinions does not translate to an unfettered “freedom in the exercise of judgment; the power of free decision-making”.⁸⁷

Despite such clarifications, the Court’s approach to its discretion is so deep-rooted and will unlikely change. As Judge Tladi cynically comments “[a]s a result, in respect of each advisory opinion in the future the Court will continue, to the detriment of many trees and our climate, to rehearse and formulaically repeat these grounds and explain why they do not apply in that particular case.”⁸⁸ By creating this unnecessary procedural hurdle – devoid of substance- the Court drags the judicial system into an outdated vicious circle of bilateralism, undermining the true nature of Advisory Opinions which constitute manifestations of the communally-oriented UN system.⁸⁹

86 *Legal Consequences Opinion*, *supra* note 45, Declaration of Judge Tladi, 2, para. 5.

87 *Ibid.*, 3, para. 8.

88 *Ibid.*

89 R. Kolb, *The International Court of Justice* (2013), 1150 [‘Kolb, *The International Court*]; Hofbauer, *supra* note 33, 238.

II. Chasing ‘Authoritative’ Pronouncements: The Role of the Rulings in Settling the Israel/Palestine Dispute

Evidently, advisory and conciliatory proceedings have important procedural advantages for Palestine. However, they still remain non-binding *stricto sensu*, in stark contrast to contentious judgments, which formally create international obligations for the participating States as of Article 59 Statute. Despite that, their utilization is underlined by substantial objectives related to the ‘authoritative’ character of the requested pronouncements and their contribution to the conflict’s resolution.

This section will firstly address the distinction between ‘bindingness’ and ‘authoritativeness’, arguing that is rather artificial in practice. Then, it will assess the decisions’ substantial findings as to the existence of an apartheid regime and will outline the contribution of the rulings in settling the underlying dispute.

1. Binding v. Authoritative

The *Mauritius/Maldives* case before the ITLOS is reminiscent of the widely accepted position that in executing its advisory function the Court produces not binding but authoritative legal statements.⁹⁰ Similarly, the ICJ has previously ascribed great weight to the interpretation adopted by the independent treaty bodies,⁹¹ while the International Law Commission recognizes that their pronouncements may serve as a subsidiary means for the determination of the

90 *Mauritius/Maldives*, *supra* note 83, paras 202, 203: “[i]t is equally recognized that an advisory opinion entails an authoritative statement of international law on the questions with which it deals.” “[j]udicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the ‘principal judicial organ’ of the United Nations with competence in matters of international law.”

91 *Abmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, ICJ Reports 2010, 639, 663, para. 66.

existence and content of rules of international law.⁹² It follows that there is a scale of measuring the legal value of rulings issued by (quasi-) judicial organs, which in the eyes of this author is in fact artificial.

At the top of this ladder lie Judgments which are formally binding and enforceable. However, their bindingness is not an inherent feature but rather an extrinsic characteristic; it originates from States' previous agreement to accord Judgments binding character (e.g. as per Article 59 Statute) and does not necessarily depend on the content of each Judgment. Binding and enforceable as they may seem, Judgments' actual implementation is put into question in the absence of a concrete enforcement mechanism.

On the contrary, in the advisory and conciliatory context, the legal value of the pronouncements relates to their substance. The Advisory Opinion and the *ad hoc* Commissions' report on Israel/Palestine case determine the precise scope of rights and obligations of Israel, third States and the UN, explaining what conduct – may that be permissive of prohibited - is prescribed under international law.

According to Judge Nolte,⁹³ the distinction between binding judgments and authoritative opinions lies in the fact that in the former the Court makes binding determinations upon specific factual conditions endowed with legal certainty and finality, and broader legal characterizations in the latter. The broader approach adopted in Opinions precludes such assessments from “having the conclusive effect attributed to factual assessments for the purpose of determining State responsibility in contentious proceedings”.

This distinction is very formalistic. As Contesse has observed,⁹⁴ via such pronouncements the issuing bodies may *decide* on issues that are submitted to them, making direct factual and legal *determinations*; or may *provide answers* that will assist those who have to make the final determinations. Such pronouncements are capable of ‘obliging’ disputing parties, third States as well as the UN to follow a certain course of action in respect to the underlying dispute.⁹⁵ Espe-

92 Special Rapporteur, Charles Chernor Jalloh, *Third Report on Subsidiary Means for the Determination of Rules of International Law*, UN Doc A/CN.4/781, 29 January 2025, paras 149-151.

93 *Legal Consequences Opinion*, *supra* note 45, Separate Opinion of Judge Nolte, paras 3-7.

94 J. Contesse, ‘The Rule of Advice in International Human Rights Law’, 115 *American Journal of International Law* (2021), 3, 367, 371.

cially the requesting organ must duly take account of it in light of the customary duty of cooperation, good faith and mutual respect enshrined in Art. 2(2) Charter; should it further choose “to adopt a legal solution to the point decided by the Court’s opinion, that point of law becomes binding on the requesting organ”.⁹⁶

The 2024 Opinion and Conciliation report are prominent examples. The (quasi) judicial fora have arrived at actual legal determinations with significant legal and political implications: Israel has committed internationally wrongful acts and its legislation and measures imposing a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities violate Article 3 of CERD; Israel must pay reparations.⁹⁷ Other UN organs cannot dispute these findings of law.⁹⁸

These findings inevitably go beyond what could be expected as merely ‘opining’, ‘reporting’ or ‘legally characterizing’.⁹⁹ They have a quasi-binding character,¹⁰⁰ outlining Israel’s,¹⁰¹ UN’s¹⁰² and third States’¹⁰³ obligations arising from the former’s unlawful presence and acts in the OPT. It follows that such pro-

95 Lando, ‘Advisory Opinions’, *supra* note 70, 126-127.

96 See Kolb, *The International Court*, *supra* note 89, 1097-1098; G. Abi-Saab, *Les exceptions préliminaires dans la procédure de la Cour internationale* (1967), 75-83; N. Lanzoni, ‘The Authority of ICJ Advisory Opinions as Precedents: The Mauritius/Maldives Case’, 2 *The Italian Review of International and Comparative Law* (2022) 2, 296, 307.

97 *Legal Consequences Opinion*, *supra* note 45, paras, 229, 269; CERD, *Report of the Ad Hoc Conciliation Commission on the Inter-State Communication Submitted by the State of Palestine Against Israel Under Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination*, UN Doc. CERD/C/113/3, 21 August 2024, para. 44 [‘CERD, *Findings and recommendations*’].

98 Kolb, *The International Court*, *supra* note 89, 1098.

99 Contesse, *supra* note 94, 373.

100 On the binding character, see also Lando, ‘Advisory Opinions’, *supra* note 70, 125-128.

101 *Legal Consequences Opinion*, *supra* note 45, paras 267-272; CERD, *Findings and recommendations*, *supra* note 97, para. 51.

102 *Legal Consequences Opinion*, *supra* note 45, paras 280-283; CERD, *Findings and recommendations*, *supra* note 97, para. 54.

103 *Legal Consequences Opinion*, *supra* note 45, paras 273-279; CERD, *Findings and recommendations*, *supra* note 97, para. 53.

nouncements, albeit a non-binding document, have a *lato sensu* binding character deriving from their very content – the current state of applicable law which is *ipso facto* binding.

That the pronouncements authoritatively reflect the current state of international law depends, firstly, on the ‘weight and authority’ of the ICJ, the UN’s principal judicial organ with full competence in matters of international law, and the *ad hoc* Commission, comprised of CERD members with expertise in matters of racial discrimination. These institutions, undeniably, enjoy high legitimacy assessed in the context of their large constituency.¹⁰⁴ Further, they reached their conclusions on fact and law with a level of rigor and scrutiny, following the established procedures.¹⁰⁵ It is particularly commendable that the *ad hoc* Commission lived up to the expectations of its conciliatory role and performed its tasks in an objective manner, seizing every opportunity to engage Israel in the process and making its offices available to both parties. Because both proceedings were not adversarial, standards of proof are weighed differently¹⁰⁶ and Israel’s non-participation did not pose serious evidentiary obstacles.¹⁰⁷ Both organs had at their disposal the information collected during written and oral pleadings including the responses provided by Israel, the Committee’s concluding observations and other United Nations documents, non-governmental organizations (NGOs) and academic institutions.¹⁰⁸

In light of these, the distinction between binding and authoritative is artificial. Judgements may be binding documents *per se* but at the end of the day are not more enforceable than the Advisory Opinion and the *ad hoc* Conciliation Report. The latter have a ‘*lato sensu* binding character’, because they articulate legally binding obligations and make legal determinations on the status of the occupation, and the legality of Israel’s discriminatory policies.

104 Lando, ‘Binding Advisory Opinions’, *supra* note 83, 128.

105 *Ibid.*, 118.

106 In the ICJ context, lack of parties in advisory proceedings translates to lack of claims which further means that the Court may not weigh evidence to reach its opinion, see further R. Kolb, *The Elgar Companion to the International Court of Justice* (2014), 237. On the evidentiary difficulties in the Israel/Palestine context see Rhades, *supra* note 32.

107 *Legal Consequences Opinion*, *supra* note 45 paras 44-47; CERD, *Findings and recommendations*, *supra* note 97, paras 10-12, 30-31.

108 *Ibid.*

2. Is Israel an Apartheid State?

It is, however, worth commenting that the rulings lack teeth in addressing apartheid claims.¹⁰⁹ On the one hand, the ICJ confirmed that Israel's policies amounted to a violation of Article 3 CERD but failed to provide a detailed analysis of the Article's components; to specifically differentiate between racial segregation and apartheid; and clarify whether Israel has established an apartheid regime in the OPT. Drawing from the different remarks made by Judges in their Separate Opinions and Declarations as to the elements of apartheid and the assessment of the situation in the OPT, it is understandable that the Court opted for a compromise and purposely avoided a more detailed statement for reasons of internal coherence. On the other hand, the *ad hoc* Commission appeared even more cautious and did not make detailed comments on the existence of apartheid nor did it engage in a dialogue with the ICJ, whose Opinion was issued a month earlier.¹¹⁰ This echoes the troubling relationship between the ICJ and the CERD in adopting divergent views when interpreting ICERD. Surprisingly, however, this time the ICJ has taken a more assertive stance as to apartheid. The *ad hoc* Commission in its fact assessment report only stated that "those acts may amount to a situation of apartheid if no action is taken by Israel to effectively address the issues raised."¹¹¹

As commentators have observed,¹¹² this is not simply a missed opportunity for ICERD organs, but an inadequate execution of their mandate to interpret and enforce the Convention and an incident of improper justice administration. Palestine's over 30 pages of analysis on Israel's apartheid regime were completely

109 D. Keane, 'A Missed Opportunity: The Decision in Palestine v Israel', EJIL:Talk! (5 September 2024), available at <https://www.ejiltalk.org/a-missed-opportunity-the-decision-in-palestine-v-israel/> (last visited 23 January 2025).

110 *Ibid.*

111 CERD, *Report of the Ad Hoc Conciliation Commission on the Inter-State communication Submitted by the State of Palestine Against Israel Under Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination - Assessment of the Facts*, UN Doc CERD/C/113/3/Add.2, 21 August 2024, para 11.

112 Keane, *supra* note 109.

ignored by the Commission members, who offered no reasoning in their report. It is regrettable that the *ad hoc* Commission reached the limits of its authority in engaging with Israel – thus delaying the issuance of its report for six years – yet failed to give justified answers to all aspects of Palestine’s petition.

Despite the reluctance to directly and conclusively address apartheid, the pronouncements still remain highly influential, shedding light to other aspects of Israel’s unlawful and discriminatory conduct. As Judge Tladi correctly observes, this should not detract from the cogency of the findings.¹¹³ In confirming a violation of Article 3, and in recognizing that “the continuation of the colonization through settlements and outposts in Palestinian territories is in itself an obstacle to a possible amicable solution to the Israeli-Palestinian dispute”,¹¹⁴ the organs highlight that the realization of Palestine’s self-determination is severely impeded by Israel’s prolonged occupation and discriminatory settlement policies and practices. The physical and juridical isolation of Palestinian communities¹¹⁵ violates the integrity of the Occupied Palestinian Territory, as an essential element of the Palestinian people’s right to self-determination;¹¹⁶ the discriminatory legislation hampers the integrity of the Palestinian people themselves¹¹⁷ and obstructs their right to freely determine their political status and to pursue their economic, social and cultural development.¹¹⁸

3. The Pronouncements’ Practical Implications and Their Role in Dispute Settlement

In their rulings, the ICJ and the *ad hoc* Commission have produced unprecedented statements with important legal implications, bringing apartheid and racial segregation at the heart of the dispute and underlying the nexus

113 Declaration of Judge Tladi, *supra* note 86, para. 38.

114 CERD, *Findings and recommendations*, *supra* note 97, para. 48.

115 *Legal Consequences Opinion*, *supra* note 45, paras 227-228.

116 *Ibid.*, para. 238; see also CERD, *Findings and recommendations*, *supra* note 97, paras 41-42.

117 *Ibid.*, para. 239.

118 *Ibid.*, para. 242; See also CERD, *Findings and recommendations*, *supra* note 97, para 41.

between self-determination and racial discrimination. In utilizing such mechanisms, Palestine was not exclusively trying to showcase the existence of an apartheid regime.

The final conclusion of the 2025 Treaty on the British Indian Ocean Territory/Chagos Archipelago¹¹⁹ proves that seeking such authoritative pronouncements with a *lato sensu* bindingness is “a step in a broader political process”.¹²⁰ The Court’s advisory ruling and the CERD’s decision -similarly to contentious judgements- directly shape policy on an international level and constitute tools in international bargaining. The decisions on Palestine, similarly to the Chagos case-study, are quintessential examples of petitions aiming to serve as means of political pressure and legal tools in future mediation and/or judicial proceedings,¹²¹ especially if one takes into consideration the fact that Israeli-Palestinian negotiations have been stalled for many years. In that way, the Conciliation mechanism and the Opinion have indirect dispute settlement elements, since the two (quasi-) judicial fora rule through their expertise and advice and subsequently guide international conduct upon the matter.¹²²

Specifically, both organs have outlined Israel’s, third States’ as well as UN’s obligations relating to the ongoing situation, creating thus the legal frame within which a political solution is to be reached. The Court has unambiguously stated that Israel must immediately seize its wrongful conduct,¹²³ and provide full repa-

119 *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia*, signed in London and Port Louis 22 May 2025.

120 S. V. Scott, ‘Litigation Versus Dispute Resolution Through Political Processes’ in N. Klein (ed.), *Litigating International Law Disputes* (2014), 24, 26.

121 Lando, ‘Binding Advisory Opinions’, *supra* note 83, 130. In its 2019 Opinion on the Chagos Archipelago, the ICJ determined that the UK’s continued administration of the territory, which had been unlawfully separated from Mauritius, violated international law, leaving the latter’s decolonization incomplete. Partly as a result of this conclusion, the UK began negotiations with Mauritius in 2022 regarding sovereignty over the Chagos Archipelago. The Opinion further played a critical role in the proceedings before the ITLOS on the *Maldives/Mauritius* case, *supra* note 83, para. 245; on that see Lando, ‘Binding Advisory Opinions’, *supra* note 83, 106-133. In the aftermath of these proceedings, an agreement was ultimately signed in 2025, see *supra* note 119.

122 See generally Contesse, *supra* note 94, 367.

123 *Legal Consequences Opinion*, *supra* note 45, paras 267-268.

rations for the damage caused by its internationally wrongful acts to all natural or legal persons.¹²⁴ Further, according to the Court all States are under an obligation not to recognize as legal the situation arising from Israel's unlawful presence in the OPT Palestinian Territory and not to render aid or assistance in maintaining that situation.¹²⁵ The *ad hoc* Commission has specifically requested the appointment of a rapporteur and a working group,¹²⁶ and both organs have urged the GA and the SC to consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.¹²⁷ Such considerations have been welcomely endorsed by the GA Resolution A/RES/ES-10/24, which further requested the establishment of a mechanism to follow up on the violations of Article 3 ICERD.¹²⁸

In that way the organs have clearly established the legal frame within which a political solution shall be reached. As indicated by the *Chagos* precedent, international law - as pronounced in advisory and conciliatory decisions - is not just a tool but an indispensable part of the solution. Such a contention is increasingly being challenged by recent political developments. Security Council Resolution 2803 and the annexed "Trump 20-point plan" significantly sidestep the legal determinations made by the ICJ and the *ad hoc* Commission.¹²⁹ While it falls beyond the scope of this Article to outline the resolution's procedural and substantive deficiencies, its adoption raises more legal questions than the ones it purports to resolve, particularly with regard to the *jus cogens* right to self-determination.¹³⁰ In direct response to this, the GA adopted a short counter-resolution, reaffirming 'the right of the Palestinian people to self-determination, including the right to their independent State of Palestine,' thereby bringing back into play the normative authority of the Advisory Opinion and the *ad hoc* Commission.¹³¹

124 *Ibid.*, para. 269.

125 *Ibid.*, para. 278.

126 CERD, *Findings and recommendations*, *supra* note 97, para. 54.

127 *Legal Consequences Opinion*, *supra* note 45, paras 281; CERD, *Findings and recommendations*, *supra* note 97, para. 54.

128 GA Res. ES-10/24, UN Doc. A/RES/ES-10/24, 18 September 2024.

129 SC Res. 2803 (2025), UN Doc. S/RES/2803, 17 November 2025.

130 M. Burgis-Kasthala, 'UNSC Resolution 2803', EJIL:Talk! (28 November 2025), available at <https://www.ejiltalk.org/unsc-resolution-2803/> (last visited 3 December 2025).

In light of the interplay between law and politics, it must be clarified that it is beyond the (quasi-) judicial character of the organs to provide an exhaustive enumeration of the means and methods to resolve the dispute. Doing so would amount to an unwarranted usurpation of the responsibilities of the political organs of the UN, which otherwise enjoy a wide margin of appreciation in making such decisions.¹³² Besides, no (quasi-) judicial ruling issued in the course of either advisory or contentious proceedings could be sufficient to fully resolve all aspects of such a high-political conflict. Its settlement necessitates negotiations, political maneuvering, and compromises that fall beyond the capacity of any court to impose.¹³³ This does not absolve the rulings of their dispute-settlement character, which is further underscored by the procedures' role in the peace architecture envisaged in the modern system of international law.

That the Conciliation mechanism constitutes a dispute-settlement method specially designed to respond to disputes arising within the CERD context has never been contested.¹³⁴ This is not applicable *mutandis mutandis* to the ICJ's advisory function, which has not been traditionally viewed as a viable litigation avenue, until the *Chagos Opinion*.

In response to this criticism, it should be duly noted that the Court's Advisory function is a fully-fledged procedure within the system established by the Charter. The inclusion of the ICJ as the principal judicial organ alongside the SC as a political organ with primary responsibility for the maintenance of peace warrants the assertion that the Charter's peace architecture is founded upon the ideology of 'peace through law'.¹³⁵ In implementing this ideology, the Charter construes Advisory Opinions as the connecting point between the UN political and judicial organs. In this system, the ICJ is intended to assist via Advisory Opinions the GA and the Security Council in executing their dispute-settlement responsibilities: the Court is called upon to give its expert opinion on perplexed legal matters -often arising in the context of inter-State disputes- that cannot be easily answered by the political organs. In executing its advisory role, the Court partici-

131 GA Res UN Doc. A/C.3/80/L.26, 3 November 2025.

132 Declaration of Judge Tladi, *supra* note 86, para. 57.

133 Kulick, *supra* note 34, 51.

134 Such a conclusion is purported by the language of Article 16 which characterizes the mechanism as one of "dispute-settlement".

pates on an equal footing with the rest organs in the UN's activities,¹³⁶ undeniably manifesting the Organization's own goal, peace through law. Such a construal of Advisory Opinions is echoed in the GA Resolution A/RES/ES-10/24, which not only underscored the functional relation between peace and the rule of law, but further confirms the essential role the Court plays in their realization via its advisory function.¹³⁷

Therefore, the institutional position of the Court and the functional role of its advisory pronouncements warrant the assertion that Advisory Opinions facilitate in one way or another the settlement of inter-State disputes.

C. Conclusion: Judicializing Political Affairs or Politicizing Judicial Organs?

The Article has demonstrated Palestine's strategic judicialization of its conflict with Israel via an Advisory Opinion and the CERD's ad hoc conciliation mechanism, in order to obtain useful authoritative pronouncements while bypassing critical jurisdictional obstacles. While the utilization of the CERD mechanism was unprecedented, the last decade has witnessed an increasing appeal for the Court's advisory function over controversial international law questions,

135 Separate Opinion of Judge Nolte, *supra* note 93, para. 4, Albeit Judge Nolte recognizes that '[t]he conclusions of the Court in advisory opinions are not the end but the beginning of a process that seeks to establish and maintain peace through law', he adopts a different opinion as to the contours and limits of the Court's advisory jurisdiction than the one forwarded by this Article; M. Bennouna, 'The Advisory Function of the International Court of Justice in the Light of Recent Developments' in M. C. Bassiouni (ed.), *The Global Community Yearbook of International Law and Jurisprudence: Global Trends: Law, Policy & Justice Essays in Honour of Professor Giuliana Ziccardi Capaldo* (2013), 95.

136 *Peace Treaties Opinion*, *supra* note 45, 71; *Wall Opinion*, *supra* note 28, 156, para. 44.

137 GA Res. ES-10/24, *supra* note 128, stating: "Reaffirming the need for universal adherence to and implementation of the rule of law at both the national and international levels and its solemn commitment to an international order based on the rule of law and international law, which, together with the principles of justice, is essential for peaceful coexistence and cooperation among States, Considering that respect for the International Court of Justice and its functions, including in the exercise of its advisory jurisdiction, is essential to international law and justice and to an international order based on the rule of law".

underscoring their importance. Palestine's petitions should be viewed in the broader context of trending strategic litigation and 'lawfare' practices, namely the 'hyper-judicialization' of international crises and the growing appeal before international adjudicative bodies for selective aspects of underlying conflicts.¹³⁸

Strategic litigation, as employed by Palestine and other actors in recent years, epitomizes the evolution of international legal processes into an instrument of normative and political contestation. In a legal order theoretically governed by the principle of sovereign equality of States, yet in practice marked by profound and systemic power asymmetries, obstructed diplomatic avenues and selective enforcement mechanisms, recourse to international adjudication becomes not merely a legal strategy but a means of reframing narratives, reaffirming rights, and mobilizing structural change. Strategic litigation is part and parcel of the dynamic interplay between law and politics; a means through which marginalized or less powerful actors seek to engage, challenge, and potentially reshape the contours of international legality itself.

The strategic judicialization of political affairs, either by means of contentious proceedings or through the request of Advisory Opinions has received strong criticism, by both Courts,¹³⁹ individual judges¹⁴⁰ and commentators.¹⁴¹ At the heart of this criticism lies the need to protect the institutions' judicial integrity from petitions driven by purely strategic political objectives. By 'recharacterizing' their pending disputes so as to fit the narrow chapeau of compromissory clauses,

138 M. Papadaki & J. Devaney, 'Against 'Recharacterization' of International Disputes - A Prismatic Approach to International Adjudication' ESIL Interest Group on International Courts and Tribunals Workshop on 'Parallelism before International Courts and Tribunals', Wednesday, 4 September 2024 (in hand with the author).

139 *Award in the Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland*, Award of the Arbitral Tribunal, 18 March 2015, 28 Reports of International Arbitral Awards (2015), 359, 457 paras 208-209, 460, paras 220-221.

140 *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Judgment, General List No. 180, 12 November 2024, Dissenting Opinion of Judge Yusuf, 1103-1104, para. 21; *Legal Consequences Opinion*, *supra* note 45, Dissenting Opinion of Vice-President Sebutinde, 36, para. 92

141 Tsagourias, 'The ICJ's Advisory Opinion', *supra* note 32; M. Pomerance, *The Advisory Function of the International Court in the League and UN Eras* (1973), 280, 287.

or by requesting Advisory Opinions on bilateral disputes in an effort to circumvent consent, States allegedly turn to international judicial institutions for “propaganda purposes” rather than for “genuine problem solving”.¹⁴² This practice risks damaging the Court’s reputation and authority, transforming it into a politicized forum, with a “lawyer-client” function.¹⁴³

However, the criticism falls into an odd paradox: while it condemns the politicization of international judicial fora as threatening the Court’s judicial integrity, it simultaneously requires the Court to make an inquiry into the strategic political motives behind each application in order to establish and exercise its jurisdiction. Such political motives are no threat to the Court. It is well established after all that disputes and legal questions do not arise in a vacuum but in politically charged environments.¹⁴⁴ Ergo, the Court’s judicial integrity is hampered if it is required to engage in unnecessary political discourses, prone to manipulation, selective interpretations and evidentiary challenges, in defiance of its character as a court of law.¹⁴⁵ As Higgins aptly noted, “the Court’s judicial function is more than an allegedly mere application of rules to facts—the Court is necessarily choosing, explaining, and refining”.¹⁴⁶

In the dichotomy between judicializing international affairs and politicizing judicial fora, the eloquent words of Judge Tladi remain guiding: “[t]he Court is only a court”.¹⁴⁷ Certainly, any judicial institution with contentious and/or advisory jurisdiction is not a panacea. However, in a system where multilateralism and the rule of law are continuously challenged, characterizing attempts to engage the Courts’ already limited jurisdiction as abusive risks undermining its essential role in peaceful dispute resolution.

142 M. Giles Samson & D. Guilfoyle ‘The Permanent Court of International Justice and the “Invention” of International Advisory Jurisdiction’ in M. Fitzmorice, C. Tams, P. Merkouris (eds), *The Legacies of the Permanent Court of International Justice* (2013), 65.

143 Pomerance, *supra* note 141.

144 *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, ICJ Reports 2015, 592, 604, para. 32; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, ICJ. Reports 1980, 3, 20, para. 37.

145 Papadaki & Devaney, *supra* note 138.

146 R. Higgins, *Problems and Process: International Law and how we use it* (1995), 204.

147 *South Africa v. Israel Case*, *supra* note 23, Declaration of Judge Tladi, 701, para. 19.

In that regard, the ICJ's advisory function must be seen as indispensable to the UN's architecture. International law as pronounced in Advisory Opinions is not just an instrument in the political process which may eventually answer long-standing and deeply rooted conflicts akin to the Israel/Palestine one. For a political process that is not equitable and, does not pay due regard to States' rights and obligations, under international law is bound to be ineffective. However, restricting its exercise through undue procedural hurdles would not only weaken access to international adjudication but most importantly would erode the fundamental principle of 'peace through law', manifested in the Court's advisory pronouncements. The ICJ offers Palestinians "a peaceful and legitimate choice"¹⁴⁸ for their freedom and as a matter of principle, access to its procedures should be wide open.

148 See Palestine's exercise of its right to reply in UN Meetings Coverage and Press Releases, *Fourth Committee Hears Support for Referring Question of Palestine to International Court of Justice for Advisory Opinion*, GA/SPD/770, 10 November 2022, available at <https://press.un.org/en/2022/gaspd770.doc.htm> (last visited 20 February 2025).