

## RE. LEGAL CONSEQUENCES OF THE UK'S RELATIONSHIP WITH ISRAEL IN RELATION TO ISRAEL'S ACTIONS IN THE OCCUPIED PALESTINIAN TERRITORIES

---

### ADVICE

---

#### INTRODUCTION

1. I am asked to advise on whether the UK, and individuals within the UK, could be in breach of international law as a result of aid and assistance given to Israel (this is referred to as “vicarious liability”).
2. I am conscious that the politics of the matter are complex and that there are at least two principal parties to the current conflict. Given, however, that the UK does not have any form of relationship with Hamas (and cannot, consequently, be vicariously liable crimes committed by Hamas), I have confined my analysis to wrongs committed or allegedly committed by Israel.
3. My conclusions are, in summary:
4. **Background:** The context for this matter flows, in the long term, from Israel's occupation of Gaza, the West Bank, and East Jerusalem and, in the short term, from Operation Swords of Iron (Israel's current military operation in Gaza).
  - (1) On 19 July 2024 the International Court of Justice (“**the ICJ**”) found that Israel's occupation of the West Bank, Gaza, and East Jerusalem is unlawful. It found that Israel has breached the international law prohibition of obtaining territory by force, violated the Palestinian people's right to self-determination, and breached Articles 2 and 3 of the Convention on the Elimination of all forms of Racial Discrimination (which prohibit racial discrimination and apartheid).

- (2) On 26 January 2024, the ICJ made a preliminary ruling in a claim by South Africa and others against Israel. The ICJ held that the Palestinian people's rights under the Convention on the Prevention and Punishment of the Crime of Genocide ("**the Genocide Convention**") have "plausibly" been violated by Israel's conduct in Gaza since 7 October 2023.
  - (3) On 23 May 2024 the Independent Commission of Inquiry on the Occupied Palestinian Territory ("**the IIC**" - an independent panel commissioned by the Office of the UN High Commissioner for Human Rights) presented its report on allegations of war crimes and crimes against humanity committed by Israel and Hamas between 7 October and 31 December 2023. The IIC concluded that Israel had committed multiple war crimes and crimes against humanity. The IIC does not, however, have the status of a court. I have, therefore, referred to these findings throughout as "alleged crimes".
- (b) **Legal Principles:** A state or an individual may be vicariously liable in international law for the unlawful acts of another.
- (1) Where the wrong constitutes a serious breach of a peremptory norm of international law (such as genocide, aggression, or torture), a third party may be liable where they have rendered aid and assistance to facilitate the wrong.
  - (2) Where the wrong is a war crime or crime against humanity, a third party may be vicariously liable where they have rendered aid and assistance which has facilitated the wrong and have done so with knowledge of the wrong and either intention to facilitate the wrong or the knowledge that, in the normal course of events, the wrong is almost certain to occur.

(c) **Analysis:**

- (1) There is a real prospect that the UK and/or individuals herein has/have rendered aid to Israel which helped facilitate the commission of wrongful and allegedly wrongful acts. This aid and assistance included military, logistical, intelligence, economic, and diplomatic assistance.
- (2) There is a real prospect that the UK and/or individuals herein has/have the requisite knowledge of Israel's wrongful and allegedly wrongful acts and had knowledge that, in the normal course of events, the aid and assistance rendered would help facilitate those acts.

(d) **Conclusions:** Consequently, there is a real prospect that the UK and/or individuals herein have committed breaches of international law (by vicarious liability).

- (1) Re. Israel's breaches of the prohibitions of acquisition of territory by aggression and (allegedly) genocide and torture, and the Palestinian peoples' right to self-determination: There is a real prospect that the UK or individuals herein rendered aid which facilitated these wrongs and alleged wrongs. This, alone, would be sufficient to establish vicarious liability in international law.
- (2) Re. Israel's alleged war crimes and crimes against humanity: there is a real prospect that the UK and/or individuals herein rendered aid and assistance which facilitated the alleged wrongs and had the requisite knowledge thereof. This would be sufficient to establish vicarious liability in international law.

5. Most of the matters addressed in this advice turn on the facts of Israel's actions in Gaza and the facts of the UK's relationship with Israel. The primary reason for this is that most relevant facts are likely in the possession of either the government of the UK or the government of Israel. These governments have not made the information public. Should a court become seized of any of the issues discussed in this advice, that court will likely be able to compel production of the relevant evidence. Given the practical limitations on my advice, I have confined myself to exploring whether there is a "real prospect"<sup>1</sup> of vicarious liability being established in relation to the UK and/or individuals herein. I have not (and cannot) determine whether such accusations are more likely than not to be made out on the facts.
  
6. My instructions are limited to analysis of the UK's vicarious liability. I have not, therefore, considered whether the UK has breached its positive duties under (for example) the Genocide Convention or whether the licensing of weapons sales to Israel is unlawful in UK domestic law. A summary analysis of the former can be found in the Judges and Lawyers Open Letter to the UK Concerning Gaza.<sup>2</sup> Analysis in respect of the latter can be found in the submissions of the parties in *R (AL-Haq) v Secretary of State for Business and Trade*<sup>3</sup> (currently *sub judice*).

---

<sup>1</sup> For the avoidance of doubt, I employ the definition of "real prospect" used in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314. I have not (and cannot) whether such accusations are more likely than not to be made out on the facts. I have selected this standard to aid the understanding of a UK domestic audience, rather than for any particular relevance it has for international law.

<sup>2</sup> Available at:

<https://lawyersletter.uk/#:~:text=In%20a%20letter%20dated%2026%2026%20in%20Gaza.>

<sup>3</sup> Available at: <https://www.glanlaw.org/israel-weapons-sales>

## BACKGROUND

### Sequence of Events

7. I note, at the outset, that this matter arises in the context of a cycle of violence dating back to the mid 20<sup>th</sup> century (if not earlier). While my summary recitation of the relevant background begins on October 7 2023, I am aware that the origins of the matter lie deeper.
8. On 7 October 2024 members of the military wing of Hamas conducted an assault against Israeli military and civilian targets close to the border between Israel and Gaza. More than 1200 people were killed, of which more than 800 were civilians. The IIC concludes that multiple war crimes and crimes against humanity were committed during these attacks.
9. Israel began airstrikes against targets in Gaza in the morning hours of 7 October 2023. On 8 October Israel commenced “Operation Swords of Iron”, a combined arms operation in Gaza. That operation is ongoing. The IIC found the following facts as to casualties:

*By May 2024, the fatalities in the Gaza Strip were estimated to have exceeded 34,800. Of them, 24,682, including 7,356 children and 5,419 women, were identified as of 30 April. The number of injured was estimated at 77,908. Disaggregated data were only available for 53,019 (including 12,332 children and 13,996 women). These numbers are likely higher with thousands of persons still missing, many of them now dead under the rubble. Air and artillery strikes account for the majority of casualties since 7 October.<sup>4</sup>*

10. On 9 October 2023, Israel announced a complete siege of Gaza. 90% of the population of Gaza face acute food insecurity as a result of Israel’s siege.<sup>5</sup>

---

<sup>4</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (A/HRC/56/26), §39

<sup>5</sup> IIC Report, §§48-53

11. On 12 December 2023 the UN General Assembly adopted a resolution calling for an immediate “humanitarian ceasefire”<sup>6</sup>
12. On 23 April 2024 the High Court (England and Wales) granted permission for Al-Haq, a Palestinian rights organisation, to bring a judicial review challenging the legality of UK arms sales to Israel.

### **Finding that Israel’s Occupation of the Palestinian Territories is Unlawful**

13. By resolution of 30 December 2022 the General Assembly of the United Nations requested the ICJ provide an advisory opinion on the legality of Israel’s occupation of the West Bank, Gaza, and East Jerusalem (“**the Occupied Territories**”). By decision of 19 July 2024, the Court gave its opinion.<sup>7</sup> The Court concluded, *inter alia*:
  - (a) Israeli law and policy treat Palestinians less favourably than Israelis, without justification. This violates Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination (“**CERD**”).
  - (b) Israel’s enforcement of strict separation between Palestinians and Israelis violates Article 3 of CERD (which prohibits “racial segregation and apartheid”).
  - (c) Israel has:
    - (1) Control of the Occupied Territories as an “occupying power”.
    - (2) Annexed parts of the Occupied Territories onto Israeli territory. The process of annexation is ongoing.

---

<sup>6</sup> A/RES/ES-10/22

<sup>7</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024

- (3) Transferred “growing numbers” of its own population into the Occupied Territories.
  - (d) Consequently, Israel’s occupation of the Occupied Territories is unlawful.
  - (e) Israel has violated the prohibition against acquiring territory by force.
  - (f) Israel has breached and/or denied the right of the Palestinian people to self-determination.
14. The ICJ concluded that both Israel and the international community must take positive action to remedy Israel’s unlawful occupation. In particular:
- (a) Israel must cease the unlawful occupation.
  - (b) Israel must make reparations to the Palestinian people.
  - (c) The international community must cease any aid or assistance to the unlawful occupation.

### **Accusation of Genocide Against Israel**

15. On 26 January 2024 the International Court of Justice (“**the ICJ**”), in an interim decision, concluded that there is a plausible risk that Israel is committing genocide in Gaza and ordered various interim measures.<sup>8</sup> The ICJ made further

---

<sup>8</sup> International Court of Justice (ICJ) Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), [Request for the Indication of Provisional Measures, Order of 26 January 2024](#) (“South Africa v. Israel Provisional Measures Order of 26 January 2024”)

interim orders on 28 March<sup>9</sup> and 24 May 2024<sup>10</sup>. The broad effect of the orders is that Israel must exercise restraint and comply with international law in Gaza.

### **Accusations of War Crimes and Crimes Against Humanity Against Israel**

16. The IIC found that Israel and Israeli personnel “committed war crimes, crimes against humanity, and violations of International Humanitarian Law” (the “law of war”). The below summarises the IIC’s conclusions. (but, for reasons of concision, does not set out each element of each offence – for which the reader is referred to the IIC’s full report).

### ***Factual Findings***

17. The IIC based their conclusions on several factual findings. In summary:

18. Israeli forces have attacked civilians and civilian objects:

- (a) Israeli forces have operated a “no restraint” approach, whereby “the Israeli government has given ISF blanket authorisation to target civilian locations widely and indiscriminately in the Gaza Strip.” The report quotes several Israeli leaders setting out this approach. In particular “Israel’s Defence Minister Yoav Galant said, “Gaza will never return to be what it was”, and “I have released all restraints, we use everything””.<sup>11</sup>

---

<sup>9</sup> International Court of Justice (ICJ) Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), [Request for the Indication of Provisional Measures, Order of 26 January 2024](#) (“South Africa v. Israel Provisional Measures Order of 28 March 2024”)

<sup>10</sup> International Court of Justice (ICJ) Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), [Request for the Indication of Provisional Measures, Order of 26 January 2024](#) (“South Africa v. Israel Provisional Measures Order of 24 May 2024”)

<sup>11</sup> §44



- (b) The IIC noted that ISF tactic appeared consistent with the application of the “Dahya doctrine” (a strategy which encompasses the use of disproportionate force against civilian infrastructure as a method of “deterrence”):

*In many of these cases, the Commission could not identify military targets as the focus of the attacks. Even when military targets were allegedly present, attacks lacked distinction, proportionality and precautions, resulting in thousands killed and injured and widespread destruction of entire neighbourhoods including in Jabalia, Al-Rimal, Al-Yarmouk and Al-Maghazi.<sup>12</sup>*

- (c) The IIC also recorded cases in which ISF killed civilians who posed no threat, including those seeking refuge in churches or holding white flags.<sup>13</sup>

19. Israel has imposed a “total siege” on Gaza:

- (a) After 7 October 2023, Israel publicly announced a complete siege of Gaza.
- (b) Public statements of Israeli leaders disclose an intention “to instrumentalise and weaponise the provision of necessities, to hold the population of the Gaza strip hostage...” as both an act of “retribution” and “to achieve political and military objectives”.
- (c) Such statements included:

*Israel’s Defence Minister Yoav Gallant framed the siege as a measure of retribution, announcing “a complete siege... no electricity, no water, no food, no fuel. We are fighting human animals, and we act accordingly.”*

- (d) Since 7 October 2023 Israel has either deliberately cut or restricted supplies of food, electricity, and drinking water to Gaza. Since December 2023:

*...more than 90 percent of the population in the Gaza Strip has faced high acute food insecurity, the most acute situation being reported in northern*

---

<sup>12</sup> §45

<sup>13</sup> §46

*Gaza. This is the compounded result of the destruction and prevention of local food production, including agriculture, fishing and baking, the siege preventing the import of adequate food supplies and the danger to humanitarian workers in distributing the limited food supplies available. As of March 2024, the situation is continuing to deteriorate; 1.1 million people face catastrophic levels of food insecurity.*

- (e) The siege has a disproportionate impact on vulnerable groups including children, newborns, the elderly, persons with disabilities, and women.<sup>14</sup>

20. Forcible transfer of civilian population:

- (a) Between 7 October and 20 December 2023, the ISF issued more than 80 “evacuation” orders, requiring civilian population to move from significant parts of the Gaza strip.
- (b) The IIC documented “statements by Israeli officials and public figures demonstrating an intent to forcibly transfer Palestinians.”
- (c) The IIC found that the so-called “evacuation routes were not safe and that ISF harassed and attacked refugees along the routes:

*...including forcing Palestinians of all ages and genders at gunpoint to strip during evacuation processes and walk for prolonged periods without clothes. These cases indicate that ISF intentionally inflicted much of the hardship experienced during this process.*

- (d) The ISF, on multiple occasions, attacked areas in which civilians had been informed that they would be safe:

*These attacks resulted in casualties, including deaths of civilians not taking any direct part in the hostilities. At the same time, the massive casualties and destruction by ISF in areas that were evacuated have created conditions whereby whole residential areas have been razed and families have no homes to return to.<sup>15</sup>*

---

<sup>14</sup> §§48-55

<sup>15</sup> §§56-61

21. Sexual and gender-based violence (“SGBV”):

- (a) The IIC concluded that Palestinians have been “systematically” subjected to SGV by ISF.
- (b) This included public stripping, being forced to perform humiliating acts whilst fully or partially undressed, and sexual assault. “Palestinians were also made to watch members of their family and community strip in public and walk completely or partially undressed while subjected to sexual harassment.”
- (c) Palestinian men and women were also subjected to violence and humiliation online. ISF broadcast film of detainees being sexually humiliated online and doxed female prisoners.
- (d) The IIC noted that the cultural circumstances of Palestinians were an aggravating factor because many retained strongly held sensitivities “relating to privacy, nudity, and the significance of the veil.”
- (e) The IC concluded:

*Based on the way in which such acts were committed, including with filming, photographing and posting material online, in conjunction with the many cases with similar methods observed in multiple locations, the Commission concludes that forced public stripping and nudity and other types of abuse by Israeli military personnel were either ordered or condoned. These acts were intended to humiliate and degrade the victims and the Palestinian community at large, by perpetuating gender stereotypes that create a sense of shame, subordination, emasculation and inferiority. It is evident that such violence is both a part of and has been enabled by the broader targeting and ill-treatment of Palestinians.<sup>16</sup>*

22. Violence against civilians in the West Bank and East Jerusalem: Despite the West Bank being governed by Fatah (which played no part in the 7 October attack),

---

<sup>16</sup> §§65-68

Between 7 October and 31 December 2023, 308 Palestinians, including 80 boys, were killed in the West Bank, including East Jerusalem, 300 of them by Israeli forces and eight by settlers. The fatalities in the West Bank within this period exceeded any annual fatality toll since OCHA began collecting data on casualties in 2005.” The IIC noted that settler attacks on civilians have “surged” and that these are facilitated by the Israeli government, which has provided weapons and encouragement to settlers.<sup>17</sup>

23. Impacts on children: The IIC noted particular impacts of ISF actions on children. As of 30 April 2024:

*...more than 7,300 Gazan children have been confirmed to be killed, thousands remain unidentified, and 12,332 wounded, according to the Gaza Ministry of Health. <sup>61</sup>In addition, thousands of children are missing, many of them likely buried under the rubble of destroyed buildings. Rescue efforts have been hampered by airstrikes and ground incursions, shortage of rescue equipment, scarcity of fuel for vehicles and equipment, and limited or no communication capabilities.*

### ***Legal consequences of Israeli actions***

24. The IIC concluded that Israel’s conduct amounts to war crimes, crimes against humanity, and breaches of international humanitarian law. For reasons of concision, I have not set out each element of each offence – for which the reader is referred to the IIC’s full report.

25. As to War Crimes:

- (a) Starvation as a method of warfare, contrary to article 8(2)(b)(xxv) of the Rome Statute.
- (b) Murder or wilful killing contrary articles 8(2)(a)(i) and (b)(i) of the Rome Statute.

---

<sup>17</sup> §§62-64

- (c) Sexual violence and outrages upon personal dignity/sexual and gender-based violence amounting to torture or cruel and inhuman treatment: article 8(2)(c) of the Rome Statute.
26. As to Crimes Against Humanity:
- (a) Extermination, contrary to article 7(1)(b) of the Rome Statute.
  - (b) Murder contrary to article 7(1)(a) of the Rome Statute
  - (c) Gender persecution contrary to article 7(1)(h) of the Rome Statute
  - (d) Forcible population transfer contrary to article 7(1)(k) of the Rome Statute
  - (e) Torture and cruel and inhuman treatment contrary to article 7(1)(f) of the Rome Statute
27. As to International Humanitarian Law: Israel appears to have imposed collective punishment on Palestinians, contrary to Article 50 of the Hague Regulations, Article 87 of the Third Geneva Convention and article 33 of the Fourth Geneva Convention (this will likely also amount to a war crime).

### **UK Involvement with Israel**

28. The UK has a close relationship with Israel across multiple areas. Of particular relevance in the instant case are the following:
29. Military aid and assistance:

- (a) The UK has provided extensive intelligence support for Israel. UK surveillance aircraft are alleged have flown more than 200 missions over Gaza since 7 October 2023.<sup>18</sup>
- (b) In October 2023 the UK sent two Royal Navy support ships and around 100 Royal Marines to the Eastern Mediterranean. The (then) Prime Minister, Rishi Sunak, said their purpose was to “support efforts to ensure regional stability and prevent further escalation.”<sup>19</sup>
- (c) The UK has also sent military aid to Israel.<sup>20</sup>
- (d) The (then) Defence Secretary, Grant Shapps, has given parliamentary statements indicating that UK surveillance work was limited to locating hostages<sup>21</sup> and military aid was “non-lethal”.<sup>22</sup> UK forces have, however, been involved in publicly acknowledged combat operations in the Israeli theatre. In April, RAF jets were deployed to assist ISF in respect of a drone attack launched against Israel by Iran<sup>23</sup> (itself a retaliation for suspected Israeli attacks on Iranian territory)<sup>24</sup>. The terms on which the UK provides military assistance to Israel (and the constraints on that assistance) are, therefore, not entirely clear.

### 30. Weapons:

---

<sup>18</sup> <https://www.declassifieduk.org/revealed-uk-military-has-flown-200-spy-missions-over-gaza-in-support-of-israel/>

<sup>19</sup> <https://www.theguardian.com/world/2023/oct/12/uk-to-send-navy-ships-and-spy-planes-to-support-israel>

<sup>20</sup> <https://ukdefencejournal.org.uk/uk-confirms-aid-to-israel-has-only-been-non-lethal/>

<sup>21</sup> <https://www.declassifieduk.org/revealed-uk-military-has-flown-200-spy-missions-over-gaza-in-support-of-israel/>

<sup>22</sup> <https://ukdefencejournal.org.uk/british-aircraft-providing-surveillance-support-to-israel/>

<sup>23</sup> <https://www.bbc.co.uk/news/uk-68810774>

<sup>24</sup> <https://www.reuters.com/world/middle-east/iran-launches-drone-attack-israel-expected-unfold-over-hours-2024-04-13/>

- (a) The UK government has, since 2008, licensed UK companies to provide arms exports to Israel worth over £576 million. Since the beginning of Israel's operations in Gaza, the UK has granted at least 42 new licences.<sup>25</sup>
  - (b) The most recent decision to renew licences was made on 8 April 2024.<sup>26</sup>
31. Diplomatic support: The UK has formally agreed to argue on Israel's behalf at the UN. The UK has agreed that the UN Human Rights Council focuses "disproportionately" on Israel. The UK has committed to working with Israel to protect its position at the UN Human Rights Council and "other international bodies".<sup>27</sup> It is not clear how the UK will discharge its part of this agreement. It is not clear, for example, whether the UK will protect Israel against being "singled out" for breaches of international law which are committed by Israel but also allegedly committed by other states.
32. Trade and Investment:
- (a) Trade and investment between the UK and Israel amounts to around £6.1bn per year. Around 6600 UK businesses export goods to Israel.
  - (b) In 2023 the Sunak government signed the "2030 roadmap for UK-Israel bilateral relations" with Israel. This purports to be a "strategic partnership" which is "underpinned by extensive security and defence cooperation". The UK and Israel jointly agreed to invest substantial funds across a range of trade and investment areas. These include "defence", "cyber", "science, technology, and innovation", and health. The roadmap is a "living

---

<sup>25</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-9964/>

<sup>26</sup> <https://www.glanlaw.org/single-post/uk-arms-exports-challenge-revived-expedited-and-now-set-for-full-hearing-in-october>

<sup>27</sup> FCDO, "2030 roadmap for UK-Israel bilateral relations", (2023), p. 7

document” which provides for ongoing cooperation between Israel and the UK across a series of working groups. <sup>28</sup>

(c) The UK and Israel have, in place, a limited treaty governing trade (which, in essence, replicates the trade relationship between the EU and Israel). Both parties have committed to negotiating a more comprehensive trade agreement. In July 2024 the Starmer government committed to prioritising negotiations for a trade agreement with Israel.<sup>29</sup>

33. Higher Education: Several UK higher education institutions run cooperative projects with companies that do business in Israel and with Israeli state institutions. The UK and Israeli governments committed to deepening that cooperation in the 2030 roadmap.<sup>30</sup>

---

<sup>28</sup> Ibid

<sup>29</sup> <https://www.gov.uk/government/news/new-government-drives-forward-trade-talks-to-turbocharge-economic-growth>

<sup>30</sup> 2030 Roadmap, p. 15



## LEGAL PRINCIPLES

34. Public international law recognises that both individuals and states may attract vicarious liability for the wrongful acts of other individuals and states. This means that, should the allegations against Israel be proved, those states and individuals who have “aided and abetted” Israel’s wrongful acts will also (in part) be liable for those acts in the eyes of international law.

### State Vicarious Responsibility

35. Article 16 of the International Law Commission’s (“ILC”) Articles on State Responsibility (“ASR”) provides that a state may be liable for the wrongful act of another state. The ASR are not, in and of themselves, a source of international law. Rather, they record existing Customary International Law (essentially the international law equivalent of the common law). Article 16 has been recognised by international courts as part of customary international law.<sup>31</sup>

36. Article 16 provides:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.

37. This, in essence, establishes four elements for vicarious state responsibility:

- (a) **A wrongful act:** Such acts may include war crimes, crimes against humanity, genocide, or breaches of fundamental rights.

---

<sup>31</sup> 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, para 417 (hereinafter *Bosnian Genocide case*)

- (b) **Provision of “aid or assistance”**: This can encompass a broad range of things. For example, the provision of weapons, logistical support, technical assistance, intelligence sharing, economic (such as trade or investment) or diplomatic support.<sup>32</sup> It will not, however, extend to mere expressions of approval or failure to publicly condemn a state’s actions.<sup>33</sup>
- (c) **Sufficient nexus between the aid and the principal wrong**: It is not necessary for the aid to have caused the principal wrong, rather it must have “contributed significantly” to the wrongful act.<sup>34</sup> A “significant” contribution is not necessarily a “large” contribution. The ILC commentary to Article 16 suggests a contribution can be “significant” while only having contributed to a “minor degree” to the wrong act.<sup>35</sup>
- (d) **The assisting state must have knowledge of the circumstances of the wrongful act**: This requirement is twofold –
- (1) The assisting state must have knowledge of the wrongful act. The assisting state is not required to investigate but it cannot wilfully turn a blind eye.<sup>36</sup>

---

<sup>32</sup> Lanovoy, V., “Complicity in an Internationally Wrongful Act”, in Nollkaepner, N., and Plakokefalos, I., *Principles of Shared Responsibility in International Law*, (Cambridge, Cambridge University Press, 2014), p. 9

<sup>33</sup> ILC Commentary, ‘Introduction to Chapter IV’, para (9), p. 147; Crawford (2013), *State Responsibility: The General Part*, pp. 403–04; Quigley, J. (1986), ‘Complicity in International Law: A New Direction in the Law of State Responsibility’, *British Yearbook of International Law*, Vol. 57(1), p. 80; Nolte and Aust (2009), ‘Equivocal Helpers’, p. 13; Aust (2011), *Complicity and the Law of State Responsibility*, p. 221. Jackson, while accepting the orthodox position, argues that a principled approach to complicity under Article 16 would encompass the provision of complicit influence – see Jackson (2015), *Complicity in International Law*, p. 155.

<sup>34</sup> ILC Commentary to Article 16, para (5).

<sup>35</sup> *Ibid*, para. (10)

<sup>36</sup> ICTY (Trial Chamber), *Prosecutor v Blaskic* [I IT-95-14-T]

- (2) The assisting state must also either intend for the assistance to contribute to the commission of the wrongful act or know that, in the normal course of events, the assistance will do so.<sup>37</sup>
- (e) **The wrongful act must also be wrongful if the assisting state had committed the act itself:** In practice this means that a state can't be liable for assisting a wrongful act if they are not party to the treaty provision that has been breached. In the instant case, the UK is a party to the same relevant (and, indeed, a wider range) international law instruments as Israel so this issue does not arise.

### Individual Vicarious Responsibility

38. Article 25(3) of the Rome Statute provides that an individual may be vicariously responsible for a war crime committed by another individual:

In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

...

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

---

<sup>37</sup> *Prosecutor v Bemba*, Pre-Trial Chamber, ICC-01/05-01/08, Judgment of 15 June 2009, para 358

(ii) Be made in the knowledge of the intention of the group to commit the crime;

...

39. Liability applies in a similar manner to that set out above in the case of states. The intent element is met where a person either intends to assist in the commission of the crime or is aware that, in the ordinary course of events, their assistance will have that effect.<sup>38</sup>

### **Vicarious Responsibility for Breaches of *Jus Cogens* Norms**

40. There is a lower threshold for vicarious liability where the primary wrong concerns a breach of jus cogens norms (the fundamental rules of international law from which no justification is possible). The relevant *jus cogens* norms are the instant case is the prohibitions of genocide and torture.

41. Article 40 of the ASR recognises that states must not create “serious” breaches of jus cogens norms. A “serious breach” is a breach that “involves a gross or systematic failure by the responsible State to fulfil the obligation.”

42. Article 41 provides:

...

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

...

**[Emphasis added]**

---

<sup>38</sup> Rome Statute, Art. 30(2)

43. This suggests that, where the primary wrong is a serious breach of a *jus cogens* norm, vicarious liability may be established without proving knowledge or intention.<sup>39</sup>

---

<sup>39</sup> See Nolte, G. and Aust, H. (2009), 'Equivocal Helpers: Complicit States, Mixed Messages and International Law', 58 *International and Comparative Law Quarterly*, No. 1, pp. 1-30.

## ANALYSIS

44. It is impossible to say for certain whether the UK or individuals herein are liable for Israeli wrong acts (if such acts are established) because the detail of the UK's relationship with Israel is contained in documents which are not publicly available. We do not know "who knew what and when". This evidence does, likely, exist and could be obtained by an international or domestic court seized with a claim against the UK or individuals. For the purposes of the present advice, I have confined myself to assessing whether the UK or individuals herein could possibly attract vicarious liability.

### UK "Assistance" To Israel

45. It seems likely that the UK has provided "assistance" to Israel which may have been used to support Israel's unlawful occupation of the Occupied Territories and/or to assist in the commission of allegedly wrongful acts (including Genocide, War Crimes, and Crimes Against Humanity). In particular:
46. **Provision of weapons:** If weapons, which have been sold to Israel or (likely) to settler communities pursuant to a licence issued by the UK, are used in connection with the unlawful occupation or alleged wrongful acts then the UK will likely be found to have "assisted" Israel those wrongs.
47. **Military and logistical support:** To the extent that UK military assets in the region have facilitated Israeli military or civilian activities in the Occupied Territories, they will likely have assisted the unlawful occupation. They may also have assisted specific wrongful acts. It also appears possible that UK assets, when assisting in the defence of "Israeli territory" may have included the Occupied Territory in the definition of "Israeli territory". This may also be assistance to the unlawful occupation.
48. **Intelligence:** It seems almost certain that the UK has provided intelligence support to Israel. If this intelligence is restricted purely to the locations of

hostages, then it is unlikely to be considered assistance for wrongful acts. If, however, the intelligence provided also assisted Israel with occupation or military operations (such as, for example, identifying an alleged Hamas stronghold which may contain hostages, where Israel subsequently used the information to attack that target using disproportionate force) then the UK may have assisted a wrongful action.

49. **Economic support:** It seems likely that the UK, through its trade relationship with Israel, has helped facilitate the unlawful occupation. It is probable, for example, that UK has agreed preferential trade conditions with Israel which can benefit goods and services made in the Occupied Territories. Given that the Occupied Territories are increasingly integrated into Israel's economy, there is a real possibility that goods and services which purport to be made in Israel are connected to the Occupied Territories. There are, for example, reports of companies which conduct business in the Occupied Territories then move the products into Israel before export,<sup>40</sup> or products sold on the international market based on technologies developed to facilitate or tested in the Occupation.<sup>41</sup>
50. **Diplomatic Support:** The 2030 Roadmap contains a commitment by the UK to support Israel (which seems to include an undertaking to help oppose or suppress criticism of Israel) in intergovernmental settings. If this assistance includes, for example, using diplomatic means to frustrate attempts by other states to ensure Israel complies with the ICJ's advice to end the unlawful occupation or cease the commission of other wrongful acts, then it could be considered aid and assistance for those acts.

### **UK Vicarious Liability for *Jus Cogens* Wrongs**

---

<sup>40</sup> See, for example, <https://www.quarrymagazine.com/2011/03/05/multinational-companies-mining-occupied-west-bank/>

<sup>41</sup> See, for example, <https://www.aljazeera.com/podcasts/2023/8/9/how-israeli-technology-turns-occupation-into-profit>

51. The right to self-determination and the prohibition of aggression are peremptory norms of international law.<sup>42</sup> It is not, therefore, necessary to establish that the UK had knowledge that its assistance would facilitate Israel's unlawful occupation. If Israel's actions amount to a "serious breach" of the Palestinian people's right to self-determination (as seems likely) then the UK may be vicariously liable regardless of whether it was aware that its assistance facilitated the occupation. The ICJ did not specifically address the question of whether the unlawful occupation amounted to a "serious breach" but described Israel's conduct as "serious breaches of obligations *erga omnes* under international law."<sup>43</sup>
52. The prohibition of genocide and torture are also jus cogens norms. If, therefore, (a) Israel is found to have committed genocide and/or torture (including SGBV amounting to torture), and (b) the UK aided the relevant acts, the UK may also be vicariously liable for these wrongs.

### **UK "Knowledge" and "Intent"**

53. It seems, in any case, certain that the UK was aware of the fact of Israel's occupation of the Occupied Territories and highly likely that it was aware that "in the normal course of events" the assistance was almost certain to facilitate the commission of the occupation.
54. It also seems probable that the UK had knowledge of Israel's actions which, according to the IIC's allegations, amount to war crimes and crimes against humanity. It seems unlikely that the UK intended any assistance it provided to facilitate such crimes. It is at least possible, however, that the UK was aware that in the normal course of events, its assistance was almost certain to do so. To take

---

<sup>42</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024; ICL, "Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)" (2022)

<sup>43</sup> ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024, §280



a hypothetical example: If (a) the UK is aware that Israel applies the Dahiya Doctrine (or similar tactical approach), and (b) the UK provides Israel with intelligence suggesting the presence of Hamas fighters in a built up area in which civilians are still present, it seems difficult to believe that the UK would not know that Israel was almost certain to use disproportionate force resulting in the deaths of some or all of those civilians.

55. As noted above, ministers have claimed that UK weapons are only provided to Israel for use in a “defensive” manner. It is necessary to consider, however, whether the UK is entitled to place weight on those guarantees. If the UK is aware that, as a matter of fact, Israel will use weapons for offensive purposes then a mere formal undertaking not to do so will hold less or no weight. Moreover, it is worth noting that Israel essentially classes all of its actions in the Occupied Territories as “defensive”. The distinction drawn by ministers may, therefore, have little or no real meaning.

### **Individual Liability**

56. It is impossible to comment with any precision on specific cases of individual liability because the relevant information is not in the public domain. It is, however, certainly possible that individuals working within the UK government will attract vicarious liability if war crimes charges are made out against Israeli leaders and personnel. If, for example:
- (a) Israeli leaders or personnel are convicted of a particular war crime;
  - (b) The UK, through the provision of weapons, intelligence, or other assistance, has aided or assisted in that particular crime;
  - (c) The assistance was ordered and/or executed by UK government ministers, or civil servants;

- (d) At the relevant time, those individuals knew that, in the ordinary course of events, the assistance provided was almost certain to facilitate the acts subsequently found to be criminal;

Then those ministers/civil servants may be vicariously liable for the primary offence (and, as a result, guilty of a war crime themselves).

## CONCLUSIONS

57. Based on the above analysis, it seems reasonable to conclude that the UK (including individuals within the UK government) may be in breach of international law by reason of vicarious liability for wrongs committed and/or allegedly committed by the State of Israel:
- (a) There is a real prospect<sup>44</sup> that the UK has provided aid and assistance to Israel which facilitated its violation of peremptory norms of international law. Namely, the right to self-determination and the prohibition of obtaining territory by aggression. It is at least possible, therefore, that the UK is vicariously liable for Israel's breaches of these rights.
  - (b) There is a real prospect that the UK provided aid and assistance to Israel which facilitated its (alleged) commission of war crimes and crimes against humanity. There is also a real prospect that the UK had the requisite knowledge of the facts of these (alleged) crimes and that the assistance provided was, in the ordinary course of events, almost certain to facilitate the relevant crime. It is at least possible, therefore, that the UK could be vicariously liable for Israel's (alleged) war crimes and crimes against humanity (should such crimes be proved).
  - (c) There is a real prospect that individuals (including ministers and/or civil servants) may have facilitated the commission of alleged war crimes and crimes against humanity. There is also a real prospect that the UK had the requisite knowledge of the facts of these (alleged) crimes and that the assistance provided was, in the ordinary course of events, almost certain to facilitate the relevant crime. It is at least possible, therefore, that individuals

---

<sup>44</sup> For the avoidance of doubt, I employ the definition of "real prospect" used in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314

within the UK could be vicariously liable for war crimes committed by Israeli personnel (should such crimes be proved).

SAM FOWLES  
Cornerstone Barristers  
5 August 2024