The International Court of Justice as a Human Rights Body: Promises and Pitfalls for Strategic Litigation

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Abstract

The International Court of Justice was not established as a human rights body. Its founding instruments frame it as a settler of disputes between States, with jurisdiction dependent on State consent and with no express human rights mandate. Yet over eight decades, the Court has undergone a quiet transformation involving its use in strategic litigation. Through its contentious and advisory functions, it has progressively recognised, interpreted, developed, and in certain instances enforced key norms of international human rights law, including self-determination, genocide, torture, racial discrimination, and the right to a healthy environment.

This article sets out the ICJ's structural and institutional limitations, traces the evolution of its human rights jurisprudence, and considers whether the Court is entering a new phase characterised by collective rights enforcement. It concludes by assessing the promises and pitfalls of this evolving role for those pursuing strategic human rights litigation before the Court.

Keywords: International Court of Justice, Human Rights, European Court of Human Rights, Climate Change, Treaty Bodies

1. Introduction

In almost eight decades since its inception, the International Court of Justice (ICJ) has moved beyond its traditionally conceived inter-State function in ways that bear directly on the protection of human rights under international law. As the principal judicial organ of the United Nations (UN),[1] its founding instruments—the UN Charter and the ICJ Statute[2]—frame the court's role as a settlor of disputes between the States, rather than a mechanism for the protection of individuals. But international human rights law forms part of the corpus of international law entrusted to the Court's interpretation and application. As Rodley has observed, even in its earliest cases, the ICJ was confronted with questions implicating human rights, such as the scope of the applicability of the first post- Second World War human rights treaty, the Genocide Convention.[3]

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Statute of the International Court of Justice 1945, Article 1.

[2] United Nations Charter 1945 (UN Charter), Article 7; Statute of the International Court of Justice (ICJ Statute) 1945, Article 1.

[3] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 ICJ Rep 15; Nigel Rodley, 'The International Court of Justice and human rights treaty bodies' in Mads Andenas and Eirik Bjorge, *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (CUP 2015), 87.

Building on this early engagement, several trends have since emerged in ICJ caselaw. The first is a doctrinal evolution. The Court's jurisprudence has revealed a gradual expansion of principles with direct relevance to human rights protection,[4] including the recognition of obligation *erga omnes*,[5] the binding nature of provisional measures protecting individuals,[6] and a growing willingness to articulate and develop human rights norms.[7] Second—and perhaps as a result—the Court's docket has transformed from traditional inter-State or territorial claims to claims invoking human rights-related obligations reflecting issues of community interest,[8] such as those concerning genocide, torture, racial discrimination, self-determination, the right to strike, and climate change.[9] At the time of writing, more than onethird of the cases before the ICJ are human rights cases.[10] Third, the Court has, by and large, increasingly embraced systemic integration within the broader human rights architecture, citing and engaging with specialised human rights bodies and instruments,[11] and functioning as part of the wider system rather than external to it.[12]

In light of these features, it becomes necessary to reconsider what qualifies as a "human rights body" under international law. In the absence of a universally accepted definition, this article proposes a working understanding of a human rights body as an international institution, judicial or quasi-judicial, that contributes (through its mandate and practice) to the protection, interpretation, development, or enforcement of human rights law under

[4] See eg. Gentian Zyberi, *The Humanitarian Face of the International Court of Justice: Its Contribution to Interpreting and Developing International Human Rights and Humanitarian Law Rules and Principles* (Intersentia, 2008).

[5] *Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)*, Second Phase, Preliminary Objections (1970) ICJ Rep 3, 32, para. 33.

[6] *LaGrand (Germany v. United States of America)*, Judgment (2001) ICJ Rep 466, 506, para. 109.

[7] See e.g. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion (1971) ICJ Rep 16; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep 136; *Legal Consequence of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion (2019) ICJ Rep 95; *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion (2024) General List No. 186; *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*, Advisory Opinion (2025) General List No. 196; *Obligations of States in respect of Climate Change*, Advisory Opinion (2025) General List No. 187.

[8] Bruno Simma, 'Mainstreaming Human Rights: The Contribution of the International Court of Justice' (2012) 3(1) JIDS 7.

[9] At the time of writing, the Court's docket includes *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 11 States intervening); Right to Strike under ILO Convention No. 87 (Advisory Opinion); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan; Azerbaijan v. Armenia)*; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation); Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands v. Syrian Arab Republic); Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel); Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany); Application of the Convention on the Preventian and Punishment of the Crime of Genocide in Sudan (Sudan v. United Arab Emirates)*.

[10] Dapo Akande, 'Fourteenth Annual Charles N Brower Lecture' (American Society of International Law, April 2026) <https://www.youtube.com/watch?v=dQpW8PcuKXc>.

[11] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment (2010) ICJ Rep 639, 664, para. 66.

[12] Başak Çalı, Zeynep Elibol, and Lorna McGregor, 'The International Court of Justice as an Integrator, Developer and Globaliser of International Human Rights Law', in Martin Scheinin (ed.), *Human Rights Norms in 'Other' International Courts* (CUP 2019), pp. 62-86.

international law. On this understanding, the ICJ is a human rights body. Although it was not established as a specialised human rights institution, the Court has, in the exercise of its general jurisdiction, recognised, interpreted, developed, and, in certain instances, enforced key norms of international human rights law.

So, what does this mean for strategic litigation? As a forum for the articulation, clarification, and enforcement of human rights norms, the Court becomes a potential site for rights-based advocacy, albeit one limited by its inter-State procedure.[13] The question is therefore not only whether the ICJ fits within the architecture of human rights protection, but also what opportunities and constraints its institutional design creates for those seeking to advance human rights claims through strategic use of the Court.

To explore these issues, this article begins by setting out the institutional limits of the ICJ. The third section deals with the evolving engagement of the ICJ with human rights. The fourth section considers whether we are entering a new phase for the ICJ. The fifth section addresses promises and pitfalls of the ICJ's human rights practice for strategic litigation claims.

2. The ICJ's Institutional Limits: A Court of International Law

The ICJ was not established as a specialised human rights court. Its institutional design gives rise to a number of structural limitations that shape, and at times constrain, its capacity to function as a human rights body. These include, in particular, the absence of an express human rights mandate; its inter-State character and the resulting lack of direct individual access; a jurisdiction dependent on State consent and only rarely grounded in human rights treaties; the absence of any requirement of human rights expertise among its judges; and procedural features, including limited fact-finding powers, that differ from those of specialised human rights tribunals.

First, unlike the UN human rights treaty bodies[14] or regional human rights courts and bodies,[15] the ICJ was not established under a dedicated human rights instrument or resolution. The UN Charter—the Court's founding instrument—serves as the constitution of the UN "as an association of States within the larger universal legal community".[16] Nonetheless, the Court operates within a framework that places human rights within the organization's mandate.[17] Article 1 of the Charter identifies among the UN's central aims the promotion and encouragement of "respect of human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion", and recognises the organization's purpose to serve as "a centre for harmonizing the actions of nations in the attainment of these common

[13] Or, alternatively, a Court with participation of relevant international and regional organizations in its advisory procedure. See ICJ Statute, Article 66(2).

[14] See e.g. International Covenant on Civil and Political Rights 1966 (ICCPR), Article 28; UN Economic and Social Council Resolution 1985/17, para. (a); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT), Article 17; International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD), Article 8.

[15] European Convention on Human Rights 1950 (ECHR), Article 19; American Convention on Human Rights 1978, Chapters VII and VIII; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998, Article 1.

[16] Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (2009) Legal Aspects of International Organizations, Vol. 51, 78.

[17] See e.g. Statement by Ambassador Mark Lyall Grant of the UK Mission to the UN at the Security Council Open Debate on the Maintenance of International Peace and Security, '70 years ago, the UN Charter established the three founding pillars of the UN system: peace and security, human rights, and development' (23 February 2015), available at: <https://www.gov.uk/government/speeches/70-years-ago-the-un-charter-established-the-three-founding-pillars-of-the-un-system-peace-and-security-human-rights-and-development>.

ends".[18] Similarly, Article 55 obliges the UN to promote "universal respect for, and observance of, human rights and fundamental freedoms for all".[19]

But the inclusion of human rights among the purposes of the UN did not alter the institutional design of the Court itself. As Espósito argues, these provisions "became the seed of a universal system of promotion and protection of human rights but did not at the same time affect substantially the original idea of the Court as an inter-State dispute settlement body that admits only States as parties in cases before the Court".[20] The Court is not part of a regional human rights regime. It operates as a universal judicial body without a specific mandate over human rights, and with a jurisdiction derived from the consent of States.

Nevertheless, the Court has, on occasion, drawn from the work of UN human rights bodies to inform its own reasoning. In its *Diallo* case, when considering alleged violations of the International Covenant on Civil and Political Rights (ICCPR), the Court noted that it was not formally bound "to model its own interpretation" of the ICCPR on that of the Human Rights Committee (HRC), but that it believed that it should "ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty".[21] The Court explained that such engagement promotes "the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled".[22]

This engagement does not necessarily lead to always following the findings of UN human rights treaty bodies. In *Qatar v. UAE,* the ICJ departed from the interpretation adopted by the Committee on the Elimination of Racial Discrimination regarding the meaning of "national origin" in Article 1(2) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).[23] The Court construed the term as referring to an inherent characteristic linked at birth and not encompassing current nationality, whereas the Committee has taken a broader view, considering nationality as central to a person's identity and membership within a political community.[24] More recent cases brought under the CERD likewise suggest a relatively cautious, and at times restrictive, approach on the part of the Court when compared to the Committee's more expansive approach. In the CERD case brought by Ukraine against Russia, the Court did not characterise the banning of the Mejilis, or more broadly the treatment of the Crimean Tatars, as constituting indirect discrimination on the basis of ethinic origin,—an issue that promped extensive separate and dissenting opinions in the 2024 judgment.[25] Similarly, in *Armenia v. Azerbaijan* (preliminary objections), the Court adopted a careful approach to the notion of indirect discrimination, including in

[18] UN Charter, Article 1(3); 1(4).
[19] UN Charter, Article 55.
[20] Carlos Espósito, 'Human Rights' in Carlos Espôsito and Kate Parlett (eds), *The Cambridge Companion to the International Court of Justice* (CUP 2023), 487-8 (emphasis removed).
[21] *Diallo* (n 11), 664, para. 66.
[22] ibid. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep 136, pp. 179-181, referring to the HRC's findings and the text of the the International Covenant on Economic, Social and Cultural Rights (ICESCR) to conclude that the ICCPR and ICESCR are applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.
[23] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections (2021) ICJ Rep 71, 104, para. 101.
[24] ibid, 106, para. 105.
[25] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Merits (2024) ICJ Rep 78, p. 175, [251]; p. 182, [275].

relation to conduct affecting environmental protection,[26] and signalled a more restrained reading of the Convention than that reflected in the CERD Committee's practice, including its General Recommendations.[27] In the same judgment, the Court also took a more cautious position on questions of jurisdiction *ratione temporis*,[28] diverging in part from approaches adopted by both the CERD Committee and the European Court of Human Rights.[29] As Espósito notes, such divergences illustrate that reasonable disagreement in treaty interpretation remains possible, even among authoritative human rights bodies.[30]

Second, ICJ judges are elected by the UN General Assembly and Security Council in accordance with Article 9 of the ICJ Statute, which provides that the Court's composition should reflect "the main forms of civilization and the principal legal systems of the world".[31] Human rights expertise is not an express requirement for election. At the time of writing, seven of 15 ICJ judges have a background in human rights.[32] But this can be compared with the Court's composition 20 years ago, when only three judges had a background in human rights.[33]

Third, as regards subject-matter, the ICJ enjoys competence over "any question of international law".[34] This broad mandate, however, also means that the Court has not always gone as far as specialised human rights bodies in interpreting existing international norms. A notable illustration concerns the right to consular assistance under the Vienna Convention on Consular Relations (VCCR).[35] While the Inter-American Court of Human Rights, in its 1999 Advisory Opinion, recognised the right to consular assistance right as a human right,[36] the ICJ has taken a more restrained approach. In *LaGrand*, the Court considered it unnecessary to determine whether the right to consular notification had "assumed the character of a human right."[37] Similarly, in *Avena*, it declined to decide on Mexico's submission that the right to consular assistance constituted a "due process" or "human" right.[38] In *Jadhav*, India argued

[26] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections (2024) ICJ Rep 1058, p. 1150, [100].

[27] See Veronica Botticelli, 'Greening CERD? The ICJ's (Over)Cautious Stance on Environmental Harm as Racial Discrimination in Azerbaijan v. Armenia' (EJIL:Talk!, 18 December 2024) <https://www.ejiltalk.org/greening-cerd-the-icjs-overcautious-stance-on-environmental-harm-as-racial-discrimination-in-azerbaijan-v-armenia/>.

[28] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections (2024) ICJ Rep 1058, p. 1141, [63].

[29] See Naphtali Ukamwa, 'Judging Time Under the Silence of a Compromissory Clause: A Reflection on Retroactivity of (Human Rights) Treaties and Jurisdiction Ratione Temporis in Azerbaijan v. Armenia' (OpinioJuris, 07 January 2025) <https://opiniojuris.org/2025/01/07/judging-time-under-the-silence-of-a-compromissory-clause-a-reflection-on-retroactivity-of-human-rights-treaties-and-jurisdiction-ratione-temporis-in-azerbaijan-v-armenia/>.

[30] Espósito (n 20), 503-4.

[31] ICJ Statute, Article 9.

[32] Judge Iwasawa (former Chair of the HRC); Judge Sebutinde (former Judge of the Special Court for Sierra Leone); Judge Abraham (former Member and Chair of the Committee of Experts of the Council of Europe for the Improvement of Procedures for the Protection of Human Rights); Judge Charlesworth (a noted scholar of international law and women's rights); Judge Brant (a human rights scholar); Judge Cleveland (former member of HRC); Judge Tladi (a human rights scholar).

[33] Judge Higgins (a human rights scholar); Judge Buergenthal (former judge of the Inter-American Court of Human Rights); Judge Simma (former member of CESCR Committee).

[34] ICJ Statute, Article 36(2).

[35] Vienna Convention on Consular Relations 1963.

[36] Inter-American Court of Human Rights, Advisory Opinion OC-16/99 on *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* (1 October 1999).

[37] *LaGrand* (n 6), 494, para. 78.

[38] *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment (2004) ICJ Rep 12, 61, para. 124.

that Pakistan's denial of consular access violated not only the VCCR but also Article 14 of the International Covenant on Civil and Political Rights, as it impaired Mr Jadhav's right to a fair trial, a claim grounded in the jurisprudence of the Inter-American Court of Human Rights.[39] The ICJ held that its jurisdiction did "not extend to the determination of breaches of international law obligations other than those under the Vienna Convention."[40] Nonetheless, the Court noted that "the principles of a fair trial [are] of cardinal importance in any review and reconsideration" of the conviction, and that Pakistan's courts must ensure "full weight is given to the effect of the violation" of Mr Jadhav's consular rights.[41]

These difficulties relating to the applicable law are further compounded by the fact that the ICJ's jurisdiction is fundamentally based on State consent. Because the Court may exercise jurisdiction where a State has accepted it, its ability to engage with human rights norms often depends on the scope of the dispute. Unless a State has accepted the Court's jurisdiction in respect of a particular dispute[42] or more generally,[43] a case may be brought before the Court only under a treaty containing a compromissory clause,[44] where the Court will be limited to findings on the interpretation and application of the underlying treaty conferring jurisdiction upon the Court. Of the approximately 300 treaties that grant the ICJ jurisdiction over disputes related to their interpretation and application,[45] only five concern human rights.[46] And among these five, only the Genocide Convention grants direct access to the Court without requiring prior negotiation or arbitration.[47] Even then, for certain treaties, States also remain free to limit the Court's jurisdiction through reservations to compromissory clauses.[48]

Jurisdictional constraints are reinforced by equally significant limitations on standing. The ICJ's contentious jurisdiction is confined to disputes between States.[49] Individuals have no direct access to the Court. Although a State may bring the claim of one of its nationals through the customary law of diplomatic protection,[50] this avenue is subject to strict conditions, including nationality requirements and exhaustion of local remedies,[51] as reflected in the International Law Commission's (ILC) Draft Articles on Diplomatic Protection.[52] Moreover, there is no obligation upon States to exercise diplomatic protection, leaving

[39] *Jadhav (India v. Pakistan)*, Judgment (2019) ICJ Rep 418, 430-1, para. 36.
[40] ibid.
[41] ibid, 458, para. 145.
[42] Through special agreement or forum progatum under ICJ Statute, Article 36(1).
[43] By making an optional declaration under ICJ Statute, Article 36(2).
[44] ICJ Statute, Article 36(1).
[45] The State of Switzerland and others, 'Handbook on accepting the jurisdiction of the International Court of Justice' (United Nations 2014), available at: <https://legal.un.org/avl/pdf/rs/other_resources/Manual%20sobre%20la%20aceptacion%20jurisdiccion%20CIJ-ingles.pdf>.
[46] Those treaties are: Convention on the Prevention and Punishment of the Crime of Genocide 1948 (Genocide Convention); CAT (requiring resort to negotiation and arbitration); CERD (requiring resort to negotiation); Convention on the Elimination of All Forms of Discrimination against Women 1979 (requiring resort to arbitration); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (requiring resort to arbitration); International Convention for the Protection of All Persons from Enforced Disappearance 2006 (requiring resort to negotiation and arbitration).
[47] Genocide Convention, Article IX.
[48] See e.g. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility (2006) ICJ Rep 6; *Application of the Convention on the Prevention and Punisgment of the Crime of Genocide in Sudan (Sudan v. United Arab Emirates),* Provisional Measures (2025) General List No. 197.
[49] ICJ Statute, Article 34.
[50] See generally Kate Parlett, 'Diplomatic Protection and the International Court of Justice' in Christian J Tams and James Sloan (eds.), *The Development of International Law by the International Court of Justice* (OUP 2013).
[51] See e.g. *Nottebohm (Liechtenstein v. Guatemala),* Second Phase (1955) ICJ Rep 4.

individuals dependent on the political will of their State of nationality.[53] Though these limitations do not preclude human rights litigation before the ICJ, they seriously hinder it.

Finally, the Court's working methods may also limit its capacity to operate in the same manner as specialised human rights tribunals and engage in similar human rights discussions. Rather than sitting in smaller chambers, the ICJ generally sits as a full bench of 15 judges, which contributes to a lengthy and often highly deliberative decision-making processes. Draft judgments are discussed paragraph by paragraph (sometimes over the course of several weeks), reflecting the collegial but time-consuming nature of proceedings.[54] Beyond its deliberative structure, the Court's procedural framework also constraints its ability to engage with the factual dimensions of human rights claim. The ICJ possesses only limited fact-finding powers,[55] relying primarily on written and oral submissions by the parties, with no independent mechanism for gathering or verifying evidence unless the Court relies on evidence produced by independent fact-finding bodies.[56] By contrast, the European Court of Human Rights (ECtHR) has developed more robust fact-finding practices, including the ability to request documentary evidence on its own initiative, hear witnesses, appoint experts, and where necessary, conduct on-site investigations.[57]

3. The Evolving Engagement of the ICJ with Human Rights

How have these institutional limitations shaped the Court's engagement with human rights? In its first judgment, the ICJ invoked the "elementary considerations of humanity" as a principle of international law—an early acknowledgment of human rights values within its reasoning.[58] But for decades thereafter, the Court's contribution to the development of human rights law was marked by what Judge Simma has described as "hesitation and restraint".[59] Human rights issues tended to arise only incidentally, embedded within broader inter-State disputes rather than addressed as autonomous legal claims.[60]

Over time, however, the ICJ's engagement with human rights has become more explicit and doctrinally sophisticated, even if it remains conditioned by the limits of its jurisdiction and institutional design, which have influenced both the types of cases brought before the Court and the scope of its analysis. In terms of jurisdictional limitations, the Court's jurisdiction and admissibility requirements have compelled States to frame broad factual situations within the confines of specific treaty clauses, by squeezing expansive human rights claims through the

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[52] ILC Draft articles on Diplomatic Protection (2006), UN Doc. A/61/10. Article 1 of the Draft articles was regarded as reflecting customary international law in *Diallo* (*Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections (2007) ICJ Rep 582, 599, para. 39

[53] ibid, Article 1: "A State has the *right* to exercise diplomatic protection in accordance with the present draft articles" (emphasis added).

[54] See Bruno Simma and Jan Ortgies, 'Deliberation and Drafting: International Court of Justice' (MPIL, 2019), available at: <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3399.013.3399/law-mpeipro-e3399>.

[55] The Court can appoint experts to provide evidence, as it did in the *Corfu Channel* case on the possibility of observing the mine-laying operation from the Albanian coast. See *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits (1949) ICJ Rep 4, 22; Giorgio Gaja, 'Assessing Expert Evidence in the ICJ' (2016) 15(3) *The Law & Practice of International Courts and Tribunals* 409.

[56] See Michael A. Becker, 'Recent developments in reliance upon third-party fact-finding at the International Court of Justice' (2025) 38(3) *Leiden Journal of International Law* 617.

[57] See ECHR, Article 38; ECtHR Rules of Court (2025), Rules A1-A8.

[58] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits (1949) ICJ Rep 4, 22.

[59] Simma (n 8), 9-18. A caveat can be seen in the ICJ's involvement with the right to self-determination in the context of decolinisation (see below).

[60] ibid 10.

eye of the needle of a more limited convention.[61] For example, in *Bosnia and Herzegovina v. Serbia and Montenegro*, proceedings were brought under the Genocide Convention, preventing the Court from addressing the full range of crimes against humanity and war crimes that had been alleged.[62] Similar limitations have been seen in more recent cases, including *Ukraine v. Russia*, also brought under the Genocide Convention. The Court in its 2024 preliminary objections judgment, confined the case to the narrow question of whether Russia had plausibly invoked the Genocide Convention as a justification for its actions in Ukraine, while declining jurisdiction over broader claims concerning the lawfulness of Russia's conduct under the Convention.[63] At the time of writing, preliminary objections are also pending in *Nicaragua v. Germany*, a case brought under the Genocide Convention alleging that Germany has breached its obligations to prevent genocide and is complicit by providing military assistance to Israel in the context of the conflict in Gaza.[64] The developing practice of using human rights treaties to establish recourse to the Court for deep-seated disagreements about political, social, economic or military issues—though effective in bringing human rights issues to the attention of the Court—has been critiqued as using the Court for a forum for disputes that would more appropriately resolved elsewhere.[65]

The Court's jurisdiction has also been contingent upon the fulfilment of procedural and substantive preconditions embedded in compromissory clauses. For example, the Court found itself without jurisdiction in *Georgia v. Russia*, where it found that the requirement of prior negotiations under Article 22 of the CERD was not satisfied.[66]

In other instances, cases have been deemed inadmissible owing to the absence of indispensable third parties whose rights or obligations formed part of the dispute.[67] For example, in *East Timor*—concerning the legality of Australia's treaty-making with Indonesia as the administering power in East Timor—the ICJ ruled that it could not exercise jurisdiction because finding against Australia would require ruling on the legal position of Indonesia, which had not consented to the Court's jurisdiction.[68]

Some of the jurisdictional and admissibility barriers limiting the ICJ's contentious jurisdiction have been partly overcome through its advisory function. Over the decades, this mechanism has provided a channel through which politically sensitive or legally complex questions, sometimes with significant human rights dimensions, could be brought before the Court. Through advisory proceedings, the ICJ has been called upon to consider a series of questions with significant human rights dimensions: the legality of South Africa's presence in

[61] ibid 19. See e.g. *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Merits, Separate Opinion of Judge Simma (2003) ICJ Rep 324, 326.

[62] See Simma (n 8), 19; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment (2007) ICJ Rep 43.

[63] See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections (2024) ICJ Rep 360.

[64] *Alleged Breaches of Certain International Obligations* (n 9).

[65] See Lawrence Hill-Cawthorne, 'International Litigation and the Disaggregation of Disputes: Ukraine/Russia as a Case Study' (2019) 68(4) ICLQ 779; Callista Harris, 'Claims with an Ulterior Purpose: Characterising Disputes Concerning the "Interpretation or Application" of a Treaty (2020) 18 *The Law and Practice of International Courts and Tribunals* 279; Filippo Fontanelli, 'Once Burned, Twice Shy: The Use of Compromissory Clauses before the International Court of Justice and Their Declining Popularity in New Treaties' (2021) 104(1) Rivista di diritto internazionale 1.

[66] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections (2011) ICJ Rep 70.

[67] *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, Preliminary Objections (1954) ICJ Rep 19 (where Albania was found to be an indispensable third party).

[68] *East Timor (Portugal v. Australia)*, Judgment (1995) ICJ Rep 90.

Namibia in the 1960s, where the Court examined the right to self-determination and the status of apartheid within the emerging human rights framework;[69] the construction of the wall in the Occupied Palestinian Territory in 2004, including questions concerning the applicability and interaction of international human rights law and international humanitarian law in situations of occupation and the extraterritorial reach of human rights treaties;[70] the question of whether the process of decolonisation of Mauritius was lawfully completed, engaging issues of self-determination;[71] the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem;[72] the legal consequences under human rights law and international humanitarian law of Israel's obligations toward UN bodies in the Occupied Palestinian Territory,[73] and the obligations of States in respect of climate change, including obligations relating to the enjoyment of fundamental human rights.[74]

These advisory opinions contributed to a gradual integration of human rights reasoning into the Court's broader jurisprudence. Judge Simma has identified a turning point in the ICJ's engagement with human rights beginning in 1996, marked by what he termed a "qualitive leap" in both the number and nature of human rights cases brought before the Court, starting with the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*.[75] He described this development as the judicial "mainstreaming" of human rights, whereby human rights considerations became integrated into the broader fabric of general international law.[76] According to Simma, this phase reflected the Court's growing role in shaping key dimensions in international human rights law, clarifying the nature of obligations under human rights treaties, developing the law of reservations, defining the territorial scope of human rights obligations, addressing the attribution of violations committed by non-State actors, and adapting the rules of State responsibility to human rights contexts,[77] as illustrated in the *Bosnian Genocide* judgment.[78]

This qualitative leap can be seen across eight areas.

3.1. Self-determination

First, the ICJ has played a central role in shaping and consolidating the right to self-determination, particularly in the context of decolonisation, through a series of landmark

[69] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion (1971) ICJ Rep 16.
[70] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep 136.
[71] *Legal Consequence of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion (2019) ICJ Rep 95.
[72] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion (2024) General List No. 186.
[73] *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*, Advisory Opinion (2025) General List No. 196.
[74] *Obligations of States in respect of Climate Change* (n 7).
[75] See Simma (n 8) 18; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion (1996) ICJ Rep 226. The turning point in the Court's jurisprudence can also be associated with the Court's consideration of the Genocide Convention in Bosnia's case against Serbia, submitted in 1993, including through the provisional measures proceedings that predated the case's conclusion in 2007. See e.g. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Provisional Measures (1993) ICJ Rep 3.
[76] Simma (n 8) 28.
[77] ibid.
[78] *Bosnian Genocide* (n 62) 111-2, para. 163; 116, para. 173.

judgments.[79] Self-determination is a contentious issue, and the Court has continued to be confronted with related disputes over a period of more than 75 years, though the nature of such disputes has changed over time.[80] In its *Namibia* Advisory Opinion, building on almost 20 years of case law from the Court on the international status of South West Africa,[81] the Court recognised that principle of self-determination as enshrined in the UN Charter is applicable to non-self-governing territories.[82] The findings of the Court in these cases served as a guide for the work of the political organs of the UN and the advancement of their decolonisation and human rights agenda.[83]

Almost five years later, in *Western Sahara*, the Court confirmed that the right to self-determination had crystallised into a customary principle by 1960, requires "a free and genuine expression of the will of the peoples concerned"[84] and "leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized".[85]

In 1995, the Court recognised the right of peoples to self-determination "has an *erga omnes* character" and is one of the "essential principles of contemporary international law".[86] In doing so, the Court confirmed that the right to self-determination is a universal right, rather than one confined to certain peoples.[87] In its 2004 *Wall* Advisory Opinion, the Court restated these principles and found that Israel's construction of a wall in the Occupied Palestinian Territory "severely impede[d] the exercise by Palestinian people of its right to self-determination, and [was] therefore a breach of Israel's obligation to respect that right".[88]

In 2019, the Court found that the decolonisation of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination.[89] The ICJ found that the right to territorial integrity is recognised under customary international law as "a corollary of the right to self-determination".[90] The Court found that the right to self-determination has a broad scope of application[91] and that "the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power".[92]

Five years later, in relation to the Occupied Palestinian Territory, the Court referred to the inclusion of self-determination as common Article 1 of the ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR) and the HRC's finding that the realisation of self-determination as "an essential condition for the effective guarantee and

[79] By contrast, Suedi notes that the Court has underexplored the right to self-determination in territorial disputes, despite the occasional repercussions of territorial disputes on local populations. See Yusra Suedi, 'Self-determination in territorial disputes before the International Court of Justice: From rhetoric to reality?' (2023) 36 LJIL 161.

[80] Gentian Zyberi, 'Self-determination Through the Lens of the International Court of Justice' (2009) NILR 429, p. 430.

[81] *International Status of South West Africa*, Advisory Opinion (1950) ICJ Rep 128; *South West Africa* cases (*Ethiopia v. South Africa; Liberia v. South Africa)*, Second Phase, Judgment (1966) ICJ Rep 6.

[82] *Namibia* (n 69) 31, para. 51.

[83] Zyberi (n 4), p. 437.

[84] *Western Sahara*, Advisory Opinion (1975) ICJ Rep 12, 32, para. 55.

[85] ibid 36, para. 71.

[86] *East Timor* (n 68) 102, para. 29.

[87] See Timo Koivurova, 'The International Court of Justice and Peoples' (2007) 9 ICLR 157.

[88] *Wall* (n 70) 184, para. 122.

[89] *Chagos* (n 7) 138, para. 177.

[90] ibid 134, para. 160.

[91] ibid 131, para. 144.

[92] ibid 134, para. 160.

observance of individual human rights and for the promotion and strengthening of those rights".[93] The Court found that Israel, as the occupying Power, has "the obligation not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, over the entirety of the Occupied Palestinian Territory"[94] and had violated that right through its policies and practices in the territory.[95] In determining what the right to self-determination entails, the Court found that a people is protected against acts aimed at dispersing the population and undermining its integrity as a people,[96] and has the right to exercise permanent sovereignty over natural resources, as a principle of customary international law.[97] The Court also found that a key element of the right to self-determination is the right of a people "freely to determine its political status and to pursue its economic, social and cultural development", as reflected in common Article 1 of the ICCPR and ICESCR.[98] The Court added in 2025 that Israel "is under an obligation not to impede the operations of United Nations entities, other international organizations and third States, and to co-operate in good faith with the United Nations to ensure respect for the right of the Palestine people to self-determination."[99]

Across these judgments and opinions, the Court has progressively articulated the legal contours of the principle of self-determination and elevated its importance as a foundational law of international law, linking it to the broader protection of human rights and the legitimacy of State sovereignty. As Zyberi notes, "[t]he couching of this right in clear legal terms, a process in which the Court has been largely involved from the beginning, has contributed to transforming this right into a cornerstone of international law".[100]

3.2. Genocide

At the time of writing, the ICJ has issued an advisory opinion[101] and has concluded 12 cases that were based on the Genocide Convention and the prohibition of genocide.[102] Though historically restrictive in some respects,[103] the Court's caselaw has advanced the prohibition

[93] *Legal Consequences arising from Israel's Policies and Practices* (n 73) 65, para. 233; HRC, General Comment No. 12 (Right to Self-determination) (1984), para. 1.
[94] ibid 66, para. 237.
[95] ibid 68, para. 242.
[96] ibid 67, para. 239.
[97] ibid 67, para. 240.
[98] ibid 67, para. 241.
[99] *Presence and Activities of the United Nations* (n 7) 65, para. 221.
[100] Zyberi (n 4), 444.
[101] *Reservations* Advisory Opinion (n 3).
[102] *Bosnian Genocide* (n 62); *Legality of Use of Force (Serbia and Montenegro v. Canada)*, Preliminary Objections (2004) ICJ Rep 429; *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, Preliminary Objections (2004) ICJ Rep 279; *Legality of Use of Force (Serbia and Montenegro v. France)*, Preliminary Objections (2004) ICJ Rep 575; *Legality of Use of Force (Serbia and Montenegro v. Germany)*, Preliminary Objections (2004) ICJ Rep 720; *Legality of Use of Force (Serbia and Montenegro v. Italy)*, Preliminary Objections (2004) ICJ Rep 865; *Legality of Use of Force (Serbia and Montenegro v. Netherlands)*, Preliminary Objections (2004) ICJ Rep 1011; *Legality of Use of Force (Serbia and Montenegro v. Portugal)*, Preliminary Objections (2004) ICJ Rep 1160; *Legality of Use of Force (Yugoslavia v. Spain)*, Order of 2 June 1999 (1999) ICJ Rep 761; *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)*, Preliminary Objections (2004) ICJ Rep 1307; *Legality of Use of Force (Yugoslavia v. United States of America)*, Order of 2 June 1999 (1999) ICJ Rep 916; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Merits (2015) ICJ Rep 3; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v. United Arab Emirates)*, Order of 5 May 2025 (2025) General List 197 (removed from the general list after rejection of provisional measures).
[103] See John Quigley, 'International Court of Justice as a Forum for Genocide Cases' (2007) 40(1)-(2) *Case Western Reserve Journal of International Law* 243, on the Court's narrow reading of genocide under the Genocide Convention, particularly in the context of ethnic cleansing.

of genocide, holding that a State can commit genocide,[104] and elaborating on the obligations to prevent and punish genocide, as well as the evidence required for specific intent. In 1951, the ICJ linked the prohibition of genocide to fundamental values shared by the international community as a whole, noting that the prohibition was inspired by a commitment on States to "condemn and punish genocide as a 'crime under international law involving a denial of the right of exercise of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and the spirit and aims of the United Nations'.[105]

In its *Bosnian Genocide* case, the Court confirmed that the obligations to prevent and punish genocide are "two distinct yet connected obligations", which are owed *erga omnes*,[106] and for which States can be held responsible if they fail to abide by the obligation.[107] Its judgment was notably consistent with the decisions and practice of the International Criminal Tribunal for the former Yugoslavia, upon which the Court relied heavily,[108] particularly for evidentiary issues.[109] The Court has also clarified that in order to satisfy the conditions of genocide in Article II of the Convention, the State must possess the requisite intent, which in addition to the acts being "conscious, intentional, or volitional",[110] must consist of an "intent to destroy the group as such in whole or in part".[111] Any crime under Article III must be proved by evidence that is "fully conclusive".[112] The Court has also clarified that Article VI of the Convention "obliges the Contracting Parties to institute and exercise territorial criminal jurisdiction" in their national courts.[113]

At the time of writing, there are also four pending cases before the Court, which will no doubt bring more insights. First, a case concerning the genocide against the Rohingya people brought against Myanmar by The Gambia under the principle of *erga omnes partes*.[114] Second, a case brought by Ukraine against Russia for "false claims of genocide in the Luhansk and Donetsk" and undertaking a so-called "special military operation" against Ukraine.[115] The Court has found that it does not have jurisdiction over the claims by Ukraine that Russia had falsely alleged acts of genocide in Ukraine.[116] Third, a case brought against Israel for the destruction of the Palestinian national, racial and ethnic group in the Gaza Strip.[117] Fourth, a case brought against Germany for alleged violations of the Genocide

[104] *Bosnian Genocide* (n 62) 113, para. 166.
[105] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion (1951) ICJ Rep 15, 23. See René Figueredo Corrales, 'In the Pursuit of High Purposes: The International Court of Justice, Obligations *Erga Omnes* and the Prohibition of Genocide' (2023) 22 *The Law and Practice of International Courts and Tribunals* 62, 82-3.
[106] *Bosnian Genocide* (n 62) 219, para. 393; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections (1996) ICJ Rep 595, 615-6, para. 31.
[107] *Bosnian Genocide* (n 62), 201, para. 393.
[108] ibid, 197-8, paras. 374-375; see William A Schabas, 'Whither genocide? The International Court of Justice finally pronounces' (2007) 9(2) *Journal of Genocide Research* 183.
[109] Theodor Meron, *The Making of International Criminal Justice: The View from the Bench: Selected Speeches* (OUP 2011), 234-5.
[110] *Bosnian Genocide* (n 62), 121, para. 186.
[111] ibid, 121, para. 187.
[112] *Croatian Genocide* (n 102) 74, para. 178; 119, para. 407.
[113] *Bosnian Genocide* (n 62), 226-7, para. 442.
[114] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 11 States intervening)*, Preliminary Objections (2022) 477.
[115] *Ukraine v. Russia* (n 63), 386, para. 24.
[116] ibid.
[117] *South Africa v. Israel* (n 9).

Convention (among others) in alleging "facilitating the commission of genocide" in providing political, financial and military support to Israel and defunding the United Nations Relief and Works Agency for Palestine Refugees in the Near East.[118]

Beyond its doctrinal contributions, the Court's engagement with genocide claims has also had expressive and communicative effects. As Waltham-Smith notes, the global audibility of ICJ proceedings "create[s] space for atrocity and suffering to be heard in new modalities, amplifying an incipient international-juridical recognition."[119] In the ongoing proceedings against Israel, "there was something powerful about hearing, in the calm, measured recitation of the judicial bench, detailed attestation to the death, destruction, sufferting and trauma wrought upon Palestinians in Gaza, drawing on the statements of UN agencies and spokespeople, and immediately followed by quotations of dehumianizing statements made by Israeli officials".[120]

3.3. Torture

The Court has also issued important judgments on the prohibition of torture. Most notably, in *Belgium v. Senegal*, the Court found Senegal in breach of its obligations under the Convention Against Torture (CAT) by failing to submit the case of the former President of Chad to its competent authorities for prosecution by and failing to take necessary steps to extradite him for alleged acts of torture.[121] The Court characterised obligations under the CAT as obligations *erga omnes partes* owed towards all States parties, providing Belgium with standing to invoke Senegal's international responsibility.[122] For the first time in history, the ICJ also explicitly held that the prohibition of torture is part of customary international law, with the status of a peremptory norm (*jus cogens*), from which no derogation is permitted,[123] leading to subsequent arguments that the Court's reasoning could be influential beyond its facts to establish the existence of a customary obligation to prosecute or extradite.[124] The Court also confirmed that domestic law cannot be invoked to justify non-performance of treaty obligations, including the prohibition of torture,[125] and that financial difficulties or delays in legal reform do not justify a failure to prosecute.[126] Following this judgment, Senegal established the Extraordinary African Chambers, which tried, convicted, and sentenced former President Habré to life imprisonment in 2016, with the appeals chamber confirming this verdict in 2017.[127]

In June 2023, Canada and the Netherlands jointly filed an application at the ICJ against Syria, concerning Syria's international responsibility for its "gross and systematic" failure to fulfil

[118] *Nicaragua v. Germany* (n 9).
[119] Naomi Waltham-Smith, 'Forgiveness Is Not a Musical Instrument' (2024) XIV *A Journal of Literary Studies and Linguisitcs* 148, 151.
[120] ibid.
[121] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment (2012) ICJ Rep 422.
[122] ibid 449-50, paras. 68-9. This aspect of the judgment has been criticised for its incompatibility with Article 21(1) of the CAT. See A Mark Weisburd, *Failings of the International Court of Justice* (OUP 2015), 301-3.
[123] ibid 457, para. 99. See also ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*) (2022) UN Doc. A/77/10.
[124] See Manuel J Ventura and Victor Băieşu, 'The ICJ's Senegal v Belgium Judgment and the Obligation to Prosecute or Extradite Alleged Torturers: The Case of Al Bashir and the ICC' in Sharon Weill, Kim Thuy Seelinger, and Kerstin Bree Carlson (eds.), *The President on Trial: Prosecuting Hissène Habré* (OUP 2020).
[125] ibid 460, para. 113. See also Vienna Convention on the Law of Treaties 1969, Article 27.
[126] ibid 460, para. 112.
[127] See Juan Pablo Perez-Leon Acevedo, 'The Extraordinary African Chambers in the Senegalese Courts and the Development of International Criminal Law in Africa' in Jeremy Sarkin and Ellah T M Siang'andu, *Africa's Role and Contribution to International Criminal Justice* (CUP 2021).

its obligations to prohibit torture and other forms of cruel, inhuman, or degrading treatment or pubishment in accordance with the CAT,[128] marking a significant milestone in the ongoing quest for justice for Syria.[129] This case is pending at the time of writing, with provisional measures being granted by the Court in November 2023.[130]

3.4. Racial Discrimination

In *Barcelona Traction*, the ICJ found that the international protection from racial discrimination is an obligation *erga omnes* owed to the international community as a whole.[131] One year later, in 1971, in its *Namibia* Advisory Opinion, the Court made an unequivocal condemnation of racial discrimination, finding that South Africa's continued occupation of Namibia violated both the League of Nations Mandate for South West Africa and the UN Charter. The Court found that:

> "Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."[132]

The *Namibia* Advisory Opinion was preceded by Judge Tanaka's influential dissenting opinion in the *South West Africa* cases in 1966, where he concluded that "the norm of non-discrimination or non-separation on the basis of race has become a rule of customary international law", and that South Africa's obligations as Mandatory were governed by this legal norm.[133]

In its 2024 Advisory Opinion on the legality of Israel's continued occupation of the Occupied Palestinian Territory, 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", and that this differentiation of treatment could not be justified with reference to reasonable and objective criteria or a legitimate public aim.[134] The ICJ accordingly found that Israel's restrictions amounted to systemic discrimination based on, *inter alia*, race, religion or ethnic origin, in violation of Article 2, CERD, Article 2(1) of the ICCPR and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights.[135] The Court also found that, as Israel's legislation and measures served to maintain a

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[128] *Application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and The Netherlands v. Syria)*, Joint Application Instituting Proceedings (2023) General List No. 188.

[129] Veronica Bellintani and Mouhanad Sharabati, 'State Responsibility for Acts of Torture: Netherlands/Canada v Syria at the International Corut of Justice' (OpinioJuris, 2023) < https://opiniojuris.org/2023/07/17/state-responsibility-for-acts-of-torture-netherlands-canada-v-syria-at-the-international-court-of-justice/>.

[130] *Application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and The Netherlands v. Syria)*, Provisional Measures, Order of 16 November 2023 (2023) ICJ Rep 587.

[131] *Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)*, Second Phase, Preliminary Objections (1970) ICJ Rep 3, 32, paras. 33-4.

[132] *Namibia* (n 69) 57, para. 131.

[133] *South West Africa (Liberia v. South Africa)*, Second Phase, Dissenting Opinion of Judge Tanaka (1966) ICJ Rep 250, 287.

[134] *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East* Jerusalem, Advisory Opinion (2024) ICJ Rep 753, 834, para. 223,

[135] ibid.

near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities, Israel had also violated Article 3, CERD which prohibits racial segregation and *apartheid*.[136]

In recent years, the Court has also addressed racial discrimination as part of the jurisdiction it is afforded under the CERD. Despite the CERD being considered a "neglected treaty", the Convention has been used a basis for ICJ jurisdiction as much as other universal human rights treaties that contain compromissory clauses allowing for ICJ jurisdiction.[137] In 2008, Georgia instituted proceedings before the Court under the CERD, alleging violations by Russia through actions on the territory of two secessionist republics of Georgia, Abkhazia and South Ossetia. The Court found that it did not have jurisdiction over the dispute as Georgia had failed to exhaust a preliminary requirement under Article 22, CERD to attempt to resolve the dispute by negotiation before submitting it to the Court.[138]

In 2018, Qatar brought the first case before the ICJ under Article 22 of the CERD, instituting proceedings against the United Arab Emirates (UAE) and asserting that "the UAE ha[d] enacted and implemented a series of discriminatory measures directed at Qataris based expressly on their national origin", resulting in alleged human rights violations.[139] Though the Court found that it did not have jurisdiction in that case, it made findings on the "ordinary meaning" of "national or ethnic origin" under Article 1(1) of the CERD, concluding that the references to "origin denote, respectively, a person's bond to a national or ethnic group at birth, whereas nationality is a legal attribute which is within the discretionary power of the State and can change during a person's lifetime".[140] This finding has been criticised as having no basis in the text of the CERD and little accordance with practical realities.[141]

In 2024, the Court gave its judgment in relation to Ukraine's allegations that Russia had engaged in and supporting a campaign of discrimination against Crimean Tatars and ethnic Ukrainians in Crimea, including through the suppression of representative institutions, restrictions on cultural and educational rights, and persecution of community leaders.[142] The ICJ found that Russia was obliged to (a) refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*, and (b) ensure the availability of education in the Ukrainian language[143]

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[136] *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East* Jerusalem, Advisory Opinion (2024) ICJ Rep 753, 835, para. 229. This finding has come under scrunity for a lack of clarity on whether the situation actually amounted to segregation *or* apartheid. See Separate Opinion of Judge Nolte (2024) ICJ Rep 996; Declaration of Judge Tladi (2024) ICJ Rep 1020; David Keane, '"Racial Segregation and Apartheid" in the ICJ Palestine Advisory Opinion' (EJIL:Talk!, 2024) <https://www.ejiltalk.org/racial-segregation-and-apartheid-in-the-icj-palestine-advisory-opinion/>.

[137] Emanuele Cimiotta, 'Parallel Proceedings before the International Court of Justice and the Committee on the Elimination of Racial Discrimination' (2020) 19 *The Law and Practice of International Courts and Tribunals* 388, 388-9.

[138] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections (2011) ICJ Rep 70; Kevin Jon Heller, 'Guest-Post: Anna Dolidze on the ICJ Judgment in *Georgia v. Russia*' (OpinioJuris, 2011) <https://opiniojuris.org/2011/04/07/guest-post-anna-dolidze-on-the-icj-judgment-in-georgia-v-russia/>.

[139] *Qatar v. UAE* (n 23), 85, para. 31.

[140] ibid 98, para. 81.

[141] Cathryn Costello and Michelle Foster, 'Race Discrimination Effaced at the International Court of Justice' (2021) 115 AJIL:Unbound 339, 341-3.

[142] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Merits (2024) ICJ Rep 78.

[143] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian*

and found violations of the CERD, particularly Articles 2(1)(a) and 5(e)(v).[144] However, the Court also repeatedly found that Ukraine had not furnished the Court with convicing evidence demonstrating that discriminatory acts against Crimean Tartars and ethnic Ukrainians were based on their ethnic origin rather than their political opposition, and failed to establish indirect discrimination.[145]

There are currently two further cases on the Court's docket brought under the CERD, between Armenia and Azerbaijan.[146]

3.5. Human Rights Aspects of International Humanitarian Law

A significant dimension of the Court's evolving human rights engagement has emerged through its interpretation and application of international humanitarian law. Though its contributions to international humanitarian law have been classified by some as non-revolutionary,[147] whether its references to international humanitarian law were merely incidental or formed the cruz of the matter, the ICJ confirmed the place of this body of law in general international law.[148]

In *Nicaragua*, the Court clarified the scope of Common Article 1 of the Geneva Conventions, recognising the negative obligation "not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions".[149] The Court also confirmed that the conflict between the *contras*' forces and those of the Government of Nicaragua was a non-international armed conflict and governed by rules applicable to those conflicts, whereas actions of the United States in and against Nicaragua were governed by the legal rules relating to international conflicts.[150] By implication, the Court reecognised that there were two separate armed conflicts existing in parallel, though it avoided the need to explore the resulting differences between the substantive humanitarian law applicable to the international conflict and that applicable to the internal conflict by characterising the provisions of common Article 3 of the Geneva Conventions as a "minimum yardsticj" applicable to any armed conflict.[151]

Ten years later, the Court assessed the legality of the threat or use of nuclear weapons under international humanitarian law during armed conflict. The Court reaffirmed the "intransgressible principles of international humanitarian law", including the protection of civilians and the prohibition of unnecessary suffering and held that these principles constitute "the cardinal principles" of humanitarian law.[152] Though the Court did not determine the

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Federation), Request for the indication of Provisional Measures, Order of 19 April 2017 (2017) ICJ Rep 104, 140, para. 106.

[144] *Application of the International Convention for the Suppression of the Financing of Terrorism* (n 25), 211-213.

[145] See Iryna Marchuk, 'Unfulfilled Promises of the ICJ Litigation for Ukraine: Analysis of the ICJ Judgment in Ukraine v. Russia (CERD and ICSFT)' (EJIL:Talk! 2024) <https://www.ejiltalk.org/unfulfilled-promises-of-the-icj-litigation-for-ukraine-analysis-of-the-icj-judgment-in-ukraine-v-russia-cerd-and-icsft/>.

[146] *Armenia v. Azerbaijan; Azerbaijan v. Armenia* (n 9).

[147] Christopher Greenwood, 'The International Court of Justice and the Development of International Humanitarian Law' (2022) 104 *International Review of the Red Cross* No. 920-921, 1840,1853.

[148] Pavle Kilibarda and Robert Kolb, 'The International Court of Justice, international humanitarian law and human rights law' in Robert Kolb, Gloria Gaggioli, and Pavle Kilibarda, *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar Publishing 2022), 186.

[149] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits (1986) ICJ Rep 14, 114, para. 220.

[150] ibid 114, para. 219.

[151] ibid 114, para. 218. See Greenwood (n 151), 1843-1844.

[152] *Nuclear Weapons* (n 75), 257, para. 79.

legal character of international humanitarian law, it did clarify that the fundamental rules of humanitarian law "are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law."[153] The ICJ explicitly confirmed that international human rights law applies in times of armed conflict, alongside international humanitarian law.[154] The Court also recognised that the right not to be arbitrarily deprived of the right to life[155] must be interpreted by reference to international humanitarian law, as the *lex specialis* in situations of hostilities.[156] The Court concluded unanimously that the threat or use of nuclear weapons must comply with Article 2(4) of the UN Charter and the relevant international humanitarian law principles of necessity, proportionality, distinction, and avoidance of unnecessary suffering.[157] As Chetail recognises, it is significant that the Court recognised the continuing application of human rights treaties in time of armed conflict. First, at the substantive level, provisions of human rights treaties go beyond conventional humanitarian law and can fill normative gaps, particularly in the context of non-international armed conflict and internal strife. Second, at the procedural level, human rights treaties contain sophisticated enforcement mechanisms that can supplementthe more rudimentary mechanisms for the implementation of humanitarian law.[158]

In 2002, the Court considered the scope of universal jurisdiction in prosecuting war criminals.[159] In 2004, the Court emphasised that in times of armed conflict, both international humanitarian law and international human rights law must be considered.[160] This was deemed particularly important for acts done by a State outside of its territory, especially in occupied territory.[161]

The following year, in *Armed Activities*, the Court applied the customary rule reflected in Article 42 of the Hague Conventions[162] to determine occupation based on factual authority rather than formal administration.[163] The ICJ clarified that occupation exists when territory is "actually placed under the authority of the hostile army", and determined that an occupying power has dual responsibility: for acts of its military that violated international obligations and for falling to prevent violations by other actors in occupied territory.[164] The Court held

[153] ibid, 257, para. 79. This conclusion has been scrutinised as to whether the Court implicitly admitted the peremptory character of such rules, or whether the Court is merely suggesting that the international humanitarian law principles must not be transgressed. See Vincent Chetail, 'The contribution of the International Court of Justice to international humanitarian law' (2011) 85 *International Review of the Red Cross* No. 850, 235, 250-1; Luigi Condorelli, 'Nuclear weapons: A weighty matter for the International Court of Justice' (1997) 319 *International Review of the Red Cross* No. 319, 14. Judge Weeramantry, in his Dissenting Opinion, stated categorically that the rules of international humanitarian law have acquired the status of *jus cogens*. *Nuclear Weapons* (n 60), Dissenting Opinion of Judge Weeramentry (1996) ICJ Rep 429, 496.
[154] ibid, 257, para. 78.
[155] ICCPR, Article 6.
[156] *Nuclear Weapons* (n 75), 240, para. 25.
[157] ibid, 266, para. 105(2)(C).
[158] Chetail (n 153), 241.
[159] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Jurisdiction and Admissibility (2002) ICJ Rep 3.
[160] *Wall* (n 70).
[161] ibid.
[162] Hague Convention (II) with Respect to the Laws and Customs of War on Land 1899; Hague Convention (IV) respecting the Laws and Customs of War on Land 1907.
[163] *Armed Activities* (n 48) 230-1, paras. 174-8.
[164] ibid 229, para. 172; 231, para. 179.

that parties to armed conflict are responsible for all persons forming part of their armed forces, regardless of whether they acted contrary to instructions.[165]

In 2024, the ICJ examined the "prolonged" nature of Israel's occupation of the Occupied Palestinian Territory and found that the prolonged nature of an occupation has no legal consequences under international humanitarian law.[166] Instead, the prolonged nature of the occupation may be relevant for assessing the occupying power's compliance with other rules of international law.[167]

Finally, in 2025, the Court found that Israel, as an occupying power of the Occupied Palestinian Territory, has an obligation under international humanitarian law and international human rights law to ensure that the civilian population "has essential supplies of daily life, including food, water, shelter, fuel, medical supplies and services".[168] It stressed that Israel must agree to facilitate relief schemes provided by the UN and its entities, including the UN Relief and Works Agency for Palestinian Refugees, because they are the only realistic means to fulfil those obligations in the current circumstances.[169] The Court held that Israel must not impose measures that prevent, impede or render impossible the operations of UN bodies or other international organisations and third States in and in relation to the Occupied Palestine Territory.[170] The Court also affirmed that Israel's effective control over the Gaza Strip has increased significantly since earlier rulings, and accordingly Israel's obligations under the law of occupation have also increased.[171]

3.6. The Right to a Healthy Environment

In its early caselaw, the Court cautiously promoted the environment and the concept of sustainable development, and contributed to the development and clarification of environmental law and related agreements between the countries.[172] The Court first considered environmental law in 1997, when analysing the 1977 bilateral Treaty on the Construction and Operation of the Gabčikovo-Nagumaros Barrage System. The Court stated that it is "mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage".[173] The ICJ accepted by implication Slovakia's contention that none of the norms on which Hungary relied was of a peremptory nature.[174] The Court did not, however, rule out the possibility that environmental norms may develop in future and that whenever they do, they must be considered by the parties.[175]

In its *Nuclear Weapons* Advisory Opinion, the Court recognised that "the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the

[165] ibid 242, para. 213.
[166] ibid 795-6, para. 109.
[167] ibid. See Marko Milanović, 'ICJ Delivers Advisory Opinion on the Legality of Israel's Occupation of Palestinian Territories' (EJIL:Talk! 2024) <https://www.ejiltalk.org/icj-delivers-advisory-opinion-on-the-legality-of-israels-occupation-of-palestinian-territories/>.
[168] *Presence and Activities of the United Nations* (n 73) 65, para. 223(3)(a).
[169] ibid 65, para. 223(3)(b).
[170] ibid 45, para. 132; 49, para. 152.
[171] ibid 35, para. 86.
[172] Bijay Singh Sijapati and Gyaneshwer Parajuli, 'Role of the International Court of Justice in Promoting Environment and Sustainable Development' (2021) 15 *NJA Law Journal* 239, p. 252.
[173] *Gabčikovo-Nagymaros Project (Hungary/Slovakia)* (1997), Judgment, ICJ Rep 7, 77-8, para. 140.
[174] ibid 62, para. 97.
[175] Louis J Kotzé, 'In Search of a Right to a Healthy Environment in International Law' in John H Knox and Ramin Pejan (eds.), *The Human Right to a Healthy Environment* (OUP 2018) 149.

environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."[176] Though international law on the safeguarding of the environment does not specifically prohibit the use of nuclear weapons, the Court clarified that it indicates important environmental fac tors that are properly to be taken into account in the context of the implementation of the principles and rules of the applicable law in armed conflict.[177] In doing so, the Court stressed the importance of the environment and in this context the rights of future generations.[178]

In 2010, the ICJ considered a seven-year environmental dispute between Agentina and Uruguay, concerning Uruguay's authorisation for pulp mills on the banks of the Uruguay River, which forms the international boundary between the two countries. The Court ruled that Uruguay was obliged by treaty to notify and consult with Argentina before authorising the pulp mills and letting construction start, and that Uruguay had breached this obligation.[179] The ICJ reminded the parties of their customary international law obligation to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control,[180] and observed that the practice of environmental impact assessments has gained so much acceptance among States that it may now be considered a requirement under general international law where there is a risk that the proposed industrial activity may have a significant adverse impact on a transboundary context, in particular, on a shared resource.[181]

This recognition and application of environmental law culminated in the express recognition of the right to a healthy environment in the Court's Advisory Opinion on the *Obligations of States in Respect of Climate Change*. The Court held for the first time that international human rights law forms part of the applicable law when States deal with climate change obligations, rejecting the idea that climate-treaty law displaces human rights obligations.[182] The Court acknowledged that the adverse effects of anthropic climate change may impair the enjoyment of a wide range of human rights: the rights to life, health, an adequate standard of living, privacy, family and home, as well as the rights of women, children and indigenous peoples.[183] It noted that a clean, healthy and sustainable environment is connected with human rights enjoyment,[184] putting to end a long-standing debate as to whether the right to a healthy environment is part of the pantheon of universally recognised human rights.[185] The ICJ also found that States have due diligence obligations to prevent significant harm to the

[176] *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion (1996) ICJ Rep 226, 241-2, para. 29.
[177] ibid 243, para. 33.
[178] Malgosia Fitzmaurice, 'The International Court of Justice and the Environment' (2004) 4(2) *Non-State Actors and International Law* 173, p. 182.
[179] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment (2010) ICJ Rep 14.
[180] ibid 78, para. 193.
[181] ibid 83, para. 204. The Court restated this conclusion five years later in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Rep 2015, 665, 706, para. 104.
[182] *Obligations of States in respect of Climate Change* (n 7), 52, para. 145.
[183] ibid 111, paras. 381-382.
[184] ibid 113, para. 393.
[185] David R Boyd, 'World's Highest Court Embaces the Right to a Healthy Environment' (Columbia Law School Sabin Center for Climate Change Law, 2025) <https://blogs.law.columbia.edu/climatechange/2025/07/29/worlds-highest-court-embraces-the-right-to-a-healthy-environment/>.

climate system or other parts of the environment, and that these obligations may engage human rights responsibilities.[186] The Court determined that certain obligations in the climate change context may give rise to obligations *erga omnes*.[187]

3.7. Individual Human Rights

Even rights that are closely associated with the individual have come before the ICJ, such as the right to a fair trial, and the Court has played an important role in integrating these rights into a "unitary vision of the international legal system".[188] In 1956, the Court noted that "[t]he principle of equality of the parties follows from the requirements of good administration of justice … [t]he judicial character of the Court requires that both sides directly affected by these proceedings should be in a position to submit their views and their arguments to the Court".[189] Individual ICJ judges have also considered the right to a fair trial to be a *jus cogens* norm.[190]

Similarly, in *Diallo*, Guinea brought a case on behalf of its national, Ahmadou Sadio Diallo, a Guinean businessman who had been arbitrarily detained, mistreated, and expelled by the Democratic Republic of the Congo (DRC) in the 1990s.[191] The Court found that Mr Diallo's arrest and detention were arbitrary, violating Article 9(1) of the ICCPR and Article 6 of the African Charter on Human and Peoples' Rights.[192] The Court also found that the DRC failed to inform Mr Diallo of the reasons for his arrest, breaching Article 9(2) of the ICCPR, and found that his expulsion without effective judicial review violated Article 13 of the ICCPR, and Article 12(4) of the African Charter.[193] The ICJ was also asked to consider whether Mr Diallo's treatment in detention violated the prohibition of inhuman or degrading treatment, and found that although his conditions were harsh, they did not reach the threshold of inhuman treatment.[194] The Court did, however, reaffirm that humane treatment of persons deprived of liberty is a general principle of human rights law binding on all States.[195] The most important aspect of the Court's reasoning was its reliance on the interpretation of the ICCPR provisions by specialist bodies, including the Human Rights Committee, as well as the jurisprudence and practice of the African Commission on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights.[196]

At the time of writing, the Court is also considering the existence of the right to strike under International Labour Organization Convention No. 87 in an advisory opinion,[197] which has human rights implications and is protected in other human rights instruments.[198]

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[186] ibid 87-93, paras. 280-300.
[187] ibid 125, para. 439.
[188] Vera Gowland-Debbas, 'The ICJ and the challenges of human rights law' in Mads Andenas and Eirik Bjorge (eds.), *A Farewell to Fragmentation* (CUP 2015), p. 144.
[189] *Judgment of the Administrative Tribunal of the ILO upon Complaints Made against* UNESCO, Advisory Opinion (1956) ICJ Rep 77, 86.
[190] *Jadhav (India v. Pakistan)*, Judgment, Declaration of Judge Robinson (2019) ICJ Rep 510, 512.
[191] *Diallo* (n 11).
[192] ibid 669, para. 82.
[193] ibid 670, para. 85.
[194] ibid 666, para. 73.
[195] ibid 671, para. 88.
[196] ibid, 664, paras. 66-68. See James Crawford and Amelia Keene, 'Interpretation of the human rights treaties by the International Court of Justice' (2020) 24(7) *The International Journal of Human Rights* 935, p. 941.
[197] *Right to Strike* (n 9).
[198] See Gaia Zanotti, 'The Right to Strike in International Law amid Legal Challenges: Exploring Alternatives to ILO Convention No. 87' (EJIL:Talk! 2024) <https://www.ejiltalk.org/the-right-to-strike-in-international-law-amid-legal-challenges-exploring-alternatives-to-ilo-convention-no-87/>.

3.8. The Right to Consular Assistance

The Court's engagement with human rights has also extended to the protection of procedural safeguards, most notably the right of individuals to consular notification and assistance under the Vienna Convention on Consular Relations (VCCR). The first case to be brought before the Court on the VCCR was brought by Paraguay on behalf of one of its citizens, Mr Breard, who was arrested in Virginia, US for murder. US authorities did not inform him of his right to contact the Paraguayan consulate, as required by Article 36 of the VCCR.[199] The Court indicated provisional measures, ordering the US to take all measures at its disposal to ensure that Mr Breard was not executed pending the final decision of the Court.[200] The US Supreme Court, after the Department of Justice offered an amicus brief claiming that a provisional order from the ICJ was not binding, denied both Paraguay's appeal of its claim against Virginia and Breard's habeas claim.[201] Mr Breard was executed in April 1998.[202] Paraguay subsequently discontinued the case.[203]

In its *LaGrand* and *Avena* cases, the Court held that Article 36(1) of the VCCR conferred individual rights directly on foreign nationals.[204] In these cases, the Court interpreted Article 36 as creating two distinct but related obligations. First, paragraph 1 requires receiving States to notify foreign nationals "without delay" of their right to consular access upon arrest or detention.[205] The "without delay" requirement does not necessarily mean "immediately and before interrogation",[206] though other tribunals have interpreted this requirement more rigorously given its importance for safeguarding defence rights.[207] Second, paragraph 2 requires States to ensure "full effect" is given to the purposes for which these rights are intended.[208] These cases have, in turn, contributed to the "humanization" of the VCCR and of international law as a whole.[209]

In these cases, the Court addressed whether domestic procedural rules could prevent foreign nationals from raising VCCR violations. The US applied its "procedural default rule", which bars defendants from raising legal issues on appeal if they failed to raise them at trial. Germany and Mexico argued that this rule prevented their nationals from obtaining remedies for consular notification violations. The Court held that when examining whether States have breached the Convention, it "must be able to examine the actions of [municipal] courts in the light of international law".[210]

3.9. Interim Remarks

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[199] *Vienna Convention on Consular Relations (Paraguay v. United States of America)*, Application Instituting Proceedings (1998).
[200] *Vienna Convention on Consular Relations (Paraguay v. United States of America)*, Provisional Measures, Order of 9 April 1998 (1998) ICJ Rep 248, 258, para. 41(I).
[201] *Breard v. Greene* (1998) 523 U.S. 371; See Mary Welek Atwell, *An American Dilemma: International Law, Capital Punishment, and Federalism* (Palgrave Macmillan New York 2015), p. 45.
[202] Amnesty International, *The Execution of Ángel Breard: Apologies Are Not Enough* (Amnesty International, 1998).
[203] *Vienna Convention on Consular Relations (Paraguay v. United States of America)*, Order of 10 November 1998 (1998) ICJ Rep 426.
[204] *LaGrand* (n 6) 494, para. 77; *Avena* (n 38) 35, para. 40.
[205] *LaGrand* (n 6) 497, para. 90.
[206] *Avena* (n 38) 49, para. 87.
[207] See Eileen Denza and Chanaka Wickremasinghe, 'Consular Access and Protection' in Ivor Roberts (ed.), *Satow's Diplomatic Practice* (8th ed., OUP 2023), 292, §15.12.
[208] *Avena* (n 38) 57, para. 113.
[209] Martin Mennecke, 'Towards the Humanization of the Vienna Convention of Consular Rights – The *LaGrand* Case Before the International Court of Justice' (2001) 44 *German Yearbook of International Law* 430, 468.
[210] ibid 30, para. 28. See generally *LaGrand* (n 6).

Taken together, the Court's jurisprudence reveals a gradual transformation in its engagement with human rights. What began as cautious recognition of "elementary considerations of humanity"[211] has evolved into a sophisticated and multifaceted body of caselaw that situates human rights norms within the mainstream international adjudication.[212] The ICJ's approach remains conditioned by its institutional and jurisdictional limits, but through its contentious and advisory functions, the Court has consistently affirmed that the protection of human rights lies at the core of the international legal order.

Future cases are likely to continue bringing human rights issues, with significant political backgrounds, before the Court. In September 2024, Australia, Canada, Germany and the Netherlands formally called upon Afghanistan to cease what the countries allege are violations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), beginning the process for the four countries to file a case with the ICJ.[213] Though the current status of this initiative is uncertain, it illustrates the growing willingness of States to invoke human rights treaties as jurisdictional gateways to the Court in response to systemic and politically sensitive violations. This trend can be seen, in particular, in the growing number of cases brought before the ICJ by non-victim States concerning human rights violations.[214]

4. A Potential New Phase for the ICJ?

Over the past half-century, two major and overlapping themes have emerged in the ICJ's engagement with human rights. First, the Court has increasingly handled crucial (and often existential) geopolitical issues. Even within the constraints of its jurisdiction, the ICJ's current docket reflects its importance in some of the most urgent and consequential human rights issues of our time. In 2025 alone, the ICJ delivered landmark decisions on self-determination,[215] genocide,[216] climate change,[217] and access to humanitarian assistance.[218] The ongoing war in Ukraine, the largest conflict in Europe since the Second World War,[219] is currently before the Court.[220] The atrocities seen in the conflict in Gaza have prompted two separate cases before the Court.[221] The long-running Nagorno-Karabakh situation, the most enduring conflict in Eurasia, has returned to the Court in *Armenia v. Azerbaijan*.[222] Questions of self-determination and territorial integrity arise in the pending cases of *Guatemala/Belize* and *Guyana v. Venezuela.*[223] These cases illustrate the Court's evolving role as a forum for the adjudication of issues that strike at the core of humanity's collective security, dignity, and survival.

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[211] *Corfu Channel* (n 55), 22.
[212] Simma (n 8).
[213] See Alice Johnson, 'Afghanistan: potential ICJ case a step towards justice for Afghan women' (International Bar Association, 2024), available at: <https://www.ibanet.org/afghanistan-icj>.
[214] See Priya Urs, 'Obligations *erga omnes* and the question of standing before the International Court of Justice' (2021) 34(2) *Leiden Journal of International Law* 505.
[215] *Legal Consequences arising from Israel's Policies and Practices* (n 72).
[216] *The Gambia v. Myanmar* (n 114); *South Africa v. Israel* (n 9); *Sudan v. UAE* (n 48). These cases, whilst already involving landmark decisions, have not yet received judgments on the merits at the time of writing.
[217] *Obligations of States in respect of Climate Change* (n 8).
[218] *Presence and Activities of the United Nations* (n 73).
[219] *Ukraine v. Russia* (n 9)
[220] Philippa Webb, 'Double Waiver of Immunity and Ripple Effects' (2025) ICSID Review, siaf022 (Advance Access), 58.
[221] *South Africa v. Israel* (n 9); *Alleged Breaches of Certain International Obligations* (n 9).
[222] *Armenia v. Azerbaijan; Azerbaijan v. Armenia* (n 9).
[223] *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize).*

Second, the Court has, in parallel, strengthened the recognition of collective rights and clarified the legal foundations of collective action within the international legal order. The ICJ's jurisprudence has progressively signalled a conception of international law in which certain rights and obligations transcend bilateral relations between States. In *Barcelona Traction*, the Court introduced the concept of obligations *erga omnes*—obligations owed by a State "toward the international community as a whole", the protection of which "all States can be held to have a legal interest".[224] Such obligations include the prohibitions of aggression, genocide, torture, slavery, and racial discrimination, and the right of peoples to self-determination.[225]

The Court recognised that peremptory norms of international law reflect and protect fundamental values of the international community as early as 1951, almost 20 years prior to the adoption of the Vienna Convention on the Law of Treaties.[226] In it *Reservations* Advisory Opinion, the Court noted that the prohibition of genocide was inspired by the commitment to "condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial that shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations."[227] In subsequent decisions, the Court has reaffirmed this description and the peremptory status of the prohibition of genocide.[228]

In contrast to its earlier restrictive approach in the *South West Africa* cases, the Court has now affirmed that States may bring cases not merely to vindicate their own rights but also to uphold the collective interests of the international community through the principle of *erga omnes partes*.[229] As Judge Meron has observed, this development reflects the "humanization of State responsibility", a shift from viewing State responsibility solely as an inter-State matter to recognising its role in safeguarding fundamental human values.[230] This evolution is exemplified by a series of cases brought by non-victim States: Belgium's case against Senegal for failing to prosecute or extradite Hissène Habré for alleged torture,[231] The Gambia's case against Myanmar for alleged genocide of the Rohingya people,[232] Canada and the Netherlands' case against Syria for alleged acts of torture in Syria's repression of civilian demonstrations and the subsequent armed conflict,[233] South Africa's case against Israel concerning alleged genocide in the Gaza Strip,[234] and Nicaragua's case against Germany for its alleged support of Israel in the ongoing conflict in the Gaza Strip.[235] It is interesting to note

[224] *Arbitral Award of 3 October 1899 (Guyana v. Venezuela).*
[225] *Barcelona Traction (Belgium v. Spain)*, Second Phase, Preliminary Objections (1970) ICJ Rep 3, 32, para. 33.
[226] *Reservations* Advisory Opinion (n 3); ILC, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries (2022) YILC vol. II, Part Two, pp. 17-18, para. 3.
[227] *Reservations* Advisory Opinion (n 3), 23.
[228] *Bosnian Genocide* (n 62), 110-111, para. 161; *Croatian Genocide* (n 102) 46, para. 87.
[229] See e.g. *The Gambia v. Myanmar* (n 114); *South Africa v. Israel* (n 9).
[230] See Theodor Meron, 'Humanization of State Responsibility: From Bilateralism to Community Concerns' in *The Humanization of International Law* (Brill 2005), 247 *et seq.* See also Judge Cançado Trindade's reference to the "humanization of the law of nations" in *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and the United Arab Emirates v. Qatar)*, Separate Opinion of Judge Cançado Trindade (2020) ICJ Rep 119, 137-8, para. 51.
[231] *Belgium v. Senegal* (n 121). Note, however, that some of the victims in that case held dual Belgium nationality.
[232] *The Gambia v. Myanmar* (n 114).
[233] *Canada and The Netherlands v. Syria* (n 128).
[234] *South Africa v. Israel* (n 9).
[235] *Nicaragua v. Germany* (n 9).

that, for the time being, the development of *erga omnes (partes)* standing is unique to the ICJ, and has not been seen in inter-State cases before other human rights courts and bodies.[236]

The Court's growing docket underscores the extent of this collective turn. At present, two-thirds of all UN Member States are engaged in proceedings before the ICJ—as applicants, respondents, interveners, or participants in advisory proceedings. In *Ukraine v. Russia*, an unprecedented 34 States have filed declarations of intervention under Article 63 of the Statute; 11 have filed declarations in *The Gambia v. Myanmar*, and 12 declarations and applications in *South Africa v. Israel*, including one by Palestine.[237] The Court's advisory proceedings have also become a global forum for collective legal expression: 91 States, the highest number in the Court's history, submitted written statements in the *Climate Change* Advisory Opinion, an initiative that originated with a campaign by 17 law students from eight Pacific Island nations in 2019.[238]

Together, these developments signal that the ICJ is no longer confined to the classic bilateral model of dispute settlement, in which two States seek resolution of reciprocal claims. Increasingly, the Court functions as a forum in which obligations owed to the international community as a whole are articulated and contested.

5. Promises and Pitfalls for Strategic Litigation

What does the present picture of the ICJ's human rights engagement mean for strategic litigation? "Strategic litigation" can be defined for the purposes of this article to mean litigation that "aims to bring about broad societal changes beyond the scope of the individual case at hand. It aims to use legal means to tackle injustices that hve not been adequately addressed in law or politics".[239]

The ICJ's gradual mainstreaming of human rights opens new pathways for strategic litigation that blend legal creativity with political coalition-building. While structural limits remain, States (and the communities and movements that influence them) can increasingly use the Court not only to settle disputes but also to define the contents of international human rights law. Several considerations arise from the foregoing analysis that indicate how such litigation might be conceived and pursued in practice:

First, since the ICJ's jurisdiction remains consent-based, strategic litigants can frame violations under treaties with compromissory clauses,[240] though its factual allegations will need to be framed accordingly.

Second, the advisory jurisdiction has become a preferred route for politically sensitive or systemic human rights questions. Strategic actors (States, designated UN organs, or regional groups) can use this mechanism to obtain authoritative interpretations of human rights related norms without the constraints of consent, and to frame new global norm, such as the right to a healthy environment or responsibilities of occupying powers. As seen in the *Climate Change*

[236] Akande (n 10).
[237] See *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 5 June 2023 on Admissibility of the Declarations of Intervention (2023) ICJ Rep 354; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 3 July 2024 (2024) ICJ Rep 729, Order of 25 July 2025 (2025) General List No. 178; *South Africa v. Israel* (n 9).
[238] *Obligations of States in respect of Climate Change*, Press Release No. 2024/31 (12 April 2024).
[239] European Center for Constitutional and Human Rights 'Strategic litigation' <https://www.ecchr.eu/en/glossary/strategic-litigation/>.
[240] Such as the Genocide Convention, Article IX; CAT, Article 30; CERD, Article 22; CEDAW, Article 29.

Advisory Opinion, advocacy networks and vulnerable States can coordinate to present global questions that reflect collective concerns, rather than bilateral disputes.[241]

Third, the ICJ's acceptance of obligations *erga omnes*, *erga omnes partes*, and *jus cogens* enables non-victim States to bring cases in defence of collective human rights values. This allows room for solidarity litigation, cases brought to protect global community interests.[242] Strategic litigators can therefore identify community-wide harms and use these cases to strengthen universal accountability even when victims lack access to international forums.[243]

Fourth, the ICJ's jurisprudence increasingly (though with exceptions)[244] interacts with regional courts and human rights treaty bodies.[245] Strategic litigation could sequence cases across forums to, for example, establish factual findings regionally and pursue State responsibility internationally. Litigants can also cross-reference interpretations to encourage coherence, as the ICJ itself did in *Diallo*.[246] Strategic litigation at the ICJ might also place the Court as the 'capstone' forum to confirm or consolidate international norms first developed by specialised bodies.

Fifth, ICJ judgments and advisory opinions have symbolic power. Even without enforcement,[247] they shape global narratives. Strategic actors can use this to secure international recognition of a situation as a violation of human rights norms,[248] clarify disputed legal principles for domestic courts and UN bodies; and support political or sanctions-based subsequent measures by providing a judicially endorsed legal framework.[249] It is worth noting, however, that the symbolic power of the Court's judgments appears to be stronger when the underlying dispute is already being subjected to extensive media coverage. For example, whilst the cases brought under the Genocide Convention by Ukraine and South Africa—where both disputes had featured prominently in the media before the ICJ's involvement—initiated a significant impact, particularly in media terms, the matter seems to be different in the case brought by Sudan against the United Arab Emirates under the same Convention in 2025.[250]

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[241] *Obligations of States in respect of Climate Change* (n 8).

[242] See Simma (n 8); Sarah Thin, 'In Search of Community: Towards a Definition of Community Interest', in Gentian Zyberi (ed.), *Protecting Community Interests through International Law* (Intersentia 2021); Gentian Zyberi, 'The Protection of Community Interests in International Law: Some Reflections on Potential Research Agendas', in Gentian Zyberi (ed.), *Protecting Community Interests through International Law* (Intersentia 2021).

[243] See Cecily Rose, 'Public Interest Litigation at the International Court of Justice' (2023) 22 *The Law and Practice of International Courts and Tribunals* 229.

[244] See above on the ICJ's divergence from certain CERD views when issuing judgments on racial discrimination. See also See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)* (2024) ICJ Rep 1198, on the divering interpretation adopted by the CERD Committee and the former European Commission on Human Rights with regard to the question of jurisdiction *ratione temporis*. See also *Qatar v. UAE* (n 23), 104, para. 101.

[245] Rodley (n 3).

[246] *Diallo* (n 11), 664, para. 66.

[247] Constanze Schulte, *Compliance with Decisions of the International Court of Justice* (OUP 2004); Philippa Webb, 'Patience and Perseverance: Time and Compliance with Inter-State Judicial Decisions' in Andrea Gattini and Marco Dimetto (eds.), *Time and International Adjudication* (Brill 2025).

[248] Such as the situation of the Occupied Palestinian Territory. See *Legal Consequences arising from Israel's Policies and Practices* (n 72).

[249] See generally, Aloysius P. Llamzon, 'Jurisdiction and Compliance in Recent Decisions of the International Court of Justice' (2007) 18(5) EJIL 815.

[250] See *South Africa v. Israel* (n 9); *Ukraine v. Russia* (n 9); *Sudan v. UAE* (n 9).

Sixth, third-State interventions under Article 63 (or applications under Article 62) have emerged as a "crucial mechanism" of collective expression,[251] though the Court has recently changed its rules regarding oral interventions by intervening parties.[252] Future litigation at the ICJ might seek support from this procedure to build coordinated interventions and consolidate a shared interpretation of human rights treaties.

Seventh, litigants might need to ensure that pre-litigation correspondence satisfies procedural preconditions in the relevant treaties (as *Georgia v. Russia* demonstrates), or frame disputes under treaties with minimal preconditions.[253] Advisory proceedings might also be used where jurisdictional hurdles are insurmountable.

Eighth, human rights litigation before the ICJ is complex, slow and State-centred. States may therefore pair ICJ proceedings with real-time advocacy before UN bodies to maintain momentum.

Ninth, litigation before the ICJ might result in lower compensation than in cases before human rights bodies.[254] Strategic litigants might therefore pursue complementary remedies, framing broader forms of reparation and using the Court's normative authority to increase accountability through other international or domestic mechanisms.

6. Conclusion

In 1950, Hersch Lauterpacht, then a leading scholar and later a judge of the ICJ, proposed amending the ICJ Statute to enable "private persons, natural or corporate, to appear as parties before the Court in cases in which the other party, being a State or an organization of States, initiates or consents to the proceedings"."[255] His suggestion, visionary for its time, would have enabled individuals to appear (at least indirectly) before the World Court. But the proposal found no support: States were unwilling to extend the Court's jurisdiction beyond

[251] Bruno Simma, 'When "Community Interest" Intervenes: Article 62 of the ICJ Statute Facing Obligations *erga omnes (partes)* (2025) 24 *The Law and Practice of International Courts and Tribunals* 258, 281.

[252] Note, however, that the Court has recently changed its practice on third-State interveners and oral interventions. In *The Gambia v. Myanmar* (n 9), the Court did not allow interveners to make interventions in the course of oral submissions on the merits.

[253] One example is the Geneva Convention. However, though the procedural requirements under Article IX are minimal, the threshold for proving the commission of genocide is high. See Rana Moustafa Essawy, 'The Attainability of the Evidentiary Standard for Genocidal Intent in Gaza' (EJIL:Talk!, 2024) <https://www.ejiltalk.org/the-attainability-of-the-evidentiary-standard-for-genocidal-intent-in-gaza>. Moreover, there might be negative implications from relying on the Genocide Convention to establish the Court's jurisdiction, as was seen in *Ukraine v. Russia* (n 63), 420, para. 144, where the Court found that Ukraine's claims against Russia for its false allegations of genocide do not fall within the catalogue of rights and interests protected by the Genocide Convention. See Serena Forlati, 'The Genocide Convention Before the ICJ: Judicial Protection of Fundamental Values Between Tradition, Innovation, and the Risk of Futility' (2024) 34 IYIL 295.

[254] The highest compensation order by the ICJ to date was made in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations (2022) ICJ Rep 13 to a total sum of USD $325,000,000 (USD $325 million, a sum that was significantly lower than that the claimant was seeking). See Sebastian Lukic and Lili Hanna Feher, 'Awarding Damages Flexibly … or Painting with a Broad Brush' (Völkerrechtsblog, 2022) <https://voelkerrechtsblog.org/awarding-damages-flexibly>. In comparison, the highest compensation ever awarded by the ECtHR was ordered in *Yukos v. Russia* (Just Satisfaction) App No. 14902/04 (2014), consisting of approximately USD $2,237,010,000 (approximately USD $2.24 billion).

[255] Stephen M Schwebel, 'Judge Sir Hersch Lauterpacht's Report on the Revision of the Statute of the International Court of Justice', in David D. Caron et al (eds.), *Practising Virtue: Inside International Arbitration* (OUP 2015), §IV.

inter-State disputes, and the Statute's status as part of the UN Charter renders amendment virtually impossible.[256]

Despite these structural limitations, both internal developments within international law and external global pressures have made human rights an indispensable part of the Court's contemporary work. The ICJ now adjudicates or advises on disputes relating to international peace and security, including some of the most atrocious military conflicts and urgent human rights question of the age, from genocide and racial discrimination to occupation, self-determination, and the human consequences of climate change.

Adopting the broad functional definition set out at the start of this article, the ICJ can therefore be understood as a human rights court in substance if not form. Through its jurisprudence, the Court has progressively integrated general international law with human rights principles, interpreting and consolidating the legal foundations upon which other institutions build. Its influence, though indirect and restrained by State consent, continues to expand case by case, reinforcing the importance of human rights within the international legal order. The ICJ was not built as a human rights court, and its consent-based structure imposes real constraints on strategic litigation. But those limits do not preclude influence. For States willing to navigate procedural hurdles, build coalitions, and frame claims within existing treaty jurisdictional gateways, the Court offers unmatched normative authority. Its judgments may take time to attain, but they have the potential to shape the language, direction, and legitimacy of international human rights law.

[256] ibid.