IN THE HIGH COURT OF JUSTICE **AC-2023-LON-003634**
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

B E T W E E N :

THE KING
(on the application of
Al-Haq)

Claimant

-v-

SECRETARY OF STATE FOR BUSINESS AND TRADE

Defendant

Claimant's Skeleton Argument for hearing listed on 23 April 2024

References are in the following format: Statement of Facts and Grounds "SFG/paragraph"; Summary Grounds of Defence "SGD/paragraph"; Reply "Reply/paragraph"; Renewal Grounds "RG/paragraph".
Abbreviations are the same as defined in SFG unless otherwise indicated

Hearing listed for: half a day; Pre-reading estimate: half a day minimum

List of pre-reading:
If half a day: SFG; SGD; Reply; Permission Decision; Renewal Grounds; R (CAAT) v Secretary of State for International Trade [2019] EWCA Civ 1020
If time allows: South Africa v Israel, ICJ judgment and order on provisional measures 26 January 2024; R (CAAT) v Secretary of State for International Trade [2023] EWHC 1343 (Admin); Claimant's CCO submissions

INTRODUCTION

1. The Claimant, a prominent Palestinian human-rights organisation, challenges the ongoing decision of the Secretary of State for Business and Trade (the "**SST**") to grant, and not to suspend, licences for the export of weapons and military equipment to Israel for use in Gaza.[1]

[1] The SST is able, as a matter of law, to impose an end-use control, such that arms might continue to be exported to Israel for other uses (for example in relation to Iran), whilst no longer being exported for use in Gaza. It is the Claimant's understanding that this was the position in the CAAT challenges, namely that those

2. This challenge focuses on Israel's military response following the events of 7th October 2023, and concerns solely the question of Israel's compliance with the legal obligations that apply during any armed conflict. The law of *jus in bello* is distinct from the law of *jus ad bellum*: IHL is blind to the circumstances in which the present hostilities, or the overall armed conflict, began.

3. In particular, the challenge concerns the Strategic Export Licensing Criteria (the "**Criteria**") [SB/p.116-120]: Criterion 2(c) (which requires the SST not to grant a licence if she determines that there is a clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law ("**IHL**")); and Criterion 1(b) (which requires the SST not to grant a licence if to do so would be inconsistent with the UK's obligations under the Arms Trade Treaty ("**ATT**"), in particular in relation to genocide).[2] The Claimant submits that, in determining that the continued licensing of arms to Israel for use in Gaza is lawful under those Criteria, the SST has acted irrationally (Ground 1), committed errors of law (Ground 2), and acted unlawfully as a matter of procedure (Ground 3).

4. An application for permission for judicial review was brought on 6 December 2023. Summary Grounds of Defence were filed on 12 January 2024. A Reply was filed on 22 January 2024. Permission was refused by Eyre J on 19 February 2024. The Claimant respectfully submits that Eyre J's decision was wrong[3] and that there is, beyond doubt, an arguable case that the Defendant has acted unlawfully and that permission ought to be granted.

5. In that connection, the Claimant respectfully invites the SST to re-consider her opposition to permission being granted. In particular, since the time at which the SGD were filed, it has become ever more apparent that the legal arguments raised by the Claimant in these

challenges related to exports to Saudi Arabia for use in Yemen, rather than exports to Saudi Arabia more broadly.

[2] It is common ground that under Criterion 7(g) the UK must consider the end-use of an export, so, for example, parts for F35 jets are within the scope of this judicial review challenge, even though F35s are not made in the UK, as they are sent to a third-State who then exports the final product to Israel. See SFG/§§48-49, §§113-114 [CB/3/35].

[3] The renewal grounds are set out in [CB/11/124]. Due to space constraints, those renewal grounds are not repeated in the present skeleton argument, but of course can be addressed and developed orally.

proceedings are, at the very least, respectable and command considerable support. By way of non-exhaustive example:

5.1. The United Nations Human Rights Council has issued a resolution calling upon all States, *inter alia*, to "*cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel…in order to prevent further violations of international humanitarian law and violations and buses of human rights*"; and recognising that "*grave violations of multiple peremptory norms by Israel constitute a threat to international peace and security and result in grave breaches and human rights abuses, and calls upon all States to ensure that their arms exports do not contribute to or benefit from this unlawful situation*"; and expressing concern that "*the sale, diversion and transfers of arms and jet fuel increase the ability of Israel…to commit serious violations, including attacks against civilians and civilian infrastructure, disregard international law and seriously undermine the enjoyment of human rights*".[4] The United Kingdom is of course one of the States to which that resolution is addressed.

5.2. Many other States have ceased exporting arms, including the Netherlands—following a court decision that there was a clear risk that arms exports from the Netherlands will be used to commit serious violations of IHL (the same test that this Court must apply at the substantive review stage)—along with Spain, Italy, Canada, Belgium and Japan.[5]

5.3. The United Nations Security Council has passed a resolution demanding an immediate ceasefire during Ramadan and to allow humanitarian access into Gaza.[6] The Council reiterated its "*demand that all parties comply with their obligations under international law, including international humanitarian law and international human rights law, and in this regard deploring all attacks against civilians and civilian objects, as well as all violence and hostilities against civilians, and all acts of terrorism, and recalling that the taking of hostages is prohibited under international*

4 UN HRC Res A/HRC/55/L.30 (5 April 2024) at §§12-13.
5 RG §12.3.
6 UN Security Council Resolution 2728 (25 March 2024).

law" and demanded "*an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire*". The UK voted in favour of this resolution. Israel has refused to comply with the resolution,[7] with its war cabinet minister Benny Gantz referring to it as "*lacking operational significance for u*s."[8] This places it in breach of international law. By way of further update, in recent correspondence, the SST has stated that the SCR is not binding.[9] This is incorrect as a matter of law: the language used in the Resolution is mandatory in nature, which is the deciding consideration (see eg the *Namibia advisory opinion*[10] paras 113-114). It is also inconsistent with the apparent understanding of the FCDO on this issue, since Lord Ahmad informed the House of Lords on 26 March 2024: "*The noble Baroness asked about UN Security Council Resolution 2728—it is binding*."[11]

5.4. the International Court of Justice (the "**ICJ**") has issued two provisional measures orders against Israel in the case of *South Africa v Israel*. Those orders have found, *inter alia*, that the rights under the Genocide Convention are plausibly engaged and ordered Israel to take all measures within its power to prevent the commission of genocide and related acts; and to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip.[12] The second order responded to the famine and starvation caused by Israel's military action, ordering that Israel must take all necessary and effective measures to ensure, without delay, in full co-operation with

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7 Israeli Foreign Minister Israel Katz said on X that Israel would not abide by the resolution: "*The state of Israel will not cease fire. We will destroy Hamas and continue to fight until the last of the hostages returns home*.". '*Israel cancels Washington visit after US allows UN Gaza ceasefire resolution to pass', CNN* 25 March 2024, https://edition.cnn.com/2024/03/25/middleeast/un-security-council-gaza-israel-ceasefire-intl/index.html.

8 https://www.timesofisrael.com/israel-nixes-us-rafah-talks-as-washington-allows-unsc-resolution-demanding-gaza-ceasefire/#:~:text=Defense%20Minister%20Yoav%20Gallant%2C%20who,the%20hostages%20to%20their%20homes.%E2%80%9D

9 In its letter on 12 April 2024 [CB/42/645], the Defendant claims that the Resolution is "*a non-binding Chapter 6 resolution*", without further explanation.

10 *Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* Advisory Opinion, ICJ Rep 1971 p16.

11 Mindful of parliamentary privilege, if necessary the Claimant will seek to raise the apparent contradiction between the FCDO's position in Parliament and the SST's position in the present litigation with the relevant parliamentary actors.

12 *South Africa v Israel*, provisional measures order, 26 January 2024.

the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary.[13]

5.5. A letter has been sent to the Prime Minister of the United Kingdom by a number of former senior judges, legal practitioners and academics setting out that the UK's exports of military equipment to Israel are in breach of international law and calling for the Prime Minister to cease exports of arms. In particular, the letter is signed by Lady Hale, Lord Sumption, Lord Carnwath, Lord Wilson and former Lord Justices of Appeal Aikens, Hooper, Moses, Sedley LLJs, along with almost 1100 other lawyers.[14]

5.6. Ministers, including Lord Cameron (the Foreign Secretary)[15] and Lord Ricketts (a former permanent secretary of the Foreign Office),[16] have acknowledged that Israel's adherence to IHL is properly a matter of concern.

6. Indeed, the lawfulness of Israel's conduct in Gaza is one of the vexed and dominant issues of the day. Against that backdrop, it is, in the Claimant's respectful submission, difficult to understand how its challenge can be characterised as so weak that it cannot even proceed to a

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13 *South Africa v Israel*, provisional measures order, 28 March 2024.

14 [CB/39/622], signatories listed at https://lawyersletter.uk/#signatories. A letter has been sent in response [CB/41/641] , contesting the views set out in the first letter, at least in part, but of course this does not diminish the fact that authoritative legal voices agree that exports are in breach of international law, at least for the purpose of arguability.

15 Lord Cameron has said that he is "worried" Israel may have breached international law: https://www.bbc.co.uk/news/uk-politics-67929003 . On 15 March 2024 he wrote to the Chair of the Foreign Affairs Select Committee stating that "it is of enormous frustration that UK aid for Gaza has been routinely held up waiting for Israeli permissions…the main blockers remain arbitrary denials by the Government of Israel and lengthy clearance procedures, including multiple screenings and narrow opening windows" noting that "more urgent progress is needed": https://committees.parliament.uk/publications/44011/documents/217998/default/. In an article in The Times on 7 April 2024 entitled "We have humanitarian laws. Israel must abide by them.", the Foreign Secretary stated that there is "no doubt where the blame lies" for the deaths of seven aid workers, three of whom were British, noting that "our backing is not unconditional": https://www.thetimes.co.uk/article/david-cameron-israel-gaza-hamas-war-c7g32znnt

16 Lord Ricketts has said that "*there's abundant evidence now that Israel hasn't been taking enough care to fulfil its obligations on the safety of civilians.*": https://www.theguardian.com/world/2024/apr/03/britain-should-stop-arming-israel-lord-ricketts-former-national-security-adviser

substantive hearing. Indeed, the Defendant has failed to administer a clean knock-out blow as to why the grounds are unarguable, and certainly none that would prevent the claim from surmounting the "*low*" threshold of arguability: *Maharaj v Petroleum Co of Trinidad and Tobago Ltd* [2019] UKPC 21 at §3. The refusal of permission is intended for cases which are "*hopeless, frivolous or vexatious*" (White Book (vol. 1), §54.4.2). That is not this case. Further, while the Claimant submits that its claim is plainly arguable, it is also a claim of general public importance, which itself is relevant to the granting of permission.[17] The public importance of this claim is addressed at §49 below.

7. Finally, notwithstanding her duty of candour, when the SGD were filed, the SST chose to withhold much of the contemporaneous decision-making material from the Court and the Claimant as discussed further at §16 below. That is a factor that weighs in favour of permission being granted, per *R (Sky Blue Sports & Leisure Ltd) v Coventry City Council* [2013] EWHC 3366 (Admin) at §§26 and 29.

8. There is now a further dimension to this problem. It has recently become apparent that further legal advice may have been given to the SST that supports the Claimant's challenge.[18] There is an outstanding issue in relation to the privileged nature of that advice, in whole or in part, given the loss of confidentiality in its conclusion.[19] The Claimant does not seek the determination of this issue at the permission hearing. However, it notes that the SST is obliged pursuant to the duty of candour, amongst other obligations, not to mislead the Court. If the assertion of privilege means that the Court does not have before it a factor that is plainly highly material to the arguability of the challenge (*i.e.* that the SST has in fact received legal advice which supports the Claimants' submissions), the SST cannot allow the Court to proceed on

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17 In *R (Gentle) v Prime Minister* [2006] EWCA Civ 1078 at [4]-[5], [22]-[23], the Court of Appeal granted permission to appeal and permission for judicial review for the same reasons, "not on the basis that we have concluded that the application for judicial review has a real prospect of success within the meaning of CPR 52.3(6) but on the basis that because of the importance of the issues and the uncertainty of the present position there is a compelling reason why an appeal should be heard." See also *R (Adiatu) v HMRC* [2020] EWHC 1554 (Admin) at [265].

18 The Guardian, "UK government lawyers say Israel is breaking international law, claims top Tory in leaked recording" 30 March 2024 available at https://www.theguardian.com/world/2024/mar/30/uk-government-lawyers-say-israel-is-breaking-international-law-claims-top-tory-in-leaked-recording

19 The Claimant wrote to the SST on 3 April 2024 in this connection, in particular noting that confidentiality in its conclusion has been lost. By response dated 12 April 2024, the SST stated that the loss of confidentiality in the summary of advice will not give rise to loss of confidentiality in the whole of the advice, unless the reality is that there is nothing of substance which requires protection.

that materially incorrect basis. Instead, the SST should concede permission. See, by analogy *R (Belhaj) v DPP (No.2)* (DC) [2018] 1 WLR 3602 at §§37-40.

THE STANDARD OF REVIEW

9. It is to be anticipated that, should the SST continue to resist the grant of permission, the focus of her submissions at the present stage will be on the standard of review. It will doubtless be said that the continued supply of arms to Israel involves multi-factorial evaluative judgement calls of the very highest sensitivity, which are quintessentially for the Executive, and which it is thoroughly inappropriate for the Judiciary to second-guess.

10. Whilst it is of course the case that there are aspects of the application of the SELC which may involve the exercise of evaluative expertise, nevertheless the SST's licensing decisions must necessarily be carried out in accordance with the law. It is now well-established that these licensing decisions are reviewable by the courts (as in *CAAT1* and *CAAT2*). It would be wrong for permission to be refused on the basis of deference, in particular in a case which is a prima facie compelling as the present (see §§34-40 below).

11. Further, the Court may wish to bear in mind the limited scope of the SST's evaluative judgement in any event. Firstly, when one or other of Criterion 1(b) or 2(c) SELC is met, "*the Government will not grant a licence*". The SST is not permitted to take into account other considerations (whether those considerations relate to international relations, or to the national interest) to allow her to continue to grant a licence in such circumstances. Accordingly, a significant area of Governmental expertise and specialism – namely what might be judged best for UK national interests on the world stage, or indeed what might be judged best for the UK's allies, or indeed whether the UK would wish to continue to arm Israel – is entirely omitted from the present legal framework.[20]

12. Secondly, the proper interpretation of the SELC itself is simply a matter of law, which is for the courts to determine. Both of Criteria 1(b) and 2(c) require consideration of the content of International Humanitarian Law (for Criterion 2(c)) and the nature of the UK's obligations

[20] This may well reflect a view that the SELC themselves reflect the decision that the UK's national interests will ultimately be served by a global legal order in which conflicts take place in accordance with the laws of war.

under the Arms Trade Treaty (for Criterion 1(b)). Again, these are questions which are quintessentially for the courts. The Court will be aware that, in some challenges involving international law, there is argument that the courts need only ask whether the Government adopted a "tenable" view of international law. It is understood to be common ground that this is not such a case.[21] Accordingly, again there is no basis for any deference. As set out further in §§21-33 below, it is the Claimant's case that the SST has made serious errors of law.

13. Thirdly, assuming it is otherwise free from legal error, the Claimant entirely accepts that the factual assessment under Criteria 1(b) and 2(c) may well be capable of attracting deference. This was reflected in the *CAAT* cases (addressed by the SST in §10 of her SGDs). However, this is of less relevance to the present challenge than in other cases, since the present case includes legal norms such as (i) the non-conditionality of aid, (ii) the starvation of civilians as a method of war, and (iii) siege/collective punishment; which are by their nature less focussed on a broad evaluative assessment of proportionality in relation to a military objective. But further and in any event, the overwhelming *prima facie* strength of the case that there have been IHL breaches, combined with the current profoundly concerning evidence in relation to the quality of the SST's decision-making, are such that in the present case no concerns in relation to deference could properly lead to the refusal of permission.

THE HISTORY OF, AND FUTURE OF, THE CHALLENGE

14. The present application for judicial review relates to the continuing and/or repeated decision(s) of the SST "*to continue granting export licences for military and dual-use equipment being exported to Israel either directly or where Israel is the final-destination, following the events of 7th October 2023"* (as per box 3.1 of the Claim Form).

15. When considering the SFGs, SGDs and Reply, the Court may be assisted to know that the SST provided no substantive reply to the Claimant's pre-action protocol correspondence (SFG §3 [CB/3/22]) over a period of months. This meant that the Claimant was forced to bring proceedings by reference to material that was otherwise available to it, either in the public

[21] See §128, SFGs [CB/3/59]. The SST does not expressly agree, but addresses the law in §§13-22 SGDs [CB/8/86] with no reference to tenability.

domain or by dint of its own knowledge or enquiries. The SFGs were pleaded by reference to the factual position as at 13 November 2023 (SFG at §51 [CB/3/35]).

16. The SGDs were filed on 12 January 2024. In overview:

    16.1. They are accompanied by no documentary disclosure and no witness statement.

    16.2. They contain some detail in relation to some of the IHLCAP Cell assessments, but this is of varying degrees of detail (and no detail whatsoever is provided in relation to the assessment of 29th December (SGD at §31 [CB/8/91])). There is no provision of underlying materials, such as the "Tracker" used in the *CAAT* cases (see §§44ff in *CAAT2*).

    16.3. There is no (or very little) detail in relation to the various ministerial submissions (whether from MENAD to the Foreign Secretary seeking his decision on whether Israel is committed to complying with IHL (§48 [CB/8/99]); from ECJU to the Foreign Secretary in relation to the options for handling extant export licences (§49 [CB/8/99]); or from the Director Export Controls and Sanctions to the SST (§51 [CB/8/99])).

    16.4. There is no (or very little) detail in relation to the Foreign Secretary's recommendation to the SST (§52 [CB/8/99]).

17. It is to be anticipated that, should permission be granted, there will be provision of substantially more material in relation to the period up to the SGDs, and also subsequently. The Claimant submits that it would be appropriate for the court to consider the evidence before the SST up until the date of the hearing (or an agreed date shortly before the hearing which would allow enough time for the relevant material to be properly considered). Per the Court of Appeal's judgment in *CAAT1*, the present claim is necessarily "*iterative*" and the Claimant seeks to challenge those further decisions.[22] Indeed, the Defendant has stated that she will keep her

[22] [2019] EWCA Civ 1020 at [60]. This is in contrast to the Defendant's submission in *CAAT2*, where she "emphasised that in contrast to the position in the first challenge, where the Secretary of State had undertaken an updated exercise to the date of the Divisional Court hearing, she had made clear that she would not do so for this challenge": [2023] EWHC 1343 (Admin) at [85]. In this case the Defendant has indicated the opposite, and in *CAAT2* the Divisional Court in any event did not determine the question of whether or not rolling review was appropriate (but considered that the new evidence made no difference).

decision under continuing, careful review (SGD/1 [CB/8/82]) with a further IHL assessment undertaken every two weeks, in addition to potential interim assessments (SGD/32 [CB/8/91]). This means at least seven new IHL assessments have been undertaken since the 29 December assessment referenced in the SGD. Those should form part of the present proceedings. The alternative (as raised by the Claimant with the SST[23]) is that the Claimant issues further proceedings and applies to consolidate, but that would appear a burdensome and inefficient course of action.

18. For the avoidance of doubt, should permission be granted, the Claimant would of course be assiduous to ensure that the claim is in good order for its effective and efficient determination. This would include identifying any new grounds of challenge, and any significant new arguments, as soon as possible and seeking to make the necessary amendments to the SFGs (and seeking permission, if necessary).

19. Finally, the Claimant has been updating the SST on a regular basis with key developments which are highly material to the IHL assessment (in tab C of the Core Bundle), some of which are set out further in §36 below. For its part, the SST has not responded to any of these updates nor provided any information in relation to any further decisions. This changed on 12 April 2024 [CB/42/646], when the SST (responding to the Claimant's letter of 3 April 2024) confirmed a decision had been taken to continue to grant licences, but providing no further information in that regard.

THE GROUNDS OF CHALLENGE

20. The Claimant addresses Ground 2 (error of law) first, as it did in its Reply, for ease of exposition and since it reflects the order taken in the SGD.

GROUND 2: ERROR OF LAW

21. One explanation for the SST's decision-making is legal error. So far, from the very limited disclosure of the approach taken as set out in the SGD, there are at least two legal errors apparent in the SST's decision making.

[23] Letter dated 3 April 2024 [CB/35/559].

The SST wrongly interprets "IHL" in the SELC to mean the importing State's view of IHL

22. At present, this point arises most acutely in relation to the provision of humanitarian assistance to civilians.[24] It is apparent from the SGDs that the UK believes (correctly) that Israel is under an obligation to allow free and unimpeded passage of humanitarian relief (and indeed, as Occupying Power, to ensure food supplies for the population), and it is Israel's view that it is not under this obligation (SGDs at §§13-14, §35 [CB/8/86]).

23. The Claimant fully accepts that, in a (very) limited sense, this speaks in Israel's favour, insofar as it relates to Israel's attitude to IHL. This is because, when Israel blocks the provision of food and other humanitarian supplies, causing or increasing the likelihood of the starvation of the civilian population, it is not intentionally breaching IHL, so far as it understands IHL. (It is, of course, intentionally breaching IHL as it is correctly understood.)

24. In contrast, the overwhelmingly important consequence of Israel's interpretation of IHL is that – for the purposes of Criterion 2(c) as properly construed - Israel's formal commitments to complying with IHL should be taken as excluding the disputed norm. Very obviously, Israel is not committed to allowing free and unimpeded passage of humanitarian relief. Indeed, the evidence in that regard is overwhelming (see the "*conditionality publicly being placed upon humanitarian access by Prime Minister Netanyahu*" noted in §35 SGDs [CB/8/92] back on 10 November 2023; and as is well known the appalling situation for the civilian population has developed along those predictable and intended lines).

25. Because there has been no disclosure of underlying Ministerial Submissions or documents, the Claimant is limited to the information provided in the SGDs. Nowhere in the SGDs is there any indication that the SST was advised that Israel clearly has no commitment to complying with the IHL obligation that there must be free and unimpeded access to humanitarian aid,

[24] However, humanitarian assistance is only one example and the Claimant understands that Israel's view of IHL is at variance with the UK's view in other respects. For example: (i) Hamas carries out civic functions in Gaza and the targeting of its civic activities is not a permissible military objective, as implicitly recognised at SGD §35 ("*There have been public political statements from Prime Minister Netanyahu and his ministers referencing the total destruction of Hamas. Given Hamas also has responsibility for running civilian infrastructure in Gaza, including hospitals, this rhetoric is troubling.*") and (ii) there are credible reports that Israel is breaching proportionality and distinction on a policy level, which may indicate that Israel has misdirected itself as to the proper content of IHL. Human Rights Watch and Amnesty International propose to carry out research into other areas of variance, having filed a notice of intention to intervene.

because it does not recognise any such obligation. Instead, the entire focus was on Israel's subjective compliance with its own view of IHL:

25.1. SGD/§14 [CB/8/87]: "*it does not necessarily follow from the fact that Israel may take a different view of the scope of its obligations that it is not committed to complying with IHL*".

25.2. SGD/§43 [CB/8/98]: the IHLCAP Cell's assessment of 8 December: "*Israel's position was that it is acting in accordance with what it believes to be the relevant legal obligations in relation to humanitarian assistance, and it is therefore possible that this is a case of disagreement about what the law requires, rather than an intentional disregard of IHL*".

25.3. SGD/§55(d) [CB/8/100]: ECJU apparently advised the Foreign Secretary that "*Israel's position is that it is acting in accordance with what it believes to be the relevant obligations in relation to humanitarian assistance and that therefore, although this is an area of concern, it may not be indicative of any intentional disregard for IHL*".

26. The Claimant infers from these paragraphs that the SST (and those advising her) are interpreting "*serious breach of IHL*" in the SELC, in particular Criterion 2(c), to mean, or to include, IHL as interpreted by Israel. That is an error of law.

The SST wrongly interprets the ATT as dispensing her from compliance with her preventative obligations under the Genocide Convention, and further interprets those preventative obligations as not arising for consideration.

27. The second error of law concerns Criterion 1(b), which provides that the Government will not grant a licence if to so do "*would be inconsistent with*" the UK's obligations under the Arms Trade Treaty (ATT).

28. Article 6(2) of the ATT requires that: "*A State Party shall not authorize any transfer of conventional arms…if the transfer would violate its relevant international obligations under international agreements to which it is a Party…*".

29. A relevant international obligation is the duty to prevent acts of genocide, imposed by Article 1 of the Genocide Convention. The obligation to prevent genocide is considered in the *Bosnia Genocide Case*[25] (§§431-432). Of particular relevance to the present case is the time at which the obligation arises, and the time at which non-compliance with the obligation becomes a breach:

> *" 431. Thirdly, a State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed. It is at the time when commission of the prohibited act (genocide or any of the other acts listed in Article III of the Convention) begins that the breach of an obligation of prevention occurs. In this respect, the Court refers to a general rule of the law of State responsibility, stated by the ILC in Article 14, paragraph 3, of its Articles on State Responsibility:*
>
> *". . . 3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation."*
>
> *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 attempt to prevent, the occurrence of the act. In fact, a State's obligation to prevent, and the corresponding duty to act, arise 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. 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. However, if neither genocide nor any of the other acts listed in Article III of the Convention are ultimately carried out, then a State that omitted to act when it could have done so cannot be held responsible a posteriori, since the event did not happen which, under the rule set out above, must occur for there to be a violation of the obligation to prevent."*

30. The Claimant understands – or at least infers - the SST's case to be that Article 6(2) ATT therefore does not apply at the time at which the obligation to prevent genocide arises. Instead, it only applies subsequently, when and if genocide occurs, at which point there has been "*violation*" of the duty to prevent genocide. The Claimant will say that, if this is the SST's case, this places too much weight on the word "*violation*" in Article 6(2) and would lead to the "*absurd*" result warned against by the ICJ and inconsistent with the purpose of Criterion 1(b). Indeed, the UK might find itself having violated the ATT in relation to transfers of arms which

[25] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzogovina v Serbia and Montenegro),* Judgment, ICJ Rep 2007, at p.222.

have already taken place, in breach of its obligation to prevent genocide, having adopted a construction of Article 6(2) that means that it never asks itself the relevant question at a moment in time in which it can actually take any relevant action.

31. The SST focusses her submission on an argument that "*the obligation, under the Genocide Convention, to prevent genocide, is given effect to in the ATT in Article 6(3)*" (SGD/§20 [CB/8/88]). That provides that: "*A State Party shall not authorize any transfer of conventional arms…if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.*". She positively contends that this provides for a "*much higher*" threshold of knowledge than is required under the duty to prevent genocide. For this reason alone her submission should be rejected.

32. In any event, these are matters of construction, which are plainly arguable, and permission should - in the Claimant's submission – be granted.

33. For the avoidance of doubt, the Claimant submits that the threshold to prevent genocide (in particular attempted genocide, or incitement) has been met and that the obligation to prevent applies to the UK. The ICJ has found that there is a plausible case that the rights under the Convention are engaged on the current facts in Gaza and that there is a real and imminent risk that irreparable prejudice will be caused to the rights under the Convention before the ICJ reaches its final decision on the merits (in other words: a real and imminent risk of genocidal acts), noting that "*the civilian population in the Gaza Strip remains extremely vulnerable*" and that Israel's military operation has resulted in "*tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure*" (§70).

GROUND 1: RATIONALITY

34. The question for the Court is, of course, whether there is currently a sufficient basis to conclude that Ground 1 is arguable. In the Claimant's respectful submission, this is plainly made out.

35. The Claimant does not repeat its lengthy submissions set out in §§25-40, §§50-115, and §§117-124, SFGs [CB/3/29]. For the present purposes of obtaining permission, it makes the following four points.

36. Firstly, there is overwhelming evidence of loss of civilian life at a staggering scale. The extent of civilian harm was obvious even at the time of filing the SFGs and has considerably worsened. The present position is:

36.1. As at 12 April 2024, at least 33,634 Palestinians have been killed (including 9,500 women and 14,500 children) and 76,214 injured in Gaza since 7 October 2023.[26]

36.2. 1.1 million people are facing catastrophic levels of food insecurity and 50,000 children are estimated to be acutely malnourished. Only one water pipeline coming from Israel remains operational, 83% of groundwater wells are not operating and *all* wastewater treatment systems are non-operational.[27]

36.3. At least 244 aid workers have been killed, including 181 UN staff.[28]

36.4. Residential and civic buildings continue to be destroyed: over 60% of residential buildings and 80% of commercial facilities have been damaged. See further the Annex to this Skeleton Argument, setting out examples of strikes on residential buildings, civic structures and hospitals. As is well-known, and by way of example, Israel conducted a two-week intensive raid in and around al-Shifa hospital, during which the area was subjected to constant bombing and the hospital was left in ruins.[29] After the operation, hundreds of decomposing bodies were found strewn around the hospital and bulldozed into the earth, and surviving family members have identified many civilians including medical staff and patients, including women.[30] It is reported that Israeli forces executed doctors who refused to leave their patients and any person suspected

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26 UN OCHA Flash Update Day 188, https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-188

27 *Ibid.*

28 *Ibid.*

29 [CB/26/388].

30 [CB/26/394].

of being a fighter, even though they had already been captured.[31] Israel claims to have killed 200 fighters and detained 900 people, of which 500 it says had ties to Hamas or Palestine Islamic Jihad.[32] UN experts have condemned "*the wholesale destruction and killing at Al-Shifa Hospital*".[33]

37. Secondly, as set out in §§22-26 above, it was abundantly obvious that Israel did not intend to comply with IHL so far as provision of aid to the civilian population was concerned. Indeed, at SGD §45 [CB/8/98] the Government states that it "*assessed that it was possible that Israel's actions in relation to some aspects of the provision of/access to humanitarian relief were a breach of IHL*", which in itself should have caused very considerable concern. As set out in the Reply §20, there are public statements of senior Israeli officials noting that Israel will not comply with binding international obligations, in particular UN Security Council Resolutions and judgments of the ICJ (Reply/§20.1 [CB/9/114]).

38. Thirdly, there is an abundance of authoritative opinion that Israel is breaching IHL in Gaza. The Claimant relies for present purposes on the various statements set out in §5 above, in addition to those listed in §§56, 64-66, 72, 76, 84, 87, 96 of its SFGs [CB/3/37], but plainly those statements could easily be supplemented with many more, such is the unanimity of international concern.

39. Fourthly, as to the SST's decision-making, as set out in the SGDs:

    39.1. There are obvious *Tameside* failings. In particular:

        39.1.1. It seems that, in the time from 7 October to filing of the SGDs in January 2024, the SST only asked Israel for information once (as set out in SGDs/§§36-38 [CB/8/93]). This was on 21 November 2023, six weeks after the conflict started. A "*very urgent time-frame*" was imposed, with a response given by Israel within five days. The IHLCAP Cell asked a limited set of questions, focussing on a small number of specific incidents, with some limited broader questions.

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31 *Ibid*.

32 https://www.bbc.co.uk/news/world-middle-east-68705765

33 https://www.ohchr.org/en/statements-and-speeches/2024/04/israelgaza-un-experts-deplore-attacks-al-shifa-hospital-urge-states

Israel said that it was unable to give any information in relation to the specific incidents,[34] and instead gave limited broader high-level answers or assertions. This approach was accepted by the IHLCAP Cell (SGD/§42 [CB/8/97]).

39.1.2. Otherwise, there is no indication in the SGDs of other questions being asked of Israel, or of other answers being given, or of the application of proper scrutiny. For the avoidance of doubt, such questions would and should include: questions in relation to an incident by incident assessment (as per the "Tracker" used in the CAAT litigation); questions in relation to policies (for example, what are Israel's collateral damage policies, what are Israel's targeting policies,[35] etc); and questions in relation to the macro-level numbers (namely how it is that civilians are being harmed at this scale). There appears to have been a total failure on the part of the SST to obtain the information that any rational decision-maker would need in order to reach a proper decision under Criteria 2(c) and 1(b).

39.1.3. It is difficult to reconcile this with the statement in the SGDs that the IHLCAP "*collated detailed evidence and expert analysis, covering broader contextual concerns as well as drilling down into the detail of Israel's conduct of the hostilities"* (SGD/§55(b) [CB/8/100]).

39.2. There is no indication in the SGDs that the SST even applied her mind (or that her advisers did so) to entire, and critical, categories of international law, including

39.2.1. serious risk of (attempted) genocide,

39.2.2. the heightened protection in relation to objects indispensable to the civilian population and other specially protected objects under IHL, such as hospitals and sources of essential supplies such as (domestically supplied, rather than aid) food

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[34] Israel refused to give the UK detailed as to specific strikes on the basis that evidence gathering takes time. However, IHL assessments are naturally *prospective*, Israel could have supplied these to the UK without delay whilst evidence gathering took place (Reply/§16 [CB/9/113]).

[35] Accounts have recently emerged of unlawful policies in relation to the identification of military targets, such as a policy reportedly named "Where's Daddy" relating to the targeting practice of killing alleged Hamas operatives in their family homes. +972 magazine, "'Lavender': The AI machine directing Israel's bombing spree in Gaza" https://www.972mag.com/lavender-ai-israeli-army-gaza/

and water.[36] This is a startling omission when considered against the facts of the present armed conflict where there is evidence of Israel targeting these exact objects and claims of widespread famine and starvation (Reply/§14.2 [CB/9/111]). In the absence of any reasoning, it is very difficult to view the SST's approach to this as anything other than irrational.

39.2.3. Although IHLCAP concluded that Israel's evacuation warnings are unlikely to be in breach of IHL and that Israel has not committed collective punishment, there is no supporting reasoning or analysis. Again it is difficult to view this as anything other than irrational, in particular the latter conclusion, in circumstances in which the UK agrees that Israel is conditionally withholding aid. Further, the SST failed entirely to consider the effects of Israel's siege by targeting essential supplies such as fuel (Reply/§14.3 [CB/9/111]).

39.3. Although it is asserted in the SGDs that IHLCAP "*enable ECJU to give authoritative advice to Ministers in relation to Israel's capability to and commitment to, and its record of compliance with, IHL*" (SGD/§§55(b)-(c) [CB/8/100]), the IHLCAP Cell did not provide any advice to the Foreign Secretary (or to ECJU) on Israel's commitment to comply with IHL. Instead, having repeatedly held in their assessments (§§31-35, §§39-47, SGD [CB/8/91]) that they were concerned by Israel's commitment to comply (and/or record of compliance) with IHL,[37] they adopted the course of stating that: "*the assessment on commitment was deferred for ministerial decision*". The SGD then states that, "[*o]n 12 December 2023, the Foreign Secretary decided that he was satisfied that there was good evidence to support a judgment that Israel is committed to comply with IHL*" (§50 [CB/8/99]), but with no identification of what that good evidence might be.

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[36] For example, protected objects such as hospitals cannot be targeted, even where they have become military objectives, without due warning and a reasonable time limit after the warning has remained unheeded; and any attack remains subject to the principles of distinction, proportionality and precaution: SFG at §32 [CB/3/31].

[37] For example, on 10th November 2023, they concluded that "Given the paucity of information, the scale and intensity of the conflict, the death toll, the unusual civilian population density coupled with their inability to evacuate and the concomitant mounting effects of the conflict on civilians, HMG's current inability to come to a clear assessment on Israel's record of compliance with IHL poses significant policy risks". (§35, SGD [CB/8/92]).

40. In summary, in the Claimant's submission, in circumstances of such compelling *prima facie* evidence of breach of IHL, and with the obvious inadequacies in the SST's decision-making process apparent on the face of the SGDs, it is plainly at least arguable that the SST's decisions in relation to Criterion 1(b) and (2)(c) were irrational.

GROUND 3: PROCEDURAL FAILURES

41. Ground 3 is that the SST has failed in her procedural obligations. Despite repeated requests, the SST has yet to comply with the duty of candour in these proceedings. As a result, there are substantial gaps in the Claimant's knowledge of the SST's processes, see Reply at §23 [CB/9/116]. Despite this, there are already clear flaws in the SST's processes.

42. As set out in the Reply at §22 [CB/9/115]:

    42.1. The SST has failed to address relevant matters by omitting consideration of large sections of IHL, this is addressed at §39.2 above, where it is explained that the SST has failed to consider, inter alia, genocide, indispensable objects, specially protected objects, analysis of Israel's warnings prior to attack and the effects of Israel's siege on the civilian population (Reply/§22.1 [CB/9/115]). In circumstances where Criterion 2(c) requires the SST to ascertain whether there is a risk that exports might be used in serious violations of IHL, to not consider large sections of IHL that are clearly applicable on the factual material available amounts to an unlawful decision.

    42.2. Similarly, as set out above at §39.1, the SST failed to consider the totality of the evidence and instead considered only a very small handful of incidents on a strike-by-strike basis when the cumulative mass of potential incidents in which there is a credible case of IHL violations is overwhelming (Reply/§22.1 [CB/9/115]).

    42.3. Further, the SST failed to adequately seek to obtain the necessary information from Israel in circumstances where Israel would have had immediate access to its IHL assessments and has been ordered by the ICJ to preserve evidence of its actions. The SST ought to have obtained this information and failing this ought to have concluded that a stay was an appropriate course following her own policy where there was insufficient information (Reply/§22.2, §15 [CB/9/115]).

42.4. The SST has failed to give due weight to reports by UN organisations and NGOs. The Courts have been clear that where assurances given by foreign States are contradicted by evidence from UN organisations with expertise or remit in the relevant field that evidence carries "*the greatest weight*": *R (AAA (Syria) and others) v SSHD* [2023] UKSC 42 at §§62-70. It is clear from the SST's assessments in the SGD that this was not done (Reply/§22.3 [CB/9/115]).

42.5. In the SGD at §26 [CB/8/90], the SST states that she may impose a temporary stay where "*conflict or conditions change the risk suddenly, or make conducting a proper risk assessment difficult*". The SST's IHL assessment noted that the SST was "*without accurate information*" in relation to both IDF decision making and IDF operations and thus the UK had been "*unable to make a case-by-case assessment on Israel's compliance with IHL for specific strikes or ground operations during the current conflict*", whilst noting that the number of children who had been killed raised "*serious concerns*" (SGD/§35 [CB/9/92]). On the SST's own policy, she ought to have imposed a stay of export licenses pending more information regarding Israel's conduct and her failure to do so renders the decision unlawful (Reply/§22.4 [CB/9/115]).

43. For all of these reasons, ground 3 is clearly arguable and should proceed to a substantive hearing.

APPLICATION FOR URGENT LISTING

44. In light of the present stark facts, the Claimant renews its application for an expedited timetable and relies on its previous application and correspondence. Oxfam estimates that 250 Palestinians are being killed every day.[38]

45. Given the delay caused by the refusal of permission, the Claimant amends its proposed timetable as follows:[39]

[38] Oxfam press release, 11 January 2024, https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major-21st-century-conflict-oxfam.

[39] Per its email of 31 January 2024, the Defendant did not object to the previous version of this timetable, containing the same time lengths of time for the filing of statements of case, bundles and skeleton arguments - save that the Defendant opposed the provision for a hearing to be listed by 7 June 2024.

45.1. The Defendant is to have 21 days to file Detailed Grounds of Resistance following the grant of permission;

45.2. The Claimant is to have 14 days to file a Reply;

45.3. The hearing is to be listed as soon as possible after 15 July 2024 and in any event by 31 July 2024;

45.4. The Claimant is to file its Skeleton Argument and authorities bundle 7 days before the hearing;

45.5. The Defendant is to file its Skeleton Argument 3 days before the hearing;

45.6. Hearing bundles to be filed 14 days before the hearing.

46. The Claimant submits that an appropriate length of hearing would be 3 days, in order to accommodate submissions from interveners if permission is granted. The organisations which have notified the court of their proposal to intervene thus far are Human Rights Watch and Amnesty International. Oxfam has also indicated to the court that it intends to apply to join the proceedings.

APPLICATION FOR CCO

47. The Claimant renews its application for a CCO, on amended terms due to the receipt of new funding, as explained in the witness statement of Rochelle Ferguson filed on 4 April 2024 [CB/32/525]. Now that the total funds available to the Claimant stand at £45,866, the Claimant seeks a CCO of £25,000 with a reciprocal cap of £87,500. The Defendant previously agreed to a CCO of £20,000, with a reciprocal costs cap of £70,000, before reneging on that agreement when filing the SGD.

48. As set out in the Claimant's CCO submissions, under section 88 of the Criminal Justice and Courts Act 2015, the court may make a CCO if it is satisfied that (*i*) the proceedings are public interest proceedings; (*ii*) absent a CCO, the claimant would withdraw from those proceedings and it would be reasonable for the claimant to do so.

49. As to (*i*), these proceedings raise a point of law of general public importance, namely whether the SST is unlawfully licencing the export of arms to Israel where there is a clear risk of those arms being used to commit breaches of international humanitarian law, or in violation of the UK's obligation to take steps to prevent genocide pursuant to the Genocide Convention. A positive outcome in these proceedings would affect a significant number of people in Palestine, insofar as weapons from the UK which would otherwise be used by Israel in attacks will no longer be available for use. Domestically, there have been mass public protests, open letters sent to government from the former judiciary and prominent lawyers, and Parliamentary debates; internationally, there have been innumerable statements of condemnation by the UN, NGOs, and many States, including Israel's closest allies.

50. As to (*ii*), the Claimant has stated previously, and takes this opportunity to reaffirm that, it will be forced to withdraw if no CCO is granted. The Global Legal Action Network ("**GLAN**") has agreed to bear the Claimant's adverse costs if subject to a CCO, but it has not, and does not have the financial means to, indemnify the Claimant absent a cap. The Claimant's financial position is as set out in the Power witness statement and GLAN's financial position is as set out in the Ferguson witness statement [CB/32/525]. Neither has significant funds available above the amount of funding obtained for the challenge – in particular, most of GLAN's funds are ringfenced for specific purposes, and it has some limited emergency reserves (Ferguson/6, 9 [CB/32/525]). Counsel and GLAN solicitors working within Bindmans are engaged on a discounted conditional fee basis,[40] while Bindmans solicitors work at significantly reduced hourly rates (Power/12-14 [CB/15/153]). The matter is not brought for any financial gain.

51. Where a CCO is granted, under section 89(2) of the Criminal Justice and Courts Act 2015, the court must impose a reciprocal cap which limits the liability of the other party to pay the claimant's own costs if relief is granted. The Claimant respectfully submits that a ratio of 2:7 between the cap and the reciprocal cap is appropriate, following the guidance of *Western Sahara v SSIT* [2021] EWHC 1756 (Admin) at [43]. The Claimant would withdraw if no CCO at all were granted, but it accepts that it would be willing to use all of the funds it has raised

[40] In the event that the Claimant loses, the Claimant's lawyers are entitled to be paid at a discounted rate up to the limit of the funds raised remaining after adverse costs have been paid, if any. In the event that the Claimant wins, the lawyers are entitled to be paid the discounted fees up to the limit of the funds raised, to the extent that they are not fully recovered from the Defendant.

for the litigation for adverse costs if ordered by the Court to do so. However, the Claimant maintains that it is reasonable for some of those funds to be used for its own legal team, after a reasonable sum is paid in respect of adverse costs.[41]

CONCLUSION

52. For the reason set out above, the Claimant respectfully submits that permission should be granted.

VICTORIA WAKEFIELD KC

JAGODA KLIMOWICZ

Brick Court Chambers

LUKE TATTERSALL

Essex Court Chambers

16 April 2024

[41] Ferguson/13-15 [CB/32/529].

Annex to Skeleton Argument

I. Humanitarian Attacks

Date (on or before)	Location	Bundle Reference
Vehicles in Transit		
3 November 2023	Ambulance outside al-Shifa hospital on 3 November 2023, killing 15 civilians and injuring scores. (GAZ088)	CB/452-453
7 November 2023	Attack on ICRC Convoy (GAZ325)	CB/454
11 January 2023	Attack on a Palestinian Red Crescent Society ("**PRCS**") ambulance in Deir al Balah on 11 January 2023 (GAZ108)	CB/454
5 February 2024	Attack on UNRWA aid convoy (GAZ324)	CB/454
3 March 2024	Attack on aid truck belonging to Kuwaiti charity (GAZ323)	CB/455
4 April 2024	Attack killing a PRCS nurse as he attempted to rescue victims of a prior Israeli attack. (GAZ229)	CB/455
Warehouses and administrative headquarters		
30 October 2023	Attack on PRCS Warehouse in Gaza City (GAZ130)	CB/456
Various (between December and February 2024)	PRCS Headquarters in Khan Younis (GAZ326)	CB/456
Around the end of December 2023	PRCS Headquarters in Jabalia, including several ambulances. (GAZ230)	CB/457
13 February 2024	UNRWA Headquarters (GAZ327)	CB/457
Hospitals and Health Centres		
Discovered after Israeli withdrawal in April 2024	Complete destruction of al-Amal hospital, including multiple ambulances including several completely	CB/459

	submerged by earth (GAZ098)	
18 March 2023 – 1 April 2024	Complete destruction of Shifa Hospital (GAZ225)	CB/394-408
5 February 2024	Destruction of UNRWA Health Centre, Sheikh Radwan (GAZ342)	CB/459
16 February 2024	Destruction of UNRWA Beach Camp Health Centre (GAZ352)	CB/459
9 and 15 October 2023	Complete destruction of the International Eye Hospital (GAZ189)	CB/460
17 January 2024	Destruction of Al Quds Hospital	CB/460
6 November 2023	Damage to Rantisi Children's Hospital	CB/460
17 December 2023	Shelling of Mubarak Children's Hospital	CB/461
30 December 2023 and 22 February 2024	Airstrike on Turkish Friendship Hospital and bulldozing of entrance gates	CB/461

II. Municipal and Civic Attacks

Incident	Bundle Reference
Atfaluna Society for Deaf Children, Palestine Square (GAZ200)	CB/416-418
Central Archive of Gaza City (GAZ173)	CB/419-421
UNRWA Rehabilitation Centre for the Visually Impaired (GAZ340)	CB.422-425
Al Quds Open University, Northern Gaza Branch (GAZ343)	CB/426-427
Khan Younis Municipality Building (GAZ339)	CB/428-433
Islamic University of Gaza (GAZ051and GAZ350)	CB/432-436
Al Azhar University (GAZ045)	CB/437-439
Rashad al Shawa Cultural Center, Gaza City (GAZ344)	CB/440-444
Palestinian Legislative Council, Gaza City (GAZ351)	CB/445-449
Dar al Kalima University (GAZ232)	CB/450-451

III. Indispensable Objects

Date	Attack	Bundle Reference (Renewal Bundle)
18 October 2023	Al Nuseirat Bakery in al Nuseirat Refugee Camp, Deir al Balah, Gaza.	SB/1363-1367

25 October 2023	The only bakery in the al-Meghazi Refugee Camp in the centre of Gaza, reportedly killing at least ten people and wounding dozens of others.	SB/1368-1374
1 November 2023	House near Sharq Bakery, which was reportedly the sole operational bakery in the area at the time. This airstrike occurred In the Nasr neighbourhood of Gaza City while approximately 300 people were waiting in line for bread, resulting in many deaths and injuries.	SB/1375-1377
Unknown	New Beit Lahiya Bakery	SB/1378-1379
Unknown	Kamal Ajour Bakery	SB/1380-1382
4 November 2023	Main water reserves in south of Gaza	1DM§93 [CB/49]
5 November 2023	Water tank in Tal al Zaatar, Northern Gaza	1DM§93 [CB/49]
18 November 2023	Shelling of the al-Salam wheat mill, leading to its closure.	1DM§105 [CB/199]

IV. Residential Attacks: Sample Airwars Incidents[1]

[1] Airwars is a non-profit organisation based in London, UK which monitors, assesses and preserves civilian casualty claims resulting from explosive weapons use in multiple conflicts. Airwars has been documenting incidents of civilian harm related to the use of explosive weapons in the Gaza Strip since October 7, 2023. Its methodology can be found on the Airwars website, which explains that Airwars' assessments capture all available open-source information and will be adjusted if additional information emerges. The below is a sample list of 29 incidents of attacks on residential homes taken from a total of 222 incidents investigated by Airwars which killed families; they can be found in granular detail on their website and the Claimant is informed that Airwars is working from an overall dataset of thousands of causing civilian harm. The dataset does not include attacks on civilian objects which have not caused civilian harm. Each incident is geolocated to the highest possible degree of accuracy by trained geolocation teams.

Date	Location, including geolocation coordinates	Description	Deaths reported	Individuals killed verified to date[2]
7 October 2023	Al Zeitoun neighbourhood, South of Gaza City, 31.485479, 34.444885	Aerial attack on residential building of the Al-Dous family and others. Reportedly there was no warning.	15	9[3]
7 October 2023	Beit Hanoun, Northern Gaza, 31.538582, 34.537000	Aerial attack on the Shabat family house. Reportedly there was no warning.	12-19	2[4]
8 October 2023	Sheikh Ijlin, Street 10, South of Gaza City, 31.504221, 34.417139	Aerial attack on the residential building housing the Shamlakh family home and others. Reportedly there was no warning.	10-12	10[5]
8 October 2023	Abu Zuhri Apartment Building, Al Shaboura refugee camp, Rafah City, Southern Gaza, 31.284219, 34.258834	Aerial attack on an apartment building. Reportedly there was no warning.	4-5	1[6]
8 October 2023	Nuseirat camp, Deir Al Balah, Central Gaza, 31.458824, 34.389414	Aerial attack on the Younis family house.	6	5[7]
8 October 2023	Nuseirat Camp 5, Deir al	Aerial attack on the Al-Assar family house and three neighboring houses,	4-5	4[8]

[2] AIRWARS have verified individuals where possible by matching names and ages with the Palestinian Ministry of Health list of victims' names and ID numbers. The names of those killed in attacks prior to 26 October have been matched with the Palestinian Ministry of Health list of fatalities in Gaza released on October 26th, 2023. The names of those killed in attacks after 26 October have been reconciled with published Palestinian Ministry of Health lists.

[3] https://airwars.org/civilian-casualties/ispt0004-october-7-2023/.

[4] https://airwars.org/civilian-casualties/ispt0011-october-7-2023/.

[5] https://airwars.org/civilian-casualties/ispt0027-october-8-2023/.

[6] https://airwars.org/civilian-casualties/ispt0024-october-8-2023/.

[7] https://airwars.org/civilian-casualties/ispt0036-october-8-2023/.

[8] https://airwars.org/civilian-casualties/ispt0031-october-8-2023/.

	Balah, Central Gaza, 31.453364, 34.390576	including the house belonging to the Al-Naqla family.		
8 October 2023	Vicinity of Abdel Azzam Mosque, Izbet Beit Hanoun, Northern Gaza, 31.545256, 34.525208	Aerial attack on the Al Zaneen family house. Reportedly there was no warning.	21-22	20[9]
9 October 2023	Al-Shati refugee camp, Gaza City, 31.530719, 34.452569	Aerial attack on the Al-Tatar family house.	2	2[10]
9 October 2023	Bani Suhalia, Vicinity of Asfour petrol station, Khan Younis, Southern Gaza, 31.334423, 34.333242	Aerial attack on a residential building housing the Al-Najjar family.	4-8	3[11]
9 October 2023	Al Nasmawi towers, Khan Younis, Southern Gaza, 31.344261, 34.291017	Aerial attack on a residential building housing the apartment of the Abu Shamala family.	4-5	4[12]
10 October 2023	Abasan Al Kabira, East of Khan Younis, Southern Gaza, 31.326601, 34.342172	Aerial attack on the Qadeeh family home.	14-50	11[13]

[9] https://airwars.org/civilian-casualties/ispt0032-october-8-2023/.
[10] https://airwars.org/civilian-casualties/ispt0097-october-9-2023/.
[11] https://airwars.org/civilian-casualties/ispt0051-october-9-2023/.
[12] https://airwars.org/civilian-casualties/ispt0062-october-9-2023/.
[13] https://airwars.org/civilian-casualties/ispt0102m-october-10-2023/.

10 October 2023	Vicinity of Abu Saleem mosque, Deir al Balah, Central Gaza, 31.414496, 34.352518	Aerial attack on the al-Najjar family home. Reportedly there was no warning.	18	15[14]
10 October 2023	Al-Amal neighbourhood, West of Khan Younis, Southern Gaza, 31.357092, 34.302552	Aerial attack on Awad family's five-storey home. Reportedly there was no warning.	7	2[15]
10 October 2023	Vicinity of Salah al Din Mosque, Al-Zaytoun neighbourhood, Gaza City, 31.496814, 34.458025	Aerial attack on the residential home of the al-Sarhi family. Reportedly there was no warning.	10	7[16]
11 October 2023	Al Awda Street, Jabalia, North Gaza, 31.526394, 34.489921	Aerial attack on several houses in Jabalia. Reportedly there was no warning.	55 – 63	26[17]
12 October 2023	Deir Al Balah, Central Gaza, 31.419778, 34.351556	Aerial attack on the al-Azayza family home. Reportedly there was no warning.	26	26[18]
12 October 2023	Al Nuseirat Camp 2, Deir Al Balah, Central Gaza, 31.441022, 34.382483	Aerial attack on the Kafina family home in a four-story residential building. Reportedly there was no warning.	2	2[19]

[14] https://airwars.org/civilian-casualties/ispt0096-october-10-2023/.
[15] https://airwars.org/civilian-casualties/ispt0092-october-10-2023/.
[16] https://airwars.org/civilian-casualties/ispt0117-october-11-2023/.
[17] https://airwars.org/civilian-casualties/ispt0135-october-12-2023/.
[18] https://airwars.org/civilian-casualties/ispt0136-october-12-2023/.
[19] https://airwars.org/civilian-casualties/ispt0155-october-12-2023/.

12 October 2023	Al-Nakhil Street, Deir Al Balah, Central Gaza, 31.424365, 34.342887	Aerial attack on the Al-Zari'i family home.	11-12	8[20]
12 October 2023	Al-Masry Tower in the centre of the city of Rafah, Southern Gaza, 31.278575, 34.252227	Aerial attack on a residential apartment building. Reportedly there was no warning.	4	4[21]
12 October 2023	Tower G6, Hamad Towers in the town of Hamad, in Khan Younis, Southern Gaza, 31.377384, 34.318570	Aerial attack on a residential apartment building. Reportedly there was no warning.	3-4	1[22]
12 October 2023	Vicinity of Al Bahabsa Mosque, East of Rafah, Southern Gaza, 31.266549, 34.261689	Aerial attack on the Al-Zimili family house.	9	8[23]
15 October 2023	Al Nuseirat Camp 5, Deir Al Balah, Central Gaza, 31.452843, 34.390054	Aerial attack on the al-Taweel family house.	22	13[24]
15 October 2023	Wadi Sheikh Daoud, Deir al Balah, Central Gaza, 31.420054, 34.353917	Aerial attack on the the Zidan family home. Reportedly there was no warning.	7-8	6[25]

[20] https://airwars.org/civilian-casualties/ispt0150-october-12-2023/.
[21] https://airwars.org/civilian-casualties/ispt0148-october-12-2023/.
[22] https://airwars.org/civilian-casualties/ispt0149-october-12-2023/.
[23] https://airwars.org/civilian-casualties/ispt0173-october-12-2023/.
[24] https://airwars.org/civilian-casualties/ispt0221-october-15-2023/.
[25] https://airwars.org/civilian-casualties/ispt0230-october-15-2023/.

16 October 2023	Qaizan al Najjar, Khan Younis, Southern Gaza 31.333847, 34.296719	Aerial attack on the Zaqmat family house.	19-22	15[26]
17 October 2023	Vicinity of Kuwaiti Hospital, Rafah Governorate, Southern Gaza, 31.289743, 34.251428	Aerial attack on the home of the Abu Lebda family. Reportedly there was no warning.	17 – 26	14[27]
17 October 2023	Vicinity of Burqa Stadium, Central Rafah, Southern Gaza, 31.285973, 34.253723	Aerial attack on the Al-Khawaja family home within a five-floor residential building.	12	10[28]
18 October 2023	Vicinity of Bani Suhaila cemetery, Bani Suheila, East of Khan Younis, Southern Gaza, 31.339996, 34.324402	Aerial attack on two homes, the Abu Ishaq family home and the Fafsis family home.	26	26[29]
19 October 2023	Al Bassa neighborhood, Deir al Balah, Central Gaza, 31.426959, 34.349396	Aerial attack on the al-Attar family home.	13	1[30]
31 October 2023	Al-Muhandeseen Tower (Engineers	Aerial attack on multistorey partially residential tower. Reportedly there was no warning.	133 – 164	19[31]

[26] https://airwars.org/civilian-casualties/ispt0247-october-16-2023/.
[27] https://airwars.org/civilian-casualties/ispt0302-october-17-2023/.
[28] https://airwars.org/civilian-casualties/ispt0300-october-17-2023/.
[29] https://airwars.org/civilian-casualties/ispt0352-october-18-2023/.
[30] https://airwars.org/civilian-casualties/ispt0360-october-19-2023/.
[31] https://airwars.org/civilian-casualties/ispt0784-october-31-2023/.

	Tower), East of Nuseirat Camp, Central Gaza, 31.441886, 34.393011			

V. Religious Attacks

Incident	Bundle Reference
Great Omari Mosque (GAZ095)	3DM§23 [CB/352]
Hammam al-Samarra (GAZ157)	
Al Hassina Mosque (GAZ155)	
Ancient Othman bin Qashqar Mosque (GAZ167)	
Historic Katib al-Wilaya Mosque (GAZ170)	
Ahmed Yassin Mosque (GAZ171)	
Al-Gharbi Mosque (GAZ199)	
Sousi Mosque (GAZ172)	