POSITION PAPER

LOCAL GOVERNMENT PENSION SCHEME INVESTMENTS IN COMPANIES INVOLVED IN THE OCCUPIED PALESTINIAN TERRITORY AND ISRAEL'S MILITARY OFFENSIVE IN THE GAZA STRIP

27 August 2025

A. INTRODUCTION

1. This position paper (**'the Paper'**) sets out the legal consequences under international and domestic law for investments under the Local Government Pension Scheme (**'LGPS'**) in companies involved in the occupied Palestinian Territory (**'OPT'**).

2. The Paper addresses:

   2.1. Israel's violations of international law in the OPT (Part C);

   2.2. The UK's prevention and non-assistance duties under international law (Part D);

   2.3. The application of those duties to LGPS investment in companies aiding or assisting in Israel's violations (Part E);

   2.4. The rule of law, domestic law and international law (Part F);

   2.5. The LGPS's statutory framework and the relevant public authorities' powers (Part G); and

   2.6. The consequences of LGPS investment in companies aiding or assisting in Israel's violations under domestic law (Part H).[1]

3. The Paper is prepared on behalf of the Palestine Solidarity Campaign (**'PSC'**), by Counsel (Max du Plessis S.C., Tatyana Eatwell and Joshua Jackson) with the assistance of Deighton Pierce Glynn.

B. EXECUTIVE SUMMARY

4. Israel has occupied the Palestinian territory the West Bank and Gaza, since 1967. Israel's occupation is illegal under international law, violating the prohibition of the use of force (Article 2(4) of the UN Charter).

5. A central feature of the occupation has been the establishment and expansion of settlements for Jewish Israeli citizens. The West Bank is scattered with settlements, fragmented by separation walls and is subject to a complex regime of Israeli control. Over 700,000 settlers now live in the West Bank, and the rate of settlement continues to increase.

[1] The legal principles set out here can obviously be applied to investments apart from Israel and the OPT but they are outside the scope of this paper.

6. The settlement enterprise is a means of entrenching occupation, demographically engineering the population of the West Bank, and paving the way for annexation. Through its settlement enterprise, Israel is committing serious violations of international humanitarian law (**'IHL'**): it is violating the prohibition on occupying powers transferring its civilian population into occupied territory (sixth paragraph of Article 49 if the Fourth Geneva Convention), the prohibition on the extensive appropriation and destruction of property (Articles 46, 52 and 55 of the Hague Regulations, and Articles 53 and 147 of the Fourth Geneva Convention), and the prohibition on the forcible transfer of population (first paragraph of Article 49 and fourth paragraph of Article 85 of the Fourth Geneva Convention).

7. It is inherent in Israel's occupation and settlement enterprise that it is violating the prohibition of racial discrimination and apartheid, as well as thwarting the Palestinian people's right to self-determination.

8. Israel is also committing widespread violations of IHL in Gaza. Following the attacks by Hamas on 7 October 2023, the Israeli military has systemically conducted indiscriminate and direct attacks against civilians and civilian objects, in breach of the fundamental IHL principles of distinction, proportionality, military necessity and precaution.

9. At the time of drafting this Position Paper over 62,000 Palestinians have been killed (the majority of which are women, children and the elderly), and over 90% of residential buildings damaged or destroyed (in violation of the prohibition on the extensive appropriation and destruction of property). Through indiscriminate aerial bombardment, destruction of property and arbitrary evacuation orders, the Israeli military has forcibly transferred the Palestinian population in Gaza (in breach of the first paragraph of Article 49 and fourth paragraph of Article 85 of the Fourth Geneva Convention).

10. Over 90% of Palestinians in Gaza have been displaced. And through its indiscriminate attacks on civilians, its blockade and restrictions on the entry of essential supplies and humanitarian aid into Gaza, Israel has violated the prohibition of deliberate starvation of civilians as a method of warfare (Articles 55 and 59 of the Fourth Geneva Convention).

11. Many experts and NGOs have gone as far as to conclude that Israel *is* committing the crime of genocide. At the very least, Israel's actions have given rise to a serious risk of genocide being committed by Israel arising from breaches of the Genocide Convention, including its ongoing breaches of the ICJ's provisional measures Orders.

12. Our conclusions are consistent with the ICJ's Advisory Opinion, the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* of 19 July 2024 (***'OPT Advisory Opinion'***), the ICJ's provisional measures of 26 January 2024, 28 March 2024 and 24 May 2024 in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (***'South Africa v Israel'***), reports of several UN bodies, and the ICC Pre-Trial Chamber's unanimous decision on 21 November 2024 to issue arrest warrants for Benjamin Netanyahu and Yoav Gallant on the basis that there are reasonable grounds that each bear criminal responsibility for a series of war crimes and crimes against humanity.

13. Critically, the norms Israel is violating include peremptory norms of international law, which reflect the most fundamental values of the international community and pose an intolerable threat to the most basic human values.

14. Israel's serious breaches of peremptory norms, its violations of the Geneva Conventions, and the serious risk of genocide in Gaza have consequences for the UK under international law. The UK owes a number of **'prevention and non-assistance duties'**. In sum:

    14.1. The UK must not recognise, explicitly or implicitly, situations created by Israel's serious breaches of peremptory norms.

    14.2. The UK must refrain from rendering aid or assistance to maintaining situations created by Israel's serious breaches of peremptory norms.

    14.3. The UK is required to cooperate with other States and take all reasonably available measures to bring to an end any violations of peremptory norms by Israel, ensure respect of the Geneva Conventions, and prevent genocide.

15. The scope of the prevention and non-assistance duties is far-reaching and extends to the UK's investment relations with Israel. These duties require the UK to refrain from investing in companies which aid or assist in the commission of Israel's serious breaches of peremptory norms of international law, which may foreseeably assist in the commission of genocide and violations of the Geneva Conventions (we refer to such companies as the **'Involved Companies'**). Where pre-existing investments are concerned, public bodies must take reasonable steps towards divesting from such companies. At all times, investors must exercise due diligence.

16. Within this context, our focus is on the LGPS, one of the UK's largest public sector schemes, through which the UK has significant investment relations with Israel. The prevention and non-assistance duties are engaged in the LGPS context. PSC's LGPS database indicates that local pension funds in the LGPS have invested around £12.2bn in companies which contribute to Israel's violations of international law in the OPT. That includes substantial investments in Involved Companies, and – in particular – companies which are involved in the supply of technology, surveillance equipment and weapons to the Israeli military, and the construction and financing of settlements in the West Bank. We refer to such companies as **'paradigm cases'** of Involved Companies, those which have the strongest nexus to Israel's violations of international law in the OPT and which should be divested from as a matter of priority.

17. Under the LGPS, responsibilities are divided between the Secretary of State for Housing, Communities and Local Government (**'the Secretary of State'**) and local administering authorities. Both are organs of the State whose acts and omissions are attributable to the UK under the Articles of Responsibility of States for Internationally Wrongful Acts (**'the Articles of State Responsibility'**). If their acts and omissions are incompatible with the prevention and non-assistance duties, they will trigger the UK's responsibility under international law. The prevention and non-assistance duties require action by the Secretary of State and the administering authorities. In particular:

    17.1. The Secretary of State must produce guidance giving effect to the prevention and non-assistance duties (requiring the action outlined at paragraph 15 above), and make directions to administering authorities in the event of non-compliance.

    17.2. Even in the absence of such guidance, administering authorities should ensure their investment strategies give effect to the prevention and non-assistance duties. They must refrain from making new investments in Involved Companies, exercise due diligence and take reasonable steps towards divesting from such companies.

18. If nothing else, that the Secretary of State and the administering authorities comply with their international law obligations is demanded by the fundamental constitutional principle of the rule of law. That the Government ought to comply with international law is underscored further by the updated Ministerial Code, the Attorney-General's Guidance on Legal Risk, and recent public statements of the Government.

19. Under the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (**'2016 Regulations'**), the Secretary of State has powers to make guidance/directions in relation to how administering authorities manage and invest local pension funds. Those powers are sufficiently broad to enable the Secretary of State to make guidance/directions giving effect to the prevention and non-assistance duties. The guidance presently in force is the "Local Government Pension Scheme: Guidance on Preparing and Maintaining an Investment Strategy Statement" (July 2017) (**'LGPS Guidance'**). The LGPS Guidance does not require administering authorities to take the action necessary to comply with the prevention and non-assistance duties, but – on the other hand – does not prohibit administering authorities from refraining to invest or divesting from Involved Companies. administering authorities.

20. The current position under the LGPS Guidance is that when administering authorities make investment decisions, they must consider any factors that are material to the performance of their investments, including environmental, social and governance (**'ESG'**) factors. Administering authorities are permitted to take non-financial considerations into account and may forgo financial return to generate social impact, provided that it would not involve a risk of significant financial detriment to the scheme and where they have good reason to believe that scheme members would support the decision. Refraining from limited classes of investment and taking *reasonable* steps towards divesting from Involved Companies in furtherance of administering authorities' prevention and non-assistance duties and their members' wishes acting with due diligence would not contravene administering authorities' fiduciary and public law duties.

21. Beyond having sufficient powers to comply with the prevention and non-assistance duties, our assessment is that the Secretary of State and the administering authorities must comply as a matter of domestic law. That is because the common law gives effect to the prevention and non-assistance duties, by virtue of them forming part of customary international law. There are no good reasons of constitutional principle capable of rebutting the presumption that the common law gives effect to customary international law in this instance. Indeed, there are compelling reasons why the presumption should hold. We are concerned with the most fundamental norms of international law, Israel's violations of those norms are well-established (including by the ICJ), the domestic courts have manageable standards to apply, and there is a sufficient domestic foothold within the LGPS through which the prevention and non-assistance duties can apply. There is a significant risk that administering authority decisions to continue investing in Involved Companies and a failure by the Secretary of State to adopt appropriate guidance/directions would be unlawful as a matter of public law.[2]

[2] The judgment in *R (Al-Haq) v Secretary of State for Business and Trade* [2025] EWHC 1615 (Admin) (**'*Al-Haq*'**) does not materially diminish that risk. It is a first instance judgment which may be subject to appeal. In any case, the present context is clearly distinguishable from *Al-Haq*. In *Al-Haq*, the Divisional Court dismissed the claimants' challenge to the lawfulness of the F-35 Carve Out. The F-35 Carve Out excluded from a suspension of arms export licences the export of components of F-35 aircraft to a multinational F-35 joint strike fighter programme in circumstances where the Secretary of State was advised that it was not possible to suspend the licensing of components for use for Israel without having an impact on the entire F-35 programme, and that a suspension of all F-35 components would have a profound impact on international peace and security. The Divisional Court accepted that the common law allowed for the drawing down of rules of customary international law in appropriate cases, where consistent with constitutional principle. However, it was central to the judgment that the

22. In any case, the nature and extent of Israel's violations of international law, the UK's prevention and non-assistance duties, and/or the risk of triggering the UK's responsibility under international law, gives rise to a heightened obligation upon administering authorities to take into account and make adequate inquiries in respect of such matters, when deciding whether to invest in and/or divest from Involved Companies (or, in the Secretary of State's case, when deciding whether to issue guidance and directions).

23. The situation is such that it is not legally open to administering authorities or the Secretary of State to refuse to take such action on the basis of (or being materially influenced by) a view that Israel is not committing serious violations of international law, or that the UK's prevention and non-assistance duties do not arise, do not apply to administering authorities, or do not require measures to be taken in the sphere of investment relations. These positions would represent an untenable view of international law justiciable under domestic law.

24. Administering authorities and the Secretary of State will be at significant legal risk if they continue to invest or permit investment in Involved Companies. The request made to the Secretary of State is not to stop any particular investment or to target any particular company operating in the OPT. Rather, to comply with international and domestic law, the Secretary of State must issue guidance giving effect to the prevention and non-assistance duties, and make directions if administering authorities fail to comply with the guidance. In any case, administering authorities must take a prudent approach in considering, making inquiries and exercising due diligence to determine whether investments in Involved Companies under the LGPS are contributing to violations of international law in the OPT. Momentum is building towards an international law compliant approach to divestment, with many local councils calling for divestment from entities complicit in violations of human rights and international law in the OPT. The administering authorities and the Secretary of State should take appropriate action without unreasonable delay. The mounting evidence of Israel's violations and the severe harm inflicted on the Palestinian people require action to be taken in the felicitous and prompt discharge of the UK's duties.

C. ISRAEL'S VIOLATIONS OF INTERNATIONAL LAW

25. The OPT refers to the West Bank (including East Jerusalem) and Gaza. Israel has occupied the OPT since 1967 following the Six-Day war.[3] According to Professor S. Michael Lynk, former UN Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, Israel's occupation of Palestine has resulted in "*5 million stateless Palestinians living without rights, in an acute state of subjugation and with no path to self-determination or a viable independent State*."[4] The situation has only deteriorated in the last 18 months. Israel has committed and is continuing to commit widespread violations of international law in the OPT, and good grounds to believe that its actions in multiple respects amount to international crimes

subject matter of the case trespassed on high policy and typically non-justiciable matters of national security and defence, international peace and security, and the conduct of foreign relations, which were reserved to the judgment of the executive. That is far removed from the present context, which concerns the investment decisions of administering authorities and does not unacceptably trespass on the aforesaid areas. A further distinction is that the analysis in the Paper relies firmly on the determinations of the ICJ in – for example – the *OPT Advisory Opinion* and does not require a public authority or domestic court to make its own findings about the lawfulness of Israel's conduct in the OPT; rather, it simply requires the Secretary of State and the administering authorities to be guided by and accept the ICJ's findings about Israel's violations of peremptory norms and the consequences arising therefrom.

[3] A summary of the history of Israel and Palestine can be found in the *OPT Advisory Opinion* at §§ 51ff.

[4] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michal Lynk (UNHRC, 12 August 2022), A/HRC/49/87 (**'the Michael Lynk 2022 Report'**), at § 9.

in the West Bank and Gaza. That analysis is consistent with the ICJ's *OPT Advisory Opinion*, the ICJ's provisional measures of 26 January 2024, 28 March 2024 and 24 May 2024 in *South Africa v Israel*, the ICC's decision to issue arrest warrants for Benjamin Netanyahu and Yoav Gallant on 21 November 2024, and the reports of several UN bodies and other reputable organisations.

(1) The West Bank

26. The West Bank is the largest constituent part of the OPT, with a population of 2.9 million Palestinians. Israel's violations of international law in the West Bank are intrinsically linked to its settlement policy. The West Bank is scattered with Israeli settlements, fragmented by separation walls and is subject to a complex regime of Israeli control.[5] Under the Oslo Accords, signed by Israel and the PLO in 1993 and 1995, the West Bank was divided into three categories: (i) Area A accounts for 18% of the West Bank and is under full administrative Palestinian control; (ii) Area B accounts for 22% of the West Bank and is under Palestinian administrative control but under the security control of Israel; and (iii) Area C accounts for 60% of the West Bank and is under Israeli administrative and security control.[6]

27. Since 1967, successive Israeli Governments have constructed around 370 Jewish-only settlements for Israeli citizens across the West Bank.[7] The number of Israeli citizens that live in the West Bank has risen from 247,000 at the time of the Oslo Accords to now over 700,000. Israel's policies of consolidating and expanding settlements in the West Bank are accelerating, following the transfer of administrative and legal powers in the West Bank to the civilian Government of Israel.[8] To maintain and integrate those settlements into the territory of Israel, Israel directly provides for and facilitates the infrastructure of settlement (water, roads, construction, sewage, power, security systems, education systems, healthcare facilities, and telecommunications).[9]

28. The expansion and consolidation of settlements in the West Bank contributes to the entrenchment of occupation and is designed to demographically engineer the population of the West Bank, pave the way for Israeli annexation of Palestinian territory and thwart the realisation of Palestinian statehood.[10] That aim of annexation accords with the statements of a number of high-level public officials and various legal and policy developments in Israel.[11] On 21 March 2025, the UN Secretary-General reported:

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[5] Israeli Occupation of Palestinian Territory (UNISPAL).

[6] Areas A, B, C (Visualizing Palestine).

[7] Report of the United Nations Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (UNHRC, 6 March 2025) A/HRC/58/73 (the **'OHCHR 2025 Report'**), at § 14..

[8] OHCHR 2025 Report, at §§ 8-13.

[9] Report of the United Nations High Commissioner for Human Rights on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (UNHRC, 12 March 2023) A/HRC/52/76 (the **'OHCHR 2023 Report'**), at § 10; Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory (UNCTAD, 20 September 2021) TD/B/EX(71)/2 (the **'UNCTAD 2021 Report'**), § 40.

[10] Michael Lynk 2022 Report at §§ 35 and 47; "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", Report of the United Nations High Commissioner for Human Rights (UNHRC, 1 February 2024) A/HRC/55/72 (the **'OHCHR 2024 Report'**), at § 6; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, (UNGA, 14 September 2022) A/77/328 (the **'Independent International Commission of Inquiry 2022 Report'**), at § 51; OHCHR 2025 Report, at § 13.

[11] Amnesty International Genocide Report, pp 241-273. See also: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, Genocide as colonial erasure (UNGA, 1 October 2024) A/79/384 (the **'Francesca Albanese October 2024 Report'**), §§ 50-53; Gaza: UN experts call on international community to prevent genocide against the Palestinian people (UN, 16 November 2023); Michael Lynk 2022 Report, at § 48; Israel's Apartheid Against Palestinians: Cruel Systems of Domination and Crime Against Humanity (Amnesty International, 2022) (**'Amnesty International Apartheid Report'**), pp 64-67; OHCHR 2025 Report, at §§ 8-13. Further, see:

> "The relentless expansion of Israeli settlements is dramatically altering the landscape and demographics of the occupied West Bank, including East Jerusalem. Palestinians are increasingly confined into shrinking and disconnected areas, presenting an existential threat to the prospect of a contiguous, viable, independent Palestinian state."[12]

29. As an occupying power, Israel is subject to duties under IHL applicable to situations of international armed conflict (**'IAC'**) and situations of partial or total military occupation.[13] It also remains subject to obligations under international human rights law (**'IHRL'**) and is party to a number of IHRL treaties.[14] Israel's IHRL obligations apply to its acts in the West Bank, as an occupied territory over which it exercises effective control.[15] While this Part is primarily concerned with Israel's State responsibility, we refer to the Rome Statute of the International Criminal Court (the **'Rome Statute'**) insofar as there are good grounds to believe that corresponding war crimes and crimes against humanity have been committed.[16]

30. The catalogue of Israel's violations of international law in the West Bank is long. We limit ourselves to the following obvious examples.

31. Unlawful annexation of territory contrary to the prohibition of the use of force. Israel's occupation and settlements are contrary to the multiple UN Security Council resolutions calling for Israel's withdrawal from the OPT and/or declaring Israel's occupation of and settlements in those areas to be illegal.[17] The UK government has acknowledged as much.[18] In its *OPT Advisory Opinion*, the ICJ concluded that the prolonged nature of Israel's occupation, the expanding contours of Israeli settlements, Israel's acts in encouraging such expansion, the extension of Israeli civilian law to settlements, and Israel's assertions of sovereignty over the West Bank "*are designed to remain in place indefinitely and to create irreversible effects on the ground*" and amount to

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Netanyahu says will begin annexing West Bank if he wins Israel election, (Haaretz, 7 April 2019); Israeli far-right minister speaks of effort to annex West Bank, (Guardian, 24 June 2024); Read the Full Transcript of Benjamin Netanyahu's Interview With TIME, (Time, 8 August 2024); Far-right Israeli minister orders preparations for West Bank annexation, (Al-Jazeera, 11 November 2024).

[12] 'Report of the Secretary-General on the Implementation of Security Council Resolution 2334 (2016)' (UNSG, 21 March 2025) (the **'UNSG 2025 Report'**), at p 6.

[13] Art 2, § 2, common to the Geneva Conventions; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* [2004] ICJ Rep 136 (the ***'Wall Advisory Opinion'***), at §101. See also *Public Committee against Torture in Israel v Government of Israel* (2006) Case No. HCJ 769/02, § 18.

[14] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 (***'Nuclear Weapons Advisory Opinion'***), at § 25; *General Comment No.31, The Nature of the General Legal Obligation Imposed on State Parties to the Covenant* (HRC, 26 May 2004) CCPR/C/21/Rev.1/Add.13, § 11.

[15] *Wall Advisory Opinion,* §§ 107-113; *OPT Advisory Opinion*, §§ 99-100; Concluding observations on the combined seventeenth to nineteenth reports of Israel, (CERD, 27 January 2020) UCERD/C/ISR/CO/17-19 (***'CERD Israel COs'***), §§ 9-10.

[16] Whereas Israel is not a State Party to the Rome Statute, the State of Palestine acceded to the Rome Statute on 2 January 2015 and the Rome Statute came into force for the State of Palestine on 1 April 2015. The ICC decided, on 5 February 2021 that the Court could exercise jurisdiction over the situation in the State of Palestine and that the territorial scope of its jurisdiction extended to acts committed in Gaza and the West Bank, including Jerusalem. See: Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18, 5 February 2021. That Decision has been appealed by Israel and has been remanded back to the Pre-Trial Chamber for reconsideration by the Appeals Chamber on the ground that the Pre-Trial Chamber had failed to sufficiently consider Israel's challenge to jurisdiction. Despite the appeal, the arrest warrants remain valid. See Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's "Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute", ICC-01/18-422, 24 April 2025.

[17] UNSC Res 242 (1967); UNSC 252 (1968); UNSC Res 446 (1979); UNSC Res 465 (1980); UNSC Res 298 (1971); UNSC Res 2334 (2016).

[18] For example, see: Speech: The expansion of Israeli settlements in the West Bank if wholly unacceptable and illegal: UK statement at the UN Security Council (Gov.uk, 19 September 2024).

annexation of large parts of the OPT.[19] In the opinion of the ICJ, the measures taken by Israel amount to an illegal acquisition of territory under international law, contrary to the prohibition on the use of force under Article 2(4) of the UN Charter and the prohibition of the acquisition of territory by use of force.[20]

32. Transfer of Israel's own population into the West Bank. Israel is committing an ongoing violation of the prohibition of the transfer of its own civilian population into the Occupied Palestinian Territories (sixth paragraph of Article 49 of the Fourth Geneva Convention; **'transfer of population'**).[21] Israel's establishment, encouragement and expansion of settlements in the OPT is a paradigm case of transfer of population. There has been a substantial population transfer of over 700,000 Israelis to around 370 settlements in the West Bank since 1967, which continues to accelerate.[22] Transfer has been direct and indirect.[23] As a State, Israel has effected the transfer of population by *inter alia* constructing, investing in, approving and granting planning permission for the construction of settlements and associated infrastructure, extending the application of Israeli law to such areas, retroactively recognising "*outposts*" (illegal under Israeli domestic law), and providing financial incentives for Israelis to relocate to the West Bank.[24] The transfer of members of Israel's population has occurred in the context of Israel's occupation of the West Bank. The ICJ has concluded that the expansion of settlements in the West Bank is a State policy ostensibly designed to entrench Israel's occupation of the West Bank, engineer the demography of the West Bank, and pave the way for annexation.[25] The ICJ concluded in the *Wall Advisory Opinion* and the *OPT Advisory Opinion* that the establishment of settlements constituted a breach of Article 49 of the Fourth Geneva Convention.[26]

33. Confiscation, appropriation and destruction of property. Israel is responsible for the extensive destruction and appropriation of property by Israel in the West Bank, in violation of Article 46, 52 and 55 of the Hague Regulations, and Articles 53 and 147 of the Fourth Geneva Convention.[27] Significant Palestinian land has been appropriated by a combination of declarations of State land, demolition and land requisition, and the application of discriminatory planning and zoning laws in order to pave the way for the construction and expansion of "*Jewish-only*" settlements.[28] Approximately 35% of Palestinian land has been confiscated and thousands of Palestinians and around 13,000 Palestinian structures have been demolished since 2009, meeting the "*extensiveness*" threshold.[29] The UN Independent International Commission of Inquiry has found that Israel's water and land policies have resulted in a reduction in agricultural land for

[19] *OPT Advisory Opinion*, at § 173.
[20] *OPT Advisory Opinion*, at § 179. See also *Wall Advisory Opinion*, §§ 87 and 139-142, where the ICJ held that Israel's use of force in the West Bank could not be justified by the doctrines of self-defence or necessity.
[21] Any person who orders, solicits or induces, or facilitates, or in any other way contributes to the transfer of parts of Israel's civilian population to the West Bank, would also commit the war crime of transfer of population (Rome Statute, Article 8(2)(b)(viii) and Article 25).
[22] OHCHR 2024 Report, at § 9; Michael Lynk 2022 Report, at § 47; OHCHR 2025 Report, §§ 13-19.
[23] ICC Elements of Crimes, (Article 8(2)(b)(viii).
[24] OHCHR 2025 Report, at §§ 13-19; OHCHR 2023 Report, at §§ 9-15; 2021 UNCTAD Report, at § 40; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: Report of the Secretary-General (UNGA, 25 October 2023) A/78/554 (the **'UNSG 2023 Report'**), at §§ 15-20.
[25] *OPT Advisory Opinion,* at § 173.
[26] *Wall Advisory Opinion*, at § 120; *OPT Advisory Opinion*, §§ 115-119. See also: OHCHR 2023 Report, at § 5; 2022 Independent International Commission of Inquiry Report, § 85.
[27] Further, any person who orders, solicits or induces, or facilitates, or in any other way contributes to the destruction and appropriation of private property in the West Bank, in circumstances where it is not justified by military necessity, will commit the war crime of extensive destruction and appropriation of property contrary to Article 8(2)(a)(iv) of the Rome Statute.
[28] 2022 Independent International Commission of Inquiry Report, at §§ 33 and 39; OHCHR 2023 Report, at § 8; Michael Lynk 2022 Report at § 43. See also, the OHCHR 2023 Report, at §§ 25-33; OHCHR 2025 Report, at §§ 20-22.
[29] Data on demolition and displacement in the West Bank (UN OCHA). See also: 2022 Independent International Commission of Inquiry Report, at § 39. Compare to *Prosecutor v Blaskic*, ICTY (TC), Judgment (3 March 2000), at § 157.

Palestinians from 2,400 sq km to 1,000 sq km.[30] Demolitions and seizures of Palestinian-owned structures are accelerating across the West Bank, with Israeli authorities demolishing or seizing around 1,779 Palestinian-owned structures between 1 November 2023 and 31 October 2024, and 460 structures between 7 December 2024 and 13 March 2025.[31]

34. The expansion of Israeli settlements and the appropriation of Palestinian land are two sides of the same coin. The consequence of the establishment and expansion of Israeli settlements in the OPT has been the extensive destruction and appropriation of Palestinian property.[32] In circumstances where the destruction/appropriation of land and property has been directed at the Palestinian population at large and the apparent objective of appropriation is the establishment and expansion of unlawful settlements, there is no reasonable basis to conclude that the destruction of Palestinian property on such a scale is rendered "*absolutely necessary*" by military operations (for the purposes of Article 53 of the Fourth Geneva Convention). The appropriation of property has been carried out "*wantonly*" in the sense that it occurred on a large scale, was not justified by military necessity, and was intentional and in pursuit of a State policy to establish and expand settlements in the OPT (for the purposes of Article 147 of the Fourth Geneva Convention).[33] Finally, the destroyed and appropriated property was protected under the Geneva Conventions in that it included private property and publicly owned property within the meanings of Articles 53 and 56 of the Fourth Geneva Convention and Article 46 of the Hague Regulations.[34] The ICJ reached that conclusion in the *OPT Advisory Opinion*.[35]

35. Forcible transfer of population. As a matter of policy, Israel's organs and/or agents have committed forcible transfer of Palestinians in the West Bank, in breach of Articles 49 and 147 of the Fourth Geneva Convention.[36] The ICJ reached that conclusion in the *OPT Advisory Opinion*.[37] Around 21,000 Palestinians have been forcibly displaced since 2009 as a result of demolition alone, with countless others displaced through a combination of settler and State violence, requisition and appropriation of land, and the broader environment of coercion.[38] In respect of violence, around 2,000 Palestinians have been killed and 100,000 have been injured by Israeli soldiers and settlers in the West Bank since 1 January 2008.[39] The levels of violence have increased in recent times, particularly since 7 October 2023.[40] Multiple UN reports have found widespread evidence of Israeli security forces failing to prevent and at times supporting violent attacks by settlers against Palestinians.[41] In no sense can the transfer of Palestinians through those means be considered the result of a "*genuine choice*."[42] There is no credible basis on which the totality of forcible transfers could be properly characterised as temporary

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[30] 2022 Independent International Commission of Inquiry Report, at § 72.
[31] 2025 UNSG Report, at p 1; OHCHR 2025 Report, at § 55.
[32] *OPT Advisory Opinion*, at § 120.
[33] *Prosecutor* v *Dario Kordić and Mario Čerkez*, ICTY (TC), Judgment (26 February 2001), at § 346.
[34] *Wall Advisory Opinion*, § 132.
[35] *OPT Advisory Opinion*, § 122. See also: *Wall Advisory Opinion*, §§ 119 and 132.
[36] Any person who has threatened, coerced and used force to ensure the displacement of Palestinians from and within the West Bank will have committed the war crime and, where their conduct is carried out as a matter of policy, the crime against humanity of forcible transfer contrary to Articles 7(1)(d), 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.
[37] *OPT Advisory Opinion*, § 147.
[38] Data on demolition and displacement in the West Bank (UN OCHA). See also: OHCHR 2024 Report, at §§ 20-21 and 25-29.
[39] Data on casualties (UN OCHA).
[40] Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (UNGA, 20 September 2024) A/79/363 (**'Special Committee 2024 Report'**), at § 17; OHCHR 2025 Report, at §§ 35, 40-50; UNSG 2025 Report, at p 3.
[41] OHCHR 2024 Report, at §§ 16-33; OHCHR 2025 Report, at §§ 40-53; UNSG 2023 Report, §§45-74.
[42] *Prosecutor v Stakíc*, ICTY (AC), Judgment (22 March 2006), § 279. At § 281, the Appeals Chamber observed that force is not limited to physical force "*but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power […] or by taking advantage of a coercive environment*." See also: *OPT Advisory Opinion*, § 145.

evacuations justified by protection of the Palestinian population or military imperatives. There is no credible basis upon which to conclude that Israel has transferred or intends to transfer Palestinians back to the lands they have been displaced from, particularly in circumstances where settlements or Israel military infrastructure have now been built upon those lands.[43]

36. Race discrimination. Israel is committing widespread and systematic violations of the prohibition of racial discrimination in the West Bank.[44] Differential treatment between Palestinians and Jewish Israeli settlers goes to the core of Israel's settlement policy and practices in the West Bank:

36.1. Palestinians and Jewish Israelis are subject to dual legal systems in the West Bank constituting a form of *de jure* discrimination, whereby Palestinians are subject to a different and less favourable legal system than Jewish Israeli settlers. Palestinians are subject to military law and the jurisdiction of military courts, whereas Jewish Israeli settlers are subject to Israeli civilian law and courts.[45]

36.2. Jewish Israeli settlers have access to health insurance, national insurance, social services, education, and essential utilities that are far superior to those of Palestinians.[46]

36.3. The practices of land appropriation/destruction are almost exclusively targeted at Palestinian communities. There is differentiation in the application of zoning and planning laws, demonstrated by *inter alia* that (i) *circa* 90% of Palestinian requests for build permits are refused but 30-40% of requests by Jewish Israeli are approved, (ii) demolition orders are five times more likely to be issued for Palestinian structures compared to Israel structures, (iii) punitive demolition orders are used against Palestinians as punishment for criminal offences, but are not applied to settlers, and (iv) only 1% of land in Area C and 13% of land in East Jerusalem are allocated for the construction of Palestinian infrastructure.[47]

36.4. Jewish Israeli settlers are permitted to access settlements in Area C (designated under the Oslo Accords), pass through checkpoints and use Israeli-only roads, which Palestinians are in general terms impeded or prevented from accessing.[48] Israel has put in place around 793 impediments on the movement of Palestinians in the West Bank, through the creation of disconnected enclaves intersected with walls, checkpoints, barricades, military closure zones and "*Israeli-only*" roads.[49] Restrictions on the movement on Palestinians have been expanded since 21 January 2025.[50]

36.5. Practices of widespread administrative (and arbitrary) detention appear to be targeted near exclusively at Palestinian communities. Thousands of Palestinians have been subject to indefinite administrative detention without charge, any presentation of evidence, trial or

[43] Fourth Geneva Convention, Article 49; *OPT Advisory Opinion*, § 146.
[44] Under IHRL, direct discrimination will be established where (i) there is "*differential treatment*" or "*less favourable*" treatment, (ii) based upon a prohibited ground, (iii) which cannot be justified in the sense that it pursues a legitimate aim and is proportionate to that aim: *OPT Advisory Opinion*, §§ 190-191.
[45] *CERD Israel COs,* § 22; *OPT Advisory Opinion*, at § 136.
[46] *CERD Israel COs,* § 22; Michael Lynk 2022 Report at §§ 38-41 and 50.
[47] *Concluding observations on the fourth periodic report of Israel* (CESCR, 12 November 2019) (***'CESCR Israel COs'***), §§ 50-51; *CERD Israel COs,* § 42(a)-(b); *OPT Advisory Opinion*, §§ 210 and 214-220; UNCTAD 2021 Report, at § 33; OHCHR 2024 Report, at § 35; UNSG 2023 Report, at § 33.
[48] *OPT Advisory Opinion*, §§ 199-205; *CERD Israel COs,* § 22; *Concluding observations on the fifth periodic report of Israel* (HRC, 5 May 2022) (***'HRC Israel COs'***), § 36; Michael Lynk 2022 Report, at § 42.
[49] OHCHR 2025 Report, at §§ 33-34; OHCHR 2024 Report, at § 43.
[50] UNSG 2025 Report, at p 3; OHCHR 2025 Report, at § 34.

conviction.[51] 99% of Palestinians tried in Israeli military courts are convicted, indicative of a lack of due process and/or impartiality.[52]

37. Palestinians are a racial group, falling with the broad definition in Article 1 of the ICERD (encompassing "*race, colour, descent, or national or ethnic origin*").[53] The widespread and systematic nature of the abovementioned treatment, routinely explicitly targeted at Palestinians based on their race, makes plain that the differential treatment set out above is based on the prohibited ground of race.

38. The totality of differential treatment cannot be justified. The ICJ has recently confirmed that Israel's security concerns do not provide a carte blanche justification for its violations of international law.[54] Further, to the extent Israel's military/security or economic objectives are aimed at securing, establishing, maintaining or expanding Israeli settlements, they cannot amount to a legitimate security or military aim in circumstances where those settlements in themselves are unlawful under international law.[55] To the extent there are any residual legitimate aims not directly associated with the settlement enterprise, the severity and widespread nature of the discriminatory measures targeted at the Palestinian people at large and on the basis of their identity as a people mean they are vanishingly unlikely to be a proportionate means of achieving any residual legitimate military/security aims.[56] Where the conduct in question is incompatible with the rules of IHL, it cannot amount to justifiable discrimination.[57] We also note that race is a "suspect ground" of discrimination, such that particularly weighty reasons are required when it comes to the justification of measures that differentiate in the treatment of different racial and ethnic groups.[58] For the reasons given, that heavy burden of justification cannot be discharged.

39. Apartheid. The Committee on the Elimination of Racial Discrimination (**'CERD'**) and the ICJ have found that Israel has violated the prohibition of "*racial segregation and apartheid*" under Article 3 of the ICERD.[59] The two concepts are not identical, and neither the CERD nor the ICJ made an express finding of apartheid. Article 3 refers to racial segregation and apartheid, and a breach of Article 3 could refer to racial segregation, apartheid, or both. The topic was left for extensive *discursus* in some of the separate opinions by the Judges in the ICJ.[60] For instance, the President of the ICJ, Judge Salam said:

> "29. Israel's commission of inhumane acts against the Palestinians as part of an institutionalized régime of systematic oppression and domination, and its intention to maintain that régime, are undeniably the expression of a policy that is tantamount to apartheid."

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[51] Michael Lynk 2022 Report at §§ 41 and 50(a). See also: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice (OHCHR, 4 March 2024) A/HRC/55/28, § 75.
[52] Michael Lynk 2022 Report, at § 41.
[53] *OPT Advisory Opinion*, § 190.
[54] *OTP Advisory Opinion*, Declaration of Judges Nolte and Cleveland, § 8; Declaration of Judge Charlesworth, §§ 22-23; Declaration of Judge Tladi, §§ 42-54
[55] *OPT Advisory Opinion*, §§ 205 and 221.
[56] *OPT Advisory Opinion*, § 205.
[57] *OPT Advisory Opinion*, § 213.
[58] *R (SC) v Secretary of State for Work and Pensions* [2021] 3 WLR 428, § 108; *D.H. and Others v Czech Republic* [GC] App no 57325/00 (13 November 2007), §§ 176 and 194.
[59] *CERD Israel COs*, §§21-23; *OPT Advisory Opinion*, §§ 225-229.
[60] *OPT Advisory Opinion*, Declaration of President Salam, § 23; Declaration of Judge Tladi, § 41; and Declaration of Judge Brant. C.f., Separate Opinion of Judge Nolte, §§ 8-19; and Separate Opinion of Judge Iwasawa, §§ 12-13.

40. In coming to that view, President Salam expressly referenced, amongst others, the affirmative expert conclusions on apartheid that had been reached by the UN Special Rapporteurs.[61] Judge Tladi, the South African Judge, agreed with Judge Salam that Israeli practices in the OPT constituted apartheid.[62] Declaring a somewhat privileged and painful understanding of the issues as a black South African, he wrote: "*Whether one speaks of the discriminatory detention practices, including detention without trial […], residence permit system, restrictions of movement or demolition of property, deprivation of land, or the encircling of Palestinian communities into enclaves reminiscent of South African Bantustans from which I come, it is impossible to miss the similarities*."[63] It "*is difficult*", said Judge Tladi, "*to see how anyone can look at the policies and practices that have been detailed before the Court and find that, when taken together, the systemic character of these segregationist acts, including the explicit, legislated policy that self-determination in Palestine is reserved for Jewish persons only, do not reveal the purpose of dominating the Palestinians.*"[64]

41. There are thus at least good grounds to think that Israel is violating the prohibition of apartheid in the West Bank. As to its legal elements (as defined in Article 3 of ICERD and Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid (**'the Apartheid Convention'**)):

    41.1. An institutionalised regime of systematic oppression and domination exists in the West Bank on account of *inter alia*: (i) the juridical separation of Palestinians and Jewish Israeli settlers;[65] (ii) the physical separation of Palestinians and Jewish Israeli settlers;[66] (iii) the regularity and extent of differential treatment highlighted above; and (iv) the permanence of the regime. An element of differential treatment and juridical distinction could have been explained as a byproduct of a short-term and temporary occupation, but that is tenuous in circumstances where occupation has been ongoing for almost 60 years, there is no sign that Israel intends to withdraw from the West Bank, and is taking steps to consolidate and expand its occupation of the West Bank. There exists a permanent state of affairs consistent with an apartheid regime.[67]

    41.2. It follows from the preceding analysis that inhumane acts have been committed against Palestinians as part of the settlement enterprise: namely, acts of forcible transfer, extensive property destruction, widespread restrictions on freedom of movement, arbitrary detention and violence against Palestinians.[68]

    41.3. There are compelling grounds to conclude that those inhumane acts were committed for the purpose of establishing or maintaining the institutionalised regime of systematic oppression and domination that exists in the West Bank. There has been a growing chorus

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[61] *OPT Advisory Opinion,* Declaration of President Salam, § 30: "*This is also the conclusion reached by United Nations Special Rapporteurs on the Occupied Palestinian Territory since 2007 (see, for example, A/HRC/53/59 of 28 August 2023, A/HRC/49/87 of 21 March 2022, A/HRC/40/73 of 30 May 2019, A/HRC/25/67 of 13 January 2014, A/HRC/16/72 of 10 January 2011, A/HRC/4/17 of 29 January 2007)*."

[62] *OPT Advisory Opinion,* Judge Tladi, Separate Opinion, §§ 37 and 39.

[63] *OPT Advisory Opinion,* Judge Tladi, Separate Opinion, § 37.

[64] *OPT Advisory Opinion,* Judge Tladi, Separate Opinion, § 40. See further: Jinan Bastaki, Whose reasonable inference? The ICJ's Advisory Opinion and the threshold for apartheid's mens rea (EJIL Talk!, 22 August 2024).

[65] *OPT Advisory Opinion*, § 228; *CERD Israel COs*, § 22. See also: Michael Lynk 2022 Report, §§ 38-41.

[66] *OPT Advisory Opinion*, § 227. See also: Michael Lynk 2022 Report, § 42.

[67] Michael Lynk 2022 Report, at §§ 38-44. John Dugard and John Reynolds, Apartheid, International Law, and the Occupied Palestinian Territory (2013) EJIL 24, p. 912. See also: John Dugard, Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine (Jacana Media, 2018), pp 206 to 232. Jimmy Carter, Palestine: Peace Not Apartheid (2006, Simon & Schuster), p 215

[68] As to what can constitute an inhumane act, the case law under Article 7(1)(h) of the Rome Statute, the ICTY's case law on inhumane acts, and the acts specified in Article 2 of the Apartheid Convention provide guidance.

of human rights experts and Israeli, Palestinian and international human rights organizations that have reached findings of apartheid. We do not detail them here – they are a matter of public record.[69]

41.4. The crux is that the overarching intention behind the commission of inhumane acts has been the furtherance of the establishment, maintenance and expansion of Israeli settlements, which necessarily entails the domination of Palestinians in the West Bank (see paragraph 28 above). As Professor Michael S. Lynk put it in his 2022 Report:

> "This is a two-sided coin: the plans for more Jewish settlers and larger Jewish settlements on greater tracts of occupied land cannot be accomplished without the expropriation of more Palestinian property together with harsher and more sophisticated methods of population control to manage the inevitable resistance. Under this system, the freedoms of one group are inextricably bound up in the subjugation of the other."[70]

42. Right to self-determination. In the *OPT Advisory Opinion*, the ICJ rightly concluded that Israel's establishment and maintenance of settlements in the West Bank is a violation of the Palestinian people's right to self-determination (under Article 1(2) of the UN Charter and common Article 1 of the ICCPR and ICESCR). The ICJ's core reasoning is that "*Israel's annexation of large parts of the [OPT] violates the integrity of the [OPT], as an essential element of the Palestinian people's right to self-determination*."[71] Israel's fragmentation of the West Bank and restrictions on free movement "*undermine the integrity of the Palestinian people in the [OPT], significantly impeding the exercise of its right to self-determination*".[72] In exploiting natural resources in the OPT for the benefit of settlements, Israel has breached its "*obligation to respect the Palestinian people's permanent sovereignty over natural resources*" (an element of the right to self-determination).[73] Israel's suite of policies and practices in the West Bank has "*obstruct[ed] the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development*" (a "*key element*" of the right to self-determination).[74] "*The prolonged character of Israel's unlawful policies and practices aggravates their violation of the Palestinian people's right to self-determination.*"[75]

(2) The Gaza Strip

[69] Al-Haq, BADIL Resource Center for Palestinian Residency and Refugee Rights, the Palestinian Center for Human Rights, Al Mezan Centre for Human Rights, Addameer Prisoner Support and Human Rights Association, the Civic Coalition for Palestinian Rights in Jerusalem, the Cairo Institute for Human Rights Studies, and Habitat International Coalition, Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports (10 November 2019), p 1; Michael Sfard, The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion (Yesh Din, June 2020), pp 6, 57. A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid (B'Tselem, 12 January 2021); A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution (Human Rights Watch, April 2021), p 10; Apartheid in the Occupied West Bank: A Legal Analysis of Israel's Actions (Harvard Law School International Human Rights Clinic and Addameer, 28 February 2022), p. 1; Amnesty International Apartheid Report, p 267. See most recently: for example, the study of John Reynolds, Apartheid and International Law in Palestine in Nada Kiswanson & Susan Power (eds), *Prolonged Occupation and International Law. Israel and Palestine* (Brill 2023), p 104.

[70] Michael Lynk 2022 Report, at § 54.

[71] *OPT Advisory Opinion*, § 238.

[72] *OPT Advisory Opinion*, § 239.

[73] *OPT Advisory Opinion*, § 240.

[74] *OPT Advisory Opinion*, §§ 241-242.

[75] *OPT Advisory Opinion*, § 243.

43. Since 2006, following the withdrawal of Israel's military forces and settlers in 2005, Israel has imposed a "*blockade*" over Gaza, described by Professor Michael S. Lynk as "*the indefinite warehousing of an unwanted population of 2 million Palestinians*."[76] The blockade restricted a population of 2.1 million people to a narrow strip of land with limited access to resources, crippling the local economy and resulting in 80% of the population being dependent on international assistance.[77]

44. Following the attacks by Hamas on 7 October 2023, Israel has launched a large-scale military operation in Gaza, by land, air and sea.[78] Israel's military offensive has caused immense human suffering. The humanitarian situation caused by Israel's military offensive has been summarised by the ICJ at different points of the conflict. In its provisional measures order of 26 January 2024, the ICJ found that Israel's military operation in Gaza "*is causing massive civilian casualties, extensive civilian infrastructure and the displacement of the overwhelming majority of the population in Gaza*."[79] In its order of 28 March 2024, the ICJ observed that "*the catastrophic living conditions of the Palestinians in the Gaza Strip have deteriorated further, in particular in view of the prolonged and widespread deprivation of food and other basic necessities to which the Palestinians in the Gaza Strip have been subjected*."[80] In its order of 24 May 2024, the ICJ observed that the "*catastrophic humanitarian situation*" had deteriorated further again since March 2024.[81]

45. While a ceasefire agreement between Hamas and Israel, which began on 19 January 2025, provided some respite, Israel blocked the entry of commercial supplies and humanitarian aid into Gaza on 2 March 2025, and then resumed its military offensive on 18 March 2025.[82] As Tom Fletcher, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, put it in his briefing to the UN Security Council on 16 July 2025: "*We are beyond vocabulary to describe conditions in Gaza*": "*Food is running out. Those seeking it risk being shot*"; "*Starvation rates among children hit their highest levels in June*"; "*The health system is shattered*"; and the "*[w]ater, sanitation systems are broken*".[83] On 29 July 2025, the UN Secretary-General added: "*Palestinians in Gaza are enduring a humanitarian catastrophe of epic proportions. This is not a warning. It is a reality unfolding before our eyes*."[84]

46. Our assessment is that Israel has committed widespread violations of international law in the conduct of its military offensive. Despite the withdrawal of Israel's military presence from Gaza in 2005, Israel remains bound by obligations under the law of occupation.[85] The ICJ found in the

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[76] Michael Lynk 2022 Report at § 45.

[77] Developments in the economy of the Occupied Palestinian Territory (2023) (UNCTAD, 11 September 2023), TD/B/EX(74)/2, at §§ 36 and 39; Gaza Strip – The Humanitarian Impact of 15 Years of the Blockade (UN OCHA, June 2022).

[78] Independent International Commission of Inquiry 2024 Report, § 38.

[79] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel), Provisional Measures, Order of 26 January 2024* (***'South Africa v Israel January 2024 Provisional Measures'***), at § 13.

[80] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order of 26 January 2024 Indicating Provisional Measures, Order of 28 March 2024* (***'South Africa v Israel (March 2024 Provisional Measures)'***), at § 18.

[81] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order of 28 March 2024 Indicating Provisional Measures, Order of 28 May 2024* (***'South Africa v Israel (May 2024 Provisional Measures)'***), at § 28.

[82] UNSG 2025 Report, at p 3.

[83] Mr. Tom Fletcher, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Briefing to the Security Council on the Middle East (OCHA, 16 July 2025).

[84] Citing Integrated Food Security Phase Classification Alert that Gaza is on Brink of Famine, Secretary-General Stresses 'Trickle of Aid Must Become an Ocean' (UN Press, 29 July 2025).

[85] The conflict in Gaza may be classified as an IAC, in so far as it takes place in the context of a belligerent occupation of Gaza, and a NIAC, insofar as it applies to the conflict between Israel and Hamas, a non-State armed group (common Articles 2 and 3 to Geneva Conventions). See further: Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State

OPT Advisory Opinion that Israel continued to exercise sufficient elements of authority over Gaza through its blockade so as to retain its status as under belligerent occupation.[86] That conclusion has only strengthened since 7 October 2023.

47. Due to the distinction between *jus ad bellum* and *jus in bello*, it is no answer whether and to what extent Israel had a right to self-defence following the attacks by Hamas against Israel of 7 October 2023. Self-defence justifying a use of force under international law provides no justification for breaches of IHL by Israel or Hamas, or the commission of war crimes, crimes against humanity and/or genocide. .

48. It is beyond the scope of this Position Paper to provide a definitive analysis of the IHL compliance of individual military operations. That said, the available evidence demonstrates that Israel has systematically launched attacks which do not conform with the fundamental principles of IHL in the course of its military offensive, and that Israel's organs and/ or agents have committed a suite of war crimes as part of the conduct of hostilities in Gaza. This assessment is consistent with the ICJ's provisional measures orders and the findings underpinning them. It is also consistent with the ICC Pre-Trial Chamber's unanimous decision on 21 November 2024 to issue arrest warrants for Benjamin Netanyahu and Yoav Gallant on the basis that there are reasonable grounds that each bear criminal responsibility for the following crimes as co-perpetrators for committing the acts jointly with others: the war crime of starvation as a method of warfare; the crimes against humanity of murder, persecution, and other inhumane acts; and that the Chamber also found reasonable grounds to believe that Mr Netanyahu and Mr Gallant each bear criminal responsibility as civilian superiors for the war crime of intentionally directing an attack against the civilian population.

49. Direct and indiscriminate attacks against civilians and civilian objects. Israel has systematically conducted indiscriminate and direct attacks against civilians and civilian objects, in breach of the fundamental principles of distinction,[87] proportionality,[88] military necessity[89] and precaution under IHL.[90] There are four principal factors supporting that conclusion.

50. The first is the scale of civilian casualties and the destruction to civilian homes and objects, which gives rise to a strong *prima facie* case that Israel's military offensive has involved direct and indiscriminate attacks against the civilian population:

    50.1. As of 27 August 2025, over 62,000 Palestinians have been killed, with over 156,000 injured. Thousands more are buried under the rubble. While it is not possible to ascertain how many of those killed are combatants or civilians directly participating in hostilities, the high proportion of women, children and elderly persons killed (over 50% of fatalities)

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of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant (ICC Press Release, 21 November 2024) (**'ICC Arrest Warrant Press Release'**). See also: Marko Milanovic, Lessons for human rights and humanitarian law in the war on terror: comparing Hamdan and the Israeli Targeted Killings case (International Review of the Red Cross, June 2007) Vol 89, No 866.

[86] *OPT Advisory Opinion*, at §§ 93-94.

[87] Under the principle of distinction, direct attacks against civilians are prohibited at all times and in all situations of armed conflict (Rule 3, ICRC Rules). See also: *Nuclear Weapons Advisory Opinion,* §§ 78-79.

[88] IHL recognises that in certain circumstances civilian deaths will be unavoidable (sometimes referred to as 'collateral damage'). Provided that the attack is a 'proportionate' means of achieving a military objective, the attack will be lawful. However, "*launching an attack which may be expected to cause incidental loss of civilian life, [or] injury to civilians […] that is excessive to the concrete and direct military advantage anticipated is prohibited*" (Rule 14, ICRC Rules).

[89] Under IHL, only measures that are necessary to a legitimate military purpose and are otherwise not prohibited under IHL are permitted.

[90] Parties to a conflict must take all feasible precautions as regards *inter alia* the selection of the means, targets and methods of an attack to avoid, and in any event minimise, incidental loss of civilian life, injury to civilians, and damage to civilian objects (Rule 15, ICRC Rules).

strongly suggests there has been widespread killings of civilians.[91] In an analysis published on 30 September 2024, Oxfam reported that "[*m]ore women and children have been killed in Gaza by the Israeli military over the past year than the equivalent period of any other conflict over the past two decades*."[92] On 21 August 2025, it was reported that figures from a classified Israeli military intelligence database indicate 83% of Palestinians killed by Israeli forces in Gaza have been civilians.[93]

50.2. Significant proportions of *prima facie* civilian objects have been damaged or destroyed: 92% of housing units, 89% of water and sanitation sector assets, 88% of commercial structures, 83% of cropland, and 72% of Gaza's fishing fleet.[94] By as early as 26 January 2024, the World Bank, EU and UN's joint 2024 Interim Damage Assessment estimated that more than 60% of Gaza's electricity distribution network had been damaged or destroyed.[95] As of May 2024, the bombardment of Gaza has created 39 million tons of debris, releasing high levels of carcinogenic asbestos and other hazardous substances.[96] The UNEP has assessed that the amount of debris created in Gaza by July 2024 was 14 times more than the cumulative amount of debris generated by all conflicts since 2008.[97] While it is not possible to discount the possibility that a proportion of the damage may have been caused by Hamas, Amnesty International has assessed that "*there is no doubt that Israeli forces were responsible for a significant part of the damage and destruction, including through their aerial campaign, bulldozing of land and property and through the use of controlled demolitions*."[98] The OHCHR observed that, "*it is difficult to conceive how such levels of civilian harm were justifiable, especially as such strikes not only killed individuals but also destroyed fundamental social structures and support networks of Palestinians in Gaza, raising inferences that the IDF also intended to weaken the overall cohesion of the Palestinian community in Gaza*."[99]

50.3. Attacks on hospitals and primary healthcare facilities have been widespread. As of 22 May 2025, the WHO reported 720 health attacks, impacting 125 health facilities and damaging 34 hospitals.[100] An analysis by Forensic Architecture found that, between 7 October 2023 and 1 August 2024, 31 of 36 hospitals had been targeted by Israeli military attacks, 11 had

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[91] Reported impact snapshot | Gaza Strip (UN OCHA, 30 July 2025), updated as at 26 August 2025 (see Humanitarian Situation Update #315 | Gaza Strip, https://www.ochaopt.org/content/humanitarian-situation-update-315-gaza-strip). See also: Special Committee 2024 Report, at § 9; Independent International Commission of Inquiry 2024 Report, § 43. There is cogent evidence to suggest that violent mortality and non-violent excess deaths significantly exceed official figures, and are in the region of 75,200 and 8,540 deaths respectively: Michael Spagat and Others, Violent and Nonviolent Death Tolls for the Gaza War: New Primary Evidence (medRxiv, 22 July 2025).

[92] More women and children killed in Gaza by Israeli military than any other recent conflict in a single year (Oxfam, 30 September 2024). See also: 'You Feel Like You Are Subhuman': Israel's Genocide Against Palestinians in Gaza' (Amnesty International, 5 December 2024) (**'Amnesty International Genocide Report'**), at p 16. Set against those numbers of fatalities is the CIA's estimate that Hamas only has 20,000-40,000 fighters: 2024 Independent International Commission of Inquiry Report, § 44.

[93] https://www.theguardian.com/world/ng-interactive/2025/aug/21/revealed-israeli-militarys-own-data-indicates-civilian-death-rate-of-83-in-gaza-war

[94] Reported impact snapshot | Gaza Strip (UN OCHA, 30 July 2025). See also: 'Gaza and West Bank: Interim Rapid Damage and Needs Assessment' (World Bank, EU and UN, 18 February 2025) (the **'IRDNA'**); A Spatial Analysis of the Israeli Military's Conduct in Gaza since October 2023 (Forensic Architecture, 15 October 2024) (**'Forensic Architecture Report'**), Chapter 5: Destruction of Medical Infrastructure, p 340.

[95] Gaza Strip: Interim Damage Assessment (World Bank, EU and UN, 29 March 2024), at p 15.

[96] 2024 Special Committee Report, at § 34; MSF Report, at p 32.

[97] Gaza: Debris Generated by The Current Conflict Is 14 Times More Than the Combined Sum of All Debris Generated by Other Conflicts Since 2008 (UNEP, 1 August 2024).

[98] Amnesty International Genocide Report, at pp 125-126.

[99] 'UPDATE REPORT Six-month update report on the human rights situation in Gaza: 1 November 2023 to 30 April 2024' (OHCHR, 8 November 2024), p 12; UNRWA Situation Report #153 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem (UNRWA, 4 January 2025).

[100] 'oPT Emergency Situation Update, Issue 59' (WHO, 22 May 2025).

undergone a siege, and 10 had been invaded by Israeli personnel.[101] The report concluded that "*the timing of the Israeli military's attacks on hospitals correlates with the presence of displaced civilians at those hospitals*."[102] MSF teams in Gaza have "*witnessed a pattern of attacks against hospitals: hospitals were besieged, targeted by airstrikes or shelling and stormed by ground troops, ambulances were hit, patients and staff were killed*."[103]

50.4. At least 495 aid workers have been killed. One example is that on 30 March 2025, the bodies of 15 emergency responders and the ambulances they were travelling in were found in a mass grave, having been killed by Israeli forces on 23 March 2025 while trying to assist civilians.[104]

50.5. Similarly, the UN Independent International Commission of Inquiry recently found that Israel's attacks in Gaza have "*effectively destroyed the education system*", causing damage to over 70% of school buildings, and have created conditions in which over 658,000 children in Gaza have had no schooling for 18 months.[105] Between 7 October 2023 and 25 February 2025, 62% of school buildings used as shelters were directly hit, resulting in significant casualties.[106] The Commission's report details a catalogue of attacks on educational facilities for which there was no discernible proportionate military objective, including instances where schools were destroyed through controlled demolitions and no combatants were present.[107] The Commission concluded that many of the attacks under investigation were deliberate, unnecessary and constituted violations of the principles of necessity, distinction, precaution and proportionality under IHL.[108]

50.6. The scale and intensity of attacks against children has placed Israel on the UN list of shame for abuses against children in war.[109] Every day, on average, ten children in Gaza have been forced to have one or both legs amputated as a result of their injuries.[110] The UN Secretary-General has stated that Gaza has "*become a graveyard for children*."[111] The Independent UN Commission has recorded that "*[m]edical professionals told the Commission that they have treated children with direct gunshot wounds, indicating direct targeting of children*."[112] Publicly available testimonies by medical personnel corroborate this, with 44 doctors, nurses and paramedics having reported treating multiple instances of pre-teen children being shot in the head or chest.[113] Doctors have testified that children have been targeted by quadcopters while injured and by snipers.[114] It is difficult to

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[101] Forensic Architecture Report, Chapter 5: Destruction of Medical Infrastructure, p. 340.
[102] Forensic Architecture Report, Chapter 5: Destruction of Medical Infrastructure, p 417; and fig 5.47, p 418.
[103] MSF Report, at p 8. See also: Amnesty International Genocide Report, at pp 130-131.
[104] Gaza has become a "mass grave" for Palestinians and those helping them (MSF, 16 April 2025); Reported impact snapshot | Gaza Strip (UN OCHA, 30 July 2025).
[105] Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, (UNGA, 6 May 2025) A/HRC/59/26 (the **'Independent International Commission of Inquiry 2025 Report'**), at § 76.
[106] Independent International Commission of Inquiry 2025 Report, at § 7.
[107] Independent International Commission of Inquiry 2025 Report, at §§ 12-26.
[108] Independent International Commission of Inquiry 2025 Report, at §§ 78-80.
[109] Report of the Secretary-General: Children and armed conflict (UNGA, 17 June 2025) A/79/879-S/2025/247, at p 36.
[110] UNRWA Press conference: Update on the Occupied Palestinian Territory (UNRWA, 25 June 2024).
[111] Gaza 'Becoming a Graveyard for Children', Warns UN Secretary-General, Calling for Humanitarian Ceasefire (UN, 6 November 2023).
[112] 2024 Independent International Commission of Inquiry Report, § 36.
[113] Feroze Sidhwa, "65 Doctors, Nurses and Paramedics: What We Saw in Gaza", *New York Times* (9 October 2024). "Response to Recent Criticisms on New York Times Opinion", *New York Times* (15 October 2024).
[114] Dania Akkad, "Israeli drones shooting children in Gaza deliberately 'day after day', UK surgeon tells MPs", *Middle East Eye* (13 November 2024); and Burak Bir, "Israeli snipers targeted children with 'single shot to the head' in Gaza: UK surgeon", *Anadolu Agency* (13 November 2024). Original testimony available at: UK Parliament, Parliament Live TV, International Development Committee Hearings (12 November 2024).

conceive of a legitimate military objective that could justify the targeting of pre-teen or unarmed children.

51. Against that background, compelling evidence would be required to establish that Israel's operations were directed at military objectives; that each military attack against civilian objects and/ or resulting in civilian casualties was necessary to achieve a legitimate military objective; the incidental harm to civilians and civilian objects was proportionate to such objectives; and that it took effective precautions at all material times. It is fanciful to believe that such justification could account for the totality of the destruction and deaths outlined.

52. The second factor is the means of warfare employed by Israel, which create inherent difficulties in demonstrating compliance with the principles of distinction, proportionality and precaution. By as early as February 2024, Israel had dropped over 25,000 tons of explosives,[115] including "*dumb*" (unguided) bombs; heavy bombs (weighing up to 900kg, with a lethal radius of 360m and are expected to cause injury at up to an 800m radius); and "*bunker buster*" bombs.[116] These bombs have been dropped in one of the most densely populated areas of the world. The low accuracy and precision of such bombs, coupled with their wide destructive radius, has had inevitable indiscriminate impacts on the civilian population in Gaza.[117] There are credible reports that the Israeli military had lowered the criteria for selecting targets, increased its previously accepted ratio of civilian to combatant casualties, and has deployed artificial intelligence to rapidly generate targets with reduced human review.[118] In the view of the UN Special Committee, *"[t]his approach systemically disregards Israel's obligation to distinguish between civilians and combatants and to take adequate safeguards to prevent civilian deaths*."[119] On the basis of statements by public officials and decision-makers, the International Independent Commission of Inquiry found that "*the Government of Israel has given Israeli security forces blanket authorization to target civilian locations in Gaza widely and indiscriminately*."[120] The use of such means of warfare to a significant extent explains the scale of devastation, fatalities and damage to *prima facie* civilian objects.[121]

53. The third is that while there will likely have been circumstances where residential buildings have met the definition for military objects by virtue of their use by Hamas,[122] that does not provide a wholesale justification for disproportionate infliction of harm on civilians. The presence of combatants does not automatically render civilian objects (still less entire neighbourhoods) military objects.[123] The OHCHR, the Independent International Commission of Inquiry, Human Rights Watch and Amnesty International have investigated a series of specific attacks where heavy bombs were dropped on residential buildings with no discernible or significant military objectives or prior warning, killing significant numbers of civilians.[124]

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[115] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese (25 March 2024) A/HRC/55/73 (the **'Francesca Albanese March 2024 Report'**) at § 24; 2024 Special Committee Report, at § 34.

[116] Francesca Albanese March 2024 Report, at § 24; Amnesty International Genocide Report, at pp 120-121 and 207; Indiscriminate and disproportionate attacks during the conflict in Gaza (October – December 2023), (OHCHR, 19 June 2024).

[117] Amnesty International Genocide Report, at pp 120-121.

[118] Special Committee 2024 Report, at § 11.

[119] Special Committee 2024 Report, at § 11.

[120] Independent International Commission of Inquiry 2024 Report, § 44.

[121] By comparison, in *Prosecutor v Galić,* ICTY (TC), Judgment (5 December 2003), the ICTY found that attacking a group of 200 spectators at a football tournament, including women and children but also a "significant" number of soldiers, was indiscriminate in circumstances where 10 people were killed and 100 were injured.

[122] Amnesty International Genocide Report, p 61.

[123] International Humanitarian Law and the Challenges of Contemporary Armed Conflicts (ICRC), p.19.

[124] Thematic report – Indiscriminate and disproportionate attacks during the conflict in Gaza (October – December 2023) (OHCHR, 19 June 2024) (**'OHCHR Heavy Bomb Report**'), pp 13-14; Amnesty International Genocide Report, pp 106-121;

54. Fourth, numerous factors point to Israel's targeting of civilians or civilian objects as being intentional, or at least reckless: (i) it is highly likely that the Israeli military had the capacity to use more targeted weapons and munitions with a more limited damage radius in pursuing their military objectives, but elected not to do so;[125] (ii) the IDF is a sophisticated military, with significant experience of conducting hostilities in Gaza, and the factual circumstances which gave rise to the indiscriminate effects of Israel's use of heavy bombs were obvious; (iii) the implausibility of the majority of targets being military objects having regard to the number of Hamas fighters, the civilian objects that have been destroyed, and the evidence of widespread instances where there were no discernible military objects; (iv) reliable reports that the Israeli military had explicitly lowered its criteria for selecting targets; (v) evidence of Israel's apparent practice of routinely attacking "*safe zones*" and evacuation routes; and (vi) the contemporaneous statements of officials, such as Yoav Gallant, "*releas[ing] all constraints*" from the Israeli military in the conduct of hostilities.[126] Amnesty International has concluded that "*it strains belief*" that "*Israel's direct attacks on civilians and civilian objects and indiscriminate strikes […] could be anything other than intentional after so many months of recurring attacks, in defiance of legally binding orders by the ICJ, multiple resolutions of the UN Security Council and numerous warnings*."[127] The intentional targeting of civilians and civilian objects cannot be reconciled with the principle of distinction.

55. For those reasons, our assessment is that Israel has and continues to direct attacks against civilians and civilian objects and/or deliberately conducts indiscriminate attacks against civilians, in violation of the Geneva Conventions and customary IHL.[128] On 2 September 2024, the Secretary of State for Business and Trade decided to suspend licences of the export of arms to Israel, on the grounds that there is a "*clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law*".[129] Further, the ICC has found that there are reasonable grounds to believe that Prime Minister Benjamin Netanyahu and former Minister of Defence, Yoav Gallant, are responsible, as civilian superiors, for the war crime of intentionally directing attacks against the civilians in Gaza.

56. Extensive destruction of property. For broadly the same reasons as set out above, Israel is responsible for the extensive destruction of property by Israel in Gaza (Article 46, 52 and 55 of the Hague Regulations, and Articles 53 and 147 of the Fourth Geneva Convention).[130]

57. Forcible transfer of population. Israel has unlawfully and forcibly transferred the Palestinian population within Gaza, in grave breach of the Geneva Conventions (Articles 49(1) and 85(4) of the Fourth Geneva Convention).[131] Israel's military offensive has caused massive and involuntary displacement of persons. Over 90% of Palestinians have been internally displaced, often

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Gaza: Israeli Strike Killing 106 Civilians an Apparent War Crime (Human Rights Watch, 4 April 2024); Independent International Commission of Inquiry 2024 Report, § 46;

[125] OHCHR Heavy Bomb Report, p 12.

[126] We are fighting human animals" said Israeli Defence Minister Yoav Gallant (Youtube, 9 October 2023); Gallant: Israel moving to full offense, Gaza will never return to what it was (Times of Israel, 10 October 2023); We're focused on maximum damage': ground offensive into Gaza seems imminent (Guardian, 10 October 2023).

[127] Amnesty International Genocide Report, p 281.

[128] The corresponding war crimes include intentionally launching attacks with knowledge that they would cause incidental death, injury or damage excessive to the anticipated military advantage, and intentionally attacking civilians or civilian objects (Article 8(2)(b)(i), (ii) and (iv) of the Rome Statute).

[129] *Al-Haq* at § 1.

[130] Further, any person who orders, solicits or induces, or facilitates, or in any other way contributes to the destruction and appropriation of private property, in circumstances where it is not justified by military necessity, will commit the war crime of extensive destruction and appropriation of property contrary to Article 8(2)(a)(iv) of the Rome Statute.

[131] Independent International Commission of Inquiry 2024 Report, §§ 84-85. Further, there are reasonable grounds to believe that members of Israel's military, and relevant commanders, have committed the crime against humanity and war crime of forcible transfer (Articles 7(1)(d), 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).

multiple times, as a result of either fleeing Israel's aerial bombardment, having their homes destroyed, or complying with Israel's evacuation orders.[132] Over 767,800 people have been displaced since 18 March 2025.[133] On 19 May 2025, the IDF announced the start of an extensive new ground operation, "Operation Gideon's Chariots', one of the objectives of which is "concentrating and moving the population".[134] In the Knesset on 11 May 2025, Benjamin Netanyahu explained an aim of the operation in the following terms: "We are demolishing more and more [of their] homes, they have nowhere to return to. The only obvious result will be the desire of the Gazans to emigrate outside the Strip".[135] In August 2025, it was reported that Israel had taken a decision to take full control of Gaza City and to forcibly displace its population, with Israeli military escalating attacks on residential buildings and entire blocks in Gaza City.[136] Reports indicate that this is part of a larger plan to take full control of the entirety of the Gaza Strip.[137] In no tenable sense can such displacement be considered the product of "*genuine choice*."[138] For the reasons set out at paragraphs 50-55 above, it is difficult to conceive of a military justification for the totality of displacement caused by military attacks and property destruction. In particular, there is no tenable basis upon which the totality of displacement of caused by evacuation orders could be justified as a "*total or partial evacuation*" permitted in order to protect the security of the Palestinian people (Article 49(2), Fourth Geneva Convention). The scale, frequency and short notice of evacuation orders, and the shifting and shrinking character of "*safe zones*" in Gaza, speaks to the opposite effect.[139] Since 18 March 2025, Israel has issued at least 55 evacuation orders, covering 81% of Gaza. 86% of Gaza under active orders and/or within "Israeli-militarised zones".[140] The effect of the evacuation orders has not been to protect the Palestinian population, but to inspire mass panic, cause displacement and to inflict conditions calculated to bring about the destruction of Palestinians in Gaza, as nearly two million people are moved around into perennially overcrowded and unsanitary camps, complicating the delivery of humanitarian assistance.[141] Moreover, the Israeli military has routinely attacked asserted safe zones and evacuation routes, removing the pretence of safety,[142] and there is evidence that the ultimate aim of the Israeli Government is the permanent removal of Palestinians from Gaza. Thus, the OHCHR has concluded that the increased issuance of evacuation orders has resulted in forcible transfer, and has voiced serious concerns that the

[132] UNRWA Situation Report #167 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem (UNRWA, 17 April 2025). Compare to the use of evacuation orders in *Prosecutor v Krstíc*, ICTY (TC), Judgment (2 August 2001), § 530.

[133] Humanitarian Situation Update #309 | Gaza Strip (OCHA, 30 July 2025).

[134] IDF announces start of 'Operation Gideon's Chariots' Gaza ground offensive (ABC, 19 May 2025).

[135] הכנסת ועדת את הדהימה מלך הר סון לימור :נתניהו דברי את אהבה שלא לאחר (Maariv Online, 11 May 2025).

[136] UN OHCHR, *UN Human Rights in Occupied Palestinian Territory: Israeli plan to take full control of Gaza city will lead to further killings and displacement* (20 August 2025), https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-occupied-palestinian-territory-israeli-plan-take-full-control-gaza-city-will-lead-further-killings-and-displacement-enar

[137] Stav Levaton, Emanual Fabian, "Netanyahu said set to order full takeover of Gaza, despite IDF qualms, risk to hostages", *Times of Israel* (5 August 2025), https://www.timesofisrael.com/netanyahu-reportedly-looking-to-order-full-takeover-of-gaza-despite-idf-qualms/; Jacob Magid, "Bucking IDF warnings, security cabinet approves Netanyahu plan to conquer Gaza City", *Times of Israel* (8 August 2025), https://www.timesofisrael.com/bucking-idf-warnings-security-cabinet-approves-netanyahus-plan-to-conquer-gaza-city/.

[138] *Stakíc* (AC), § 279. See also: *Krstíc* (TC), at § 530.

[139] Francesca Albanese October 2024 Report, at § 17. See also: Amnesty International Genocide Report, at pp 132-133.

[140] Humanitarian Situation Update #306 | Gaza Strip (OCHA, 16 July 2025).

[141] Gaza: Increasing Israeli "evacuation orders" lead to forcible transfer of Palestinians (OHCHR 11 April 2025).

[142] For example, in the first six-weeks of the military offensive, 42% of the heavy bombs dropped on Gaza were dropped in designated safe zones in southern areas. And by 22 January 2024, 42% of Palestinians killed in Gaza were killed in safe zones: Francesca Albanese March 2024 Report, at §§ 79-80. See also: Independent International Commission of Inquiry 2024 Report, § 110.

intention behind its recent order in southern Gaza has been to permanently remove the civilian population in order to create a buffer zone.[143]

58. Starvation as a method of warfare. Israel has breached the prohibition of deliberate starvation of civilians as a method of warfare, and any form of violence against objects indispensable for the survival of the population (Articles 55 and 59 of the Fourth Geneva Convention).[144] There is an overwhelming body of evidence that the Israeli military has deprived civilians in Gaza of the "*objects indispensable to their survival*":

58.1. Civilians have been deprived of the indispensable objects to the extent that it has endangered the survival of the population. Severe food and water shortages have been pervasive since 7 October 2023, with the IPC considering that 100% of the population is projected to face high levels of acute food insecurity, 1 million people are currently facing emergency levels of food insecurity, and that 470,000 people face catastrophic levels of food insecurity.[145] Hospitals, bakeries, desalination plants, schools and other civilian infrastructure have stopped functioning at alarming rates. The sanitation and wastewater treatment system has collapsed. The great majority of cropland, meat and dairy producing livestock, Gaza's fishing fleet, water infrastructure and electricity distribution network has been damaged or destroyed.[146] In an open letter to EU Heads of State, dated 16 June 2025, MSF International President Dr Christos Christou and Secretary General Christopher Lockyear described "*the calculated evisceration of the very systems that sustain life*" in Gaza, and daily atrocities unfolding before their eyes, "*brazen in their brutality*", including consistent attacks against healthcare centres, airstrikes against hospitals, and convoys being fired upon.[147] Over 150 people have died of starvation, more than half of which since 20 July 2025.[148] On 29 July 2025, this culminated in the IPC issuing an alert that the worst-case scenario of famine was playing out in Gaza, amid widespread starvation, malnutrition and disease, mass displacement, severely restricted humanitarian access, and the collapse of essential services.[149] The IPC noted that nearly 90% of households in Gaza have resorted to extremely severe coping mechanisms to feed themselves, such as scavenging from garbage.[150] Tom Dannenbaum and Alex De Waal – leading IHL and starvation experts – have written this urgent caution on 30 July 2025:[151]

> "Conditions of life for Palestinians in Gaza are collapsing. Yesterday's Alert from the United Nations' Integrated food security Phase Classification (IPC) mechanism begins, "The worst-case scenario of Famine is currently playing out in the Gaza Strip." All evidence points to a horrifying reality that the enclave has crossed the tipping point into a period of accelerating mass starvation mortality and societal devastation. As a matter of moral, legal, and basic human imperative, States with any leverage at all over the

[143] Gaza: Increasing Israeli "evacuation orders" lead to forcible transfer of Palestinians (OHCHR 11 April 2025). See also: Eyal Benvenisti and Chaim Gans, Our Duty to Explain Israel's Operation to "Concentrate and Move Population" in Gaza is a Manifest War Crime" (JustSecurity, 8 July 2025).
[144] For similar conclusions, see: Special Committee 2024 Report, §§ 29-30; ICC Arrest Warrant Press Release; Independent International Commission of Inquiry 2024 Report, § 81.
[145] Reported impact snapshot | Gaza Strip (UN OCHA, 30 July 2025).
[146] Reported impact snapshot | Gaza Strip (UN OCHA, 30 July 2025). See also: 2024 Special Committee Report, at §§ 24, 27 and 36; Amnesty International Genocide Report, at pp 126-128; IRDNA.
[147] Gaza: Open Letter to EU Heads of State (MSF, 16 June 2025).
[148] The mathematics of starvation: how Israel caused a famine in Gaza (Guardian, 31 July 2025).
[149] Humanitarian Situation Update #309 | Gaza Strip (OCHA, 30 July 2025).
[150] Humanitarian Situation Update #309 | Gaza Strip (OCHA, 30 July 2025).
[151] Tom Dannenbaum and Alex de Waal, Time Has Run Out: Mass Starvation in Gaza and the Global Imperative (Just Security, 30 July 2025).

> Israeli government must use that leverage now to bring this abomination to an end. To delay further does not bear contemplating. Time has run out.
>
> The moral obligation is palpable. The legal obligation is also clear. Pursuant to the duties to ensure respect for international humanitarian law (IHL) and to act if there is at least "a serious risk" that genocide is being, or will be, committed (on which we elaborate our views below), and given the gravity and urgency of the moment, no lawful measure can be eschewed in the effort to induce Israel to allow Gaza to be flooded with humanitarian assistance, to restore essential services, and to provide the conditions for the sustained, long-term recovery needs of Palestinians in Gaza in a context in which immediate humanitarian provision is necessary but will not be sufficient for survival."

58.2. Such deprivation is primarily attributable to Israel. The deprivation of indispensable objects has resulted in part from the widespread and indiscriminate nature of Israel's military campaign. In addition, Israel has routinely blocked or restricted entry of essential supplies and humanitarian aid into Gaza. At the outset of the conflict, Israel decided to restrict the entry of all humanitarian aid into Gaza, and impose a total siege, disallowing electricity, food, water or fuel into Gaza, shutting off water pipelines and electricity supplies from Israel into Gaza.[152] While the total siege was partially lifted after a number of weeks, Israel continued to restrict the delivery of humanitarian assistance and failed to comply with its positive duty under IHL to ensure that the basic needs of Palestinians in Gaza are met "*to the fullest extent of the means available to it*" (Articles 55 and 59 of the Fourth Geneva Convention).[153] Then, on 2 March 2025, Israel reimposed a complete blockade on humanitarian aid and essential supplies, severely impacting humanitarian operation and cutting power to southern Gaza's desalination plan (limiting clean water access for 600,000 people).[154] The MSF's Emergency Coordinator in Gaza wrote on 16 April 2025 that: "*Humanitarians have been forced to watch people suffer and die while carrying the impossible burden of providing relief with depleted supplies, all while facing the same life-threatening conditions themselves. […] There is no way they can carry out their mission under such circumstances. This is not a humanitarian failure — it is a political choice, and a deliberate assault on a people's ability to survive, carried out with impunity*."[155] The full blockade was lifted after 80 days, on 18 May 2025, but Israel continues to throttle access of aid into Gaza. An absolute fuel blockade was partially lifted on 9 July 2025, after 130 days, but only a fraction of the fuel that is required to run essential life-saving services is entering into Gaza.[156] Israel initially sought to justify the reimposition of its blockade by citing Hamas' refusal to accept a proposal by the US President's Envoy, Steve Witkoff, to temporarily extend the first phase of the ceasefire agreement.[157] However, there is no basis upon which a refusal to extend a phase of a ceasefire agreement can constitute lawful justification for this measure, that in itself constitutes unlawful reprisal.[158] In a joint

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[152] UN OHCHR, *Over one hundred days into the war, Israel destroying Gaza's food system and weaponizing food, say UN human rights experts* (16 January 2024).
[153] ICC Arrest Warrant Press Release.
[154] 2025 UNSG Report, at p 3.
[155] Gaza has become a "mass grave" for Palestinians and those helping them (MSF, 16 April 2025).
[156] Humanitarian Situation Update #306 | Gaza Strip (OCHA, 16 July 2025).
[157] Israel blocks entry of all humanitarian aid into Gaza (BBC News, 2 March 2025).
[158] Belligerent reprisal is not prohibited where the action is used as an enforcement measure in reaction to a serious violation of IHL by an adversary, is proportionate to the original violation, and must not be directed at the civilian population. There is no basis upon which it can be said that refusing to agree a variation in the terms of a ceasefire agreement is unlawful. See: ICRC Rule145 'Reprisals' and commentary; UN General Assembly resolution 2675 (XXV), Basic principles for the protection of civilian population in armed conflicts.

statement on 19 May 2025, the leaders of the UK, France and Canada stated that "*[t]he level of human suffering in Gaza was intolerable*", Israeli's partial lifting of the blockade was "*wholly inadequate*", and that its "*denial of essential humanitarian assistance to the civilian population is unacceptable and risks breaching [IHL]*".[159] Israel has further sought to justify its tight control over aid delivery by claiming that Hamas steals aid provided by the United Nations and other international organisations. An internal U.S. government analysis by USAID found no evidence of systematic theft by Hamas of U.S.-funded humanitarian supplies.[160] While Israel has recently announced a number of piecemeal aid-related policies in response to the growing pressure of the international community (for example, air drops, limited humanitarian pauses, and re-connecting a desalination plant to the electricity grid), this is – as the UN Secretary-General has put it – a "*trickle of aid*" in an ocean of need.[161] Dannenbaum and De Waal have put those piecemeal and performative measures into their proper perspective:[162]

> "Even on a narrow view of the humanitarian emergency, these measures are insufficient, even assuming full implementation. They must not distract from the need for more comprehensive action. That the Israeli announcement of these measures came with the caveat that "there is no starvation in Gaza" is itself discrediting (see also here). Already, Israel's cabinet is reportedly considering a tightened siege on certain cities in Gaza and cutting off electricity to the Strip.
>
> The time for half-measures has passed."

58.3. On 22 August 2025, the Famine Review Committee of the IPC Integrated Food Security Phase Classification confirmed that Famine (IPC Phase 5) is now occurring in Gaza Governate.[163] It further predicted that famine thresholds would be crossed in Deir al-Balah and Khan Younis Governates in the coming weeks, and that "[t]he time for debate and hesitation has passed, starvation is present and is rapidly spreading. There should be no doubt in anyone's mind that an immediate, at-scale response is needed. Any further delay—even by days—will result in a totally unacceptable escalation of Famine-related mortality".[164] Emergency Directors from the FAO, UNICEF, WFP and WHO issued a joint release on the same day, stressing that half a million people in Gaza are now subject to famine, widespread starvation, destitution and preventable deaths, with children and women particularly affected.[165] The UK's Foreign Secretary issued a statement in response to the IPC declaration, noting that "[t]he confirmation of famine in Gaza City and the surrounding neighbourhood is utterly horrifying and is wholly preventable", and that

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[159] Press release: Joint statement from the leaders of the United Kingdom, France and Canada on the situation in Gaza and the West Bank (Gov.uk, 19 May 2025).
[160] Exclusive: USAID analysis found no evidence of massive Hamas theft of Gaza aid (Reuters, 25 July 2025); No Proof Hamas Routinely Stole U.N. Aid, Israeli Military Officials Say (New York Times, 26 July 2025).
[161] Citing Integrated Food Security Phase Classification Alert that Gaza is on Brink of Famine, Secretary-General Stresses 'Trickle of Aid Must Become an Ocean' (UN Press, 29 July 2025).
[162] Tom Dannenbaum and Alex de Waal, Time Has Run Out: Mass Starvation in Gaza and the Global Imperative (Just Security, 30 July 2025).
[163] IPC, *IPC: Famine review committee: Gaza Strip* (August 2025), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_Aug2025.pdf.
[164] IPC, *IPC: Famine review committee: Gaza Strip* (August 2025), https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_Aug2025.pdf.
[165] FAO, UNICEF, WFP and WHO Joint Release, 'Famine Confirmed for the first time in Gaza' (22 August 2025), https://www.who.int/news/item/22-08-2025-famine-confirmed-for-first-time-in-gaza?.See also https://www.youtube.com/watch?v=vko8g46oG2s; and https://www.savethechildren.net/news/100-children-starved-death-needless-tragedy-should-shame-world

"[t]he Israeli government's refusal to allow sufficient aid into Gaza has caused this man-made catastrophe. This is a moral outrage".[166]

58.4. A related development is the increasingly militarised and violent manner in which humanitarian assistance is distributed in Gaza. Israel has driven out UN humanitarian operations and replaced them with the Gaza Humanitarian Foundation (**'GHF'**), a private aid scheme coordinated with the Israeli military and delivered, in part, through US private security contractors. Israel has closed 400 UN-backed aid sites, replacing them with 4 GHF-run militarised aid hubs (primarily in the south of Gaza). The limited number of aid hubs is grossly insufficient to meet the overwhelming need for humanitarian assistance. The location of the aid hubs forces starved people seeking aid to travel excessive distances across dangerous terrain and active conflict zones, and waiting in queues many kilometres long until the aid hubs open. The distribution points are militarised and accessing aid is subject to an invasive vetting process by the Israeli military. The sites then remain open for as little as eight minutes at a time, creating chaos and forcing desperate Palestinians to scramble to receive aid when the distribution centres open.[167] This chaotic and militarised model of aid delivery has resulted in almost daily massacres of Palestinians at overwhelmed aid hubs, with more than 2,018 Palestinians being killed and over 14,947 injured while seeking aid at distribution points.[168] UNOCHA reports the General Director of MSF Spain saying: 'In MSF's nearly 54 years of operations, rarely have we seen such levels of systematic violence against unarmed civilians.'[169] Philippe Lazzarini, the commissioner-general of UNRWA has described the new scheme as a "*death trap*".[170] On 21 July 2025, the UK and 28 international partners gave a joint statement in the following terms:

> "The suffering of civilians in Gaza has reached new depths. The Israeli government's aid delivery model is dangerous, fuels instability and deprives Gazans of human dignity. We condemn the drip feeding of aid and the inhumane killing of civilians, including children, seeking to meet their most basic needs of water and food. It is horrifying that over 800 Palestinians have been killed while seeking aid. The Israeli Government's denial of essential humanitarian assistance to the civilian population is unacceptable. Israel must comply with its obligations under international humanitarian law. […]
>
> We call on the Israeli government to immediately lift restrictions on the flow of aid and to urgently enable the UN and humanitarian NGOs to do their life saving work safely and effectively."[171]

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[166] https://www.gov.uk/government/news/foreign-secretary-statement-response-to-famine-in-gaza-governorate

[167] Eleven-minute race for food: how aid points in Gaza became 'death traps' – a visual story (Guardian, 22 July 2025); Exclusive: US mulls giving millions to controversial Gaza aid foundation, sources say (Reuters, 7 June 2025); Is Humanitarian Aid Becoming a Tool to Advance the "Trump Plan" in Gaza? (Carnegie Endowment, 12 June 2025);. More than 330 Palestinians killed by Israel since start of lethal US-backed aid scheme (Middle East Eye, 16 June 2025); GAZA: *Starvation or Gunfire – This is Not a Humanitarian Response* (ABCD Bethlehem and Others, 2 July 2025)

[168] UNRWA Commissioner-General on Gaza: More than 1,000 Starving People Reported Killed since the end of May (UNRWA, 21 July 2025); Humanitarian Situation Update #309 | Gaza Strip (OCHA, 30 July 2025).

[169] https://www.ochaopt.org/content/humanitarian-situation-update-315-gaza-strip (OCHA, 21 August 2025)

[170] UN condemns Gaza aid 'death trap' as dozens reported killed by Israeli fire (BBC, 24 June 2025).

[171] Occupied Palestinian Territories: joint statement, 21 July 2025 (Gov.uk, 21 July 2025). See also: As Mass Starvation Spreads Across Gaza, More than 100 NGOs Make an Urgent Plea to Allow in Life-Saving Aid (Save the Children, 23 July 2025).

On 5 August 2025, UN experts expressed grave concern over the GHF's operations and called for it to be dismantled.[172]

59. The clear inference is that Israel's purpose in committing those actions has been to deploy starvation as a method of warfare, rather than the deprivation being a secondary consequence of otherwise legal military actions. Intentionality can be inferred from: (i) the extent and prolonged period of deprivation; (ii) Israel's unique position in controlling all ports of entry and supply lines; (iii) Israel's knowledge of the impact of its decisions; (iv) the continuation of Israel's actions to impede the delivery of humanitarian assistance in defiance of the resolutions of the UN Security Council and the provisional measures of the ICJ; and (v) the contemporaneous public statements of officials.[173] There is no tenable and sufficient military justification for the wholesale deprivation of indispensable objects, Israel's total siege and aid embargo or the totality of its restrictions on humanitarian assistance.[174] According to Professor Alex de Waal, in his expert opinion on starvation and famine: "*So, let me say that I've been working on this field of famine, food crisis and humanitarian action for more than 40 years, and there is no case, over those four decades, of such minutely engineered, closely monitored, precisely designed mass starvation of a population as is happening in Gaza today*".[175]

60. Genocide. There is a cogent basis to conclude that Israel has breached its obligations under the Genocide Convention in Gaza, and at the very least, Israel's actions have given rise to a serious risk of genocide inasmuch as the very right of existence of the Palestinian population in Gaza is currently at risk of irreparable prejudice.

61. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (**'Genocide Convention'**) provides the definition of genocide:

> "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group".

62. "[T]he object and purpose of the [Genocide] Convention is to prevent the intentional destruction of groups."[176] There are three essential elements, which will be addressed in turn: (i) There exists a protected group (a "national, ethnical, racial or religious group"); (ii) the commission of

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[172] UN experts call for immediate dismantling of Gaza Humanitarian Foundation (OHCHR, 5 August 2025).

[173] For select examples, see Video address by Ghassan Alian (YouTube, 10 October 2023); Israel Katz, X post: עד עתה העברנו לעזה 54,000 קוב מים ו-2,700 מגהוואט חשמל ביום בגמר (X, 10 October 2023 (translation by Amnesty International)); Israel Katz, Minister of Energy and Infrastructure, Member of the Political-Security Cabinet, Member of Knesset, @Israel_katz, Tweet (X, 6:01 pm, October 13, 2023); Statement by PM Netanyahu (Gov.il, 18 October 2023). See most recently the Defence Minister, Israel Katz, who is reported as saying: "*Israel's policy is clear: no humanitarian aid will enter Gaza, and blocking this aid is one of the main pressure levers preventing Hamas from using it as a tool with the population.*" (No plans to allow any aid into Gaza, says Israeli minister (Guardian, 17 April 2025)). See further the collection of statements in the dossiers submitted by South Africa to the Security Council (Letter dated 29 May 2024 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council (29 May 2025) S/2024/419; and Letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nationals addressed to the President of the Security Council (28 February 2025) S/2025/130).

[174] Tom Dannenbaum, Gaza and Israel's Renewed Policy of Deprivation (JustSecurity, 21 March 2025).

[175] "Precisely Designed Mass Starvation": Aid Access as Weapon in Israel's War on Gaza, Researchers Find (Democracy Now!, 21 July 2025).

[176] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v *Serbia and Montenegro)* [2007] ICJ Rep 2 (**'*Bosnian Genocide Case*'**), § 198.

a prohibited or genocidal act is be committed against a protected group, as listed in Article 2 of the Genocide Convention; and (iii) the perpetrator must intend to carry out the prohibited acts and intend to destroy, in whole or in part, that national, ethnic, racial or religious group, as such (often referred to as "special or specific intent" or "*dolus specialis*").[177]

63. First, the Palestinian people plainly constitute a "national, ethnical, racial or religious group".[178] Second, it follows from the foregoing analysis that agents of the Israeli State have committed acts proscribed by Article II(a)-(c) of the Genocide Convention.

63.1. As set out at paragraph 50.1 above, there is substantial evidence that the IDF has intentionally attacked and killed Palestinian civilians during the course of its military offensive, satisfying the *actus reus* elements of Article II(a) of the Genocide Convention.[179]

63.2. It is clear that Israel has caused serious bodily or mental harm to a large part of the Palestinian population in Gaza, within the meaning of Article II(b) of the Genocide Convention.[180] The harm has been of such a serious nature so "*as to contribute or tend to contribute*" to the destruction of Palestinians in Gaza.[181] As to bodily harm, there have been over 156,000 reported injuries, and the WHO warned in September 2024 that over a quarter of those wounded have suffered life-changing injuries.[182] Inevitably, the extensive destruction of property, multiple displacement, the panic caused by evacuation orders and the loss of loved ones will have caused serious mental harm.

63.3. Israel has implemented measures that have resulted in the deliberate infliction of conditions of life calculated to bring about the protected group's physical destruction, in whole or in part (Article II(c) of the Genocide Convention). According to Article II(c), the conditions inflicted must be objectively capable of bringing about the physical extermination of a part of the protected group, but need not immediately kill members of the group.[183] The word "*calculated*" connotes that they must be "*deliberately*" inflicted.[184] Israel's indiscriminate aerial bombardment, extensive and systematic destruction of property and life-sustaining infrastructure, forcible transfer and mass displacement through arbitrary evacuation orders,[185] total siege and aid embargo at the onset of the conflict, and continued restrictions on the delivery of humanitarian assistance throughout hostilities have cumulatively inflicted conditions which are objectively capable of physically exterminating Palestinians in Gaza in the long term. For the reasons at paragraphs 54 and

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[177] *Bosnian Genocide Case,* §§ 186-187. In addition, under the Rome Statute, it is necessary that each form of conduct capable of amounting to genocide "took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction" (Elements of Crimes, Article 6(a)-4, (b)-4, (c)-4, (d)-4 and (e)-4).

[178] *South Africa v. Israel (January 2024 Provisional Measures)*, at § 45.

[179] The material elements for the act of killing under Article III(a) of the Genocide Convention are the same as for the crime against humanity of murder. See: *Prosecutor v Kayishema and Ruzindana,* ICTR (AC), Judgment (1 June 2001), § 151.

[180] For the purposes of Article III(b) the harm caused need not be irreversible or permanent in order to be 'serious', but it must involve damage resulting in "*grave and long-term disadvantage to a person's ability to lead a normal and constructive life*": *Prosecutor v Tolimir*, ICTY (AC), Judgment (8 April 2015), § 215.

[181] *Tolimir* (AC), § 203.

[182] Reported impact snapshot | Gaza Strip (UN OCHA, 30 July 2025); Over 22,500 have suffered 'life-changing injuries' in Gaza: WHO (UN, 12 September 2024).

[183] *Prosecutor v Akayesu*, ICTR (TC), Judgment (2 September 1998), § 505; *Tolimir* (AC), §§ 231ff.

[184] *Prosecutor v Stakić*, ICTY (TC), Judgment (31 July 2003), § 508.

[185] While forcible transfer is not itself a prohibited act, it can be "*a relevant consideration as part of the overall factual assessment*" (*Prosecutor v Blagojević and Jokić,* ICTY (AC), Judgment, 9 May 2007, § 123) and "*could be an additional means by which to ensure the physical destruction*" of the protected group (*Tolimir* (AC), §§ 209 and 225; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia) (Judgment)* [2015] ICJ Rep 3, § 162. See also: *Prosecutor v Al Bashir*, Decision on the Prosecution's Application for a Warrant of Arrest for Omar Hassan Ahmad Al Bashir, ICC- 02/05-01/09, Pre-Trial Chamber I (4 March 2009), §§ 32-40.

59 above, there is every reason to believe those acts of infliction were carried out intentionally and deliberately.

64. Third, on the evidence available, there is – at the very least – a plausible case that agents of the State of Israel have ordered and/or committed those acts with the requisite "*specific intent*" to destroy, in whole or in part, the protected group of Palestinians in Gaza.

65. In the context of State responsibility, to establish specific intent it "*has to be convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly demonstrated to exist*."[186] Specific intent on the part of a State may be established if it is proven that "*those who shared the control of the 'apparatus' of the State*" acted with specific intent to destroy the protected group, in whole or in part, "*as such*".[187] For the purpose of State responsibility, the individuals to whom intent is attributable need not be precisely identified.[188] '*[D]iscriminatory intent*' – that members of the protected group were targeted because of their membership of that group – is not enough.[189] There must be evidence that the proscribed acts were committed with the intent to destroy the group, rather than the individuals subjected to attack. Specific intent can be established by direct and/or indirect evidence, and its existence can be inferred from the totality of the circumstances and evidence, "*even where each factor on its own may not warrant such an inference*."[190] A pattern of conduct may be accepted as evidence of the existence of genocidal intent if "*this is the only inference that could reasonably be drawn from the acts in question*".[191] In *Croatia v Serbia*, the ICJ held that *"in the absence of direct proof, there must be evidence of acts on a scale that establishes an intent not only to target certain individuals because of their membership to a particular group, but also to destroy the group itself in whole or in part."*[192]

66. Notwithstanding the height of the threshold, there are – at the very least – reasonable grounds to conclude that Israel has committed prohibited acts with specific intent to destroy the Palestinian people in Gaza, in whole or in part:

    66.1. The number of victims far exceeds what is typically expected in modern-day hostilities conducted by a sophisticated military.[193] Over 62,000 Palestinians have been killed, with over 156,000 injured, over 1,900,000 people have been displaced, over 90% of residential buildings damaged or destroyed, and over 90% of the population facing crisis levels of food insecurity (see paragraphs 50 and 57 above).

    66.2. The nature and conduct of Israel's military operation in Gaza.[194] Since the beginning of the conflict, Israel has conducted the indiscriminate aerial bombardment of one of the most densely populated places in the world, causing extensive destruction of life-sustaining infrastructure and the means of production in Gaza, and resulting in multiple displacements of the Gazan population. Measures include the total siege and aid embargo at the outset of the conflict, the sustained restrictions placed on the delivery of humanitarian assistance, and, since 2 March 2025, the recent blockade of humanitarian

[186] *Bosnian Genocide Case*, § 373.
[187] *Al Bashir*, § 150.
[188] *Prosecutor v Krstic*, ICTY (AC), Judgment (19 April 2004), § 34.
[189] *Bosnian Genocide Case*, at § 187. See also: *Prosecutor v Niyitegeka,* ICTR (AC), Judgment (9 July 2004), at § 53.
[190] *Al Bashir*, at §§ 153-154.
[191] *Croatia v Serbia*, at § 148. See also: *Bosnian Genocide Case*, § 373; *Al Bashir*, § 156.
[192] *Croatia v Serbia*, at § 139.
[193] For the proposition that the number of victims and scale of atrocities can be evidence of specific intent, see: *Krstic* (AC), § 35; *Prosecutor v Jelisić,* ICTY (AC), Judgment (5 July 2001) § 47.
[194] For the proposition that the nature and repetition of the acts can evidence specific intent, see: *Al-Bashir*, § 164(iii) (the ICC did not dispute the relevance of the factors relied on by the prosecution). In *Akayesu* (TC), the ICTR considered that the systematicity in which acts are carried out could imply the existence of a genocidal policy (§§ 118, 478, 579-580)

aid into Gaza, without lawful justification (see paragraph 58 above). On 16 November 2023, 35 UN human rights experts issued a statement warning that *"[g]rave violations committed by Israel against Palestinians in the aftermath of 7 October, particularly in Gaza, point to a genocide in the making"*.[195] Those grave violations have intensified. In its open letter of 16 June 2025, MSF International President Dr Christos Christou and Secretary General Christopher Lockyear stated that MSF teams have witnessed "*patterns consistent with genocide through deliberate actions by Israeli forces—including mass killings, the destruction of vital civilian infrastructure, and blockades choking off access to food, water, medicines, and other essential humanitarian supplies. Israel is systematically destroying the conditions necessary for Palestinian life*."[196] For the reasons given in this Paper, our conclusion is that Israel has committed a suite of war crimes and crimes against humanity, such as causing incidental death excessive to military objectives, forcible transfer, and use of starvation as a method of warfare. Those practices reflect the principal means by which Israel has decided to conduct its offensive and are consistent with a finding of genocide.

66.3. The statements of Israeli public and military officials at the highest levels of the State. Numerous statements of multiple senior high-level public and military officials since the beginning of the conflict are consistent with specific intent in respect of the persons controlling the apparatus of the Israeli State.[197] South Africa has catalogued such statements in a public dossier filed with the Security Council on 20 May 2024,[198] and most recently updated on 27 February 2025.[199] To list but a few examples:

66.3.1. On 9 October 2023, when Defence Minister Yoav Gallant stated that Israel "*was imposing a complete siege on Gaza*", he added: "*[w]e are fighting human animals and we are acting accordingly*."[200]

66.3.2. On 12 October 2023, President Isaac Herzog stated: "*Unequivocally. It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not aware, not involved*".[201]

66.3.3. On 28 October 2023 and 3 November 2023, Prime Minister Netanyahu invoked the story of the destruction of Amalek. The biblical passage reads:

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[195] Gaza: UN experts call on international community to prevent genocide against the Palestinian people (OHCHR, 16 November 2023).

[196] Gaza: Open Letter to EU Heads of State (MSF, 16 June 2025).

[197] Amnesty International has reviewed 102 statements that it considers dehumanise Palestinians, including 22 statements which call for acts prohibited under the Genocide Convention. It also reviewed evidence (including 62 videos) where it appears the rhetoric of senior officials has been repeated and acted upon by soldiers on the ground: Amnesty International Genocide Report, pp 241-273. See also: Francesca Albanese October 2024 Report, §§ 50-53.

[198] Letter dated 29 May 2024 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council (29 May 2025) S/2024/419. As the filing explains:

— Enclosure I sets out illustrative examples of genocidal statements by senior Israeli governmental officials, including by Israeli Prime Minister Benjamin Netanyahu and Israeli Minister of Defence Yoav Gallant, in relation to whom the Prosecutor of the International Criminal Court is seeking arrest warrants for war crimes and crimes against humanity.

— Enclosure II lists statements by — and audio-visual materials of — senior Israeli military officials and of other Israeli soldiers active on the ground in Gaza, evidencing genocidal intent and inciting to genocide, as well as genocidal acts contrary to Articles II and III of the Genocide Convention.

— Enclosure III illustrates the widespread incitement to genocide against Palestinians in broader Israeli society from which Israeli soldiers serving in Gaza are drawn, including among non-cabinet Members of the Knesset ('MKs'), former military and intelligence officials, journalists and pundits and popular singers.

[199] Letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nationals addressed to the President of the Security Council (28 February 2025) S/2025/130.

[200] "We are fighting human animals" said Israeli Defence Minister Yoav Gallant (Youtube, 9 October 2023).

[201] Israeli president Isaac Herzog says Gazans could have risen up to fight 'evil' Hamas (ITV, 13 October 2023).

"*Now go, attack Amalek, and proscribe all that belongs to him. Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses*."[202]

66.3.4. In April 2024, Minister of Finance, Bezalel Smotrich, stated that there were "*2 million Nazis […] who want to slaughter, rape and murder every Jew*."[203]

66.3.5. On 29 April 2024, Minister of Finance, Member of the Israeli Security Cabinet and Member of the War Forum, Bezalel Smotrich, speaking at a religious celebration dinner said, "*[t]here are no half measures, Rafah, Deir al-Balah, Nuseirat - total annihilation.'' You shall blot out the memory of Amalek from under heaven' – there's no place under heaven.*"[204]

66.3.6. On 18 March 2025, Israeli Defence Minister Israel Katz threatened Palestinians in Gaza with "*total devastation*", while Israeli cabinet minister Itamar Ben-Gvir stated on X: "*Annihilate, smash, eradicate, crush, shatter, burn, be cruel, punish, ruin, crush. Annihilate!*".[205]

66.4. These statements by key decision-makers in the Israeli government form a compelling part of this analysis. Indeed, the ICJ took note of a number of such statements in its consideration of South Africa's application for provisional measures, in which it concluded there is a real and imminent risk of irreparable harm to the rights of the Palestinian people under the Genocide Convention.[206]

66.5. Knowledge of the destruction of Palestinians in Gaza.[207] At all material times, high-level officials controlling the apparatus of Israel were aware of the methods of warfare employed by its military in Gaza, the devastating consequences of those methods upon the population, and the infliction of conditions on the population which are objectively capable of leading to its destruction. Yet, Israel's military strategy has remained broadly consistent despite UN Security Council resolutions and ICJ provisional measures orders requiring Israel to take measures to prevent acts of genocide and enable urgently needed humanitarian assistance into Gaza.[208]

66.6. The broader context of occupation in the OPT.[209] Israel's longstanding occupation of the OPT and its settlement enterprise in the West Bank supports a finding of specific intent. The overarching intention behind the establishment, maintenance and expansion of settlements in the West Bank appears to be to pave the way for Israeli annexation, a future which necessarily involves either the departure, removal, or subjugation of the Palestinian people within the West Bank. As set out above, Israel is committing widespread human rights violations and war crimes in the West Bank, including apartheid. The perpetration

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[202] שידור חי: ראש הממשלה נתניהו, שר הבטחון גלנט, והשר גנץ מקיימים מסיבת עיתונאים משותפת (Youtube, 28 October 2023); Prime Minister's Office in Hebrew, @IsraeliPM_heb, Tweet (X, 11:43 am November 3, 2023). The people of Amalek refers to a biblical story of absolute vengeance on an entire nation (Sefaria, I Samuel 15:1-34, JPS, 1985).

[203] סמוטריץ': איראן חייבת לרעוד – ומה (Galei Tsahal, 15 April 2024 (translated by Amnesty International).

[204] Statement By Israel's Minister of Finance Bezalel Smotrich at Mimouna In Ofakim / Sponsored by B.M. Tech LTD, Beer Sheva Times (YouTube, 30 April 2024); Noa Shpigel, Israel's Far-right Minister Smotrich Calls for 'No Half Measures' in the 'Total Annihilation' of Gaza, Haaretz (30 April 2024)

[205] Hansard, House of Commons, Debate (20 March 2025), vol. 764: Conflict in Gaza.

[206] *South Africa v Israel (January 2024 Provisional Measures),* at §52.

[207] While knowledge alone is not sufficient to establish special intent, it can properly be considered a factor supporting an inference of intent: *Krstic* (AC), § 35.

[208] UNSC Res 2720 (15 November 2023); UNSC Res 2720 (22 December 2023); UNSC Res 2728 (25 March 2024); UNSC Res 2735 (10 June 2024); *South Africa v Israel (January 2024 Provisional Measures)*, at § 86(4); *South Africa v Israel (March 2024 Provisional Measures)*, at § 51(2)(a); *South Africa v Israel (May 2024 Provisional Measures)*, at §§ 52 and 57(2)(b).

[209] For the relevance of the general context in inferring specific intent, see: *Jelisić* (AC), § 47.

of such discriminatory and culpable acts adds to the overarching inference that there is an animus towards the Palestinian people.

67. The existence of motives beyond the destruction of Palestinians in Gaza does not exclude specific intent. As the ICTR Appeals Chamber observed in *Prosecutor v Niyitegeka*, the proscribed acts must be committed "*because of the [victim's] membership in the protected group, but not solely because of such membership*."[210] The motivations for Israel's military offensive may include the defence of Israel and Israeli citizens from future attacks by Hamas, defeating and destroying Hamas and its capabilities as an armed conflict and securing the release of hostages, and revenge for the attacks of 7 October 2023. However, insofar as Israel intends to destroy a substantial part of the Palestinian group *as a means of achieving* those aims, regardless of whether they are members of Hamas or directly participating in hostilities, the special intent requirement will be satisfied.

68. For those reasons, there are – at the very least – reasonable grounds to conclude that Israel is committing genocide in Gaza. We are not alone in that view. The UN Special Rapporteur on the OPT, Amnesty International and Human Rights Watch have made cogent findings that Israel is committing genocide.[211] Numerous Palestinian NGOs such as Al Haq, Palestine Centre for Human Rights[212] and Defense for Children International – Palestine[213] have reached the same conclusion and, most recently, on 28 July 2025, two leading human rights organisations based in Israel, B'Tselem and Physicians for Human Rights, voiced their view that Israel is committing genocide against Palestinians in Gaza.[214]

69. That there is a plausible case of genocide for Israel to answer is fundamentally consistent with the ICJ's findings in *South Africa v Israel*. On 26 January 2024, the ICJ indicated the six provisional measures binding on Israel, aimed at protecting from "*irreparable harm*" the rights implicated in the case. The ICJ found that "*at least some of the rights claimed by South Africa and for which it is seeking protection*" — including "*the right of the Palestinians in Gaza to be protected from acts of genocide*" — to be "*plausible.*"[215]

70. The strength of the case against Israel has only increased since January 2024.[216] Instead of changing its conduct in Gaza and complying with its obligations under the 26 January 2024 Order, Israel intensified its attacks on the beleaguered Palestinian territory and increased its restrictions on humanitarian aid. On 28 March 2024 the ICJ issued a second provisional measures order against Israel, requiring Israel *inter alia* to take all necessary and effective measures to ensure, without delay, in full co-operation with the UN, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including

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[210] *Prosecutor v Niyitegeka*, ICTR (AC), Judgment (9 July 2004), § 53.

[211] Amnesty International Genocide Report; Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water (Human Rights Watch, 2024); Francesca Albanese October 2024 Report; UN Special Committee 2024 Report, § 69. See further the views expressed by Professor William Schabas, a leading authority on genocide: William Schabas, Why Gaza genocide is strongest case before the ICJ (Middle East Eye, 19 April 2025). Professor Schabas concluded that of all the genocide cases that have come before the ICJ under the Genocide Convention, South Africa's case against Israel is the strongest. Further: "First, genocide is being perpetrated in Gaza or, at a minimum, there is a serious risk of genocide occurring", is how it was put in a recent letter of 26 May 2025 to the Prime Minister by lawyers, legal academics and former judges who are UK-based or qualified.

[212] Generation Wiped Out: Gaza's Children in the Crosshairs of Genocide (Palestine Centre for Human Rights, December 2024).

[213] "Starving a Generation" report indicts Israel for weaponizing starvation as a tool of genocide (Defense for Children International - Palestine, 24 June 2025).

[214] A Health Analysis of the Gaza Genocide (Physicians for Human Rights, July 2025); Our Genocide (B'Tselem, July 2025).

[215] *South Africa v Israel (January 2024 Provisional Measures)*, at § 54.

[216] See for example Kai Ambos and Stefanie Bock, Genocide in Gaza? Some Preliminary Deliberations from an International (Criminal) Law Perspective, 18 June 2025.

by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary. The Court recalled that in the 26 January 2024 Order it "*found that at least some of the rights claimed by South Africa under the Genocide Convention and for which it is seeking protection were plausible, namely the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts mentioned in Article III*".[217] Judge Yusuf observed in his separate declaration that *"[t]he alarm has now been sounded by the Court. All the indicators of genocidal acts are flashing red in Gaza*".[218]

71. Despite these binding orders, Israel's military operations continued. In response to Israel's assault on Rafah in May 2024 — a so-called "*safe zone*" and "*last refuge*" where more than a million Palestinians had fled – the Court issued a further Order for provisional measures on 24 May 2024. The Court "*reaffirm[ed]*" and ordered Israel to "*immediately and effectively*" implement "*the provisional measures indicated in its Orders of 26 January 2024 and 28 March 2024*", to which the Court added further provisional measures, including that Israel halt its military offensive in Rafah and open the Rafah crossing.[219]

72. Israel has failed to comply with the Orders of the ICJ, which has been noted by the international community, including multiple States, UN bodies and NGOs alike.[220] That has been manifest since 2 March 2025, when Israel imposed a blockade on humanitarian assistance and essential supplies, and restarted its military campaign with as much ferocity as it did in the aftermath of 7 October 2023. Israel's blatant breaches of the ICJ's provisional measures fortify the case that its conduct is in violation of its obligations under the Genocide Convention.

D. THE UK'S PREVENTION AND NON-ASSISTANCE DUTIES UNDER INTERNATIONAL LAW

73. In what follows we elaborate on Israel's serious breaches of the most fundamental norms of international law in the OPT and how they give rise to the **"prevention and non-assistance duties**".

(1) Serious breaches of peremptory norms

74. *Jus cogens* or peremptory norms refer to norms "*accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*".[221] Those norms "*reflect and protect the fundamental values of the international*

[217] *South Africa v Israel, (March 2024 Provisional Measures*), § 25.
[218] Separate Declaration by Judge Yusuf, §§ 8 and 12.
[219] *South Africa v Israel (May 2024 Provisional Measures*), § 57.
[220] Ensuring Compliance with International Mechanisms After the International Court of Justice Rulings" of the 2024 Conference of Civil Society Organisations Working on the Question of Palestine – CEIRPP – Press Release (UN, 4 March 2024); UN Palestine, Panel II "Role of Civil Society Organizations" of the 2024 Conference of Civil Society Organisations Working on the Question of Palestine (UNOG) – CEIRPP – Press Release (UN, 4 April 2024); State of Palestine: UN, Security Council Demands Immediate Ceasefire in Gaza for Month of Ramadan, Adopting Resolution 2728 (2024) with 14 Members Voting in Favour, US Abstaining (UN, 25 March 2024); UN OCHA, Group of Arab States, Sierra Leone, Mozambique, Palestine: UN, Speakers in Security Council Condemn Deadly Israeli Airstrikes on Aid Workers in Gaza, Urge Immediate Action to End Violations of International Humanitarian Law (UN, 5 April 2024).
[221] Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), adopted by the International Law Commission, 73rd session (ILC, 2019) Supplement No 10 (A/74/10) (**'Draft Conclusions on Peremptory Norms'**), at p 148 (Conclusion 2). See also: Vienna Convention on the Law of Treaties (1969), Article 53.

community";[222] they prohibit conduct that is "*intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values*".[223] A related concept is *erga omnes* obligations, which refers to obligations owed to the international community as a whole, which arise in respect of norms that all States have a common interest in protecting.[224]

75. For a norm to achieve peremptory status, it must (i) be a norm of general international law (typically customary international law) and (ii) be accepted and recognised by the international community as a whole as a peremptory norm.[225] Norms that meet such criteria include: the prohibition of aggression and the use of force;[226] the prohibition of genocide; [227] the prohibition of racial discrimination and apartheid;[228] the prohibition against torture;[229] the prohibition of crimes against humanity;[230] the basic rules of IHL;[231] and the right to self-determination:[232]

76. A series of specific consequences for third States arise under the law of State responsibility where serious breaches of peremptory norms are committed.[233] According to Article 40(2) of the Articles on State Responsibility, *"[a] breach of [an obligation arising under a peremptory norm] is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation*".[234]

77. The scope of third States' obligations arising from serious breaches of peremptory norms have been clarified and expounded upon by the ICJ and International Law Commission (**'ILC'**). There are three essential components:

    77.1. A duty of non-recognition: Article 41(2) of the Articles on State Responsibility states that *"[n]o State shall recognize as lawful a situation created by a serious breach [of peremptory norms]*".[235] Recognition can be explicit or implicit.[236] In the *Namibia Opinion*, in respect of South Africa's occupation of Namibia and imposition of its apartheid regime in the territory, the ICJ held that all States are under obligations "*to recognize the illegality and invalidity of South Africa' continued presence*" in Namibia, and – by extension – "*to abstain from*

[222] Draft Conclusions on Peremptory Norms, p 150 (Conclusion 3).
[223] Commentary to Draft Articles on the Responsibility of States for Internationally Wrongful Acts, *ILC Ybk* 2001, Vol II (Part Two) ("**Commentary to Draft Articles on State Responsibility**"), p 112 at § (3) (Article 40).
[224] Commentary to Draft Articles on State Responsibility, p 112 at § (2); *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)* [1970] ICJ Rep 32, § 33.
[225] Draft Conclusions on Peremptory Norms, p 157 (Conclusions 4-5).
[226] Draft Conclusions on Peremptory Norms, p 147 (Annex); *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment* [1986] ICJ Rep 392, at § 190. See also: Commentary to the Draft Articles on State Responsibility, p 112 at § (4) (Article 40). See also: *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion* [2019] ICJ Rep 95, § 183(5); *OPT Advisory Opinion*, § 274.
[227] Draft Conclusions on Peremptory Norms, p 147 (Annex). See also: *Bosnian Genocide Case,* § 162; *Croatia v Serbia,* § 88; Commentary to Draft Articles on State Responsibility, p 112 at § (4) (Article 40).
[228] Draft Conclusions on Peremptory Norms, p 147 (Annex). See also: Commentary to Draft Articles on State Responsibility, pp 112-113 at § (4) (Article 40); Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur (ILC, 31 January 2019) A/CN.4/727 (**'Dire Tladi Report'**), §§ 91-101.
[229] Draft Conclusions on Peremptory Norms, p 147 (Annex). See also: *A and Others v Secretary of State for the Home Department* [2006] 2 AC 221, § 33.
[230] Draft Conclusions on Peremptory Norms, p 147 (Annex). See also: *Prosecutor v Kupreškić*, ICTY (TC), Judgment (14 January 2000), § 520; *Miguel Castro-Castro Prison v. Peru,* Judgment (Merits, Reparations and Costs), IACtHR, 25 November 2006, § 402. See also: Dire Tladi Report, §§ 84-90.
[231] Draft Conclusions on Peremptory Norms, p 147 (Annex). See also: Commentary to Draft Articles on State Responsibility, p 113 at § (5) (Article 40); *OPT Advisory Opinion*, § 96; *Wall Advisory Opinion*, § 155; *Tadic* (AC), § 143.
[232] *OPT Advisory Opinion*, § 233.
[233] Commentary to Draft Articles on State Responsibility, p 110 at § (1).
[234] Articles on State Responsibility, (Article 40).
[235] Articles on State Responsibility, (Article 41(2)). See also: Draft Conclusions on Peremptory Norms, pp 193 and 196-197 (Conclusion 19(2)); *Wall Advisory Opinion*, § 159.
[236] *Prosecutor v Ntaganda* (Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9) Case No. ICC-01/04-02/06/-1707 (January 2017), § 53.

entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory".[237] In *Kuwait Airways Corporation v Iraqi Airways Company and Others*, the House of Lords refused to recognise the legal validity of acts resulting from the Iraqi invasion of Kuwait (a breach of the prohibition of the use of force).[238]

77.2. The duty not to render aid or assistance:[239] As affirmed in Article 41(2) of the Articles on State Responsibility, States must not "*render aid or assistance in maintaining [a situation created by a serious breach of peremptory norms]*".[240] In the *Namibia Opinion*, additional to the non-recognition duty, the ICJ held that States were under a duty "*to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia*" [241] The existence of the duty has been reaffirmed in the *Wall Advisory Opinion* and the *OPT Advisory Opinion*.[242] For the duty to be engaged, the ILC has suggested that a State must have knowledge of the circumstances of the serious breach of *jus cogens* norms.[243]

77.3. The duty to cooperate and take reasonable measures to bring serious violations of peremptory norms to an end:[244] Article 41(1) of the Articles on State Responsibility provides that "*States shall cooperate to bring an end through lawful means any serious breach [of peremptory norms]*".[245] The duty is often couched as a duty to cooperate with other States within the context of the UN.[246] However, the duty to cooperate with other States within the modalities of the UN to bring an end to violations is not exhaustive of the broader duty to cooperate and take reasonable measures to bring serious violations of peremptory norms to an end.[247] Cooperation extends beyond the UN, and complying with the duty to cooperate does not mean that a State can do nothing while waiting for other States to act. Rather, cooperating to bring serious breaches of peremptory norms to an end will often require individual States to take reasonable measures to that end. An illustration is the ICJ's finding in the *Wall Advisory Opinion* and the *OPT Advisory Opinion* that third States are under a duty to ensure impediments to the fulfilment of the Palestinian people's right to self-determination arising from Israel's illegal presence in the West Bank are brought to an end.[248] A similar duty to take reasonable measures to bring violations to an end applies in respect of other serious breaches of peremptory norms, and flows from the broader duty of cooperation under Article 41(1) of the Articles of State Responsibility. Support for that proposition is found in the UN General Assembly resolution of 13 September 2024 ('**UNGA 2024 resolution**'), which stipulates that States must "*undertake*

[237] *Namibia Opinion*, §§ 119 and 124.
[238] *Kuwait Airways Corporation v Iraqi Airways Company and Others* [2002] 2 AC 883, § 29.
[239] Draft Conclusions on Peremptory Norms, p 196 at § (6) (Conclusion 19). Whilst there is some overlap, the duty not to render aid or assistance in the context of serious breaches of *jus cogens* is distinct from the general rule of international law that States must refrain from aiding or assistance another State in the commission of any internationally wrongful act, which requires *inter alia* the assisting State to intend to facilitate the occurrence of the internationally wrongful act: Commentary to the Draft Articles on State Responsibility, pp 66-67 at § (5) (Article 16), and p 115 at §§ (11)-(12) (Article 41).
[240] Commentary to the Draft Articles on State Responsibility, p 114 (Article 41(2)).
[241] *Namibia Opinion*, § 119.
[242] *Wall Advisory Opinion,* § 159; *OPT Advisory Opinion*, § 279.
[243] Articles on State Responsibility (Article 41); Commentary to the Draft Articles on State Responsibility, p 115 at § (11) (Article 41).
[244] *Wall Advisory Opinion,* §§ 155 and 159. See also: Articles on State Responsibility, (Article 41(1)); *A and Others v Secretary of State for the Home Department*, § 34.
[245] Articles on State Responsibility, (Article 41(1)). See also: Draft Conclusions on Peremptory Norms, p 193 (Conclusion 19(1)).
[246] Commentary to Draft Articles on State Responsibility, p 114 at § (3) (Article 41); *Wall Advisory Opinion*, § 160; *Chagos Islands Opinion*, §§ 180 and 182.
[247] Draft Conclusions on Peremptory Norms, p 196 at § (4) (Conclusion 19).
[248] *Wall Advisory Opinion*, § 159; *OPT Advisory Opinion*, § 279.

efforts bringing to an end systemic discrimination" in the OPT and take a number of steps to bring the situation created by Israel's serious breaches of peremptory norms to an end (discussed further below).[249] Accordingly, in response to the *OPT Advisory Opinion*, the UN Independent International Commission of Inquiry stated its position as follows:

> "The Commission is of the view that all States are also under an obligation to act, individually and collectively, to bring the unlawful occupation to an end, including by building political, economic and cultural pressure on the Israeli Government to end the unlawful occupation. States must do all that is necessary and reasonable to ensure that the Israeli Government brings its wrongful acts to an end as rapidly as possible."[250]

What exact measures States are required to take in a given situation will depend on the circumstances. The actions taken must themselves respect international law.[251] Further, it is an obligation of conduct, not result, and does not require a State to take *every* measure available to it. With analogy to the construction of positive obligations in other contexts, compliance requires States to act with due diligence and take all reasonable and appropriate measures to bring serious violations of peremptory norms to an end, having regard to *inter alia* the gravity of the breach, the resources of the State, the State's knowledge and capacity for influence, the effectiveness of the measures in question, the competing interests at stake, and any relevant resolutions of the UN General Assembly and Security Council.[252]

78. Having regard to those duties, Lord Bingham observed in *A and Others v Secretary of State for the Home Department* that "*the jus cogens erga omnes nature of the prohibition of torture requires member states to do more than eschew the practice of torture.*" Rather, "*[t]here is reason to regard it as a duty of States, save perhaps in limited and exceptional circumstances, as where immediately necessary to protect a person from unlawful violence or property from destruction, to reject the fruits of torture inflicted in breach of international law*."[253]

79. Third States' obligations of non-recognition, non-assistance and cooperation are engaged in the OPT context.

80. The West Bank. That conclusion is most straightforward in respect of violations of peremptory norms identified by the ICJ in the *OPT Advisory Opinion*: namely, Israel's breaches of the Palestinian people's right to self-determination,[254] the prohibition of the use of force,[255] the prohibition of racial discrimination and apartheid,[256] and the prohibitions against transfer of

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[249] Tenth emergency special session, Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, A/ES-10/L.31/Rev.1, 13 September 2024.

[250] Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (UN, 18 October 2024) (**'Independent International Commission of Inquiry 2024 Position Paper'**), § 22.

[251] *Wall Advisory Opinion*, § 159; *OPT Advisory Opinion*, § 279.

[252] By comparison, see: *Bosnian Genocide Case*, §§ 430-431; *Ilascu and Others v Moldova and Russia* [GC] App no 487/87/99 (8 July 2004), §§ 331-334; *Case of Velásquez Rodríguez v. Honduras*, Merits. Judgment of July 29, 1988. Series C No. 4, §§ 174-175; General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (CESCR, 2017) E/C.12/GC/24, §§ 14-18; *Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area, Advisory Opinion* [2001] ITLOS No.17, §§ 110-120.

[253] *A and Others v Secretary of State for the Home Department*, § 34.

[254] *OPT Advisory Opinion,* §§ 243 and 261.

[255] *OPT Advisory Opinion,* §§ 179 and 261.

[256] *OPT Advisory Opinion,* § 229.

population, forcible transfer and extensive appropriation and destruction of property.[257] Israel's violation of those fundamental norms are serious: they are longstanding, systematic, affect the rights of millions of Palestinians, and are of a significant magnitude.

81. Since as early as 1970, the UN General Assembly and at times the UN Security Council have repeatedly called upon States: (i) not to recognise any changes to the pre-1967 borders, (ii) "*to distinguish, in their relevant dealings, between the territory of the State of Israel and [the OPT]*"; and (iii) not to render aid or assistance to Israel in maintaining its illegal settlement activities, including to "*put an end to the flow to Israel of any military, economic, and financial resources that would encourage*" Israel to persist in its violations.[258]

82. The ICJ and the UN General Assembly have cogently explicated what is required of States to comply with those duties.

83. In the *Wall Advisory Opinion*, upon recognising that the obligations violated by Israel were *erga omnes* in nature, the ICJ held:

> "159. Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.
>
> 160. Finally, the (Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion."[259]

84. In the *OPT Advisory Opinion*, the ICJ expounded upon third States' obligations:

> "278. Taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, inter alia, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering

[257] Israel's commission of transfer of population, forcible transfer, and extensive destruction and confiscation of property are violations of peremptory norms in that they offend against the basic rules of IHL (constituting grave breaches of the Geneva Conventions) and/or constitute war crimes and/or crimes against humanity.
[258] UNGA Res 77/126 (2022); UNGA Res 74/11 (2019); UNGA Res 32/161 (1977); UNSC Res 2334 (2016); UNSC Res 465 (1980); UNGA Res 3414 (1975); UNGA Res 36/226A; UNGA Res 38/180A (1983); UNGA Res 2625 (1970).
[259] *Wall Advisory Opinion*, § 159.

into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory […]

279. Moreover, the Court considers that, in view of the character and importance of the rights and obligations involved, all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory. It is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end."

85. President Salam's Separate Declaration further observed:[260]

"44. […] Consequently, with respect to Israeli policies and practices that infringe the Palestinian people's right to self-determination, all States are bound by the customary obligations laid down in that Article. This requires not only taking no action that might hinder the exercise of that right, but also providing the necessary lawful support for the realization of that right and co-operating actively with the United Nations to that end. […]

45. These obligations are both negative and positive. The negative obligations require States to refrain from encouraging, aiding or assisting Israel in violation of the rules of international humanitarian law applicable in the Occupied Palestinian Territory. As the ICRC clarified in its 2016 commentary on the First Geneva Convention, "financial, material or other support in the knowledge that such support will be used to commit violations of humanitarian law would therefore violate common Article 1, even though it may not amount to aiding or assisting the commission of a wrongful act by the receiving States for the purposes of State responsibility" […] Thus, any unconditional financial, economic, military or technological assistance to Israel would constitute a breach of this obligation."

86. Upon considering the *OPT Advisory Opinion*, the UNGA issued its September 2024 Resolution.[261] The resolution relevantly provides:

"4. Calls upon all States to comply with their obligations under international law, inter alia, as reflected in the advisory opinion, including their obligation:

(a) To promote, through joint and separate action, the realization of the right of the Palestinian people to self-determination, the respect of which is an obligation erga omnes, and refrain from any action which deprives the Palestinian people of this right and, while respecting the Charter of the United Nations and international law,

[260] Declaration of President Salam, §§ 44 to 45.
[261] Tenth emergency special session, Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, A/ES-10/L.31/Rev.1, 13 September 2024.

to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise by the Palestinian people of its right to self-determination is brought to an end;

(b) Not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory;

(c) Not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Territory;

(d) Not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations, as affirmed by the Security Council in its resolution 2334 (2016), and the obligation in this regard, in relation to, inter alia, their diplomatic, political, legal, military, economic, commercial and financial dealings with Israel, to distinguish between Israel and the Palestinian territory occupied since 1967, including by:

> (i) Abstaining from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory;
>
> (ii) Abstaining from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the Territory, including with regard to the settlements and their associated regime;
>
> (iii) Abstaining, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory, including by refraining from the establishment of diplomatic missions in Jerusalem, pursuant to Security Council resolution 478 (1980) of 20 August 1980;
>
> (iv) Taking steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory, including with regard to the settlements and their associated regime; […]

(f) To undertake efforts towards bringing to an end systemic discrimination based on, inter alia, race, religion or ethnic origin, including to prevent, prohibit and eradicate the violations by Israel of article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination identified in the advisory opinion;

5. Also calls upon all States in this regard, consistent with their obligations under international law:

(a) To take steps to ensure that their nationals, and companies and entities under their jurisdiction, as well as their authorities, do not act in any way that would entail recognition or provide aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory;

(b) To take steps towards ceasing the importation of any products originating in the Israeli settlements, as well as the provision or transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory;

(c) To implement sanctions, including travel bans and asset freezes, against natural and legal persons engaged in the maintenance of Israel's unlawful presence in the Occupied Palestinian Territory, including in relation to settler violence;

(d) To support accountability efforts for all victims."

87. The UNGA 2024 Resolution is fundamentally consistent with the *OPT Advisory Opinion* and the well-established principles of international law set out in this section. The UNGA 2024 Resolution represents a cogent particularisation of what those obligations require of States in the context of Israel's establishment, maintenance and expansion of settlements in the West Bank (the "modalities" of putting those obligations into effect).[262] The General Assembly has highlighted the sharpened responsibility for all States in response to the ICJ Advisory Opinion.

88. Gaza. The UK owes the same prevention and non-assistance duties in relation to Israel's military offensive in Gaza. As set out above, there are compelling grounds to conclude that Israel has carried out direct and indiscriminate attacks against civilian and civilian objections, has committed forcible transfer of population, and has employed starvation as a method of warfare in Gaza. Those are breaches of peremptory norms, namely, the basic rules of IHL and the prohibition on war crimes and/or crimes against humanity. Given the scale and magnitude of those breaches, there can be no question as to their seriousness – and the evidence indicated above shows that the breaches are ongoing, despite the provisional measures orders of the ICJ. Accordingly, the UN Special Committee has made multiple recommendations for action by third States, including to "*refrain from aiding or abetting the commission of all violations of peremptory norms of international law*."[263] In particular:

> "(g) Protect and ensure respect for human rights in economic activities, including by setting out clear expectations for businesses in terms of responsible conduct consistent with the Guiding Principles on Business and Human Rights, and exercising heightened due diligence when supporting business enterprises;
>
> (h) Hold business entities fully accountable for complicity in violations of international law, whether through their supply of arms, provision of digital products and services and/or engagement in technology transfer and facilitation (including artificial intelligence) or links to value chains (including algorithmic-based decision- making systems) that enable Israel's ongoing onslaught in Gaza and apartheid system of injustice in the occupied West Bank, including East Jerusalem;"

89. That third States' prevention and non-assistance duties arise in respect of Gaza is implicit in the UN General Assembly's resolution of 9 June 2025, which called upon "*all Member States to individually and collectively take all measures necessary, to ensure compliance by Israel with its obligations*".[264]

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[262] To use the words of the ICJ in the *Chagos Islands Opinion*, §§ 180 and 182.
[263] *Ibid.*, para. 71.
[264] Protection of civilians and upholding legal and humanitarian obligations (9 June 2025) A/ES-10/L.34/Rev.1, at §10.

90. The initial ceasefire agreement, which broke down in March 2025, does not affect the legal position with respect to Gaza. The breaches of peremptory norms are ongoing. The legal consequences for the UK and other third States will only be suspended or cease if a future ceasefire agreement brings all of Israel's serious breaches of peremptory norms to an end.

(2) Duties to ensure respect of international humanitarian law

91. All States Parties to the Geneva Conventions, including the UK, are under an obligation, pursuant to common Article 1 of the Geneva Conventions, "*to respect and to ensure respect*" for the Conventions "*in all circumstances*". That obligation forms part of customary international law.[265] As the ICJ observed in *Nicaragua v Germany*:

> "It follows from that provision that every State party to these Conventions, "whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with" (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), pp. 199-200, para. 158). Such an obligation "does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give specific expression" (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 114, para. 220)."[266]

92. As with States' obligations in respect of serious breaches of peremptory norms, the obligation to ensure respect for the Geneva Conventions has a negative and a positive dimension. It requires States to take positive steps to prevent violations of the Geneva Conventions where IHL violations are being committed, there is an "*expectation"* of such violations "*based on facts or knowledge of past patterns"*, or there is a "*foreseeable risk that they will be committed*".[267] As the ICRC has explained, while States have some discretion to choose which measures to take to comply with the duty, those adopted must be considered "*adequate"* to ensure respect, the duty must be carried out with "*due diligence"*, and the actions required will depend on, *inter alia*, the gravity of the breach, the means reasonably available to the State, and the degree of influence it exercises.[268] According to the ICRC Commentary to common Article 1 of the Geneva Conventions, the obligation also consists of a negative obligation not to encourage, aid or assist in violations of IHL.[269]

93. Having regard to the suite of violations of IHL identified in respect of Israel's settlement enterprise in the West Bank and its military offensive in Gaza, the UK's duty to ensure Israel's compliance with the Fourth Geneva Convention is engaged. The *OPT Advisory Opinion*, the UNGA 2024 Resolution and the Independent International Commission of Inquiry Position Paper confirm as much.[270] We have long surpassed the threshold of foreseeable risk. The UK must do everything reasonably in its power to ensure Israel respects its obligations under the Geneva

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[265] Rule 139, ICRC Rules; *Nicaragua v USA*, § 220; *Wall Opinion*, §§ 158-159.
[266] *Nicaragua v Germany*, § 23. See also: *OPT Advisory Opinion*, § 279; *Wall Advisory Opinion*, §§ 157-159.
[267] ICRC Commentary to Geneva Conventions (2016), Common Article 1, §§ 162 and 164.
[268] ICRC Commentary to Geneva Conventions (2016), Common Article 1, § 165.
[269] ICRC Commentary to Geneva Conventions (2016), Common Article 1, § 158. See also: *OPT Advisory Opinion,* Declaration of President Salam, §§ 44 to 45.
[270] *OPT Advisory Opinion*, § 279; UNGA 2024 Resolution, Clause 4(e); Independent International Commission of Inquiry Position Paper, § 23.

Conventions, and ceases its violations of IHL.[271] The gravity of Israel's violations heightens the standard of due diligence to be applied, which in this case must be stringent.[272] In broad terms, the measures required of the UK to comply with that duty are co-extensive with those outlined in the previous section.

(3) The duty to prevent genocide

94. For the reasons outlined at paragraphs 60-72 above, there is a serious risk that Israel has or is committing genocide in Gaza, and that the UK's obligations to prevent genocide are engaged.

95. Pursuant to Article I of the Genocide Convention, to which the UK is a State Party, all States Parties have undertaken "*to prevent and to punish*" the crime of genocide. In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)*, the ICJ observed that *"[a]ll the States parties […] have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention*"; those obligations are owed by any State party to all the other States parties; "*they are obligations erga omnes partes, in the sense that each State party has an interest in compliance with them in any given case*".[273]

96. The quintessential exposition of the prevention duty remains that of the ICJ in the *Bosnian Genocide Case*:

> "[T]he obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: **the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide**. In this area the notion of "due diligence", which calls for an assessment in concreto, is of critical importance. Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events. The State's capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide. On the other hand, **it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed**

[271] Dieter Fleck, The Handbook of International Humanitarian Law (OUP, 4th ed, 2021), pp 693-694.
[272] For a similar analysis, see: Tom Dannenbaum and Alex de Waal, Time Has Run Out: Mass Starvation in Gaza and the Global Imperative (Just Security, 30 July 2025).
[273] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections* [2022] ICJ Rep 447, § 107. See also: *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion)* [1951] ICJ Rep 15, p 23.

> **all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide**. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce."[274]

97. While a State can only be held responsible for breaching the obligation to prevent if genocide is ultimately committed, the ICJ observed: "*This obviously does not mean that the obligation to prevent genocide only comes into being when perpetration of genocide commences; that would be absurd, since the whole point of the obligation is to prevent, or to attempt to prevent, the occurrence of the act*". Rather, the duty to act to prevent genocide "*arise[s] at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed*".[275] As the ICJ observed: "*From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit*."[276] Elsewhere in the judgment, the ICJ reaffirmed that the duty to prevent is engaged in any situation where there is a serious risk of genocide, where the State "*has it in its power to contribute to restraining in any degree the commission of genocide*".[277]

98. It is incontrovertible that the UK's duty to prevent genocide Convention is engaged in respect of Israel's military offensive in Gaza. The UK is required to take all reasonably available measures within its power which might contribute to the prevention of genocide in Gaza.

99. The threshold of "*serious risk*" of genocide has been crossed. At the very latest, the UK reasonably ought to have been aware that threshold had been crossed by 26 January 2024, when the ICJ indicated provisional measures in *South Africa v Israel* and found that South Africa had asserted a plausible right on behalf of the Palestinians in Gaza to be protected from acts of genocide.[278] The ICJ's Order of 26 January 2024 records the fact that the obligation of Israel to prevent acts of Genocide had been triggered, and a number of the Separate Declarations confirmed as much.[279] Judge Yusuf in his separate declaration made it clear: *"[t]he alarm has now been sounded by the Court. All the indicators of genocidal acts are flashing red in Gaza*".[280]

100. The conclusion as to the existence of that serious risk has only been strengthened by the ICJ's further indications of provisional measures on 28 March 2024 and 24 May 2024, and by Israel's failure to comply with those provisional measures (see paragraphs 70-72 above). Add to that the abundance of evidence regarding the nature of Israel's ongoing indiscriminate aerial bombardment of Gaza, siege tactics, restrictions on entry of humanitarian assistance and arbitrary use of evacuation orders, the number of civilian fatalities and extent of destruction of property and life-sustaining infrastructure. There are also the findings of genocide that have since been made by the UN Special Rapporteur on the OPT, Amnesty International and Human

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[274] *Bosnian Genocide Case*, § 430.
[275] *Bosnian Genocide Case*, § 431. See also: *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v Germany), Request for the Indication of Provisional Measures,* Order of 30 April 2024, (**'*Nicaragua v Germany*'**), § 24.
[276] *Bosnian Genocide Case*, § 431.
[277] *Bosnian Genocide Case*, § 461.
[278] *South Africa v Israel (January 2024 Provisional Measures),* §§ 35-36 and 54. See also: Tom Dannenbaum and Alex de Waal, Time Has Run Out: Mass Starvation in Gaza and the Global Imperative (Just Security, 30 July 2025).
[279] *South Africa v Israel (January 2024 Provisional Measures),* Declaration of Judge Nolte, §15.
[280] Separate Declaration by Judge Yusuf, §§ 8 and 12.

Rights Watch, B'Tselem, Physicians for Human Rights, and the report of 14 November 2024 by the UN Special Committee.[281]

101. Thus, from 26 January 2024 at the latest, the UK has been under an obligation of conduct to employ "*all means reasonably available*" to it which might have contributed to the preventing of genocide in Gaza, and to act with "*due diligence*" in that regard.[282] In terms of what was and is required of the UK to comply with its prevention duty, it is relevant that: (i) the UK has "*capacity to influence*" Israel by virtue of its close diplomatic, political and economic relations. It is clear from the *Bosnian Genocide Case* that "*capacity to influence*" is a relatively broad concept, with links of all kinds being relevant.[283] The UK must take measures commensurate with its capacity for influence. It is irrelevant that the undertaking of available reasonable measures by the UK alone may not suffice in deterring Israel from committing genocide in Gaza. Indeed, in a globalised world where Israel has diplomatic, economic and military ties to multiple States, it would very likely require "*the combined efforts of several States*" in order to deter Israel from preparing or committing genocide in Gaza. In any event, the duty upon the UK is at least to 'co-operate' to take such measures, which overlaps with the notion of '*combined efforts'*. Through that prism, we consider that the UK has the "*power to contribute to restraining in any degree the commission of genocide*"[284] in Gaza.

102. The obligation to prevent genocide is ongoing for as long as there exists a serious risk of genocide being committed.[285] The initial ceasefire agreement did not change that and it is highly questionable that any temporary future ceasefire agreement will do so. Israel's blockade of humanitarian aid into Gaza, renewed on 2 March 2025, and the resumption of its military campaign on 18 March 2025 demonstrate the fragility of any ceasefire agreement, and the ongoing risk of genocide in Gaza.

103. Finally, it is no answer that the ICJ has not yet finally determined whether genocide is being committed in Gaza. The duty arises at the point the serious risk threshold is crossed; not at the point it is conclusively determined Israel is committing genocide. As a leading text on genocide makes logically clear:[286]

> "A state can be held responsible for breaching its obligations to prevent genocide only if an act of genocide has actually been committed. Lest the very purpose of that duty be defeated, this does not mean, however, that a state is not required to act until such crimes have actually been committed. Nor does it mean that a requirement of causality must be established between the failure to act and the commission of acts of genocide. Instead, such a duty exists and must be effectively enforced as soon as the state is on notice of the real possibility that acts of genocide might be committed or, in the terms of the ICJ, 'at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed'".

104. Consistent with the preventative purpose of Article I of the Genocide Convention, the UK must take a proactive approach. Waiting until the ICJ gives judgment in *South Africa v Israel* before

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[281] Amnesty International Genocide Report; Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water (Human Rights Watch, 2024); Francesca Albanese October 2024 Report; UN Special Committee 2024 Report, § 69; A Health Analysis of the Gaza Genocide (Physicians for Human Rights, July 2025); Our Genocide (B'Tselem, July 2025).
[282] Independent International Commission of Inquiry Position Paper, § 23.
[283] *Bosnian Genocide Case*, § 430.
[284] *Bosnian Genocide Case,* § 461.
[285] *Bosnian Genocide Case,* §431.
[286] Guenael Mettraux, International Crimes, Law and Practice, Volume I: Genocide, OUP, 2019, at pp 85 to 86.

taking the steps necessary to comply with the prevention duty creates an unacceptable risk of engaging the UK's responsibility under international law.[287]

E. APPLICATION OF THE PREVENTION AND NON-ASSISTANCE DUTIES TO LGPS INVESTMENT IN INVOLVED COMPANIES

105. The prevention and non-assistance duties apply to the UK's investment relations with Israel and LGPS investment in companies which aid or assist in the commission of Israel's serious breaches of peremptory norms of international law, which may foreseeably assist in the commission of genocide and violations of the Geneva Conventions (i.e. the Involved Companies).

(1) Involved Companies linked to Israel's violations

106. Numerous companies contribute to, support, enable and/or facilitate the establishment and maintenance of Israeli settlements in the West Bank and the Israeli military offensive in Gaza. As early as 7 February 2013, an independent international fact-finding mission appointed by the UN Human Rights Council found that "*business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements [in the West Bank]*".[288] The mission identified the following as raising particular human rights concerns:

- "The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures
- The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements
- The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops
- The supply of security services, equipment and materials to enterprises operating in settlements
- The provision of services and utilities supporting the maintenance and existence of settlements, including transport
- Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses
- The use of natural resources, in particular water and land, for business purposes
- Pollution, and the dumping of waste in or its transfer to Palestinian villages;
- Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints

[287] Once the temporal distinction between point at which the duty arises and the point at which State responsibility can be determined is understood, the debate between the parties in *Al-Haq* (at §§ 60-64) diminishes in relevance.

[288] Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (UNHRC, 7 February 2013) A/HRC/22/63 (**'Independent Fact-Finding Mission 2013 Report'**), at § 96.

- Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements"[289]

107. The Independent Fact-Finding Mission advised States take appropriate measures to ensure business enterprises domiciled in their jurisdictions which conduct activities in relation to settlements respect human rights in their operations.[290] The OHCHR has since observed that "*[b]usinesses play a central role in furthering the establishment, maintenance and expansion of Israeli settlements*" and that, in order to comply with their responsibilities under the UN Guiding Principles on Business and Human Rights (**'UNGPs'**), "*business enterprises may need to consider whether it is possible to engage in such an environment in a manner that respects human rights*." The OHCHR has further stated that "*it is difficult to imagine a scenario in which a company could engage in listed activities [in the UN Database] in a way that is consistent with the [UNGPs]*."[291]

108. In 2022, the Independent International Commission of Inquiry "*stress[ed] that business enterprises are contributing to the expropriation and exploitation by Israel or Palestinian land and resources and are supporting the transfer of Israeli settlers into the [OPT].*"[292] And, in September 2024, the UN Special Committee called upon States to:

> "Hold business entities fully accountable for complicity in violations of international law, whether through their supply of arms, provision of digital products and services and/or engagement in technology transfer and facilitation (including artificial intelligence) or links to value chains (including algorithmic -based decision-making systems) that enable Israel's ongoing onslaught in Gaza and apartheid system of injustice in the occupied West Bank, including East Jerusalem"[293]

109. Most recently, the UN Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, Francesca Albanese, published a report on 30 June 2025 investigating the role corporations play in sustaining Israel's violations of international law in the OPT.[294] The report concludes that corporate entities in a variety of sectors (including arms manufacturers, tech firms, building and construction companies, extractive and service industries, banks, and pension funds) play a significant role in enabling Israel's violations of international law and: "*Had proper human rights due diligence been undertaken, corporate entities would have long ago disengaged from Israeli occupation*".[295] Following decades of documented violations and recent judicial developments at the ICJ, the report concludes that corporate entities have a "*prima facie responsibility to not engage and/or to withdraw totally and unconditionally from [dealings associated with Israel's violations of international law], and to ensure that any engagement with Palestinians enables their self-determination*".[296] Correspondingly, continued activities with

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[289] Database of Business Enterprises pursuant to Human Rights Council Resolutions 31/36 and 53/25, at §§ 7-8 and 14.
[290] Independent Fact-Finding Mission 2013 Report, § 117.
[291] Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (OHCHR, 1 February 2018), §§ 38, 41 and 42.
[292] 2022 Independent International Commission of Inquiry Report, § 77.
[293] 2024 Special Committee Report, § 71(g)-(h). See also: Independent International Commission of Inquiry Position Paper, § 30.
[294] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, Francesca Albanese, From economy of occupation to economy of genocide (UNHRC, 30 June 2025) A/HRC/59/23 (the **'Francesca Albanese 2025 Report'**).
[295] Francesca Albanese 2025 Report, at §§ 2-3.
[296] Francesca Albanese 2025 Report, at § 19.

sectors connected to the OPT may result in corporate entities being found to have knowingly contributed to serious violations of international law.[297]

110. The UK Government has acknowledged similar risks, stating in its guidance "*Overseas business risk: The Occupied Palestinian Territories*" (the **'OPT Business Guidance'**):

> "There are therefore clear risks related to economic and financial activities in the settlements, and we do not encourage or offer support to such activity. Financial transactions, investments, purchases, procurements as well as other economic activities (including in services like tourism) in Israeli settlements or benefiting Israeli settlements, entail legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognised as a legitimate part of Israel's territory. This may result in disputed titles to the land, water, mineral or other natural resources which might be the subject of purchase or investment."[298]

111. Pursuant to resolution 31/36 of the UN Human Rights Council, the OHCHR published a database in 2020, updated on 20 June 2023, listing companies involved in the activities outlined at paragraph 106 above (**'the UN Database'**). The UN Database lists 97 business enterprises which meet the standard of reasonable grounds to believe that they were involved in one or more of the twelve activities deemed essential to the maintenance and expansion of Israeli settlements, for the period of 1 August 2019 to 31 December 2022.[299] This is a useful starting point but, due to its temporal and thematic limitations, it cannot be considered an exhaustive account of companies involved in the establishment and maintenance of Israeli settlements in the West Bank, still less the military offensive in Gaza.[300] Together with the UN Database, the Who Profits Corporate Database (**'the Who Profits Database'**),[301] and the American Friends Service Committee Database (**'the AFSC Database'**)[302] provide a robust basis to identify Involved Companies.

112. We consider the following to be 'paradigm cases' of Involved Companies:

112.1. Arms companies involved in the supply of weaponry used in Israeli military operations in the OPT and in Israel's military offensive in Gaza. The supply of arms and munitions is essential for the sustainability of Israel's military offensive in Gaza and containment of the Palestinian people in denial of their right to self-determination. There is a close nexus between the supply of heavy bombs or components for fighter jets and Israel's heavy aerial bombardment of Gaza. A State or company providing such weapons is an obvious potential case of knowing aid and assistance.[303] In recognition of the nexus between the supply of arms and Israel's violations of peremptory norms, the UN General Assembly has called for States to "*take steps towards ceasing […] the provision or transfer of arms, munitions and related equipment to Israel, the occupying power, in all cases where there*

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[297] Francesca Albanese 2025 Report, at § 20.
[298] Overseas business risk: The Occupied Palestinian Territories (FCO and Others, 24 February 2022).
[299] OHCHR update of database of all business enterprises involved in the activities detailed in paragraph 96 of the independent report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (UNHRC, 30 June 2023) (**'UN Database'**), at §§ 7-8 and 14.
[300] UN Database, at § 5.
[301] Who Profits Database of Complicit Companies (Who Profits).
[302] How To Divest (Investigate).
[303] *Nicaragua v Germany*, § 24. See also: Commentary to the Draft Articles on State Responsibility, p 66 at § (7) (Article 16).

are reasonable grounds to suspect that they may be used in the [OPT]".[304] The UN Special Committee has highlighted supply of arms as a form of complicity.[305]

112.2. Companies directly involved in the construction of settlements and associated infrastructure, the demolition of Palestinian properties, or the supply of equipment to that end. Such activities are vital to the maintenance and expansion of the settlement enterprise. The Independent UN International Commission of Inquiry has "*stress[ed] that business enterprises are contributing to the expropriation and exploitation by Israel of Palestinian land and resources and are supporting the transfer of Israeli settlers into the [OPT]*".[306] Further, construction equipment is used to carry out mass demolitions as part of Israel's military offensive in Gaza.[307] There is a strong case that such companies are assisting in the crimes of *inter alia* transfer of population, extensive destruction and appropriation of property, and forcible transfer, as well as Israel's associated violations of the right to self-determination and prohibition of racial discrimination and apartheid.[308]

112.3. Banks financing the construction and maintenance of settlements, such as through the provision of loans, collateral and finance in respect of housing units, transport lines and infrastructure projects. The provision of loans, collateral and finance is essential to the construction and maintenance of Israel's settlements, amounting to a form of assistance.[309] The commentary to the Draft Articles on State Responsibility recognises "*knowingly providing an essential facility or financing the activity in question*" as an example of aiding or assisting under Article 16.[310]

112.4. Companies involved in the supply of surveillance equipment, digital products or technology forming part of Israel's security and/or military apparatus in the OPT. Sophisticated surveillance is essential in enforcing the restrictions on freedom of movement in the West Bank and segregation of Israeli and Palestinian communities, whereas technologies (such as artificial intelligence) have been instrumental in Israel's bombardment of Gaza.[311]

113. Accordingly, the UNGA 2024 Resolution has called on all States to "*take steps to ensure that their nationals, and companies and entities under their jurisdiction, as well as their authorities, do not act in any way that would entail recognition or provide aid or assistance*" in maintaining the situation created by Israel's serious breaches of peremptory norms.[312]

(2) The UK's investment relations with Israel and Involved Companies

114. The prevention and non-assistance duties are sufficiently broad to extend to the UK's investment relations with Israel and Involved Companies. In the *Namibia Opinion*, the ICJ referred to a duty

[304] UN 2024 General Assembly Resolution, Clause 5(b).
[305] Special Committee 2024 Report, § 71(h). See also: Francesca Albanese 2025 Report, at §§ 29-35.
[306] Independent International Commission of Inquiry 2022 Report, § 77. See also: Francesca Albanese 2025 Report, at §§ 49-52.
[307] Francesca Albanese 2025 Report, at §§ 44-47.
[308] The Commentary to the Draft Articles on State Responsibility recognises acts "assisting in the destruction of property belonging to nationals of a third county" as an example of aiding or assisting under Article 16: p 66 at § (1) (Article 16).
[309] For evidence on the broader role of the financial sector in funding and enabling Israel's violations of international law more broadly, see: Francesca Albanese 2025 Report, at §§ 72-81.
[310] Commentary to the Draft Articles on State Responsibility, p 66 at § (1) (Article 16).
[311] Special Committee 2024 Report, § 71(h); Francesca Albanese 2025 Report, at §§ 36-43.
[312] UNGA 2024 Resolution, § 5(a).

to "*refrain from lending any support or any form of assistance.*"[313] In the context of Article I of the Genocide Convention, States are required to employ "*all means reasonably available*" and "*within [their] power*" "*which might have contributed*" to "*restraining in any degree the commission of genocide*."[314] A similarly broad duty applies in respect of bringing situations created by serious breaches of peremptory norms to an end, which is evident from the *OPT Advisory Opinion* and the UNGA 2024 Resolution. In particular, the ICJ and the UN General Assembly called on States to:

114.1. "*[A]bstain from entering into economic or trade dealings with Israel concerning the [OPT] which may entrench [Israel's] unlawful presence in the territory*";[315] and

114.2. "*[T]ake steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the [OPT]*".[316]

115. In the UN Independent International Commission of Inquiry's view, that means: "*States must cease all financial, trade, investment and economic relations with Israel that maintain the unlawful occupation or contribute to maintaining it. States must review their trade and economic agreements with Israel that involve products and produce of the unlawful settlements*."[317]

116. State investment in entities which aid or assist in Israel's commission of serious breaches of peremptory norms in the OPT, and/or which may foreseeability assist in the commission of genocide and violations of the Geneva can breach the prevention and non-assistance duties in that (i) such continued investment can amount to a form of assistance (contrary to the duty under Article 41(2) of the Articles of State Responsibility) and (ii) because it is contrary to States' duties to take all reasonably available measures to bring Israel's violations of peremptory norms to an end, prevent genocide, and ensure respect of the Geneva Conventions, which would include the obligation to take steps to divest existing investments in Involved Companies.

117. Investment will amount to a form of assistance, where the State investor, through its decision to make new investments, knowingly contributes to the maintenance or expansion of settlements in the West Bank (entrenching Israel's unlawful presence in the OPT), or the commission of international crimes in Gaza.[318] State investment in the paradigm cases of companies (i.e. arms suppliers, construction companies and suppliers, banks and financiers, and technology providers) mark the clearest examples of assistance. Such companies and business activities have a strong nexus to and most obviously aid and assist in the commission of Israel's serious breaches of peremptory norms, violations of IHL and the serious ongoing risk of genocide. From the perspective of the duty of non-assistance, there is no significant difference in principle between a State directly supplying arms, construction and surveillance equipment to Israel with knowledge that the arms or equipment will be used to maintain and/ or expand settlements, or directly financing Israel's unlawful activities in the OPT, as compared to a State investing in a company which does the same, insofar as the State has knowledge the company is doing so.[319]

118. As for the duty to take all reasonably available measures, a UK-wide policy not to invest in companies which aid or assist in maintaining a situation created by Israel's commission of serious breaches of peremptory norms in the OPT may result in changing the behaviour of the companies at risk of being starved of UK investment. Such companies may adapt their business

[313] *Namibia Opinion*, § 119.
[314] *Bosnian Genocide Case*, §§ 430-431 and 461.
[315] *OPT Advisory Opinion*, § 278; UNGA 2024 Resolution, Clause 4(4)(ii).
[316] *OPT Advisory Opinion*, § 278; UNGA 2024 Resolution, Clause 4(4)(iv).
[317] Independent International Commission of Inquiry 2024 Position Paper, § 29.
[318] Commentary to the Draft Articles on State Responsibility, p 66 at § (1) (Article 16), and p 115 at §§ (11)-(12) (Article 41).
[319] Commentary to the Draft Articles on State Responsibility, p 66 at § (1) (Article 16), and p 115 at §§ (11)-(12) (Article 41).

operations, such as by disengaging from settlement-related enterprises or ceasing supply of arms and surveillance equipment to Israel, in order to secure or retain substantial investment. That, in turn, may impact upon the economic viability of Israel's settlement enterprise and/or the sustainability of its military offensive in Gaza. It is then plausible that the economic leverage placed on Israel by a UK-wide policy of not investing in Involved Companies "*might […] contribute*" to bringing to an end Israel's violations of *jus cogens* norms and/or to prevent the commission of genocide.[320] In this respect, the UK's close economic ties with Israel and the financial muscle of UK pension and investment funds give rise to a "*capacity to influence*".[321] While it is uncertain how companies will react to UK investment decisions and how Israel will react to the business decisions of Involved Companies, it is "*irrelevant*" whether the UK claims or proves that "*even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide*" or other serious breaches of peremptory norms.[322]

119. In concrete terms, it follows that there are two essential components of the UK's duties in respect of investment.

    119.1. The first is that where an investment has not yet been made but is being considered, the UK must refrain from entering into investment relations with Involved Companies. If a public authority knowingly makes new investments in Involved Companies, that would be unlawful under international law.

    119.2. The second component is that where prior investments are concerned, the UK must take reasonable steps to divest from companies which are aiding or assisting in Israel's commission of serious breaches of peremptory norms in the OPT, and/or which may foreseeably assist in the commission of genocide and violations of the Geneva Conventions. The divestment duty overlaps with the duty to refrain from investing. The distinction is that it requires positive action, pursuant to the UK's obligations to employ all means reasonably available to prevent genocide, to bring Israel's serious violations of peremptory norms to an end, and to ensure respect for the Geneva Conventions. This is not an absolute duty of immediate divestment. It is a duty to take reasonable steps to that end, which corresponds to the ICJ and UN General Assembly's view that States must "*take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the [OPT]*".[323]

120. The concept of "*due diligence*" is of central importance in determining whether a State has complied with its prevention and non-assistance duties (i.e. a failure to exercise due diligence will be a strong indicator of non-compliance).[324] The UN Special Committee has recommended that "*[i]nvestors implement policies requiring heightened human rights due diligence in conflict-affected areas and ensure that their investments in Israel do not prolong the occupation of Palestinian land*".[325] Similarly, in its 18 October 2024 position paper on the Advisory Opinion, the Independent UN Commission noted:

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[320] *Bosnian Genocide Case*, §§ 430-431 and 461. As set out at paragraph 97 above, it is irrelevant that the actions of a single State, if it had employed all means reasonably at its disposal, would have succeed in preventing genocide; State responsibility will be established where the State failed to take all measures within its power which might have contributed to preventing the genocide.
[321] *Bosnian Genocide Case*, § 430.
[322] *Bosnian Genocide Case*, § 430.
[323] *OPT Advisory Opinion*, § 278; UNGA 2024 Resolution, Clause 4(4)(iv).
[324] *Bosnian Genocide*, § 430.
[325] Special Committee 2024 Report, § 73(b).

> "Each State is obliged to undertake a thorough due diligence review of its aid and assistance to Israel and determine whether it is being used by Israel to support and maintain the unlawful occupation. Aid and assistance include financial, military and political aid or support."[326]

121. The UNGPs and comparative mandatory human rights due diligence legislation can inform what the concept of "due diligence" requires. Under the UNGPs, a central aspect for business enterprises in complying with their responsibility to respect human rights is that they should conduct ongoing human rights due diligence. Guiding Principle 17 states:

> "In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."[327]

122. Exercising due diligence cannot mean inaction. Investors must identify, assess and monitor whether and to what extent they are investing or are about to invest in Involved Companies.[328] Where an investor identifies that a company it is considering investing in is aiding or assisting in Israel's violations of international law, it must refrain from doing so. And an investor cannot disclaim knowledge of such violations or a company's involvement therein by failing to perform the requisite due diligence. If an investor fails to identify a company that is aiding or assisting in Israel's violations of international law because of a failure to exercise due diligence, that will be a circumstance where it will be assumed to have constructive knowledge. In those circumstances it will breach the duty of non-assistance where it reasonably ought to have known that its investment decision will contribute to such violations. For pre-existing investments, it *may* be a reasonable step for the investor to engage with the company, request additional information, and seek assurances that it will cease its involvement in activities which aid or assist in Israel's violations and remediate adverse impacts caused by its operations.[329] Whether engagement is an appropriate step will depend upon the extent of the company's involvement, the impact of its operations on the Palestinian people, and the investor's capacity for influence.[330] However, where engagement is unsuccessful or inappropriate, reasonable steps will require an investor to take steps towards divesting from the Involved Company without undue delay.[331] Again, immediately wholesale divestment is not required in all circumstances, such as where it would cause significant financial detriment to the relevant pension fund. But that would not absolve the UK from its duty to take reasonable steps towards divestment, which could involve staged divestment and continued engagement in appropriate circumstances.

123. For avoidance of doubt, it is <u>not</u> our view that all economic relations with Israel or any investment in any company domiciled or operating in Israel will necessarily be incompatible with the prevention and non-assistance duties. To engage the prevention and non-assistance duties,

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[326] Independent International Commission of Inquiry 2024 Position Paper, § 21.

[327] A similar expectation is set out in the OECD Guidelines for Multinational Enterprises and the Government's guidance, "Good Business: Implementing the UN Guiding Principles on Business and Human Rights", and in mandatory human rights legislation across Europe (for example, Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (**'EU CSDDD'**)).

[328] UNGPs, Principle 15(b); EU CSDDD, Articles 5(1)(b) and 8(1).

[329] EU CSDDD, Articles 5(c)-(e), 10(2)(b), 11(3)-(4) and 12.

[330] EU CSDDD, Articles 10(1) and 11(1).

[331] EU CSDDD, Articles 10(6)(b) and 11(7)(b). As to the timeframe considered reasonable for divestment to take place, guidance should be taken from the ICJ's *OPT Advisory Opinion*, which stated that "*the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible*": *OPT Advisory Opinion,* § 285.

investments must have a close nexus to Israel's unlawful activities in the OPT: they must, to use the language of the UN Commission, be investments that can reasonably be said to "*maintain the unlawful occupation or contribute to maintaining it*", or contribute "*to the commission of war crimes or genocide*".[332]

(3) The LGPS

124. The LGPS is a public sector pension scheme for people working in local government or other employers that participate in the scheme.[333] It is one of the largest pension schemes in the UK, having 6.1 million members, 18,000 participating employers and a market value of £391bn (as of March 2024).[334] As the largest public sector pension fund scheme in the UK, the above analysis on the UK's prevention and non-assistance duties has an obvious relevance to the LGPS.

125. According to the PSC Database, the LGPS has at least £12.2bn of investments in companies which it considers to be complicit in Israel's violations in the OPT. That includes substantial investments in the paradigm cases: companies which supply the Israeli military with arms, provide technology and equipment for the infrastructure of occupation, are active in Israeli settlements, and which appear in the UN Database, the AFSC Database, and the Who Profits Database.[335] The apparent extent of LGPS investment in Involved Companies gives rise to some degree of "*capacity for influence*" along the lines set out at paragraph 118 above.

126. A feature of the LGPS is that responsibilities are divided between the Secretary of State and the administering authorities. The Secretary of State for Housing and Communities is responsible for adopting regulations, guidance and making directions. The LGPS is then administered on the local level by 86 local pension funds across England and Wales (**'local pension funds'**). The "*administering authorities*" are typically local government authorities, which are responsible for managing and administering the local pension funds and investing fund assets. Investments can be direct investments by holding shares in specific companies, or indirect investments through investment funds which hold shares in specific companies on behalf of the local pension fund. The administering authority may delegate its functions to *inter alia* local pension committees and investment managers. Investments of certain administering authorities are made from asset pools, such as the London Collective Investment Vehicle (**'London CIV'**). Asset pools are voluntary collaborations between administering authorities designed to facilitate pooled investment across different funds. Administering authorities also receive advice and support from other bodies, such as local pension boards,[336] the scheme advisory board[337] and the local authority pension fund forum.[338] Notwithstanding, ultimate responsibility for the administration of each local pension fund remains with the administering authority. It is the duties and responsibilities of the Secretary of State and the administering authorities which are of central relevance to this Paper.

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[332] Independent International Commission of Inquiry 2024 Position Paper, §§ 28-29.
[333] The statutory framework is discussed further in Part F.
[334] Facts and Figures (LGPS).
[335] LGPS Investments (PSC).
[336] Local pension boards are responsible for overseeing and assisting the administering authority and local pension committees in respect of compliance with applicable regulations, legislation and guidance (2013 Regulations, Regs 106-109).
[337] The scheme advisory board is responsible for providing advice to the Secretary of State on the desirability of changes to the LGPS, as well as to administering authorities and local pension boards (2013 Regulations, Regs 110-113 and 116).
[338] The LAPFF engages with companies on behalf of its member administering authorities on ESG issues.

127. The prevention and non-assistance duties are relevant to the Secretary of State and the administering authorities. Both are organs of the State whose acts and omissions are attributable to the UK under Article 4 of the Articles of State Responsibility, and who must conform with the UK's prevention and non-assistance duties.

(4) Duties of the Secretary of State

128. The Secretary of State's principal levers of influence include her powers to issue guidance in respect of the LGPS and make directions. Administering authorities must formulate investment strategies in accordance with the Secretary of State's guidance and, if the Secretary of State is satisfied that an administering authority is not following her guidance, she has the power to make directions or give instructions requiring administering authorities to change their investment strategies or invest their assets in a specified manner (under regulations 7 and 8 of the 2016 Regulations).

129. Those powers provide an important means through which the UK can discharge its prevention and non-assistance duties. The Secretary of State's powers are sufficiently broad to enable it to revise the LGPS Guidance to require administering authorities:

    129.1. To refrain from making new investments in companies which aid or assist in the commission of serious breaches of peremptory norms by States, and/or which may foreseeably assist in the violations of the Geneva Conventions and/or breaches of the Genocide Convention where there is a serious risk of genocide; and

    129.2. Take reasonable steps to divest from such companies.

130. The contexts or companies to which that applies could be specified in regulations or guidance, or be left to administering authorities to determine with reference to defined criteria. While the Secretary of State has wide powers, whatever guidance is issued or criteria are defined would have to be thorough and best give effect to the UK's prevention and non-assistance duties – recalling (to use the language of the ICJ) that the UK must use all means reasonably at its disposal. Consistent with that duty, and having issued such guidance, it would then be incumbent on the Secretary of State to make appropriate directions or instructions in the event an administering authority's investment strategy or investment decisions did not comply with the guidance and – by the same token – the UK's prevention and non-assistance duties under international law.

131. Any failure by the Secretary of State to take appropriate action would constitute a breach of the UK's prevention and non-assistance duties under international law. It is evident that substantial LGPS investments are being made in Involved Companies (including the paradigm cases identified above). In the absence of appropriate guidance, many administering authorities have either not refrained from making new investments in such companies or have failed to take reasonable steps towards divestment. Despite that, the Secretary of State has not published appropriate guidance pursuant to the UK's prevention and non-assistance duties under international law.

(5) Duties of administering authorities

132. The UK's prevention and non-assistance duties are not limited to the Secretary of State. Administering authorities are organs of the State under Article 4 of the Articles of State Responsibility. The principle of the "*unity of the State*" means that actions or omissions of all its organs should be regarded as acts or omissions of the State for the purposes of international law; as the ILC's commentary to the Draft Articles on State Responsibility puts it: "*there is no category of organs specifically designated for the commission of internationally wrongful acts*".[339] The ILC commentary clarifies that the reference to State organ in Article 4 "*extends to organs of government of whatever kind or classification, exercising whatever functions, and at whatever level in the hierarchy, including those at provincial or even local level*".[340] Thus, in *Generation Ukraine Inc v Ukraine*, the arbitral tribunal of the ICSID held that "*[t]here is no doubt that the conduct of a municipal authority such as the Kyiv City State Administration […] is capable of being recognised as an act of the State of Ukraine under international law*".[341]

133. Thus, acts and omissions of administering authorities are attributable to the UK as a matter of international law. The UK's duties to take all reasonable measures to prevent genocide, ensure respect of the Geneva Conventions and bring violations of peremptory norms to an end extend to administering authorities. If administering authorities invest their local pension funds in a manner which is in breach of the UK's prevention and non-assistance duties, it will amount to an internationally wrongful act and trigger the UK's responsibility under international law. From the perspective of international law, it is irrelevant whether the local administering authority has delegated its functions to local pension committees or investment managers: ultimate responsibility lies with the authority.

134. It follows from the analysis above that if a local administering authority knowingly makes a fresh investment in Involved Companies, or fails to take reasonable steps towards divesting from such companies it has investments in, it will breach the UK's prevention and non-assistance duties and trigger the UK's responsibility under international law. The PSC Database demonstrates that administrating authorities are investing substantial sums in companies which are aiding or assisting in the commission of Israel's serious breaches of peremptory norms in the OPT, and/or which may foreseeably assist in the violations of the Geneva Conventions and/or a breach of the Genocide Convention in Gaza. That includes companies listed on the UN Database, the Who Profits Database and the AFSC Database, and the paradigm cases. The scale of such investments gives rise to a strong inference that administering authorities are not acting with due diligence and are in breach of the prevention and non-assistance duties.

135. To comply with the prevention and non-assistance duties, a range of reasonable steps are available for administering authorities to best give effect to the UK's prevention and non-assistance duties. Drawing from the judgments and standards indicated above, these would include the following (as examples of the '*thorough due diligence review*' called for by the International Independent UN Commission):

    135.1. Administering authorities should review their investment strategies in respect of how ESG considerations are taken into account in the selection, retention and realisation of investments. The core elements of a compliant investment strategy would be provisions requiring the authority, local pension committee and/or investment managers to: (i) refrain from knowingly making new investments in companies which aid or assist in the commission of serious breaches of peremptory norms by States, and/or which may

[339] Commentary to the Draft Articles on State Responsibility, p 40 at § (5) (Article 4). See also: *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (Advisory Opinion) [1999] ICJ Rep 62, § 62.
[340] Commentary to the Draft Articles on State Responsibility, p 40 at § (6) (Article 4). See also p 41 at § (8).
[341] *Generation Ukraine Inc v Ukraine* (Award) [2003] ICSID Case No. ARB/00/9, § 10.3.

foreseeably assist in the violations of the Geneva Conventions and/or the Genocide Convention where there is a serious risk of genocide; and (ii) take reasonable steps to divest from such companies in the case of pre-existing investments.

135.2. Administering authorities should adopt effective screening procedures for new investments in order to identify which companies meet that description and to refrain from making such investments.

135.3. As regards pre-existing investments, administering authorities must act with due diligence, taking reasonable steps to: (i) identify, assess and monitor the extent in which they are investing in Involved Companies; (ii) effectively engage with Involved Companies where appropriate; and – where engagement is unsuccessful or futile – (iii) divest from Involved Companies in a manner which would avoid or mitigate significant financial detriment to the local pension fund, such as by considering staged divestment.

135.4. In that context, the duty to take *reasonable steps* does not require action which would cause a significant financial detriment to the fund. Nevertheless, this does not permit intransigence or inactivity on the part of the administering authority, which would otherwise undermine the purpose of such steps being to progress *towards* divesting from Involved Companies. Where immediate and wholesale divestment would cause significant financial detriment, other steps such as continued engagement and/or staged divestment may be appropriate (see paragraph 122 above).[342]

136. Momentum is building towards such an approach to divestment. As far as PSC is aware, 17 local councils have now supported divestment from Involved Companies.[343] On 24 March 2025, Oxford City Council passed by a unanimous vote, which calls on the Oxfordshire Pension Fund to divest from entities complicit in violations of human rights and international law in Palestine, that reflects, at least in that local authority, support for an international law compliant approach to investment.[344] Other examples include a report on 26 August 2025 of Norway's wealth fund's decision to divest from US construction equipment group Caterpillar and five Israeli banking groups "due to an unacceptable risk that the companies contribute to serious violations of the rights of individuals in situations of war and conflict".[345]

137. In circumstances where administering authorities have delegated functions to local pension committees and/or investment managers, appropriate directions and instructions should be given. Administering authorities cannot abdicate their responsibility to comply with the prevention and non-assistance duties in its management of the local pension fund. Whether investments in Involved Companies are direct investments or indirect investments does not change the analysis. In the event of indirect investments, appropriate directions and/or instructions ought to be given to the intermediate investment fund to ensure the administering authority complies with the prevention and non-assistance duties. If there are reasonable grounds to believe that the investment fund is investing in Involved Companies on the administering authority's behalf, is unable to comply with appropriate instructions and/or is

[342] The extent and risk of financial detriment posed by a divestment, and the feasibility of various steps towards divestment, is a matter which will have to be professionally assessed by the administering authority.
[343] Timeline of Divestment Milestones (PSC).
[344] UK: Oxford council passes Boycott, Divest and Sanctions motion, (Middle Eastern Eye, 25 March 2025). For further examples of divestment, see: Synod rounds on Caterpillar Inc (Church Times, 2 November 2006); Falkirk divests from bank operating in occupied territories (UNISON, 30 July 2018).
[345] https://www.reuters.com/sustainability/society-equity/norway-wealth-fund-excludes-caterpillar-five-israeli-banks-2025-08-25/

unable or unwilling to identify whether it is investing in Involved Companies, the administering authority is dutybound to take reasonable steps to divest from that investment fund.

F. THE RULE OF LAW, DOMESTIC LAW AND INTERNATIONAL LAW

138. The prevention and non-assistance duties have significant implications under domestic law for the Secretary of State and administering authorities in respect of the LGPS. To appreciate those consequences, it is necessary to appreciate the relationship between domestic law, international law, and the principles of the rule of law.

139. The law of England and Wales is a dualist system. International treaties (such as the Genocide Convention and the Geneva Conventions) are not self-executing as a matter of English law. Absent incorporating legislation, international law does not directly place justiciable public law duties upon public authorities.[346] That relates to a cornerstone principle of British constitutional law that Parliament is sovereign, and that legislation is supreme.[347] One outworking of Parliamentary sovereignty is that if legislation is clearly incompatible with international law, or excludes or limits the influence of international law on a public authority's decision-making process, that is the end of the matter. International law yields to clear domestic statute in English law. As it was put in *R v Lyons*, international obligation "*cannot override an express and applicable provision of domestic statutory law*", and "*[i]f Parliament has plainly laid down the law, it is the duty of the courts to apply it, whether that would involve the Crown in breach of [international law]*".[348]

140. Short of situations where legislation is unambiguously incompatible with international law, international law can play a significant role in shaping domestic law. One illustration of international law's capacity for influence lies in the general principle that statutory rights, duties and powers, which are otherwise uncertain in scope, will be presumed to be compatible with the UK's international obligations.[349] In *Assange v Swedish Prosecution Authority*, Lord Dyson rightly described that as a "*strong presumption*".[350] Another avenue through which international law can inform domestic law is through its interaction with common law and public law principles. In certain circumstances, international law can act as a source of common law principles and give rise to justiciable issues of law (discussed in Section H(1) below). Further, domestic courts will interpret and apply international law in cases where there is a sufficient "*domestic foothold*" for them to do so: i.e. in "*situation[s] where it is necessary to decide a question of international law in order to determine a question of domestic law*".[351]

141. It is important to emphasise, however, that the importance of complying with international law obligations does not turn on their justiciability or enforceability in domestic courts. As Professors Dapo Akande (the UK's nominated candidate for election as a judge at the ICJ) and Eirik Bjorge put it: "*The fact that certain obligations of international law are not enforceable in the courts does not in any way detract from the fact that the Crown is bound by them*".[352]

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[346] *R (SC) v Secretary of State for Work and Pensions* [2022] AC 233, §§ 75-78; *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, 499H-500H.
[347] *R (Miller) v Secretary of State for Exiting the European Union* [2018] AC 61, § 43.
[348] *R v Lyons* [2003] 1 AC 976, §§ 14 and 28. See also: *R v Asfaw* [2008] 1 AC 1061, § 29.
[349] *R (Yam) v Central Criminal Court* [2016] AC 771, § 35.
[350] [2012] 2 AC 371, § 98.
[351] *The Law Debenture Trust Corporation plc v Ukraine* [2024] AC 411, § 158. See also: *Al-Haq*, §§ 68 and 83; *Campaign for Nuclear Disarmament v Prime Minister* [2002] EWHC 2777 (Admin), §§ 35-40.
[352] Dapo Akande and Eirik Bjorge, The United Kingdom Ministerial Code and International Law: A Response to Richard Ekins and Gugleilmo Verdirame (EJIL:Talk!, 11 December 2015).

142. The importance of the Secretary of State and the administering authorities complying with international law is reinforced by a fundamental principle of British constitutional law, the rule of law.[353] As Lord Dyson put it in *R (Cart) v Upper Tribunal* [2012] 1 AC 663, "*there is no principle more basic to our system of law than the maintenance of the rule of law itself*" (§ 122). It is of some significance then that, as per Lord Bingham's eighth principle of the rule of law, the requirement of "*compliance by the state with its obligations in international law*" is an "*existing principle of the rule of law*".[354] More recently, on 14 October 2024, the Attorney General in the UK, Lord Hermer, echoed that message when delivering the Bingham Lecture at The Honourable Society of Gray's Inn.[355] Lord Hermer spoke emphatically about "*Lord Bingham's conception of the rule of law [which] recognises that international law is the 'Rule of Law' writ large, and that States must comply with their international obligations, just as they must comply with domestic law*." Lord Hermer recommitted the UK publicly to a position where "[*i*]*nternational law is not simply some kind of optional add-on, with which States can pick or choose whether to comply*" and that the UK's "*actions must be consistent, we must show that we will hold ourselves to the highest standards*."

143. That close connection between domestic law, the constitutional principle of the rule of law and international law is further expressed in the following:

143.1. The Ministerial Code explicitly provides that there is an "*overarching duty*" for ministers to comply with the law, "*including international law and treaty obligations*" when making decisions (§ 1.6 of the Code updated on 6 November 2024).[356] A deliberate failure to comply with the Code itself may give rise to sanction against a minister (§ 2.7 of the Code).

143.2. The Attorney General's Guidance on Legal Risk (also updated on 6 November 2024) emphasises the obligation to comply with international law.[357] Within the Guidance, legal risk is defined by reference to both whether an action or decision is unlawful under domestic or international law. Specifically, at §9 and §13(c), "*the rule of law requires compliance by the state with its obligations in international law as in national law, even though they operate on different planes: the government and Ministers must act in good faith to comply with the law and in a way that seeks to align the UK's domestic law and international obligations, and fulfil the international obligations binding on the UK […] The UK attaches great importance to its compliance and respect for international law and its reputation for doing so. This must be a critical factor in legal advice in this area*".

144. It is thus recognised and required that the Secretary of State and administering authorities will take their obligations under international law and their commitment to the rule of law seriously when exercising their powers. It is to those powers that we turn next.

G. THE SECRETARY OF STATE AND THE ADMINISTERING AUTHORITIES' POWERS

145. In this Part, we consider whether the Secretary of State and the administering authorities are permitted to take the action necessary to comply with the prevention and non-assistance duties under the statutory framework for the LGPS. In short, they do.

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[353] Referred to in s.1 of the Constitutional Reform Act 2005. See also: *R (UNISON) v Lord Chancellor* [2017] ICR 1037, § 68.
[354] The Sixth Sir David Williams Lecture: The Rule of Law (University of Cambridge, 16 November 2006), p 29.
[355] Speech: Attorney General's 2024 Bingham Lecture on the rule of law (Gov.uk, 15 October 2024).
[356] Ministerial Code (Gov.uk, 6 November 2024).
[357] Guidance: Attorney-General's Guidance on Legal Risk (Gov.uk, 6 November 2024).

(1) The LGPS statutory framework

146. The LGPS was established by regulations made the Superannuation Act 1972 Act and having effect as if made under the Public Service Pensions Act 2013 (**'2013 Act'**). S.1(1) of the 2013 Act provides that regulations may establish schemes for the payment of pensions and other benefits to persons specified in s.1(2), which includes local government workers (s.1(3) of the 2013 Act). As per s.2(1) and paragraph 3(2) of Schedule 2 to the of the 2013 Act, the Secretary of State has the power to make the scheme regulations for the LGPS.

147. S.3 to the 2013 Act provides that the regulations may make such provision as the Secretary of State considers appropriate, including matters specified in Schedule 3. Schedule 3, paragraph 12, was amended by the Public Service Pensions and Judicial Offices Act 2022 (**'2022 Act'**) to include an express power for scheme regulations to include provision for:

> "(a) the giving of guidance or directions by the [Secretary of State] to the scheme manager (where those persons are different) including guidance or directions on investment decisions which it is not proper for the scheme manager to make in light of UK foreign and defence policy;"

148. That amendment was intended to reverse the effect of *R (Palestine Solidarity Campaign Ltd) v Secretary of State for Housing, Communities and Local Government* [2020] 1 WLR 1774, where the majority of the Supreme Court held that the Secretary of State's powers to give guidance and directions were limited to identifying procedures and the strategy which administering authorities should adopt to discharge their functions, such that the Secretary of State had the *"[p]ower to direct HOW administrators should approach the making of investment decisions by reference to non-financial considerations*", but not the "*power to direct (in this case for entirely extraneous reasons) WHAT investments they should not make*" (§ 31).

149. The relevant regulations are the Local Government Pension Scheme Regulations 2013 (**'2013 Regulations'**) and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (**'2016 Regulations'**). Regulation 7(1) of the 2016 Regulations provides that each administering authority must formulate an "*investment strategy*" which must be in accordance with guidance issued by the Secretary of State. Regulation 7(2) provides that the investment strategy must include:

> "(b) the authority's assessment of the suitability of particular investments and types of investments; […]
> (e) the authority's policy on how social, environmental and corporate governance considerations are taken into account in the selection, non-selection, retention and realisation of investments"

150. The administering authority must review and, if necessary, revise its investment strategy at least every three years (regulation 7(7), 2016 Regulations). It is obliged to invest any fund money that is not needed immediately to make payments from the fund in accordance with its investment strategy (regulation 7(8), 2016 Regulations).

151. If the Secretary of State is satisfied that an administering authority is failing to act in accordance with guidance issued under regulation 7(1) of the 2016 Regulations, she may make directions requiring a local administering authority to *inter alia*: (i) *"[m]ake such changes to its investment strategy […] as the Secretary of State considers appropriate*"; (ii) "*invest such assets or descriptions of assets as are specified in the direction in such manner as is specified in the*

direction"; and/or (iii) "*comply with any instructions of the Secretary of State or the Secretary of State's nominee in relation to the exercise of its investment functions*" (regulation 8(2)).

152. The relevant guidance is the 'Local Government Pension Scheme: Guidance on Preparing and Maintaining an Investment Strategy Statement' (July 2017) (**'LGPS Guidance'**). The LGPS Guidance relevantly provides:

152.1. One of the "*main aims*" of the 2016 Regulations was to "*transfer investment decisions […] more fully to administering authorities*", "*with less central prescription*" (p 4).

152.2. "*Where there is evidence to suggest that an authority is acting unreasonably, it may be appropriate for the Secretary of State to consider intervention, but only where this is justified and where the relevant parties have been consulted*" (p 4).

152.3. The power of intervention "*does not interfere with the duty [of the administering authority] under general public law principles to make investment decisions in the best long-term interest of scheme beneficiaries and taxpayers*" (p 4).

152.4. "*The concept of suitability is a critical test for whether or not a particular investment should be made*". The assessment of suitability involves consideration of different factors, including "*performance benchmarks, appetite for risk, policy on non-financial factors and perhaps most importantly, funding strategy*" (p 6).

152.5. As regards how ESG considerations are taken into account: (i) *"[w]hen making investment decisions, administering authorities must take proper advice and act prudently*", "*with care, skill prudence and diligence*"; (ii) while the administering authorities are not subject to trust law, they "*must comply with general legal principles governing the administration of scheme investments*" and "*act in accordance with ordinary public law principles*"; (iii) "*schemes should consider any factors that are financially material to the performance of their investments, including [ESG] factors*"; (iv) *"[a]lthough schemes should make pursuit of a financial return their predominant concern, they may also take purely non-financial considerations into account provided that doing so would not involve significant risk of financial detriment to the scheme and where they have good reason to think that scheme members would support their decision*"; and, subject to that threshold, (v) it is permissible for "*some part of the financial return may be forgone in order to generate the social impact*" (pp 8-9).

153. The former iteration of the LGPS Guidance contained a provision that pension policies should not be used "*to pursue boycotts, divestment and sanctions against foreign nations and UK defence industries […] other than where formal legal sanctions, embargoes and restrictions have been put in place by the Governmen*t". That was held to be unlawful in *Palestine Solidarity Campaign Ltd*, exceeding the Secretary of State's powers under the 2013 Act and 2016 Regulations. The 2013 Act has since been amended, but the 2016 Regulations have not.

154. In addition, administrators of local pension funds – whilst not trustees – owe fiduciary duties which are similar to those of trustees.[358] The content of fiduciary duties are context sensitive.[359] In the LGPS context, the fiduciary duties of administering authorities will substantially overlap with those expressed in the LGPS Guidance and their general public law duties, including the

[358] *Palestine Solidarity Campaign Ltd*, § 30.
[359] Fiduciary Duties of Investment Intermediaries (Law Commission, 30 June 2014) LAW COM No 350 ('**Law Commission Report**'), § 3.1.

requirement to administer the scheme in a manner that is reasonable.[360] It is trite that an investment decision will be unreasonable if: (i) it is "*outside the range of reasonable decisions open to the decision-maker*"; or (ii) the "*process by which the decision was reached*" was unreasonable, which includes the duty to take into account relevant considerations and ignore irrelevant considerations.[361] The latter limb is closely related to the *Tameside* duty, given that the making of reasonable and necessary inquiries are an essential condition of reasonableness.[362]

(2) The Secretary of State's powers

155. The Secretary of State has sufficient powers under the 2013 Act and 2016 Regulations to make appropriate guidance and directions to discharge (at least as far as the Secretary of State is concerned) the UK's prevention and non-assistance duties under international law.

156. It is now clear that the Secretary of State's powers to make regulations under the 2013 Act extend to provision for the "*giving of guidance or directions*" on "*investment decisions which it is not proper for the scheme manager to make in light of UK foreign and defence policy*" (Schedule 3, paragraph 12). It is no longer the case that the Secretary of State can only be concerned with the "*HOW*" rather than the "*WHAT*".[363] That power would extend to including requirements in the LGPS Guidance requiring administering authorities to refrain from making new investments in Involved Companies and to take reasonable steps to divest from such companies, whether in respect of the OPT or otherwise. Ensuring the UK's compliance with international law falls within the broad ambit of "*UK foreign and defence policy*".

157. While the 2016 Regulations have not been amended following the 2022 Act coming into force, that does not preclude the Secretary of State from revising the LGPS Guidance to incorporate such a requirement. Lord Wilson's analysis in *Palestinian Solidarity Campaign Ltd* rested to a significant degree on his Lordship's view that the "*policy of the [2013] Act […] is to identify procedures – and indeed the strategy – which administrators of schemes should adopt in the discharge of their functions*" (§ 26). The 2022 Act has clarified the purpose of the 2013 Act and, in so doing, the scope of the Secretary of State's powers. In light of the new "*policy*" of the Act, following the 2022 amendments, it is clear that the LGPS Guidance can lawfully be revised without first requiring an amendment of the 2016 Regulations: read with paragraph 12 of Schedule 3 to the 2013 Act (as amended), those regulations already empower the Secretary of State to revise the LGPS Guidance in the manner outlined in the Paper.

158. Such a reading aligns the Secretary of State's powers under the 2013 Act and the 2016 Regulations with the UK's prevention and non-assistance duties under international law. The "*strong presumption*" of compatibility is engaged.[364] As outlined in Part E, revising the LGPS Guidance to require administering authorities to refrain from making new investments in

[360] *Charles Terence Estates Ltd v Cornwall Council* [2013] LGR 97, where the Court of Appeal considered that local authorities' fiduciary duties to taxpayers were indistinguishable from the requirements of *Wednesbury* unreasonableness.
[361] *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649, § 98; recently restated in *R (Law Society) v Lord Chancellor* [2024] EWHC 155 (Admin), §§ 226-228.
[362] *Law Society No.2*, §§ 201-202, 235.
[363] *Palestine Solidarity Campaign Ltd*, § 31.
[364] *Assange*, § 98. See also: *Yam*, § 35.

Involved Companies, and to take steps towards divesting from such companies is a critical means of ensuring the UK's compliance with international law.[365]

(3) The administering authorities' powers

159. There is no general prohibition against administering authorities refraining to invest or divesting from Involved Companies.

160. It is implicit in regulation 7(2)(e) of the 2016 Regulations that administering authorities can take into account ESG considerations in selecting, retaining and realising investments, and can include such a requirement in their investment strategies. Indeed, the LGPS Guidance provides that administering authorities should consider "*non-financial factors*" where they are relevant to the "*critical test*" of suitability and/or are "*financially material to the performance of their investments*", and that "*purely non-financial considerations*" can also be taken into account (pp 6, 8-9). That is also the effect of *Palestinian Solidarity Campaign Ltd*.

161. The extent to which administering authorities can take into account non-financial factors and forgo financial return to generate social impact is subject to two constraints. As described by the Law Commission, those are:

> "(1) trustees should have good reason to think that scheme members would share the concern; and
> (2) the decision should not involve a risk of significant financial detriment to the fund."[366]

162. While the level of detriment to the local pension fund and the support of members would have to be assessed on a fund-by-fund basis, a number of general propositions can be made:

    162.1. The "*tie-break*" principle, whereby non-financial considerations can only be used to decide between two equally beneficial choices, does not reflect the law.[367] As the Law Commission has explained: "*The requirement is that trustees should not incur the risk of significant financial detriment to the scheme, not that they should avoid theoretical detriment according to a precise mathematical model*".[368]

    162.2. What constitutes a risk of significant financial detriment is a "*question of degree*".[369] It implies a qualitative threshold that must be assessed with regard to the likelihood and magnitude of the financial risk, relative to the size, value and health of the pension fund.

    162.3. It is permissible to knowingly forgo financial return beneath that threshold.[370] The amount of financial return that can be forgone for non-financial reasons can be substantial. For example, in *Harries v Church Commissioners* [1992] 1 WLR 1241, the Church

[365] That is a further distinction with Palestinian Solidarity Campaign Ltd: in no sense can the aforesaid revisions to the LGPS Guidance be properly characterised as "the imposition of policy preferences" or "political approach", which was instrumental in Lord Carnwath's analysis (at §§ 41-44).
[366] Law Commission Report, § 6.34. See also: LGPS Guidance, p 9; *Palestine Solidarity Campaign Ltd*, § 43
[367] Law Commission Report, §§ 6.71 and 6.72.
[368] Law Commission Report, § 6.72.
[369] Law Commission Report, § 6.72.
[370] LGPS Guidance, p 9.

Commissioners reached the view that excluding 13% of the market would be acceptable, while excluding 37% would not be. That approach was held to be lawful.[371]

162.4. It is for the administering authorities to evaluate whether a decision made on non-financial grounds risks causing significant financial detriment, within the usual public law constraints and upon seeking proper advice.[372]

162.5. The issues of risk, significant financial detriment and the support of members cannot be assessed in hermetically sealed compartments. As the Law Commission has explained, "*the ultimate decision should be looked at in the round*", and both factors can be weighed against each other. Thus:

> "[I]f trustees are faced with compelling evidence that members feel very strongly about the issue, then they may be justified in accepting a risk of some possible detriment, so long as that detriment is not significant. Conversely, if trustees receive clear professional advice that the decision is financially neutral, with some members agreeing and some indifferent, the trustees may still go ahead. The position may be different where only a modest level of agreement is combined with some risk of detriment."[373]

162.6. Likewise, our view is that the strength of relevant non-financial considerations can form part of the holistic assessment as to whether there is risk of significant financial detriment and scheme member support.

163. Understood in those terms, we do not see the threshold tests of risk of significant financial detriment and scheme member support compliance being irreconcilable with administering authorities' discharge of the UK's prevention and non-assistance duties. That is principally for four reasons. The first is that in circumstances where a local pension fund has not yet made an investment, it is unlikely that excluding "*limited classes of investment*" (i.e. investment in Involved Companies) would put the fund to a significant financial detriment so as to potentially justify an investment decision.[374] The second is that (as explained at paragraphs 119.2-123 above) the duty to take reasonable steps towards divesting from Involved Companies does not necessarily require immediate and wholesale divestment when it comes to pre-existing investments and a graduated approach may be permissible, insofar as administering authorities act with due diligence. The third is that, as the propositions in the previous paragraph demonstrate, administering authorities have a reasonable degree of latitude in forgoing financial returns, especially when it is weighed in the balance with the concerns of scheme members and the strength of the non-financial consideration in play. The fourth follows from that: we are concerned with compliance with the UK's international law obligations not to assist and to prevent serious violations of the most fundamental norms. The importance of complying with such norms must materially weigh in the balance.

[371] *Harries* at 1250. See also: Law Commission Report, § 6.72.
[372] Law Commission Report, §§ 6.75-6.76.
[373] Law Commission Report, § 6.78.
[374] Law Commission Report, § 6.73, recording the agreement of several consultees in that respect.

H. THE DOMESTIC LAW CONSEQUENCES OF LGPS INVESTMENT IN INVOLVED COMPANIES

164. Beyond the question of whether administering authorities *can* refrain from investing or take steps to divest from Involved Companies under domestic law (and the Secretary of State can issue appropriate guidance and directions), we now consider whether they are obligated to do so, to consider doing so and/or to make inquiries in that respect.

(1) Common law giving effect to customary international law

165. One avenue in which international law can inform domestic law is through the relationship between customary international law and the common law. To establish a rule of customary international law: "*there must be evidence of a substantial uniformity of practice by a substantial number of States; and opinio juris, that is, a general recognition by states that the practice is settled enough to amount to a binding obligation in international law*".[375]

166. The relationship between English law and customary international law is represented by Lord Mance's dictum in *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2016] AC 1355:

> "Speaking generally, in my opinion, the presumption when considering any such policy issue is that CIL, once established, can and should shape the common law, whenever it can do so consistently with domestic constitutional principles, statutory law and common law rules which the courts can themselves sensibly adapt without it being, for example, necessary to invite Parliamentary intervention or consideration." (§ 150)

167. In *R (Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs*, Arden, Sales and Irwin LJJ explained that the current position is that "*customary international law is a source of common law rules, but will only be received into common law if such reception is compatible with general principles of domestic constitutional law*". Reiterating the language of presumption in *Keyu,* Arden, Sales and Irwin LJJ observed:

> "The presumption is that a rule of customary international law will be taken to shape the common law unless there is some positive reason based on constitutional principle, statute law or common law that it should not (for ease of reference, we refer to these together as reasons of constitutional principle). The presumption reflects the policy of the common law that it should be in alignment with the common customary law applicable between nations. […] Accordingly, in the case of a rule of customary international law the presumption is that it will be treated as incorporated into the common law unless there is some reason of constitutional principle why it should not be." (§ 114)

168. A distinction was drawn with unincorporated treaties, in part, on the basis that the making of treaties is a matter for the executive and the Crown has no power to alter domestic law by its unilateral action, whereas "[*t]he common law is more receptive to the adoption of rules of customary international law because of the very demanding nature of the test*." (§ 117)

[375] *R (Freedom and Justice Party) v Foreign Secretary* [2019] QB 1075. See also: *Benkharbouche v Embassy of the Republic of Sudan (Secretary of State for Foreign and Commonwealth Affairs intervening)* [2019] AC 777, § 31.

169. The most recent statement of law by the Supreme Court is *The Law Debenture Trust Corporation plc v Ukraine*. At § 204, Lords Reed, Lloyd-Jones and Kitchin observed that customary international law is not "*automatically part of the common law*" but "*a source of the common law*" which the courts can draw upon as appropriate. As part of that process, the courts have to consider "*whether there may exist any impediments or bars to giving effect to customary international law as a result of domestic constitutional principles*". However, "*given the beneficent character of customary international law, the presumption should be in favour of its application*".

170. Where a rule of customary international law forms part of the common law, that supplies a "*domestic foothold*" enabling domestic courts to determine questions of international law: i.e. that becomes a situation in which it is necessary for a domestic court to decide a question of international law in order to determine compliance with domestic common law.[376]

171. Against that background, the first critical issue is whether the prevention and non-assistance duties comprise rules of customary international law. They plainly do.

172. It is beyond doubt that a great many of the norms of international law set out in this Paper form part of customary international law. Indeed, many of the relevant norms have been recognised by the ICJ and/or ILC as being peremptory norms, which typically have customary status.[377] Those norms include the right to self-determination, the prohibition of the use of force, the prohibition of race discrimination and apartheid, the prohibition of genocide, crimes against humanity and the basic rules of IHL.

173. The prevention and non-assistance duties which arise in relation to those norms are also customary in nature. Taking the duties in turn:

    173.1. The non-recognition, non-assistance and positive duties that arise in respect of peremptory norms are secondary rules of international law which flow from those norms of customary international law.[378] That much was implicit in the *Kuwait Airways* case, where Lord Nicholls observed at § 29 that the existence of a gross breach of fundamental rules of international law "*can properly cause the courts of this country to say that, like the confiscatory decree of the Nazi government of Germany in 1941, a law depriving those whose property has been plundered of the ownership of their property in favour of the aggressor's own citizens will not be enforced or recognised in proceedings in this country*" (i.e. aligning the common law with the duty of non-recognition flowing from serious breaches of peremptory norms). Moreover, such prevention and non-assistance duties are recognised in the Articles of State Responsibility, which codify the customary international law rules of State responsibility relating to the legal consequences of a serious breach of a State obligation arising under a jus cogens norm of international law.[379]

    173.2. It is well-established that the duty to ensure respect for IHL forms part of customary international law, as confirmed by the International Committee of the Red Cross.[380] In *Nicaragua v United States of America,* the ICJ referred to the duties in Common Articles 1 of the Geneva Conventions as being derived from "*the general principles of humanitarian law to which the Conventions merely give specific expression*".[381]

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[376] *The Debenture Trust*, §§ 158-159.
[377] Draft Conclusions on Peremptory Norms, p 157 (Conclusions 4-5).
[378] Commentary to Draft Articles on State Responsibility, p. 114, § 6 (Article 41); *Namibia Advisory Opinion,* § 126.
[379] Commentary to Draft Articles on State Responsibility, p. 112, §§1-2 (Article 40)
[380] Rule 139, ICRC Rules.
[381] *Nicaragua v. United States of America*, § 220.

173.3. The same can also be said for the duty to prevent genocide, with the ICJ confirming in its *Advisory Opinion on the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* that "*the principles underlying the Convention are principles which are recognized by civilized nation as binding on States even without any conventional obligation*".[382]

174. It need not additionally be established that there is substantial uniformity of State practice and *opinio juris* as regards the manner in which the prevention and non-assistance duties apply to a particular context. That is to confuse the existence of a rule of customary international law and the question of whether a duty forms part of customary international law, with the application of those rules and duties to a particular set of facts.[383] Rules of customary international law, particularly in the area of prevention and non-assistance duties, are often open textured; it would stymie the development and application of customary international law if, every time they were to be applied to a new context, substantial state practice had to be identified.[384] Further, in Sections D and E, we have identified a substantial body of work from the ICJ, the UN General Assembly and other UN bodies demonstrating that the prevention and non-assistance duties are engaged in the context of the OPT and apply to the sphere of trade and investment relations.

175. It follows that there is a presumption that customary international law and, in particular, the prevention and non-assistance duties, "*can and should shape the common law*" in this instance.[385] Customary international law operates as a spring from which public common law duties aligning with the prevention and non-assistance duties can and should emerge.[386] Whether the presumption that common law gives effect to the prevention and non-assistance duties can be rebutted rests on whether there is "*some positive reason based on constitutional principle*" that it should not be.[387] Put another way, the second critical issue is this: *would the reception of the prevention and non-assistance duties into common law be compatible with principles of constitutional law?*

176. The answer to that question is invariably context specific, depending on the subject matter in question, the nature of the relevant decisions, the relevant domestic legal framework, and the constitutional principles at stake. In the LGPS context, there is no incompatibility with constitutional principle capable of rebutting the presumption that the common law gives effect to the prevention and non-assistance duties.

177. First, this is not a case where the giving effect to customary international law would be inconsistent with statute or cut across the statutory scheme.[388] For the reasons outlined in Part G, the measures necessary to discharge the prevention and non-assistance duties are not prohibited by the applicable legislation and regulations, and fall within the powers of the Secretary of State and the administering authorities. There is no incompatibility between the administering authorities' fiduciary duties and the prevention and non-assistance duties: as outlined at paragraphs 119.1-123 and 163 above, the prevention and non-assistance duties do

[382] At p 23. Further, the number of ratifications of the Genocide Convention (153 States as of 2022), and the nature of the duties undertaken by States Parties therein, supports an inference of customary status. See also: Gunal Mettraux, *International Crimes: Law and Practice* (OUP 2019), at [5.1.1.2].

[383] For example, in *R v Jones (Margaret)* [2007] 1 AC 136, Lord Bingham distinguished between the essential proposition as to whether the crime of aggression was recognised in customary international law, and ongoing debates regarding its precise scope and definition (§ 19).

[384] In this respect, we consider the Divisional Court to have erred in its analysis in *Al-Haq* at §§ 131-133.

[385] *Keyu*, § 150. See also: *Freedom and Justice Party*, § 117; *The Debenture Trust*, § 204.

[386] *Freedom and Justice Party*, § 114.

[387] *Freedom and Justice Party*, § 117; *Keyu*, §150; *The Debenture Trust*, § 204.

[388] For example, in *R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs* [2021] 1 WLR 472, where the return of Chagos Islanders to the Chagos Islands (argued to be required as a matter of customary international law) was prohibited by legislation (§ 143).

not require administering authorities to refrain from investing or divest in a way that puts the fund at risk of significant financial detriment or is unsupported by the scheme members.

178. While Parliament has legislated in respect of the LGPS, the existence of legislation does not rebut the presumption the common law will give effect to customary international law. For instance, in *Freedom and Justice Party*, the existence of the State Immunity Act 1978 did not prevent additional immunities required to be granted under customary international law as being given effect in the common law.[389] Further, the 2013 Act is permissive in nature, leaving considerable discretion to the Secretary of State to issue guidance and to the administering authorities to formulate their investment strategies and administer the local pension funds within the confines thereof.[390] This is not a case where Parliament has "*pre-empted the whole area*", such as *Keyu,* where Parliament had adopted legislation prescribing the circumstances and procedures through which inquiries could take place into investigations into historic deaths.[391] The 2013 Act offers no comparable level of prescription, and it is widely accepted that fiduciary duties exist in parallel to those under the regulations and statute. Thus, there is no sufficient "*legislative indication that Parliament would expect the courts to refuse to recognise a relevant rule of customary international law*" or regards the area "*as reserved for itself*".[392]

179. Second, the prevention and non-assistance duties do not require the creation of criminal offences, for which it is for Parliament to legislate.[393] The fundamental constitutional principle which prevented the common law's receipt of customary international law in *R v Jones (Margaret)* does not apply in the LGPS context.

180. Third, the doctrines of the separation of powers, act of State or non-justiciability do not provide a clear bar to rebut the presumption that the common law give effect to the prevention and non-assistance duties in this context.

181. The starting point is that "*[t]he issue of justiciability depends, not on general principle but on subject matter and suitability in the particular case*".[394] Males LJ and Steyn J observed in *Al-Haq (No.2)*, in cases which involve issues of foreign policy or national security, there is "*a spectrum*" as to "*the extent to which the court is able to adjudicate* […] *depending on the nature of the issue*".[395] On one side of that spectrum, there are instances where cases have been held to trespass into issues of foreign policy, national security and international peace and security to such a degree, and where there are insufficient countervailing factors, that the doctrine of justiciability has prevented the courts from accepting the reception of customary international law into the common law and adjudicating on questions of international law.

182. For example, in *R (Al-Haq) v Secretary of State for Foreign and Commonwealth Affairs* [2009] EWHC 1910 (Admin) (***'Al-Haq (No.1')***), the Divisional Court considered it beyond its competence to decide whether Israel was in breach of international law in respect of "Operation Cast Lead", a military operation in Gaza in 2008 and 2009. Key aspects which led the Divisional Court to refuse permission in *Al-Haq (No.1)* were that: (i) the ICJ had made no findings or determinations as to breaches of international law in relation to Operation Cast Lead, such that there were no "*judicial or manageable standards*" the Divisional Court could adopt;[396] and (ii)

[389] *Freedom and Justice Party*, § 125.
[390] Indeed, the 2013 Act would appear to be much less prescriptive in nature than the State Immunity Act 1978, which sets out a wide range of circumstances where immunity must be granted.
[391] *Keyu*, §§ 117 and 151.
[392] *Freedom House*, § 125.
[393] *Jones (Margaret)*, §§ 23 and 28-30.
[394] *R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598, § 85.
[395] *Al-Haq (No.2)*, § 88.
[396] *Al-Haq (No.1)*, §§ 42, 56-57.

the claim trespassed onto matters of "*high policy*" and the remedies sought by the claimant would have compelled the Court to make declarations or directions as to the foreign policy the Government should adopt towards Israel on the international plane.[397]

183. More recently, in *R (Al-Haq) v Secretary of State for Business and Trade* [2025] EWHC 1615 (Admin) (***'Al-Haq (No.2)'***), the Divisional Court dismissed a challenge to the lawfulness of the "F-35 Carve Out".[398] The F-35 Carve Out excluded from a suspension of arms export licences to Israel the export of components of F-35 aircraft to a multinational F-35 joint strike fighter programme in circumstances where the Secretary of State was advised that it was not possible to suspend the licensing of components for use for Israel without having an impact on the entire F-35 programme, and that a suspension of all F-35 components would have a profound impact on international peace and security. It was central to the judgment that the subject matter of the case trespassed significantly on high policy and typically non-justiciable matters of national security and defence, international peace and security, and the conduct of foreign relations, which were reserved to the judgment of the executive.[399]

184. Neither judgment is authority for a general rule that the courts cannot adjudicate on matters of international law or on cases which relate to the conduct of foreign states.[400] Males LJ and Steyn J accepted in *Al-Haq (No.2)* that the common law allowed for the drawing down of rules of customary international law in "*appropriate*" cases, where compatible with constitutional principles.[401] Indeed, there have been circumstances where the courts have seen fit to adjudicate on whether foreign States have violated international law.

185. In *Oppenheimer v Cattermole* [1976] AC 249, the House of Lords refused to sanction recognition of a Nazi decree by which a German Jew, who was a refugee in England, had lost his nationality. Lord Cross, in his leading speech, made the following observation:

> "The third ground on which it was argued that English law should pay no regard to the 1941 decree was that it was contrary to international law. […] A judge should, of course, be very slow to refuse to give effect to the legislation of a foreign state in any sphere in which, according to accepted principles of international law, the foreign state has jurisdiction. He may well have an inadequate understanding of the circumstances in which the legislation was passed and his refusal to recognise it may be embarrassing to the branch of the executive which is concerned to maintain friendly relations between this country and the foreign country in question. But I think— as Upjohn J thought (see *In re Claim by Helbert Wagg & Co Ltd* [1956] Ch 323, 334) — that it is part of the public policy of this country that our courts should give effect to clearly established rules of international law. Of course on some points it may be by no means clear what the rule of international law is. Whether, for example, legislation of a particular type is contrary to international law because it is 'confiscatory' is a question upon which there may well be wide differences of opinion between communist and capitalist countries. But what we are concerned with here is legislation which takes away without compensation from a section of the citizen body singled out on racial grounds all their property on which the state passing the legislation can lay its hands and, in addition, deprives them of their citizenship. To my mind a law of this

[397] *Al-Haq (No.1)*, §§ 44, 46, 51-53.
[398] It bears remembering that *Al-Haq (No.2)* is a first instance judgment which may be subject to appeal. In any event, and for the reasons below, the subject matter of this Paper is distinguishable from *Al-Haq (No.2)*.
[399] *Al-Haq (No.2)*, §§ 134-135 (see also § 112).
[400] That much was recognised in *Al-Haq (No.1)* (at § 54) and *Al-Haq (No.2)* (at § 134). See also: *Jones*, § 30.
[401] *Al-Haq (No.2)*, §§ 125 and 134.

> sort constitutes so grave an infringement of human rights that the courts of this country ought to refuse to recognise it as a law at all."[402]

186. Likewise, in the *Kuwait Airways* case, the House of Lords decided to disregard an otherwise applicable decree-law of the Iraqi government which extinguished the existence of Kuwait as an independent State and expropriated its assets. Lord Nicholls rejected the submission that a breach of international law by a foreign state was not a ground for refusing to recognise the effect of a foreign decree, and that an English court could not adjudicate on the sovereign acts of a foreign state in such circumstances.[403] His Lordship made the following observation:

> "This is not to say an English court is disabled from ever taking cognisance of international law or from ever considering whether a violation of international law has occurred. In appropriate circumstances it is legitimate for an English court to have regard to the content of international law in deciding whether to recognise a foreign law. Lord Wilberforce himself accepted this in the *Buttes* case, at page 931D. Nor does the "non-justiciable" principle mean that the judiciary must shut their eyes to a breach of an established principle of international law committed by one state against another when the breach is plain and, indeed, acknowledged. In such a case the adjudication problems confronting the English court in the *Buttes* litigation do not arise. The standard being applied by the court is clear and manageable, and the outcome not in doubt."[404]

It was central to Lord Nicholls' judgment that the Iraqi decree in question that it involved "*a gross violation of established rules of international law of fundamental importance*", recognised as such in the UN Security Council resolutions and subject to widespread international condemnation.[405]

187. Against that background, there are good reasons to conclude that adjudication of the issues raised in this Paper is not barred by doctrines of non-justiciability, act of State or separation of powers, and that the courts will affirm the presumption in favour of giving effect to customary international law. The reasons below distinguish the present context from those of *Al-Haq (No.1)* and *Al-Haq (No.2)*, and demonstrate that it is one where it is appropriate for the domestic courts to give effect to the prevention and non-assistance duties:

    187.1. We are concerned with serious breaches of clearly established peremptory norms, such as the right to self-determination, the prohibition of the use of force, the prohibition of race discrimination, and prevention of genocide. These are among the most fundamental norms of international law. As in *Kuwait Airways*, it is significant that we are concerned with "*flagrant violations of the rules of international law of fundamental importance*".[406] There is also an analogy to *Belhaj and Anor v Straw and Ors and Rahmatullah (No 1) v Ministry of Defence* [2017] AC 964, where Lord Sumption explained that the foreign act of state doctrine could not be applied to detention and torture because both "*exhibit the same combination of violation of peremptory norms of international law and inconsistency with principles of the administration of justice in England which have been regarded as fundamental since the 17th century*."[407] Lord Neuberger held that the public policy exception to the foreign act of state doctrine should "*depend ultimately on domestic law considerations*," but added that "*generally accepted norms of international*

[402] *Oppenheimer*, pp 276-278.
[403] *Kuwait Airways*, § 24.
[404] *Kuwait Airways*, § 26.
[405] *Kuwait Airways*, § 29.
[406] *Kuwait Airways*, § 29 (see also Lord Hope at §§ 139 and 145-149). See also: *Al-Haq (No.1)*, § 54.
[407] *Belhaj,* § 278.

law are plainly capable of playing a decisive role."[408] In this regard, Lord Sumption looked primarily to whether international law had been violated in deciding whether to apply the public policy exception.[409] While acknowledging that "*the influence of international law does not mean that every rule of international law must be adopted as a principle of English public policy*", Lord Sumption highlighted that "*[t]he role of international law in this field […] is to influence the process by which judges identify a domestic principle as representing a sufficiently fundamental legal policy*".[410] In this regard, Lord Sumption adopted the Canadian Supreme Court's dictum in *Kazemi Estate v Islamic Republic of Iran (Canadian Lawyers for International Human Rights intervening)* [2014] 3 SCR 176:

> "jus cogens norms can generally be equated with principles of fundamental justice and that they are particularly helpful to look to in the context of issues pertaining to international law. Just as principles of fundamental justice are the 'basic tenets of our legal system' […], jus cogens norms are a higher form of customary international law. In the same manner that principles of fundamental justice are principles 'upon which there is some consensus that they are vital or fundamental to our societal notion of justice', jus cogens norms are customs accepted and recognized by the international community of states from which no derogation is permitted'".[411]

That the present context involves serious breaches of peremptory norms militates strongly in favour of the reception of customary international law into the common law.

187.2. There are "*manageable standards*" which enable the courts to adjudicate on and consider Israel's serious breaches of peremptory norms.[412] For instance, the serious breaches of peremptory norms in the West Bank have either been acknowledged by the UK government (in, for example, the OPT Business Guidance), are based on findings of the ICJ in its *OPT Advisory Opinion*, are almost universally condemned (being the subject of multiple UN Security Council and UN General Assembly resolutions), or are otherwise incontestable. That is so in respect of the illegality of Israel's occupation, and the violations associated with its settlement enterprise, such as transfer of population, extensive destruction and appropriation of property, forcible transfer, racial discrimination, and violations of the right to self-determination. This is a further parallel with the *Kuwait Airways* case.[413] It is a clear distinction with *Al-Haq (No.1)*, where the legality of "*Operation Cast Lead*" had not been addressed by the ICJ in the *Wall Advisory Opinion* or otherwise.[414] It also distinguishes the present context from *Al-Haq (No.2)*, which did not concern the breaches of international law established in the *OPT Advisory Opinion*. While this Paper has provided an up-to-date account of the evidence and situation in the OPT, the domestic courts need not go any further than simply acknowledging the breaches of international law identified by the ICJ in the *OPT Advisory Opinion* in order to conclude that the prevention and non-assistance duties arise in the present context.

187.3. There are also manageable standards which enable the court to adjudicate on Israel's violations of international law in Gaza and to consider the prevention duties that arise in

[408] *Belhaj,* § 154.
[409] *Belhaj,* §§ 249-80
[410] *Belhaj,* § 257.
[411] *Belhaj,* § 257.
[412] *Kuwait Airways*, §§ 25-26. See also: *R (Miller) v Prime Minister* [2020] AC 373, § 52.
[413] *Kuwait Airways*, §§ 24-29 and 149.
[414] *Al-Haq (No.1),* §§ 42, 56-57.

response thereto under the Genocide Convention. The provisional measures orders of the ICJ and Israel's failure to implement them demonstrate that the threshold for engaging the duty to prevent genocide has, manifestly, been passed. In *Al-Haq (No.2)*, the Divisional Court concluded that it would have required to determine an issue which was pending before and had not yet been determined by the ICJ (§§ 51, 64). However, no such determination is needed to find that the prevention duty is engaged in respect of PSC's claims. All that needs to be recognised is that the serious risk threshold has clearly been passed. While the ICJ's jurisdiction in *South Africa v Israel* concerns genocide alone, it is also strongly implicit in the ICJ's analysis in respect of prohibited or genocidal acts under Article II of the Genocide Convention that it considered Israel to be violating IHL in the manner set out in this Paper, so as to engage the customary duty to ensure respect of IHL.

187.4. The case for giving effect to the prevention and non-assistance duties is "*all the more compelling*" given that a failure to place domestic law duties upon the administering authorities to refrain from investing or take steps towards divesting in Involved Companies (and the Secretary of State to issue appropriate guidance and directions) would place the UK in breach of its obligations under international law or give rise to an unacceptable risk that it will breach those obligations.[415]

187.5. The present context does not unacceptably trespass on high policy issues of national security, international peace and security, and the conduct of the UK's foreign relations. The present subject matter concerns local government investment decisions and the administration of local pension funds under the LGPS, which are plainly amenable to judicial review. That is far removed from the nature of the decision in *Al-Haq (No.2)*, which concerned sensitive issues of national security and international peace and security arising from the UK's participation and cooperation with other states in a multinational fighter jet programme.[416] No issues of national security or international peace and security arise in this case. While foreign relations issues arise to some extent in every case which would require the courts to consider questions of international law and recognise a foreign state's violations of international law, that does not in itself render an issue non-justiciable, as demonstrated in *Oppenheimer* and *Kuwait Airways.*

187.6. The giving effect to the prevention and non-assistance duties does not require the implementation of "*complex legislative definitions or machinery*".[417] It requires no Parliamentary intervention at all, with the Secretary of State and administering authorities already having sufficient powers to act within the existing scheme. Indeed, the 2016 Regulations and the LGPS Guidance envisage that non-financial considerations can and, in certain circumstances, ought to be taken into account by administering authorities.

187.7. The exercise of those powers would be consistent with the Ministerial Code and the Attorney-General's risk guidance, which oblige the Secretary of State to act in good faith and comply with the "*overarching duty*" to comply with international law (paragraph 143

[415] *The Debenture Trust* at § 205 (referring to *Freedom and Justice Party*). Insofar as the duty to prevention genocide is concerned, it is acknowledged that a breach of the duty can only be established once it is finally determined that Israel is committing genocide (*Bosnian Genocide Case*, § 431). However, for the reasons outlined at paragraph 101 above, that does not detract from the fact that the duty is engaged from the point a serious risk of genocide is established. A failure of administering authorities and the Secretary of State to take action would pose an unacceptable risk of the UK breaching its obligations under Article I of the Genocide Convention at the point a finding of genocide is made.

[416] *Al-Haq (No.2),* §§ 79, 90, 112, 134-135. It is also a distinction with *Al-Haq (No.1)*, where the nature of the claim against the government was much wider in scope, with the claimants seeking a mandatory order requiring the central government to take steps in its foreign relations with Israel (§ 43).

[417] *Freedom and Justice Party*, § 127.

above). The position set out in this Paper goes no further than what the Government has already committed to in principle.

188. For those reasons, the Secretary of State and the administering authorities are obliged to comply with the prevention and non-assistance duties as a matter of domestic law. At the very least, there is a significant risk that administering authority decisions to continue investing in Involved Companies and a failure by the Secretary of State to adopt appropriate guidance/directions will be unlawful as a matter of public law.

(2) The need for proper consideration and inquiries

189. Public authorities must have regard to all legally relevant considerations when making decisions and exercising their functions, and exercise judgment as to the relevance or weight of those considerations in a manner that is reasonable. While Israel's violations of international law and the UK's prevention and non-assistance duties are *not* mandatory statutory considerations, it does not follow that there is no public law duty to properly consider them, and make reasonable inquiries.[418]

190. As set out by the Court of Appeal in *Friends of the Earth v Secretary of State for Trade* [2021] PTSR 190, failures to take into account material considerations (which are not mandated by statute) can be sub-divided into two categories:

    190.1. There are cases where a decision-maker has completely failed to have regard to a particular consideration. "*In such a case, unless the consideration is obviously material according to the Wednesbury irrationality test, the decision is not affected by any unlawfulness […] there is no obligation on a decision-maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they have to take and positively decide to discount it in the exercise of their discretion*".[419]

    190.2. The second is whether the decision-maker has turned its mind to a consideration but has given it no or manifestly inadequate weight. "*In normal circumstances the weight to be given to a particular consideration is a matter for the decision-maker*", subject to the rationality test above.[420]

191. Those principles apply inasmuch to whether Israel's serious breaches of peremptory norms in the OPT and the UK's prevention and non-assistance duties are legally relevant considerations.[421] The Secretary of State and administering authorities will be obliged to have regard to such matters where they are "*so obviously material*" such that no reasonable authority could fail to do so,[422] or – put another way – a failure to take those matters into account is not reasonable or capable of being justified.[423] It is not a matter of discretion.

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[418] The relevant principles in respect of the *Tameside* duty are summarised in in *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, § 70.
[419] *Friends of the Earth 2021* at § 120.
[420] *Friends of the Earth 2021* at § 121.
[421] *R (Hurst) v London Northern District Coroner* [2007] 2 AC 189, § 58.
[422] *Friends of the Earth 2021,* § 119.
[423] *R (Johnson) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778, § 114.

192. That position is reflected in Lord Mance's observation in *R (Hurst) v London Northern District Coroner*, concerning the extent to which a coroner was required to comply with Article 2 of the ECHR prior to the Human Rights Act 1998 coming into force:

> "78 […] I find unattractive the proposition that it is entirely a matter for a discretionary decision-maker whether or not the values engaged by this country's international obligations, however fundamental they may be, have any relevance or operate as any sort of guide (the term used by Lord Bingham in *R v Lyons* at para 13).
>
> 79 Lord Brown in para 57 cites Cooke J's words in *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, 183, approved by Lord Scarman, with whose speech all other members of the House agreed, in *In re Findlay* [1985] AC 318, 334b. Cooke J said that:
>
> > "there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers . . . would not be in accordance with the intention of the Act."
>
> This country's international obligations in relation to a death potentially involving state responsibility appear to me to merit equivalent recognition at least as a relevant factor, even if the decision-maker were in the event to regard them as outweighed by other considerations."[424]

193. Applying those principles to the present subject matter, there are cogent grounds to conclude that Israel's serious breaches of peremptory norms, the UK's prevention and non-assistance duties and the risk of triggering the UK's responsibility under international law are legally relevant considerations which the Secretary of State and administering authorities must take into account when deciding whether to invest in and divest from Involved Companies (or issue appropriate guidance, in the case of the Secretary of State). Those matters are "*obviously material*" to the exercise of the Secretary of State and administering authorities' discretions in respect of the LGPS when it comes to investments in the Involved Companies. We are fortified in that view by the following:

    193.1. We are concerned with the most fundamental norms of international law: the right to self-determination; the prohibition of racial discrimination and apartheid; the prevention and prohibition of genocide; the basic rules of IHL; and crimes against humanity. Matters which "*shock the conscience of humankind*".[425] If violations of any norms of international law are to be legally relevant considerations, it is these.

    193.2. For the reasons given at paragraphs 187.2-187.3 above, there are manageable standards that the Secretary of State and the administering authorities can apply when taking into account Israel's violations of international law and the UK's prevention and non-assistance duties. They need look no further than the ICJ's findings in the *OPT*

[424] At first blush, Lord Mance's later dictum in *R (Yam) v Central Criminal Court* could be read as inconsistent with *Hurst*. In *Yam*, Lord Mance observed that "*a domestic decision-maker exercising a general discretion (i) is neither bound to have regard to this country's international obligations nor bound to give effect to them, but (ii) may have regard to the United Kingdom's international obligations, if he or she decides this to be appropriate*" (§ 35). In our view, *Yam* is not authority for a general proposition that public authorities are never required to take the UK's international law obligations into account. It is context sensitive, depending on whether those obligations are obviously relevant to the decisions and subject matter at hand.

[425] *Michael Domingues v United States* (Case 12.285, Inter-American Commission on Human Rights, Report No. 62/02 of 22 October 2002, § 49.

Advisory Opinion and its provisional measures Orders in *South Africa v Israel*. Those findings are now obviously augmented – and manageable standards given even greater specificity – in light of the UN and other reports cited above, including (in respect of starvation alone) the views of experts who have drawn the attention of all governments to the risk of famine and starvation in Gaza, and the commensurate obligations under international law that have been triggered.

193.3. A failure by the Secretary of State and administering authorities to take into account the character of those violations and the UK's prevention and non-assistance duties will inexorably result in the UK breaching duties articulated in the *OPT Advisory Opinion* and the UNGA 2024 Resolution, triggering its responsibility under international law.[426] That is a serious occurrence. There are strong policy reasons, rooted in the UK's support for the international rule of law, for such matters to be taken into account.[427]

193.4. The context of the statutory scheme lends support to the view that non-financial considerations can and, in certain circumstances, ought to be taken into account by administering authorities. That is presaged by regulation 7(2)(e) of the 2016 Regulations and the LGPS Guidance. Given the fundamentality of the norms and obligations concerned, it is difficult to conceive how they are not obviously relevant to the "*critical test*" of suitability (LGPS Guidance, p 6).

193.5. The requirements in the Ministerial Code and the Attorney-General's risk guidance that Government must comply with the UK's international obligations, and the increased significance of compliance with international law under the new Government all serve to underline the relevance of the UK's prevention and non-assistance duties as part of any governmental decision-making.

194. And when, we trust, the Secretary of State and/or the administering authorities do take Israel's serious breaches of peremptory norms and the UK's prevention and non-assistance duties into account, they must do so properly and on the basis of a "*tenable view*" of international law.[428] For the reasons given in this Paper, the *only* tenable view is that Israel is breaching the most fundamental norms of international law, that the UK's prevention and non-assistance duties arise in respect of Israel's violations, that those obligations apply to the sphere of investment relations and the LGPS, and that they require the UK to "*abstain from entering*" and "*take steps to prevent*" investment relations which entrench Israel's unlawful presence in the OPT or assist in its violations therein.[429]

195. Decision-makers are also under a duty to take sufficient and reasonable steps of inquiry to acquaint themselves with material and information relevant to their decisions (the *Tameside* duty).[430] It follows from the above analysis that the duty of sufficient inquiry requires administering authorities, in the exercise of their functions in respect of the LGPS, to take reasonable steps to acquaint themselves with information regarding *inter alia* the extent of their investment in Involved Companies, the extent to which prospective investees are aiding or assisting in Israel's serious breaches of international law, and the means available to avoid and

[426] As for the discussion on the duty to prevent genocide, see paragraphs 101 and 184.3 above.
[427] Noting the position of the current Attorney-General in Speech: Attorney General's 2024 Bingham Lecture on the rule of law (Gov.uk, 16 October 2024).
[428] *Friends of the Earth 2023*, §§ 28-29 and 40(iv)-(v); *R (Corner House Research) v Director of the Serious Fraud Office* [2009] AC 756, §§ 66-68; *Benkharbouche*, §§ 35-36.
[429] *OPT Advisory Opinion*, § 278; UNGA 2024 Resolution, Clause 4(4)(ii) and (iv).
[430] *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1065B. The relevant principles in respect of the *Tameside* duty are summarised in in *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, § 70.

mitigate those impacts (i.e. the steps that can be taken towards divestment). In that respect, the *Tameside* duty has a parallel and can suitably be informed by the requirement that administering authorities exercise "*due diligence*" in respect of their prevention and non-assistance duties (paragraphs 121-122 above).

196. Whilst fact sensitive and company and fund specific, it also cannot be excluded that the involvement of companies in Israel's violations of international law give rise to financial and commercial risks which are financially material to the performance of the local pension fund and must be considered on that basis alone.[431] Involved Companies may face regulatory and litigation risks in various jurisdictions regarding their acts in aiding and assisting Israel's violations of international law. And, as the UK Government has recognised in the OPT Business Guidance, that economic and financial activities in settlements take place on illegally occupied land "*may result in disputed titles to the land, water, mineral or other natural resources which might be the subject of purchase or investment*". In appropriate circumstances, administering authorities may be required to refrain from investing in or divest from such companies where there is risk of significant financial detriment to the fund. Falling short of that, the financial and commercial risks associated with investing in Involved Companies will be a legally relevant consideration which administering authorities must take into account and make reasonable inquiries in respect of.

I. CONCLUSIONS

197. As Professor Michael S. Lynk implored in 2022:

> "When the facts changed, so must our minds."[432]

198. Matters have only deteriorated. Israel's violations of the most fundamental norms of international law are now incontrovertible, and ever more egregious. There have been corresponding legal developments on the international plane, most notably the ICJ's *OPT Advisory Opinion* and its provisional measures Orders in *South Africa v Israel*. In addition to the numerous well respected Palestinian rights NGOs with years of experience in the OPT, Israeli NGOs have now stated that it is their duty to make plain what is happening and to call for immediate action, including in respect of genocide.

199. Physicians for Human Rights Israel, has stressed on 28 July 2025:

> "Despite international legal rulings, Israel has not complied with its obligations, and global enforcement remains weak. PHRI urges international bodies and states to fulfill their duty under Article I of the Genocide Convention to stop the Gaza genocide. The organization also calls on the global health and humanitarian communities to act, as the destruction of Gaza's health system is not only a legal violation but a humanitarian catastrophe demanding urgent global solidarity and response."[433]

200. B'Tselem, on the same day, said this in its report about Israel's practices throughout the OPT:

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[431] LGPS Guidance, p 6.
[432] Michael Lynk 2022 Report, at § 8.
[433] A Health Analysis of the Gaza Genocide (Physicians for Human Rights, July 2025), at p 6.

> "[S]ince October 2023, there has been a major shift in Israel's practices of oppression and harm towards Palestinians, both as individuals and as a group. We have gathered eyewitness testimonies and documented hundreds of incidents involving unprecedented and extreme violence against Palestinian civilians throughout the territory Israel controls, while key politicians and military commanders have openly declared the policies being implemented on the ground. Countless evidence of the consequences of these policies reflects the horrifying transformation of the entire Israeli system in its treatment of Palestinians."[434]

It went on to "*call on the Israeli public and on the international community to act urgently to put an immediate stop to Israel's assault on the Palestinians in the Gaza Strip and across all areas under Israeli control, using every means available under international law*."[435]

201. The International Bar Association has stressed similarly on 1 August 2025: "*The international community – and all those with leverage over Israel – must act now. Political and economic pressure must be applied immediately to end the ongoing carnage and prevent further loss of civilian life. This includes the immediate recognition of the State of Palestine, the suspension of all arms exports and military cooperation with Israel and the activation of all bilateral and multilateral mechanisms to compel an end to this genocidal campaign.*"[436]

202. It is beyond doubt that States such as the UK have duties to prevent and to refrain from recognising or assisting in situations created by Israel's violations of international law, and to take all reasonably available measures, including in cooperation with other States, to bring Israel's violations of peremptory norms to an end.

203. For the reasons set out in this Paper, Israel's serious breaches of peremptory norms, its violations of IHL, the serious risk of genocide in Gaza, and the UK's prevention and non-assistance duties under international law are legally relevant to the investment decisions of administering authorities and the Secretary of State in her regulation of the LGPS. To act consistently with its obligations under international law, and given the seriousness of the breaches in issue, a reasonably available and necessary measure is for the Secretary of State to produce guidance and/or make directions giving effect to the prevention and non-assistance duties across the LGPS. In any case, administering authorities will expose themselves to legal risk if they continue to invest in companies which are aiding or assisting in Israel's serial and serious violations of the most fundamental norms of international law in the OPT. The administering authorities and the Secretary of State have a duty to take appropriate action without unreasonable delay. The mounting evidence of Israel's violations and the severe harm inflicted on the Palestinian people require action to be taken in prompt discharge of the UK's duties under international and domestic law.

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[434] Our Genocide (B'Tselem, July 2025), at p 8.
[435] Our Genocide (B'Tselem, July 2025) at, p 9.
[436] As a summer of horrors unfolds in Gaza, IBAHRI asks the international community: if not now, when will it be time to act? (International Bar Association, 1 August 2025).

27 August 2025

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