

The Impact of the General Election on UK's Interpretation of and Compliance with International Law with Respect to the Israeli Palestinian Conflict

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Introduction.

This paper expands on the September talk given at the European Circuit Annual Conference 2024 in Bordeaux. In seeking to analyse the immediate and likely impact of the election of the new Labour government on the UK's interpretation of and compliance with international law, this paper will focus on the analysis of the UK's response to two Hague court cases.

The first is the United Nations General Assembly (UNGA) 17th January 2023 request (following a vote on 30th December 2022) for an Advisory Opinion from the International Court of Justice (ICJ) on the Legal Consequences of Israel's Policies and Practices in the Occupied Palestinian Territories, including East Jerusalem (OPT)³. The second is the International Criminal Court (ICC) Prosecutor's application for arrest warrants for Hamas and Israeli leaders in the Palestine Situation before the International Criminal Court (ICC)⁴.

The paper seeks to analyse the evolution of the UK's response from the Conservative government of Rishi Sunak to the Labour government of Kier Starmer and the legal basis for this evolution. It further intends to explore potential legal/policy areas likely to experience a further evolution.

The Application for ICJ Advisory Opinion and the UK Position: Compelling Reasons for ICJ to Decline the UNGA's Request

The UK position on the UNGA's application for an Advisory Opinion, may generously be described as an exercise in creative lawyering. It was the UK position that there were compelling reasons for the ICJ to decline the UNGA's request and the said reasons may be summarised as follows:

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² This paper was further updated in December 2024.

³ For full details of the UNGA's request to the ICJ, see: [Request for Advisory Opinion transmitted to the ICJ pursuant to General Assembly Resolution 77/247 of 30th December 2022](#).

⁴ See: [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine – 20th May '24](#).

- a. Providing an Advisory Opinion would amount to circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent, as Israel has not consented to the proceedings.
- b. The request would require the ICJ to make findings on a broad range of contentious and complex issues regarding the entire history of the dispute. However, this was not a fact-finding dispute that ICJ could properly undertake through the advisory opinion proceedings.
- c. Providing an Advisory Opinion would be contrary to the negotiation framework agreed by parties (as part of the Oslo Accords and Middle East Quartet regime) and endorsed by United Nations Security Council (UNSC) and the UNGA. As the negotiated framework does not provide for recourse to the ICJ, the court has no jurisdiction in the matter.
- d. The UNGA request requires the Court to proceed based on assumed unlawful conduct by Israel in an attempt to elicit findings that brings about the end to Israeli occupation, an issue that is a bilateral dispute and thus would not be an appropriate use of the Advisory Opinion procedure⁵.

The ICJ's Ruling on the UK Arguments

In delivering its ruling on 19th July '24, It was apparent that the ICJ gave short shrift to the UK arguments. The Court held that the Palestine issue was not simply a bilateral issue between Israel and Palestine. The matter has been of particular interest and concern to the UN and to the League of Nations before the creation of the UN, dating back to the Mandate System. Since the 1947 UNGA Resolution 181(II) on the partition of Palestine, the Palestine Question has been before the UNGA. The issues raised in the Advisory Opinion request is part of the same Palestinian question and the role of the UNGA relating to this, being also charged with issues of international peace and security, of which the Palestine situation is one. The Court was firmly of the view that Israel's consent to the proceedings was not relevant⁶.

The ICJ was also firmly of the view that it had sufficient information to give an opinion. Over 50 States and international organisations had submitted information and

⁵ [Written Statement by the United Kingdom on the Request by the UNGA for an Advisory Opinion on the Legal Consequences of Israeli Policies in the OPT, 20th July '23](#)

⁶ [The ICJ Advisory Opinion on the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory \(OPT\), including East Jerusalem, 19th July 2024, at paras 32 to 35.](#)

submissions. Israel had submitted a written statement, and a voluminous dossier had been submitted by the UN Secretary General (UNSG) on the situation in the OPT⁷.

The court observed that the question of whether an ICJ advisory opinion would have an adverse effect on peace negotiations was a matter of conjecture and speculation. It however held that the Oslo Accords cannot be understood to detract from Israel's obligations under international law as applicable in the OPT. This includes Art 47 of the 4th Geneva Convention (GC) which holds that "the protected population shall not be deprived of the benefits of the Convention by any agreement concluded between the authorities of occupied territories and the occupying power"⁸.

The ICJ was firmly of the view that the UNGA was empowered by Art 96 UN Charter to request the Advisory Opinion, and the court has the jurisdiction to give its opinion on the issue under Art 65 of its statute. Thus, its jurisdiction does not stem from the Oslo Accords.⁹

The Court observed that it would not proceed on the basis of an assumed unlawful conduct by Israel but will ascertain whether Israel's policies and practices are a violation of international law before determining any legal consequences¹⁰.

ICJ Advisory Opinion - Key Conclusions

The ICJ in the said 19th July '24 Advisory Opinion, reached the following key conclusions:

- a. The West Bank, East Jerusalem and Gaza are occupied territories (OPT) in which Israel has a commensurate degree of effective control and thus the status of an occupying power.¹¹
- b. That Israel's continued presence and/or control in the OPT including East Jerusalem is unlawful.¹²
- c. Israel is under an obligation to bring to an end its unlawful presence and/or control in the OPT as rapidly as possible.¹³

⁷ Ibid, at paras 44 to 47.

⁸ Ibid, paras 38 to 43 and 102.

⁹ Ibid, paras 41 to 43.

¹⁰ Ibid, paras 48 to 49.

¹¹ Ibid paras 18 to 24.

¹² Ibid, paras 259 to 264.

¹³ Ibid, para 267.

- d. Israel is under an obligation to cease immediately all new settlement activities and evacuate all settlers from the OPT as rapidly as possible.¹⁴
- e. Israel has the obligation to make reparation for the damage caused to all natural or legal persons concerned in the OPT.¹⁵
- f. All States are under an obligation NOT to recognise as legal the situation arising from Israel's unlawful presence and/or control in the OPT and NOT to render aid or assistance in maintaining the situation created by Israel's continued presence. They are further under an obligation to cooperate with the UN to put into effect modalities required to ensure an end to Israel's unlawful presence and the full realisation of the self-determination of the Palestinian people, and to distinguish in their dealings with Israel between the territory of Israel and the OPT.¹⁶
- g. International organisations, including the UN are under an obligation NOT to recognise as legal or cooperate with or assist the situation arising from the unlawful presence of Israel in the OPT, and to distinguish in their dealings with Israel between the territory of Israel and the OPT¹⁷
- h. The UNGA and UNSC, should consider further action required to bring to an end Israel's unlawful presence in the OPT¹⁸.

The ICJ's Reasoning

The Court reasserted that occupation is the exercise by a State of effective control in a foreign territory. To be permissible, it must be consistent with the *erga omnes* obligations owed to the international community which prohibits the threat or use of force in international relations and particularly the prohibition of territorial acquisition resulting from the threat and use of force, and the respect for the right to self-determination¹⁹. To seek to acquire sovereignty over the OPT, as shown by Israel's policies and practices in East Jerusalem and the West Bank is contrary to the prohibition of the use of force in International Relations and the principle of non-acquisition of territory by force²⁰.

¹⁴ Ibid, para 268.

¹⁵ Ibid, paras 269 to 272.

¹⁶ Ibid, paras 273 to 279

¹⁷ Ibid, para 280.

¹⁸ Ibid, para 281.

¹⁹ Ibid, para 109

²⁰ Ibid, paras 173 to 179, and 253 to 254.

The court was firmly of the opinion that the effects of Israel's policies and practices, resulting in the prolonged deprivation of the Palestinian people of their right to self-determination, constitute a breach of their fundamental rights, thus there is a direct impact on the legality of Israel's presence in the OPT. Occupation cannot be used in such a manner as to leave indefinitely the occupied population in a state of suspension and uncertainty, denying them their right to self-determination while integrating parts of their territory into the occupying Power's own territory, as Israel has²¹.

According to the ICJ, the regime of comprehensive restrictions imposed by Israel on Palestinians in the OPT amounts to systemic discrimination based on race, religion or ethnic origin, in violation of Arts 2(1), and 26 of the International Covenant on Civil and Political Rights (ICCPR), Art 2(2), of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and (perhaps most notably) a violation Art 2 and 3 of International Convention on the Elimination of all forms of Racial Discrimination (ICEAFRD) prohibiting racial segregation and apartheid²².

The Court reiterated that the illegality of Israel's occupation relates to the entirety of the Palestinian territory occupied by Israel since 1967²³.

The ICC Prosecutor's Application for Arrest Warrants in the Palestine Situation

Karim Khan KC (ICC's Prosecutor) announced on the 20th May '24 that his Office of the Prosecutor (OTP) was applying for arrest warrants for Hamas leaders: Yaha Sinwa (Gaza Head); Mohammed Deif Al-Marsi (Al-Qassam Brigades' Commander-in-Chief) and Ismail Haniyeh (Political Bureau Head) as there were reasonable grounds to believe they bore responsibility for war crimes and Crimes Against Humanity (CAH) committed on Israeli and Palestinian territories since 7th October '23. All three named Hamas leaders are now believed to have since been killed in the ongoing conflict in Gaza.

He further announced that he was seeking warrants for Israeli PM Benjamin Netanyahu and the then Defence Minister Yoav Gallant, as the OTP was also of the view that there are reasonable grounds to believe both bore responsibility for war crimes and Crimes Against Humanity (CAH) in Gaza from at least 8th October'24, Including: intentionally directing attacks against civilian population, extermination and/or murder including in the context of deaths by starvation, persecution and other inhumane acts. The OTP

²¹ Ibid, paras 236 to 243, 255 to 257 and 261.

²² Ibid, paras 223 to 229.

²³ Ibid, para 262.

sought to charge both Hamas and Israeli leaders as co-perpetrators and superiors under Articles 25 and 28 Rome Statute (RS)²⁴.

Near Consensus on the Hamas Warrant Applications

There appears to be very little dispute that the publicly available evidence provides more than reasonable evidence pointing to a widespread and systematic attack against the Israeli civilian population, thus providing grounds to request arrest warrants for the Hamas leaders, based on an alleged common plan involving the commission of war crimes and CAH. Indeed, the UK from the onset appeared to have no issue with these warrant applications.

UK (Conservative) Government Criticism of Warrant Applications for Israeli Leaders and their Basis in International Law

Lord Cameron (the then Foreign Secretary) on 21st May '24 stated in the House of Lords: "Because Israel is not a signatory to the Rome Statute and Palestine is not yet recognised as a State, we do not think the Court has jurisdiction..."²⁵. This is completely in accurate.

Palestine is Not a State

By April 2022, 138 out of 193 UN member states recognised Palestine as a State²⁶. Additionally, on 10th May 2024, 143 UN member states voted in favour of the Resolution on Admission of New Members, which determined that "the State of Palestine is qualified for membership in the United Nations in accordance with Article 4 of the Charter [i.e. full membership] and should therefore be admitted to membership of the United Nations"²⁷.

The ICC Pre-Trial Chamber (PTC) ruled in its 2021 Decision on Jurisdiction that by the UNGA adopting Resolution 67/19 of 2012 granting Palestine a "non-member observer State" status, Palestine was able to and did deposit an instrument of ascension to the Rome Statute (RS) with the UN Secretary General (UNSG). As a result, Palestine

²⁴ [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine – 20th May '24.](#)

²⁵ [ICC decision to seek arrest warrants for Israeli leaders is a mistake, says Lord Cameron, House of Lords, 21st May '24, Evening Standards.](#)

²⁶ [World Population Review: Countries that Recognise Palestine 2024.](#)

²⁷ [UN General Assembly Resolution on Admission of new Members to the United Nations, 10th May 2024, at para 1.](#)

became party to the RS once it came into force in the OPT. As asserted by the PTC, disputed borders have never prevented states from becoming state parties²⁸.

As a result, the PTC concluded that consistently with a host of UNSC and UNGA resolutions reaffirming the right to self-determination and independence of the Palestinian people on Palestinian territory occupied by Israel since 1967²⁹, the ICC's territorial jurisdiction extends to all the "territories occupied by Israel since 1967, i.e. Gaza and the West Bank, including East Jerusalem."³⁰ It is of note that the recent ICJ Advisory opinion set out above is wholly consistent with this ruling.

Israel is not a State Party

That Israel is not a State party to the RS in this instance is not an issue. In accordance with Art12(2) RS, ICC may exercise its jurisdiction where a State on whose territory the alleged conduct occurred is a RS party or the State of the accused is a RS party. Thus, the ICC clearly has jurisdiction over alleged RS crimes perpetrated on Palestinian territory by whomever irrespective of nationality, including Israelis, and over crimes allegedly perpetrated by Palestinians on other states' territories including Israeli territory³¹.

UK (Conservative) Government's Request for Amicus Submissions to ICC

It is of note that in indicating its opposition to the OTP's application for arrest warrants for the Israeli leaders, the UK Conservative government sought to resurrect before the ICC similar Oslo Accords arguments wholly rejected by the ICJ as having no basis in international law. The UK government initially sought to argue that under the Oslo Accords, the Palestinian Authority (PA) have no jurisdiction over Israelis in the OPT, therefore Palestine is unable to confer criminal jurisdiction over Israelis on the ICC³².

²⁸ [Palestine Situation PTC Decision on the Prosecution Request Pursuant to Article 19\(3\) for a Ruling on the Court's Territorial Jurisdiction in Palestine, 5th February '21, Paras 98 to 112](#)

²⁹ See: UNGA Resolution 67/19 which reaffirmed the right of the Palestinian people to self-determination and to independence in their State on the Palestinian territory occupied since 1967, and other similarly worded resolutions including UNGA 66/146 of 19th December '11 which stressed "the need for respect for and preservation of the territorial unity, continuity and integrity of all occupied Palestinian Territory including East Jerusalem" and a host of UN Security Council Resolutions including UNSC/Res/242 of 22nd November '67 which clarified that Israel's fulfilment of UN Chapter principles includes "(i) the withdrawal of Israel armed forces from territories occupied in the recent conflict and (ii) respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area" and UNSC RES/449(1979) which "calls once more upon Israelto desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967"

³⁰ ICC PTC Ruling on Territorial Jurisdiction in Palestine, 5th February '21, ante, paras 115 to 118.

³¹ [J. Onalaja, "Arrest warrants in the Israel-Palestine situation \(1\), Counsel: Journal of the Bar or England and Wales, September 2024.](#)

³² [Request by the UK for Leave to Submit Written Observations Pursuant to Rule 103, 10th June '24](#)

This argument was however inherently flawed from the outset. As the ICJ has consistently held both in the 19th July 2024 Advisory Opinion but also in the 9th July 2004 Advisory Opinion on the legal consequences of Israel's construction of the wall in the OPT³³, Palestine has a right to self-determination within OPT and all the attached sovereign rights. Israel's occupation is illegal. Therefore, this sovereign right is not Israel's to gift, nor does it arise from the Oslo Accords. The sovereign right remains Palestine's. Palestine retains *de jure* jurisdiction over the OPT and thus retains the capacity to confer this on the ICC, irrespective of a bilateral agreement such as the Oslo Accords which may limit its jurisdictional enforcement domestically. Furthermore, as held by the ICJ in its July 2024 Advisory Opinion, the Oslo Accords must be read consistently with Articles 7, 8 and 47 of the 4th Geneva Convention, which prohibits agreements which deprive or denies 'protected persons' their rights under the Geneva Conventions³⁴.

The False Moral Equivalence Argument

According to the UK Conservative Government, the OTP's investigation and application for arrest warrants amounts to an attempt to draw a false moral equivalence between terrorists and democratically elected leaders. This is errant nonsense. The RS requires the ICC to exercise its jurisdiction equally over all suspects irrespective of status or political allegiances.³⁵ All are bound by International Criminal Law (ICL) and International Humanitarian Law (IHL), and Article 54 RS requires the Prosecutor to extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under the statute and, investigate incriminating and exonerating circumstances equally. He can only pursue the facts and evidence where they lead and pursue cases where there are reasonable grounds to believe that a specific individual has committed a specific crime within the Court's jurisdiction. The fact that there are reasonable grounds to believe that Hamas leaders may have committed crimes against Israelis cannot mean that Israelis may never be found or even suspected (on reasonable grounds) to have committed RS crimes against Palestinians³⁶.

Whilst Israel has the right to defend itself, embark on a security operation in response to the Hamas et al attacks, and seek to rescue her hostages in Gaza, any self-defence action remains bound by ICL and IHL including the principles of humanity, distinction, proportionality, precautions, military necessity. No party to an armed conflict (regardless of how virtuous or legitimate its aim, nor how democratic) has the freedom

³³ [Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT, ICJ, 9th July 2004](#)

³⁴ 19th July 2024 Advisory Opinion at paras 261 to 264; J Onalaja, "Arrest Warrants", Counsel, September 2024.

³⁵ Articles 1 and 21(3) RS.

³⁶ J Onalaja, "Arrest Warrants" Counsel, September 2024.

to do whatever it likes in pursuit of its legitimate aim. Therefore, moral equivalence is wholly irrelevant, the relevant question is whether there are reasonable grounds to believe that each individual sought (regardless of nationality) has committed the alleged crimes³⁷.

It was clear to all and must have been clear to the last Conservative Government that advancing such double standards in the enforcement of ICL diminishes the credibility of states peddling this and fast erodes the ICC's legitimacy and credibility, whilst making a mockery of the rules-based international order which the UK oftens purports to advocate for. This UK position was ironically completely inconsistent with the same Conservative Government's initial stance in the early stages of the Gaza war when it was firmly of the view that Israel's actions were fully consistent with its right to self-defence and maintained that it had no view on whether specific Israeli actions were in violation of IHL as this was a matter for an international court. As a result, there was then no question of a UK ban on arms supply to Israel.

Arrest Warrant Would Jeopardise Peace Negotiations

Similarly to arguments advanced at the ICJ, and consistent with the US government position, the UK Conservative government had maintained that the ICC's issuing of warrants now could jeopardise attempts to agree a peace deal/ceasefire and the release of the hostages.³⁸

Irrespective of when the OTP applies for these arrest warrants, it is inevitable that a ceasefire deal will be agreed once it is clear to Netanyahu what has been clear to most from the outset and what appeared to have been clear to Gallant prior to his removal from the defence ministry, that Israel's military objectives of destroying Hamas and securing safe release of the hostages will not be achieved by flattening Gaza along with its civilian population, an exercise guaranteed to bolster Hamas' recruitment, whilst further risking the hostages' lives. Indeed, history shows that irrespective of whether it agrees a cease fire and hostage release deal now, Israel can and most likely would still seek to pursue the Hamas et al operatives believed to be responsible for the October 7th attacks by other means. Arguably, a ceasefire deal will be agreed once it becomes clear to Netanyahu that the continuation of this war will not secure his political future.

Crucially, the issuing of these warrants for both Israeli and Hamas leaders where there is evidence to provide reasonable grounds for believing that offences have been committed under the RS is arguably more likely to hasten the end of the conflict. This is not simply because all parties to and actors in the conflict will be put on notice that

³⁷ J Onalaja, "Arrest Warrants" Counsel, September 2024.

³⁸ See the [20th May 2024 statement of Andrew Mitchell, the then Deputy Foreign Secretary to the Commons Chamber of the UK Parliament.](#)

their actions are being closely watched by judicial authorities and the previously enjoyed impunity for alleged grave crimes will no longer be the order of the day, as all will be called to answer for alleged violations of IHL, but also for other reasons. The existence of such warrants will significantly narrow the world in which these suspects will be able to operate as they become increasingly ostracised by a significant proportion of the international community, including previously sympathetic states and organisations.³⁹

Additionally, the instigation of these cases against the alleged suspects is highly likely to significantly stem the flow of arms from the various democratic states arming the parties to this conflict. This is because all states are not simply prohibited by customary international law from encouraging violations of the Geneva Conventions, thus prohibiting provision of military equipment and ammunition to belligerents in armed conflicts when they know that it will be used to violate IHL⁴⁰, but furthermore as held by the ICJ in the Wall Advisory Opinion, Common Article 1 of the Geneva Conventions means that every state party to the convention ‘whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of [the conventions] in question are complied with’⁴¹. This places a responsibility on 3rd parties to not encourage parties to armed conflicts to violate IHL, nor take action that would assist in such violations, and to take appropriate steps to cause their cessation. Thus, arms producing and exporting states “should exercise particular caution to ensure their export is not used to commit serious violations of IHL⁴².”

It follows, as argued by Marko Milanovic, that complicity for arms producing and exporting states under Common Article 1 does not require an intention on the part of the State to facilitate a wrong. Conscious risk taking akin to recklessness will suffice, such as a case where weapons are provided whilst consciously disregarding a risk that the recipient would commit a serious violation of IHL. The arming State would risk liability for complicity if the recipient State does commit such violations of IHL, and the arms provided facilitates these violations.⁴³

Where the leaders of the parties to the current conflict in Gaza face prosecution for violations of IHL at the ICC, a State continuing to arm any party to such a conflict would

³⁹ [J. Onalaja, “Arrest warrant in the Israel-Palestine situation \(2\)”, Counsel: Journal of the Bar of England and Wales, October 2024.](#)

⁴⁰ [M. Schmitt and N. Watts, “Common Article 1 of the 1949 Geneva Conventions”, Articles of War, Lieber Institute, West Point 12th April ‘24.](#)

⁴¹ The Wall Advisory Opinion, ICJ para 158

⁴² [The Council of the European Union’s User’s Guide to Council’s Common Position on Defining Common Rules Governing the Control of Exports of Military Technology and Equipment, 20th July 2015](#)

⁴³ [M. Milanovic, “Common Article 1 Does Prohibit Complicity in IHL Violations, Through Arms Transfers or Otherwise”, EJIL:Talk , 15th April ‘24.](#)

arguably be consciously disregarding the risk that the arms being supplied would be used to commit serious violations of IHL and will no doubt struggle to continue to justify such supplies. It is thus arguably more likely that a substantial reduction in the arms provided to the parties to this conflict because of the instigation of the ICC prosecutions, will assist rather than hamper the steps to bring the war to an end.⁴⁴

UK Labour Government's Change of Position

Following the 4th July 2024 UK general election which installed into the offices of the Prime Minister and Foreign Secretary internationally reputable lawyers, who not only ran for office on a manifesto professing, but continue to profess an intention to respect international law and the rule of law,⁴⁵ the UK has witnessed the emergence of a new government which has been forced by its back benches, the wider Labour membership and their constituents to advocate more forcefully for an immediate ceasefire in Gaza. Indeed, Kier Starmer has moved from the rather curious position of appearing to argue that Israel's starvation of Gaza's civilians was a legitimate act of self-defence in response to the alleged atrocities committed by Hamas on 7th October 2023, to a more vociferous call for Israel to comply with IHL in exercise of its right to self-defence.

These lawyers being more alert to the weaknesses of the arguments being advanced by the previous UK Conservative government in opposition to the OTP's application for the arrest warrants and no doubt being fully alert to the resounding rejection of similar UK arguments by the ICJ and further aware of the detailed and clear 19th July 2024 ICJ Advisory Opinion, wasted very little time in abandoning the UK's objections to the OTP's application to the ICC PTC for arrest warrants for the Israeli leaders, as announced on 26th July '24⁴⁶.

This followed the 19th July 2024 decision by the UK Labour government to resume funding of UNWRA, previously suspended by the Conservative government, following the review by the former French Foreign Minister (Madam Colona) which concluded that Israel has failed to provide evidence that hundreds of UNWRA staff were Hamas members as it had claimed. Announcing the change in policy, the Foreign Secretary David Lammy stated that "Malnutrition in Gaza was now so severe and rates of diarrhoea was now 40 times more prevalent and polio has been detected.....Humanitarian aid is a moral necessity in the face of such a catastrophe, and it is aid agencies who ensure UK's support reaches civilians ... UNRWA is absolutely central to these efforts. No other agency can deliver aid at the scale needed."⁴⁷

⁴⁴ J. Onalaja, Arrest Warrant 2, Counsel, October 2024

⁴⁵ See: ["The reset: how Britain can restore its global reputation" by Phillip Sands, The FT, 26th July '24](#)

⁴⁶ See: ["Britain drops its challenge to ICC arrest warrants for Israeli leaders", The Guardian, 26th July '24](#)

⁴⁷ See: [UK Government press release: "UK to restart funding to UNWRA", 19th July '24](#)

In light of the mounting evidence across Gaza and firmly alert to its obligations under IHL as set out above and also under the Export Control Act 2002 and the Export Control Order 2008, on the 2nd September '24, Lammy announced to the House of Commons the UK Labour government decision to suspend licencing arms export to Israel that may be used in Gaza. This followed a legal assessment (began under the previous government) which concluded that there were clear risks that military exports to Israel if used in Gaza, might result in serious violation of IHL. Lammy noted that the said assessment has left the UK “unable to conclude anything other than that for certain UK arms exports to Israel there does exist a clear risk that they might be used to commit or facilitate a serious violation of international humanitarian law..... These include equipment that we assess is for use in the current conflict in Gaza”.⁴⁸

It is furthermore of note that since the ICC PTC issued the arrest warrants for Netanyahu and Gallant in addition to the Hamas leader Diab Al-Marsi,⁴⁹ the new Labour government has made it clear with respect to the issued warrants that it would fulfil its obligations under the RS and the International Criminal Court Act 2001 which gives the RS domestic effect. If any of the sought individuals step foot on UK soil, it would be a matter for the UK courts whether the individual is sent to the ICC on the warrant.⁵⁰

The Changing Positions of Other States

These marked changes in UK government policy on the Israel/Hamas war followed the February 2024 Dutch Appeal Court order (resulting from legal action brought by Oxfam and other NGOs) that the new right leaning and Israeli State friendly Dutch government cease all export of F35 fighter jet parts to Israel, due to the risks that they will be used to facilitate violation of IHL in Gaza⁵¹.

In its defence against cases brought by Nicaragua at the ICJ for alleged violation of the Genocide Convention via its alleged ongoing support for the Israeli government, and that brought in Berlin by the European Centre for Constitutional and Human Rights, the German government submitted that no weapons of war has been exported to Israel under any licences issued since 7th October 2023 apart from spare parts to satisfy long term contracts. It is the German government’s case that this amounted to only 32,000 Euros in 2024, compared to 26.5million Euros of exports in 2023⁵².

⁴⁸ Ibid.

⁴⁹ [ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant, ICC Press release 24th November '24.](#)

⁵⁰ [Israel-Gaza Conflict: Arrest Warrants, Hansard Volume 757: debated on Monday 25 November 2024.](#)

⁵¹ [Dutch court orders halt to export of F-35 jet parts to Israel, Reuters, 12th February '24.](#)

⁵² [Germany has stopped approving war weapons export to Israel, sources say, Reuters, 19th September '24.](#)

Both France⁵³ and Spain have ceased the supply of arms to Israel and have called for an international embargo on the supply of arms to Israel. In addition, Spain has joined Ireland and Belgium in calling for the European Union (EU) to review the EU-Israel Trade Association Agreement due to alleged breaches by Israel of the human rights obligations embedded in the agreement as a result of its actions in Gaza⁵⁴.

It is furthermore of note that Japan, Germany, Italy, Australia, Canada and the EU have resumed funding to UNWRA.

Prediction on UK Position re Occupied Territories following ICJ Ruling

By May 2024 the UK Conservative government announced unprecedented sanctions (financial and travel restrictions) against 8 “extremist Israeli settlers who have committed human rights abuses against Palestinian communities in the West Bank”, and “2 groups known to have supported, incited and promoted violence against Palestinian communities in the West Bank”. David Cameron’s Foreign Commonwealth and Development Office (FCDO) noted that there had been “unprecedented levels of violence by extremist settlers in the West Bank over the past year. He observed that “some residents of illegal Israeli settlements and outposts have used harassment, intimidation and violence to put pressure on Palestinian communities to leave their land”.⁵⁵

Following the ICJ Ruling on 19th July ’24 that all states and international bodies such as the UN are under an obligation under international law not to recognise as legal the unlawful presence of Israel in the OPT and not to render aid or assistance in maintaining the situation, and are further under a duty to distinguish in their dealings with Israel, between the territory of Israel and the OPT, thus imposing an obligation on them to: abstain from treaty relations with Israel in all cases it purports to act on behalf of the OPT; abstain from entering into economic/trade dealings with Israel concerning OPT that may entrench its unlawful presence; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal occupation, it was inevitable that the UN and its member states would need to act.⁵⁶

⁵³ [Macron calls to halt arm deliveries to Israel in Gaza war, BBC News, 6th October ’24.](#)

⁵⁴ [Spain’s Sanchez urges Brussels to suspend trade deal with Israel, Politico, 14th October ’24.](#)

⁵⁵ See: [‘The UK announces new sanctions against extremist Israeli settlers who have violently attacked Palestinians in the West Bank’. FCDO press release 12th February ’24](#) and [‘The UK has imposed new sanctions on extremist groups and individuals for inciting and perpetrating settler violence in the West Bank’ FCDO Press Release, 3rd May 2024.](#)

⁵⁶ 19th July 2024 ICJ Advisory Opinion, paras 273 to 280.

In its first step towards implementing the ICJ advisory opinion, the UNGA voted on the 18th September '24 by 124 to 14 (with 43 abstentions including the UK) for a resolution deploring Israel's continued and total disregard of its obligations under the UN Charter, and wider international law, which the UNGA determined seriously threatens regional and international peace and security. The said resolution calls on Israel to comply with international law and withdraw its military forces, immediately cease all new settlement activities, evacuate all settlers from the OPT and dismantle all parts of the separation wall constructed inside the OPT; return land and other assets including cultural assets seized since the occupation began in 1967 and allow all Palestinians displaced during the occupation to return to their place of origin; and make reparations for damages.⁵⁷

More pointedly, the resolution calls on all UN members states to take concrete steps to address Israel's ongoing presence in the OPT, particularly by: refraining from recognising Israel's presence as lawful; ensuring that they do not provide aid or assistance in maintaining the situation; taking measures to prevent their nationals, companies and entities under their jurisdiction from engaging in activities that supports or sustain Israel's occupation; ceasing importing products originating from Israeli settlements; halting the transfer of arms, munitions and related equipment where there are reasonable grounds to suspect that they might be used in the OPT; and implement sanctions such as asset freezes against individuals and entities involved in maintaining Israel's unlawful presence in the OPT, including those engaged in settler violence.⁵⁸

Whilst opting to abstain, the UK Ambassador to the UN, Dame Babara Woodward noted that the abstention was not due to a lack of support on the part of the UK for the central findings of the ICJ Advisory Opinion, but rather because of a lack of sufficient clarity in the resolution regarding achieving the shared aim of a negotiated two-state solution.⁵⁹ She however stressed the UK's grave concerns about Israel's continued settlement activities in the OPT which is "a clear violation of international law", "undermine prospect for peace" and "must cease immediately". She further expressed grave concerns regarding the unprecedented level of settler violence by extremist settlers seeking to pressure Palestinian communities to leave their land. She recalled the UK's imposition of sanctions on some radical settler groups and individuals allegedly responsible for such activities and called on Israel to hold them accountable. She reiterated the UK position that "any effort to change the geographic and demographic

⁵⁷ See ['UN General Assembly demands Israel ends 'unlawful presence' in Occupied Palestinian Territory', UN News 18th September '24](#)

⁵⁸ Ibid.

⁵⁹ See: [Explanation of vote by Ambassador Barbara Woodward, UK Permanent Representative to the UN, on the UN General Assembly resolution on the ICJ's Advisory Opinion on Israel's presence in the Occupied Palestinian Territories – Wednesday 18 September 2024](#)

make-up of the Occupied Palestinian Territory through force and outside a negotiated settlement are illegal”.⁶⁰

Following the February and May 2024 sanctions on some extremist Israeli settlers, the FCDO made clear then that a failure by Israel to clamp down on these illegal and violent activities and on those responsible would result in further action by the UK. It thus was not surprising, in light of the continued escalation of settler violence in the occupied West Bank that David Lammy announced an escalation of UK sanctions on Israeli settlers on the 15th October '24. On this occasion, the sanctions were not just on four organisations alleged to have supported and sponsored violence against Palestinian communities in the West Bank but also specific sanctions targeting 3 illegal settler outposts in the OPT⁶¹. This is the first time that the UK has backed up its rhetoric on the illegality of Israeli settlements in the OPT with enforcement action, albeit only following allegations of the said settler outpost engaging in violence and intimidation to force Palestinians off their land. It is particularly of note that three of the four organisations sanctioned by Lammy's FCDO are alleged to provide volunteers and or financial support for illegal settler outposts or are involved in the construction and establishment of illegal Israeli settlements. These escalations of UK sanctions are arguably consistent with the ICJ 19th June 2024 Advisory Opinion and the UNGA resolution of the 18th September 2024 implementing the same, thus arguably demonstrating the new UK Labour Government's intention to remain in lock-step with the requirements of international law on this issue.

In light of this, it is to be expected that irrespective of the cessation of hostilities in Gaza, faced with a continuous refusal by the Israeli government to comply with international law and IHL by preventing extremist settler violence in the OPT; ending the expansion of Israeli settlements in the OPT and beginning the dismantling of existing settlements in-step with embarking in good faith with the Palestinian Authority in negotiations for a two state solution to the protracted conflict, the new UK Labour government will come under and likely succumb to intense pressure to go further in order to implement the ICJ's 19th June '24 Advisory Opinion and the September 2024 UNGA Resolution. This will likely result in steps towards:

1. Sanctioning a significant number of individuals who continue to participate in, encourage or facilitate extremist settler violence on Palestinian civilians, including potentially members of the Israeli authorities who continue to fail to investigate and bring alleged suspects to justice. This will likely include members of the right-wing Israeli coalition government such as the National Security

⁶⁰ Ditto.

⁶¹ See: [‘New sanctions target 3 illegal settler outposts and 4 organisations that have supported and sponsored violence against communities in the West Bank’ FCDO Press Release 15th October '24.](#)

Minister Itamar Ben-Gvir, who is alleged to have encourage violence by extremist settlers on Palestinian civilians and other violations of IHL, including the prevention of aid convoys from entering Gaza.

2. Sanctions on all illegal Israeli settlements in the OPT, including all entities and businesses based on or operating withing the said settlements.
3. A trade embargo on all goods and services from within illegal Israeli settlements in the OPT and to the same. Boycott Divestment and Sanctions (BDS) will not only be central to international law but will also be forced to become central to government policy.
4. Sanctions on more individuals and organisations involved in the establishment, construction, facilitation and funding of illegal Israeli settlements in the OPT. This may likely include elements of the right-wing Israeli coalition government, such as the Finance Minister, Bezalel Smotrich who has allegedly called for the continuous expansion of the settlements in the OPT in order to prevent the establishment of a Palestinian state⁶².
5. A ban on arms and security equipment being exported to Israel which may be used by Israeli security forces in alleged violence against Palestinian civilians right across the OPT.

⁶² It is of note that the former Conservative Foreign Secretary was considering imposing such sanctions on both these extremist right wing Israeli minister just prior to the general election being called in July 2024. See: [“I had plans to sanction Israeli Ministers – Cameron”, BBC News Website, 15th October '24.](#)