

30 January 2025

Volume 14, Issue 1

Ecological Violence Fast and Slow: International Law, Natural Resources in the OPT, and the ICJ Advisory Opinion

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Credits (obliged to state): Van Gogh Museum, Amsterdam (Vincent van Gogh Foundation).

'But we tell the occupation and whoever supports it, that we are rooted in the land just like olive trees. We can never be uprooted, whatever they do. They cannot uproot us. Even if only one Palestinian remains, we will continue to cling on to this land, very rotted in it, as it is our land, the very source of life.'

Mohamed Al Bakri, Chairman of Union of Agricultural Work Committees Gaza

1. Introduction

In a 2018 Facebook post, [Dima Seelawi writes](#) about the relationship that Palestinian people, even those who live abroad, have with olive oil¹:

'When I was young, I never really understood my parents ['] insistence to only use olive oil imported from Palestine. It took a long time and a great distance in a process that was neither cheap nor convenient. The oil came in old beat-up containers that did not look appealing to me at all. In my head, if they wanted to support [a] distant family back home, they could just send them money and save us and them a big hassle. We could just use the nice-looking olive oil containers from the nearby store. Yet, this was never an option in our household. The only olive oil we used at home was from Palestine.'

After living in Palestine for a year during the olive picking season, something changed. She understood that the olive picking season in Palestine is 'holy'. She writes:

'Palestinians relate to the weather based on how it would benefit or harm the olives. There is [a] well-known unspoken rule about treating olive trees with respect. There is a day off from work just to pick olives. On public transportation, it is not unusual to hear someone on the phone telling their friend to stop by for their share of this year's olive oil stored in what used to be a Coca-Cola or a liquor bottle. A driver will stop in the middle of the way to give his brother-in-law a jar of olives that are so close to one another that they start to crush showing their insides.'

These jolly and colourful souvenirs are interrupted by a sombre reflection: *'I now have a deeper understanding of the psychology behind the burning of olive trees by Israeli settlers and why farmers moan at the scene as if they lost a loved one.'*

Seelawi's post illuminates the ecological violence of military occupation that manifests itself in the deliberate (or incidental) destruction of nature and, thus, relationships, traditions, and land's ability to sustain life. This violence is fast and slow. On one hand, it needs to be understood, as recently put by Zinaida Miller, as *'the attritive violence of everyday life over long periods of time in situations of ongoing deprivation.'*² On the other, it is a violence that erupts quickly and manifests itself in the burning, bombing, and annihilation of multiple life forms.

Recent years have seen an increased interest in the interactions between nature, conflict, and insecurity within and beyond the field of international law.³ In this piece, we consider how the recent Advisory Opinion (AO) of the International Court of Justice (ICJ) deals with natural resources in the Occupied Palestinian Territories (OPT) by situating the AO within debates on warfare, militarism, and ecological violence in the

¹ The authors wish to thank Sanam Amin for drawing attention to this post.

² Zinaida Miller 'Times of Violence, Times of Justice', in Tor Krever, et al. 'On International Law and Gaza: Critical Reflections' (2024) 12(1) *London Review of International Law* 217.

³ Eliana Cusato, *The Ecology of War and Peace: Marginalising Slow and Structural Violence in International Law* (Cambridge University Press, 2021).

OPT.⁴ We then examine more closely Israeli water policies and practices in Palestine, as documented by UN reports over the years, and the position taken by the ICJ on this issue. We follow up with some reflections on whether a human rights approach to water, which was not explicitly adopted by the ICJ, would (or would not) tackle the pervasive inequality in water access and distribution in the OPT.

2. The political ecology of the Occupied Palestinian Territories

The research agency Forensic Architecture conducted two investigations into the ecological dimensions of military occupation in Palestine. In a first report published in 2019 Forensic Architecture focused on Israeli practice of spraying aerial herbicides along the perimeter of Gaza (which the report describes as *'herbicide warfare'*) and its effects on Palestinian farmers.⁵ The report highlights that, since 2014, Palestinian farmers along Gaza's perimeter have seen their crops sprayed by airborne herbicides and regularly bulldozed. This practice has not only destroyed arable land along the border but also crops and farmlands hundreds of metres deep into Palestinian territory. Based on first-hand videos and satellite imagery, the investigation shows that aerial spraying by plane flying on the Israeli side of the border mobilises the wind to carry the chemicals into the Gaza Strip. In November 2016, in response to a Freedom of Information request filed by the NGO Gisha, the Israeli Ministry of Defense confirmed that aerial herbicides were sprayed along the perimeter of Gaza.⁶ However, the Ministry claimed that it was *'not carrying out any aerial spraying over the area of the Gaza Strip... [but] only over the territory of the State of Israel along the security barrier'*.⁷

According to the Palestinian Ministry of Agriculture, between 2014 and 2018, herbicide spraying damaged more than 13 square kilometres of farmland in Gaza.⁸ In the context of Israeli blockade, with restrictions on the movement of people and goods into Gaza, and limited possibilities to cultivate land, raise livestock, and fish, the agricultural lands along Gaza's eastern border are crucial to the food security of its population.

This practice was firmly condemned in the 2019 Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories which refers to Forensic Architecture's investigation and notes that *'[because] the damage cannot be reasonably predicted by the army, [and] such herbicides should not be used in such close proximity to the fence'*.⁹ The key purpose of these practices was to provide the Israeli military with visibility along the eastern border of Gaza, a visibility that has also left Palestinian

⁴ ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, ICJ Reports 2023 [ICJ, Policies and Practices].

⁵ Forensic Architecture, 'Herbicide Warfare in Gaza' (July 2019), <https://forensic-architecture.org/investigation/herbicide-warfare-in-gaza>, (accessed 16 August 2024).

⁶ Gisha, 'Closing In: Life and Death in Gaza's Access Restricted Areas' (August 2018) <https://features.gisha.org/closing-in/>, (accessed 16 August 2024).

⁷ Forensic Architecture (above note 6).

⁸ Gisha (above note 7).

⁹ UNGA 'Report of the Special Committee to Investigate Israeli Practices', UN Doc [A/74/356](#) (2019).

exposed to Israeli fire from hundreds of metres away.¹⁰ The report eloquently concludes that the slow, incremental violence of the degradation of the environment ‘*accelerates into an eruptive violence*’. The two forms of violence, fast and slow, operate conjunctly to destroy human lives and ecosystems.

A second, more recent investigation looks at the systematic targeting of orchards and greenhouses in Gaza by Israeli forces since October 2023. The analysis illuminates the widespread character of the destruction, which makes the authors conclude that it constitutes a ‘*deliberate act of ecocide that has exacerbated the ongoing catastrophic famine in Gaza and is part of a wider pattern of deliberately depriving Palestinians of critical resources for survival*’.¹¹ The investigation documents how, prior to 2023, Gaza contained 170 square kilometres of agricultural land, accounting for about 47 percent of its total area. As of March 2024, circa 40 percent of the land in Gaza previously used for agricultural production had been destroyed. This devastation has been most intense in the northern part of Gaza, where 90 percent of greenhouses were destroyed in the early stages of the ground invasion.¹²

The ecological impacts of the ongoing military campaign in Gaza have been well documented, including by UNEP.¹³ In addition to the intentional (and ‘*collateral*’) destruction of trees and farmland, evidence shows that groundwater has been heavily contaminated by munitions and toxins, that the sea is choked with sewage and waste, and the air polluted by smoke and hazardous substances. Researchers and environmental organisations maintain that the devastation will have enormous and long-term effects on Gaza’s ecosystems and biodiversity.¹⁴ The deliberate targeting of agricultural land and water infrastructures in Gaza, and the ensuing famine, has been forcefully condemned inter alia by the UN Special Rapporteur on the Right to Food and, most recently, by Human Rights Watch.¹⁵

Forensic Architecture’s investigations underscore not only the different patterns of ecological violence in the OPT, but also the deep, entangled relationships that [tie together](#) Palestinian people and nature (the olive trees, the orchards, the farm, the soil, the sea).¹⁶ Nature thus emerges as something more than a ‘*silent victim*’ of warfare. Foregrounding the political ecology of occupation in Palestine invites to consider the

¹⁰ Forensic Architecture (above note 6).

¹¹ Forensic Architecture, ‘No Trace of Life: Israel’s Ecocide in Gaza 2023-2024’ (March 2024), <https://forensic-architecture.org/investigation/ecocide-in-gaza>, (accessed 16 August 2024).

¹² Anna-Christina Schmidl and Eitan Diamond, ‘Legal Issues Arising from Israel’s Conduct in North Gaza’, EJIL_Talk!, 30th December 2024, <https://www.ejiltalk.org/legal-issues-arising-from-israels-conduct-in-north-gaza>, (accessed 17 January 2025).

¹³ UNEP, ‘Environmental Impact of the Conflict in Gaza: Preliminary Assessment of Environmental Impacts’ (June 2024) <https://www.unep.org/resources/report/environmental-impact-conflict-gaza-preliminary-assessment-environmental-impacts>, (accessed 16 August 2024).

¹⁴ The Guardian, ‘Ecocide in Gaza’: Does Scale of Environmental Destruction Amount to a War Crime?’ (March 2024), <https://www.theguardian.com/environment/2024/mar/29/gaza-israel-palestinian-war-ecocide-environmental-destruction-pollution-rome-statute-war-crimes-aoe>, (accessed 16 August 2024).

¹⁵ Human Rights Watch, ‘Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water’ (December 2024) <https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza> (accessed 17 January 2025); UN HRC, ‘The Palestinian People’s Food Sovereignty’ (March 2024) <https://www.ohchr.org/sites/default/files/documents/issues/food/statements/2024-03-06-palestinian-food-sov-hrc-side-event.pdf>, (accessed 16 August 2024).

¹⁶ Henrietta Zeffert ‘Nowhere Home’ (2024) 12(2) *London Review of International Law* 131.

environment not just as a *'casualty'* of military conflict but, as put by Eyal Weizman, the founder of Forensic Architecture, as *'one of the means by which colonial racism is enacted, land is grabbed, siege lines fortified and violence perpetuated'*.¹⁷ At the same time, while ecological relationships are torn apart by oppression, militarism, and prolonged occupation, they are also at the core of practices of resistance.¹⁸ Yet, considering the increased *'juridification of resistance'*,¹⁹ what does it mean to foreground the ecology of occupation in international legal practice? What forms of ecological violence can be scrutinised by international law's gaze?

3. The ICJ and the illegality of natural resource exploitation in the OPT

The ICJ considered the ecological dimensions of Israeli occupation of Palestine in its Advisory Opinion of 19 July 2024.²⁰ Whereas some of the severe repercussions for agricultural production of the construction of the Wall in the OPT were spelled out in the 2004 AO (including the destruction of land, olive trees, wells, citrus grows upon which tens of thousands of Palestinians relied for their survival [para. 133]), here the ICJ delves deeper into the issue making some key interventions.²¹ In a nutshell, the ICJ finds that Israel's use of the natural resources in the OPT is in violation of different obligations under international law. The Court maintains that *'by diverting a large share of the natural resources to its own population, including settlers, Israel is in breach of its obligation to act as administrator and usufructuary'*. The Court further contends that, *'by severely restricting the access of the Palestinian population to water that is available in the OPT, Israel acts inconsistently with its obligation to ensure the availability of water in sufficient quantity and quality'* under Article 55 of the Geneva Convention IV (GC IV). Moreover, the Court finds that Israel's policy of exploitation of natural resources in the OPT is *'inconsistent with its obligation to respect the Palestinian people's right to permanent sovereignty over natural resources'* [para 133].

In reaching these conclusions, the Court makes three noteworthy legal interventions aimed at clarifying the regime regulating the exploitation of natural resources in occupied situations.

First, departing from its previous engagement with the issue of 'illegal' resource exploitation in the *Armed Activities Case* where it relied on Article 43 of the Hague Regulations and the prohibition of pillage, the Court recalls that, under Article 55 of the Hague Regulations:

The occupying Power shall be regarded only as administrator and usufructuary of natural resources in the occupied territory, including but not limited to forests

¹⁷ Eyal Weizman, 'Forward', in Shourideh C. Molavi, *Environmental Warfare in Gaza: Colonial Violence and New Landscapes of Resistance* (Pluto Press, 2024).

¹⁸ Molavi (above note 17).

¹⁹ Tor Krever 'From Vietnam to Palestine: Peoples' Tribunals and the Juridification of Resistance' in Brian Cuddy and Victor Kattan (eds) *Making Endless War: The Vietnam and Arab-Israeli Conflicts in the History of International Law* (University of Michigan Press, 2023), at 233.

²⁰ ICJ, Policies and Practices.

²¹ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004.

and agricultural estates, and it shall “safeguard the capital” of these resources. Therefore, the use by the occupying Power of natural resources must not exceed what is necessary for the purposes of the occupation [para. 124].

Although the Court does not clarify what use would be ‘necessary’ to achieve the purposes of the occupation, it observes that the ‘*occupying Power has the continuing duty under Article 55 GCIV to ensure that the local population has an adequate supply of foodstuffs, including water*’ [para. 124]. Indeed, scholars have recognised that the interest and well-being of the local population set limits on the occupant’s rights of usufruct.²² On the basis of several UN reports, the Court finds that ‘*[t]here is evidence to the effect that Israel exploits these natural resources, including water, minerals and other natural resources, for the benefit of its own population, to the disadvantage or even exclusion of the Palestinian population*’ [para. 126].

Second, while the applicability of the laws of occupation to identify legal restraints to the depletion of natural resources by the occupant has been suggested by several scholars and remains relatively uncontroversial, what is new in this AO is the statement that ‘*the use of natural resources in the occupied territory must be sustainable, and it must avoid environmental harm*’ [para. 124]. The Court refers to Principle 23 of the 1992 Rio Declaration on Environment and Development, which provides that ‘*[t]he environment and natural resources of people under [. . .] occupation shall be protected and incidentally to the 2022 International Law Commission, Draft Principles on Protection of the Environment in Relation to Armed Conflicts, with Commentaries*’.²³ In addition to reaffirming the continued applicability of international environmental law principles in situations of military occupation, noteworthy is the recognition of the adverse ecological impact of exploitation practices and the need to mitigate it (if not avoid it) by conducting resource extraction in a sustainable way (whatever that means in practice). Whereas the *jus in bello* provides a framework to restrain the appropriation of natural resources in occupied territory by prohibiting wasteful and negligent destruction of the ‘*capital*’ of these properties (art. 55), commentators have argued that ecological and sustainability concerns are marginal to this body of law.²⁴ Therefore, the ICJ’s statement appears as a timid recognition of the value of nature beyond what is reducible to property (or ‘*capital*’).

Another fundamental move is the Court’s position vis-à-vis the principle of permanent sovereignty over natural resources (PSNR). The Court refers to the *Armed Activities Case* where it recognised the importance of the principle of PSNR under customary international law [para. 244]. In that case, based on the specific factual circumstances and lack of evidence, the Court found that the PSNR was not applicable. However, here it makes it clear that when ‘*an occupying Power pursues a policy of exploitation*

²² See e.g. Antonio Cassese, ‘Powers and Duties of an Occupant in Relation to Land and Natural Resource’ in Paola Gaeta and Salvatore Zappalà (eds) *The Human Dimension of International Law* (Oxford University Press, 2008); Eyal Benvenisti, *The International Law of Occupation* (Oxford University Press, 2012).

²³ UNGA ‘Report of the United Nations Conference on the Human Environment’, A/CONF.151/26 (1972); UNGA, ‘Report of the International Law Commission’, A/74/10 (2019).

²⁴ Cusato (above note 4).

of natural resources in the occupied territory contrary to the law of occupation, this policy could be contrary to the principle of permanent sovereignty over natural resources [para. 125]. In affirming the relevance of the principle to the situation in the OPT and linking it to the illegality of the occupation under distinct grounds, the Court confirms the validity of PSNR well beyond the 20th-century decolonisation process, a point that remained open to contention following the *Armed Activities Case*.

Further to clarifying the applicable norms and principles, the ICJ pays close attention to one dimension of the ecology of occupation: Israeli policies and practices concerning water and their repercussions on agricultural production. We now turn to this aspect, examining how the Court builds on evidence documenting the pervasive character of water deprivation in the OPT and what is left outside this AO.

4. Water access and distribution in Palestine

Over the years, the slow violence of systemic water deprivation suffered by Palestinian people has been amply documented by international institutions and civil society. The Human Rights Council has reported in 2013, 2022, and 2023 how Israel uses 80-90 percent of water in the OPT for its own purposes, Israel's refusal to grant permits to Palestinians to construct new water installations or maintain them, and its policy to develop its own water infrastructure in settlements.²⁵ Moreover, military operations and blockades in Gaza have led to insufficient supply of electricity for household water supplies, sewage and desalination treatments, worsening the pre-existing situation of 80 percent of drinking water in Gaza not meeting the WHO standards and the population's basic needs.²⁶ Widespread destruction, confiscation, and damage to Palestinian water infrastructure has also been frequently reported.²⁷ Based on accumulating evidence, UN bodies and rapporteurs have repeatedly asked Israel to facilitate the rebuilding of Palestinians' water infrastructure; to address the humanitarian crisis in Gaza due to the lack of sufficient electricity for drinkable water and wastewater sector; to halt the over-extraction of water for Israeli benefit; and to end the destruction of water infrastructure.²⁸

Drawing upon UN reports covering a period of almost forty years, the ICJ finds that water resources in the OPT have been under Israeli military control since 1967 [para 127]. In 1982 Israel transferred the authority over the water resources in the West Bank and East Jerusalem to Mekorot (Israeli national water company). Since the 2005 disengagement plan, Israel has continued to control the OPT and especially Gaza's

²⁵ UNGA HRC 'Report of the independent international fact-finding mission on the civil, political, economic, social and cultural rights of the Palestinian people' A/HRC/22/63 (2013) para. 81; UNGA HRC 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel' UN Doc A/77/328 (2022) para. 35; UNGA HRC 'Report of the situation of human rights in the Palestinian territories occupied since 1967' Report of the Special Rapporteur Albanese A/78/545 (2023) para. 59.

²⁶ UNGA HRC 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict' UN Doc A/HRC/12/48 (2009) para. 27.

²⁷ HRC [2009] paras. 50-54; HRC [2013] para. 88.

²⁸ UNGA HRC 'Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem' Report of the United Nations High Commissioner for Human Rights UN Doc A/HRC/48/43 (2021) para. 66; HRC [2023] para. 59.

water, electricity, and sewage networks and to build its own infrastructure while using most of the OPT's water for the benefits of its own population [para 128]. The Court notes that Israel impedes Palestinians to construct or maintain water installations without permit and frequently demolishes and confiscates them; Palestinian communities end up suffering from water shortages and need to purchase significant quantities of their water from Israel at a high price [para.128]. Moreover, the ICJ finds that Israeli water policies on agriculture resulted in reduction of cultivated land, and that the expansion of settlements' industrial zones has contributed to freshwater and groundwater pollution in the OPT. Dwindling supplies of water and associated environmental degradation have severely undermined the Palestinian agricultural sector [para. 130].

In terms of legal analysis, the ICJ focuses on the laws of occupation and the principle of PSNR to qualify as illegal Israeli policies and practices of water exploitation in the OPT. The ICJ stresses the important role played by the GCIV, to which Israel is a party [para. 96]. Further, the Court reaffirms that human rights treaties apply extraterritorially when a state exercises control and jurisdiction outside its territory, in situations of armed conflict and occupation. The ICJ reiterates its established jurisprudence on the relationship between IHL and IHRL, that some rights may exclusively be matters of IHL, others may exclusively be matters of IHRL, yet others may be matters of both, though it remains silent on the view, taken by many AO participants,²⁹ that IHRL obligations are complementary to those of the laws of occupation [paras. 97-101].

In addressing Israel's exploitation of natural resources, and in particular water, the laws of occupation take precedence over IHRL. IHRL holds the stage mainly in the discussion of '*discriminatory legislation and measures*' and the right to '*self-determination*' [paras. 180-299, 230-243]. The Court relies mostly on Article 55 GCIV, which provides that the occupying power has the continuing duty to ensure that the occupied population has an adequate supply of foodstuffs, including water [para. 124]. The ICJ concludes that Israel's behaviours of water exploitation, diversion, restriction, and pollution go against the principle of availability of water in sufficient quantity and quality.

There are three dimensions of Israel's practices in the OPT that emerge from the UN reports and that are left unaddressed in the AO. First, the Court does not elaborate on the relationship between Israeli policies and practices regarding water and negative health consequences on Palestinian people, which are strongly interrelated.³⁰ Second, the ICJ mentions only *en passant* the amply documented intentional and disproportionate destruction of vital water infrastructure during military operations, and the resulting water insufficiency, unsafety, and inaccessibility.³¹ Third, as Judge

²⁹ See e.g. ICJ, Policies and Practices, Written Statement of the Swiss Confederation, *ICJ Reports* 2023, para. 54.

³⁰ ESCR 'Concluding Observations on the Fourth Periodic Report of Israel', UN Doc E/C.12/ISR/CO/4 (2019) para. 46; HRC (2009) paras. 50-54; HRC (2013) para. 88; HRC (2023) para. 32; UNGA Res 64/292 (28 July 2010) UN Doc A/RES/64/292; HRC Res 15/9 (30 September 2010), UN Doc A/HRC/RES/15/9.

³¹ HRC (2009) paras. 50-54; HRC (2013) para. 88; ESCR (2019) para. 46; HRC (2022) para. 77.

Charlesworth's declaration points out, the ICJ misses the opportunity to take an intersectional approach to these practices' discriminatory impacts.³² The Court finds that Israel's control of water resources in the West Bank prioritises Israeli settlements, but does not address how, according to many reports, water shortages particularly affect Palestinian women and girls, due to their hygiene and privacy needs and role of household caretakers.

Some provisions in the laws of occupation and IHL could have been used by the Court to condemn the illegality of these practices. For instance, Article 56 GCIV 'Hygiene and Public Health' requires that to the '*fullest extent of the means available*', the occupying power must ensure and maintain public health and hygiene in the occupied territory, particularly to prevent and combat the spread of contagious diseases. Concerning the deliberate targeting of water infrastructure, Additional Protocol I (AP I) contains several provisions i.e. Articles 54, 55, and 56 which protect, respectively, objects indispensable to the survival of the civilian population, the natural environment, and works and installations containing dangerous forces (such as dams).

Yet, one must also be aware of IHL's inherent limitations to tackle issues of water access and distribution during military occupation. Necessity, distinction, and proportionality, even when interpreted progressively to uphold ecological values, reflect the pragmatic approach that permeates IHL and the laws of occupation. IHL as a '*vocabulary of standards*' attempts to reconcile conflicting logics.³³ The balancing of harms (to civilians/their objects/the environment) and military benefits/needs is reflected in several provisions, including Article 55's language of requisitioning foodstuffs (water) '*except for use by the occupation forces and administration personnel [...] only if the requirements of the civilian population have been taken into account*'. This provision includes a subjective evaluation, by the occupying power, of whether the availability of water is of the right quantity and quality. Such evaluation can, of course, be questioned and, as in the AO, condemned as illegal, but only *ex post*. Further, longer term ecological and sustainability concerns remain marginal to the laws of war. Lastly, when it comes to the exploitation of natural resources, including water, IHL is notoriously silent on the conduct of actors '*externa*' to the conflict, remarkably the extractive industry. It is thus unsurprising that scholars and advocates have turned to IHRL to expand the protection of water in conflict and occupation. The ICJ recognises the applicability of IHRL during occupation and refers to the CESCR's report on Palestinians' water access, but it does not explicitly engage with the right to water to assess Israeli illegal policies and practices in the OPT. The next section considers this road not taken and ponders the implications of a human-right approach to water, what forms of violence are seen and what are left unseen.

³² ICJ, Policies and Practices, Declaration of Judge Charlesworth, *ICJ Reports* 2024, para. 6.

³³ See generally David Kennedy, *Of War and Law* (Princeton University Press, 2006).

5. Human right to water: between institutionalisation and contestation from below

When it comes to addressing issues of water access and distribution, as well as the connection with health and discriminatory practices, IHRL may appear to offer a more useful vocabulary to capture the fast and slow ecological violence documented in the OPT. The right to safe and clean drinking water and sanitation has been officially recognised by the UNGA in 2010.³⁴ In its General Comment 15, the Committee on Economic, Social and Cultural Rights (CESCR) clarifies its normative content, and identifies state and nonstate actor obligations. The core of the right to water is defined as the enjoyment of sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses.³⁵ This encompasses a multilayered approach to water, where safe means unpolluted/dangerous, and accessible means easily obtainable, at low cost, and in a non-discriminatory manner. Several scholars have argued in favour of the application of the CESCR to protect water in conflict settings.³⁶ According to this view, a human right approach would complement the laws of occupation by offering more specific parameters to which the occupying power should comply. As such, Israel's obligations in the OPT would include the obligation not to endanger or restrict access to water, to prevent third parties from doing so, and to take the necessary measures to enable its access by Palestinian people.

Whereas the synergies between IHRL and water protection are increasingly acknowledged, the human right to water remains a contested notion. Critiques have been raised concerning its scope, implementation, inherent anthropocentrism, and marginalisation of broader political economic dynamics.³⁷ As for the latter, a key question is whether the human right to water represents an effective tool to ensure adequate access to water and participation in its governance, particularly in the context of increased privatization and resource commodification.³⁸ Under international law, acknowledging a human right does not entail any prescription on the political economic regimes needed to promote that right.³⁹ While often invoked by local communities to contest water governance and the power of private actors, as put by Sultana and Loftus, the right to water does not subvert existing global hegemonic relations.⁴⁰

This has implications when it comes to addressing Israeli water policies and practices in the OPT.⁴¹ Issues of water governance are intimately tangled to questions of

³⁴ UNGA Res. 64/292 'The Human Right to Water and Sanitation', 28 July 2010.

³⁵ Committee on Economic, Social and Cultural Rights 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', 20 January 2003, UN Doc E/C.12/2002/11.

³⁶ Ahmed Beshtawi 'The Human Right to Water and the Realisation of Water Rights in the Occupied Palestinian Territory', 16(2) *Utrecht Law Review* (2020) 137; Mara Tignino *Water During and After Armed Conflicts: What Protection in International Law?* (Brill 2016).

³⁷ Emanuele Fantini 'An Introduction to the Human Right to Water: Law, Politics, and Beyond' (2020) 7(2) *WIREs Water* 1.

³⁸ Karen Bakker 'The "Commons" versus the "Commodity": Alter-Globalization, Anti-Privatization, and the Human Right to Water in the Global South' (2007) 39(3) *Antipode* 430.

³⁹ Fantini (above note 37).

⁴⁰ Farhana Sultana and Alex Loftus 'The Human Right to Water: Critiques and Condition of Possibility' (2015) 2(2) *WIREs Water* 97.

⁴¹ Ray Murphy, Anita Ferrara and Susan Power, 'The Occupation of Palestine from a TWAIL Lens' in Nada Kiswanson and Susan Power (eds) *Prolonged Occupation and International Law: Israel and Palestine* (Brill 2023) 52-68.

sovereignty and self-determination. International law is silent on the political economic regime for the management of water resources in situations of prolonged occupation. As noted also by the ICJ, for decades, Palestinian people had to purchase water services from Israel and its public water company, Mekorot. While Mekorot sells some water to Palestinian water utilities, the amount is determined by Israeli authorities.⁴² As a result of continuous restrictions, many Palestinian communities in the West Bank have to buy water brought in by trucks at a much high prices ranging from 4 to 10 USD per cubic metre.⁴³ In some of the poorest communities, water expenses can make up half of a family's monthly income. Further, Mekorot was responsible for building the national water Carrier in the 1950s, a project which changed the quantity of water in the Jordan River by diverting it before reaching the OPT to be used in Israel and in the Israeli settlements.⁴⁴ This has deprived the Palestinian people of their share of the river and entailed disastrous environmental consequences. The Israeli policies and practises on water control and allocation have resulted in a stark inequality between Palestinians and Israelis, including settlers.⁴⁵

Scholars have amply discussed how the emphasis of right-based approaches on the regulatory state and the liberal individual erases the way socio-economic privileges and vulnerabilities are produced in the first place.⁴⁶ Moreover, as observed by Mia Tamarin, a fundamental problem that the liberal language of water rights poses in the context of Palestine is its emphasis on the '*humanitarian minimum*' required.⁴⁷ By so doing, this discourse facilitates a legally compliant minimal threshold, as standardised by the World Health Organisation at 20 litres a day per capita, which, Tamarin argues, is used by '*hydro-hegemony*' (Israel in this case) to maintain a water supply level at (just) above humanitarian crisis. The recent events in Gaza have shown how close famine is when such '*humanitarian minimum*' is not made available anymore. Framing Israeli policies and practices concerning water as human rights violations would have made visible certain forms of violence, including possibly the complicity some corporate actors, but it would have not captured the violence woven into the routine workings of global power structures.

6. Conclusion

'To make progress in this country, it is necessary to level everything. The inhabitants must go back to zero, lose their traditional culture, for it blocks everything'. This quote is attributed to an unidentified American diplomat in Vientiane by Barry Weisberg in his collection *Ecocide in Indochina: The Ecology of War*.⁴⁸ Particularly perverse in this

⁴² Amnesty, 'The Occupation of Water' (November 2017), <https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/> (accessed 17 January 2025).

⁴³ Ibid.

⁴⁴ Fantini (above note 37).

⁴⁵ Human Rights Watch, 'Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories' (December 2010), <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> (accessed 17 January 2025).

⁴⁶ Anna Chadwick, *Law and the Political Economy of Hunger* (Oxford University Press, 2019); Susan Marks, 'Human Rights and Root Causes' (2011) 74(1) *Modern Law Review* 57.

⁴⁷ Mia Tamarin 'The Human(ised) Right to Water and its limits: the case of Israel-Palestine' (2018) 6(4) *International Journal of Water Governance* 135.

⁴⁸ Barry Weisberg, *Ecocide in Indochina: The Ecology of War* (Canfield Press, 1970), at 134.

quote is the use of the term progress and its association with the idea of ‘levelling everything’. Environmental warfare in Vietnam and in Gaza appear situated along a continuum of ecological violence aimed at destroying life, community, and traditions.

The ICJ’s approach to natural resource exploitation in the OPT seeks to account for this violence. From a legal perspective, the Court’s explicit recognition of the relevance of the principle of PSNR to the situation in the OPT is significant. Equally important is the reference to sustainability and the need to avoid environmental harm in the usage of natural resources during occupation. Both interventions will enable parties to other pending and future proceedings to creatively push the boundaries of existing legal doctrines. On a factual level, the attention paid by the ICJ to the reports documenting the fast and slow ecological violence of prolonged water deprivation in the OPT is also notable. After all, as observed by Zinaida Miller, ‘it will be in the material and symbolic redistribution of power and resources that a different future can be found’.⁴⁹

Of course, this AO needs to be placed within the discursive, political economic, and ecological boundaries of the discipline. Ideas of nature as a ‘thing’ subject to appropriation and serving human needs, or as a commodity to be exploited, are deeply ingrained in international law and its different sub-fields, including IHL and IHRL.⁵⁰ Even when the environment is framed as the beneficiary of legal protection, ecological degradation is part of a balancing exercise and, ultimately, acknowledged as a tragically unavoidable sacrifice in relation to the larger objectives of warfare and militarism. Recognizing international law’s role in this does not mean, however, that we have to disengage from it. By paying attention to the ecology of occupation in Palestine, the ICJ opened a space (admittedly, a tiny space) to grapple with much bigger questions: how international law relates to historical and ongoing processes of environmental degradation and resource dispossession; how the legacies of colonialism, racialisation, and gender discrimination shape life chances in times of ecological precarity; and how to redirect law towards more environmentally just outcomes. The dialectical, often ambivalent, relationship between critique and practice of international law will continue to hunt scholars, grassroot movements, and advocates.

Cite as: Eliana Cusato and Sofia Tamburello, *Ecological Violence Fast and Slow: International Law, Natural Resources in the OPT, and the ICJ Advisory Opinion*, ESIL Reflections 14:1 (2025).

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⁴⁹ Miller (above note 2).

⁵⁰ Usha Natarajan and Julia Dehm (eds.), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022); Cusato (above note 3).