

# **PANEL OF EXPERTS IN INTERNATIONAL LAW**

Convened by the Prosecutor of the  
International Criminal Court

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## **Report of the Panel of Experts in International Law**

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*Members of the Panel of Legal Experts:*

Sir Adrian Fulford PC  
Judge Theodor Meron CMG  
Amal Clooney  
Danny Friedman KC  
Baroness Helena Kennedy LT KC  
Elizabeth Wilmshurst CMG KC

*Academic Experts:*

Professor Marko Milanovic  
Professor Sandesh Sivakumaran

**20 May 2024**

## A. Introduction

1. A Panel of Experts in International Law was convened at the request of the Prosecutor of the International Criminal Court in support of his investigation into the ‘Situation in the State of Palestine’, which covers international crimes committed either on the territory of Palestine or by a Palestinian national.
2. The Panel’s mandate was to advise the Prosecutor on whether his applications for arrest warrants met the standard provided in article 58 of the Rome Statute of the International Criminal Court (ICC). Specifically, the Panel has been asked to provide an opinion on whether there are ‘reasonable grounds to believe’ that the persons named in the warrants have committed crimes within the jurisdiction of the Court.<sup>1</sup>
3. The Panel of Experts was composed of the following lawyers:
  - Lord Justice Fulford, retired Lord Justice of Appeal and former Vice-President of the Court of Appeal of England and Wales, former Judge at the International Criminal Court;
  - Judge Theodor Meron, former Judge and President of the International Criminal Tribunal for the former Yugoslavia and Special Adviser to the Prosecutor of the International Criminal Court;
  - Amal Clooney, Barrister, Adjunct Professor at Columbia Law School, Co-Founder of the Clooney Foundation for Justice and Special Adviser to the Prosecutor of the International Criminal Court;
  - Danny Friedman KC, Barrister, expert in criminal law, international law and human rights;
  - Baroness Helena Kennedy LT KC, Barrister, Member of the House of Lords and Director of the International Bar Association Human Rights Institute;
  - Elizabeth Wilmshurst KC, former Deputy Legal Adviser at the United Kingdom Foreign and Commonwealth Office, Distinguished Fellow of International Law at Chatham House.
4. The Panel has been supported by two academic advisers:
  - Professor Marko Milanovic, Professor of Public International Law at the University of Reading School of Law;
  - Professor Sandesh Sivakumaran, Professor of International Law at the University of Cambridge.
5. The full biographies of the Panel members and academic advisers are set out in the Annex.
6. The Panel Members and academic advisers were selected because of their expertise in public international law, international human rights law, international humanitarian law

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<sup>1</sup> The Panel did not advise on issues related to the admissibility of the case.

and international criminal law and, in the case of two of them, experience as former judges of international criminal tribunals.

7. The Panel was convened at the request of the Prosecutor in January 2024 and each Panel Member was asked to assess objectively the material provided to them by the Prosecutor and to advise the Prosecutor whether it meets the relevant legal test. Since that time, the Panel has been engaged in an extensive process of review and analysis. Panel members carefully reviewed each of the applications for arrest warrants, as well as underlying evidence, including witness statements, expert evidence and authenticated videos and photographs obtained by investigators. Members of the Panel also attended Evidence Review sessions at the International Criminal Court's premises in the Hague and online.
8. The Panel has operated pro bono and independently. It has unanimously reached all of the views contained in this Report. It will set out its key reasoning below, but notes that it cannot disclose any material that is currently confidential.<sup>2</sup>

## **B. Jurisdiction**

9. The Panel agrees with the Prosecutor's assessment that the ICC has jurisdiction in relation to crimes committed on the territory of Palestine, including Gaza, since 13 June 2014, under article 12(2)(a) of the ICC Statute.<sup>3</sup> It also agrees that the Court has jurisdiction over crimes committed by Palestinian nationals inside or outside Palestinian territory under article 12(2)(b) of the Statute. The ICC therefore has jurisdiction over Israeli, Palestinian or other nationals who committed crimes in Gaza or the West Bank. It also has jurisdiction over Palestinian nationals who committed crimes on the territory of Israel, even though Israel is not an ICC State Party.
10. The basis for the Court's jurisdiction is that Palestine, including Gaza, is a State for the purpose of the ICC Statute. The ICC's Pre-Trial Chamber has already ruled that the Court's jurisdiction extends to Palestine, as a State Party to the ICC Statute, on this basis.<sup>4</sup>

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<sup>2</sup> As the Prosecutor has kept confidential the evidence underlying the article 58 applications at this stage, this Report will not reference specific pieces of evidence that the Panel has reviewed, or name specific witnesses. The Panel does, however, cite some material that is publicly available where relevant.

<sup>3</sup> On 1 January 2015, the Government of The State of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting ICC jurisdiction over alleged crimes committed 'in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014'. This means the Court can exercise jurisdiction over acts in Palestine or committed by Palestinian nationals since 13 June 2014. In addition, the State of Palestine acceded to the Rome Statute on 2 January 2015 by depositing its instrument of accession with the UN Secretary-General and the Statute entered into force for The State of Palestine on 1 April 2015.

<sup>4</sup> ICC Pre-Trial Chamber, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-143 (5 February 2021).

### C. Crimes and applicable law

11. The applications for arrest warrants charge war crimes and crimes against humanity for both Hamas and Israeli suspects. The Panel is aware that additional crimes are under investigation and expected to lead to additional applications in the future.
12. War crimes require a nexus to an armed conflict, and for some war crimes this conflict must be international.<sup>5</sup> For this reason, it is necessary to assess the situation in Gaza and in Israel to determine whether an armed conflict exists and if so, its nature.
13. The Panel agrees with the Prosecutor's conclusion that the conflicts in Israel and Gaza comprise an international armed conflict and a non-international armed conflict running in parallel. Hamas is a highly organized non-State armed group, and the hostilities between Hamas and Israel have been sufficiently intense to reach the threshold of a non-international armed conflict. The Panel's assessment is that the non-international armed conflict between Israel and Hamas began, at the latest, on 7 October 2023, when Hamas and other Palestinian armed groups launched Operation *al-Aqsa Flood* against Israel and Israel launched its Operation *Iron Swords* in response. The Panel has also concluded that there is an international armed conflict between Israel and Palestine on the basis either that:
  - a) Palestine is a State in accordance with criteria set out in international law, for which there is a sufficiently strong argument for the purpose of an application to the Court for an arrest warrant, and an international armed conflict arises if a State uses force against a non-state actor on the territory of another State without the latter's consent; or
  - b) Palestine and Israel are both High Contracting Parties to the 1949 Geneva Conventions, and that pursuant to the text of Common Article 2 of the Conventions, an armed conflict between two High Contracting Parties is international in character; or
  - c) There is a belligerent occupation by Israel of at least some Palestinian territory.
14. The Panel's assessment is that the international armed conflict began at the latest on 7 October 2023, when Israel first started responding to the Hamas attack on its territory by using force on the territory of Palestine without the latter's consent.
15. Crimes against humanity do not require a nexus to an armed conflict but need to be committed in the context of a 'widespread or systematic attack directed against any civilian population', pursuant to a State or organizational policy.<sup>6</sup> The Panel concurs with the Prosecutor that these elements are met.

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<sup>5</sup> See article 8(2)(a) and (b) of the ICC Statute.

<sup>6</sup> See article 7 of the ICC Statute.

## D. Charges

### a. *Hamas leaders*

16. The Prosecutor seeks arrest warrants against three senior Hamas leaders for the war crimes of murder and the crimes against humanity of murder and extermination for the killing of hundreds of civilians on 7 October 2023. He also seeks to charge them with the war crime of taking at least 245 persons hostage. Finally, he seeks to charge them with the war crimes of rape and other forms of sexual violence, torture, cruel treatment, and outrages upon personal dignity and the crimes against humanity of rape and other forms of sexual violence, torture, and other inhumane acts for acts committed against Israeli hostages while they were in captivity. The Panel notes the Prosecutor's statement that his investigations continue, including in relation to evidence of sexual violence on 7 October itself.
17. The suspects are: Yahya Sinwar, the Head of Hamas in the Gaza Strip; Mohammed Diab Ibrahim Al-Masri, known more commonly as Mohammed Deif, the Commander-in-Chief of the *al-Qassam Brigades* of Hamas; and Ismail Haniyeh, the Head of Hamas' Political Bureau.
18. The Prosecutor seeks to charge Sinwar, Deif and Haniyeh as co-perpetrators under article 25(3)(a) of the ICC Statute on the basis of a common plan to attack military bases in Israel, to attack and to kill civilians, and to take and detain hostages. The Prosecutor also states that they are criminally responsible under other modes of liability under article 25(3) and as superiors for failing to take all necessary and reasonable measures within their power to 'prevent or repress' the crimes or to 'submit the matter to the competent authorities for investigation and prosecution' under article 28 of the ICC Statute.
19. After assessing the material provided by the Prosecutor, including statements from survivors and eye-witnesses at the scene of six key attack locations -- Kfar Aza, Holit, the location of the Supernova Music Festival, Be'eri, Nir Oz, and Nahal Oz -- video material and statements by the perpetrators, the Panel has concluded that there are reasonable grounds to believe that the three suspects had a common plan that necessarily involved the commission of war crimes and crimes against humanity. The systematic and coordinated nature of the crimes, their scale, statements by the suspects supporting the commission of such crimes, evidence of the sophisticated planning of the attacks and the ideology and past practices of Hamas all support the finding that the common plan was criminal in character.
20. The Panel also considers that there are reasonable grounds to believe that the crimes were committed in the context of a widespread and systematic attack against the civilian population of Israel, pursuant to an organizational policy of Hamas.
21. The Panel additionally concurs with the Prosecutor's view that Sinwar, Deif and Haniyeh made essential contributions to this plan and that they have through their own words and actions admitted to their responsibility. This includes for one or more of the suspects: acknowledging their, and each other's, roles in the attacks, and acknowledging their control over the hostages' detention and release. The Panel also concurs with the Prosecutor's view that Sinwar, Deif and Haniyeh failed to prevent or

to punish the commission of the crimes by their subordinates, although it is clear that they could have done so as senior leaders of the military and political arms of Hamas.

***b. Israeli leaders***

22. The Prosecutor seeks arrest warrants against Benjamin Netanyahu, the Prime Minister of Israel, and Yoav Gallant, the Israeli Minister of Defense, on the basis that they committed the war crime of ‘intentionally using starvation of civilians as a method of warfare’ under article 8(2)(b)(xxv) of the ICC Statute. The Prosecutor also seeks to charge the two suspects with various other war crimes and crimes against humanity associated with the use of starvation of civilians as a method of warfare under articles 7 and 8 of the ICC Statute. These include the war crimes of ‘[w]ilfully causing great suffering, or serious injury to body or health’ or cruel treatment, wilful killing or murder, and intentionally directing attacks against the civilian population. The proposed charges also include the crimes against humanity of murder, extermination, other inhumane acts and persecution with respect to deaths and injuries resulting from or associated with the systematic deprivation of objects indispensable to the survival of Palestinian civilians in Gaza. The Panel notes the Prosecutor’s statement that other alleged crimes, including in connection with the large-scale bombing campaign in Gaza, are actively being investigated.
23. The Prosecutor seeks to charge Netanyahu and Gallant on the basis that they made an essential contribution to a common plan to use starvation and other acts of violence against the Gazan civilian population as a means to eliminate Hamas and secure the return of hostages as well as to inflict collective punishment on the civilian population of Gaza who they perceived as a threat to Israel. It is also alleged that they had effective authority and control over their subordinates and knew of their subordinates’ crimes but did not take necessary action to prevent or repress these crimes, leading to their criminal responsibility as superiors.
24. The war crime of ‘intentionally using starvation of civilians as a method of warfare’ requires ‘depriving [civilians] of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions’. The crime is not limited solely to the deprivation of food, but includes other objects indispensable for the survival of civilians such as water, fuel and medicine.
25. The Panel notes three preliminary points relevant to its analysis. First, as a result of a number of factors, including the imposition by Israel of restrictions on the movement of people and goods from and to Gaza in the aftermath of its 2005 disengagement, Gazans were highly dependent on Israel for the provision of and access to objects indispensable for the survival of the population even before 7 October.<sup>7</sup>
26. Second, although Israeli officials have a right to ensure that aid is not diverted to the benefit of the enemy and to stipulate lawful technical arrangements for its transfer, they cannot impose arbitrary restrictions -- such as restrictions that violate Israel’s obligations under international law, including international humanitarian law and

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<sup>7</sup> See, e.g., Israeli Supreme Court (sitting as the High Court of Justice), *Jaber Al-Bassiouni Ahmed and others v. Prime Minister and Minister of Defence*, HCJ 9132/07 (30 January 2008). See also UNCTAD, [Developments in the economy of the Occupied Palestinian Territory](#) (11 September 2023), TD/B/EX(74)/2.

international human rights law, or that contravene the principles of necessity and proportionality -- when exercising these rights.

27. Third, parties to an armed conflict must not deliberately impede the delivery of humanitarian relief for civilians, including humanitarian relief provided by third parties. And when a territory is under the belligerent occupation of one party to the conflict, there is also an enhanced active obligation for the occupying power to ensure adequate humanitarian aid for civilians, including by providing such aid itself insofar as this is necessary.<sup>8</sup> In the Panel's view, while it can reasonably be argued that Israel was the occupying power in Gaza even before 7 October 2023, Israel certainly became the occupying power in all of or at least in substantial parts of Gaza after its ground operations in the territory began.<sup>9</sup>
28. With this in mind, and based on a review of material presented by the Prosecutor, the Panel assesses that there are reasonable grounds to believe that Netanyahu and Gallant formed a common plan, together with others, to jointly perpetrate the crime of using starvation of civilians as a method of warfare. The Panel has concluded that the acts through which this war crime was committed include a siege on the Gaza Strip and the closure of border crossings; arbitrary restrictions on entry and distribution of essential supplies; cutting off supplies of electricity and water, and severely restricting food, medicine and fuel supplies. This deprivation of objects indispensable to civilians' survival took place in the context of attacks on facilities that produce food and clean water, attacks against civilians attempting to obtain relief supplies and attacks directed against humanitarian workers and convoys delivering relief supplies, despite the deconfliction and coordination by humanitarian agencies with Israel Defence Forces. These acts took place with full knowledge of the extent of Gazans' reliance on Israel for essential supplies, and the adverse and inevitable consequences of such acts in terms of human suffering and deaths for the civilian population.
29. The Prosecutor has also sought charges against Netanyahu and Gallant for the war crimes of wilful killing or murder and intentionally directing attacks against the civilian population, as well as the crimes against humanity of extermination or murder and persecution for deaths resulting from the use of starvation and related acts of violence including attacks on civilians gathering to obtain food and on humanitarian workers.
30. In the Panel's view, there are reasonable grounds to believe that the suspects committed these crimes. The Panel also considers that there are reasonable grounds to believe that the crimes were committed in the context of a widespread and systematic attack against the civilian population of Gaza, pursuant to State policy.
31. The Panel's assessment is that there are reasonable grounds to believe that Netanyahu and Gallant are responsible for the killing of civilians who died as a result of starvation, either because the suspects meant these deaths to happen or because they were aware that deaths would occur in the ordinary course of events as a result of their methods of warfare. According to material submitted by the Prosecutor, a large number of Palestinian civilians have already died in these circumstances. In relation to extermination, the number of deaths resulting from starvation is sufficient on its own to

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<sup>8</sup> See articles 55 and 56 of the Fourth Geneva Convention.

<sup>9</sup> See also O. Ben-Naftali, et al., [Legal Opinion on the Status of Israel in the North of Gaza](#) (1 April 2024).

support the charge, according to standards set out in international jurisprudence.<sup>10</sup> And this number is, unfortunately, only likely to rise. There are also reasonable grounds to believe that the starvation campaign and associated acts of violence involved the severe deprivation of victims' fundamental rights by reason of their identity as Palestinians. This can be qualified as the crime against humanity of persecution.

32. The Prosecutor has also sought to charge Netanyahu and Gallant with the crime against humanity of other inhumane acts and the war crime of wilfully causing great suffering, or serious injury to body or health, or cruel treatment, with respect to the non-lethal suffering inflicted through starvation of the civilian population of Gaza. The Panel assesses that there are reasonable grounds to believe that the suspects committed these crimes against many thousands of individuals in Gaza.
33. Based on the material it has reviewed, the Panel assesses that there are reasonable grounds to believe that Netanyahu and Gallant made essential contributions to the common plan to use starvation of civilians as a method of warfare and commit other acts of violence against the civilian population. This is evidenced by their own statements and the statements of other Israeli officials. It is also evidenced by the systematic nature of the crime, and the involvement of the suspects at the apex of the Israeli governmental apparatus, with effective authority and control over their subordinates and leadership positions in the War Cabinet and Security Cabinet, in which all key decisions on the conduct of the war -- including blocking and limiting humanitarian aid -- have been made. The Panel is also of the view that there are reasonable grounds to believe that the suspects can be held responsible as superiors given their knowledge of the crimes and the fact that they took no steps to prevent or repress their subordinates who committed them.

## **E. Conclusion**

34. The Panel unanimously agrees with the Prosecutor that the applications for arrest warrants, and material submitted by the Prosecutor in support of each application, demonstrate reasonable grounds to believe that the Court has jurisdiction over the crimes set out in the applications for arrest warrants, that these crimes were committed and that the suspects are responsible for them.
35. Having closely reviewed the arrest warrant applications, underlying evidence presented in support for the applications and the Prosecutor's process, the Panel is satisfied that the process was fair, rigorous and independent and that the Prosecutor's applications for arrest warrants are grounded in the law and the facts.
36. While this is the Panel's view, the Panel is cognisant that the decision on the issuance of warrants is for the honourable Judges of the Court.
37. Finally, the Panel welcomes the Prosecutor's statement that the investigation of crimes committed in Israel and Palestine is ongoing and that applications are likely to be made in relation to additional charges and/or suspects in the near future. The Panel agrees

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<sup>10</sup> See, e.g., ICTY, *Prosecutor v Lukić and Lukić*, IT-98-32/1-A, Judgement (4 December 2012), para. 537.



with the Prosecutor that further investigations are warranted, and hopes that victims and witnesses will choose to come forward to support the ongoing investigations.

## Annex

### Biographies of the Panel Members



Lord Justice Fulford is a retired Lord Justice of Appeal who served as a judge in the United Kingdom for 27 years, between 1995 and 2022. He was appointed as a Lord Justice of Appeal on 10 May 2013 and as Senior Presiding Judge for England and Wales on 1 January 2016. He received the UK Government's nomination, and was subsequently elected in 2003 to serve, as one of 18 judges of the International Criminal Court for a term of nine years. He was assigned to the Trial Division and presided over the ICC's first trial, that of Thomas Lubanga, and in that capacity delivered the court's first guilty verdict on 14 March 2012. In 2017 he was appointed to the role of the first Investigatory Powers Commissioner, a role in which he is supported by fifteen senior judges appointed under the Investigatory Powers Act 2016. He is currently Chair of the Security Vetting Appeals Panel.

Judge Theodor Meron CMG has been a visiting professor in Oxford Law Faculty since 2015, is an honorary fellow of Trinity College and a visiting fellow of Mansfield College, special adviser on International Humanitarian Law to the Prosecutor of the ICC, Professor Emeritus in New York University Law School and Fellow of the American Academy of Arts and Sciences, of the Council on Foreign Relations and Institute of International Law. Judge Meron is a former President of the International Criminal Tribunal for former Yugoslavia, President of the Residual Mechanism for Criminal Tribunals, presiding judge of the appeals tribunals for the ICTY and the ICTR, Legal Adviser of the Israeli Ministry for Foreign Affairs, Counsellor on International Law in the US Department of State, Visiting Fellow in All Souls College, Oxford and Professor of International Law in the Graduate Institute of International Studies in Geneva.





Amal Clooney is an award-winning barrister who specializes in international law and human rights and has appeared in cases before the International Court of Justice, the International Criminal Court and the European Court of Human Rights. Amal frequently represents victims of mass atrocities, including genocide and sexual violence. She has acted in many landmark human rights cases including the world's first trial in which an ISIS member was convicted of committing genocide against Yazidis and the first case alleging complicity in crimes against humanity by a company that funded the terror group. She previously practiced as a criminal lawyer in the U.S. and the U.K. and as a prosecutor at the Special Tribunal for Lebanon. She is a Special Adviser to the International Criminal Court Prosecutor, Karim Khan KC and represented over 100 victims of crimes against humanity in Darfur in a trial before the ICC. She is also a member of the UK government's team of experts on preventing sexual violence in conflict and the UK Attorney General's panel of experts on public international law. She is co-author of The Right to a Fair Trial in International Law (OUP 2020, with P Webb), an adjunct Professor at Columbia Law School and co-founder of the Clooney Foundation for Justice, which provides free legal support to victims of human rights abuses around the world.

Danny Friedman KC is a barrister at Matrix Chambers. He specializes at the interface between crime, human rights, administrative law and public international law. He has particular expertise in terrorism and counter-terrorism law, having appeared in landmark cases in the UK and the European Court of Human Rights concerning state action to respond to terrorist threat. He advises private individuals, NGOs and companies, as well as UK and foreign state organisations seeking to comply with human rights and humanitarian law obligations. His investigatory and advice work in relation to the public sector includes the operation of the rule of law in a number of foreign states, including in the Middle East and Eastern Europe. He has authored many publications on criminal and human rights law, including the human rights chapter in Archbold Criminal Pleading Evidence and Practice. Danny sits as a Temporary High Court Judge in Northern Ireland.





Baroness Helena Kennedy LT KC is a barrister at Doughty Street Chambers and Director of the International Bar Association's Institute of Human Rights. She is widely regarded as one of leading criminal and public law practitioners in the UK, representing defendants in many landmark cases over the last 50 years including the Brighton Bombing trial, the Guildford 4 Appeal, the Michael Bettany Espionage Trial, the Transatlantic Bomb plot and many others. She has also been a leading advocate transforming British and international law for women and girls. She has been Chair of the British Council for 6 years and Chair of the Human Genetics Commission for 8 years and

was from 2000-2004 an Advisor to the World Bank Institute. She is a member of the High-Level Legal Panel on Media Freedom for UNESCO, and recently conducted an Inquiry into Gender Apartheid in Afghanistan as well as an Inquiry into Misogyny for the Scottish Parliament. She was principal of Mansfield College, Oxford University from 2011 until 2018 and founded the Bonavero Institute of Human Rights in Oxford.

Elizabeth Wilmschurst CMG KC is a Distinguished Fellow of International Law at Chatham House. From 2003-2012, she was a visiting Professor of International Law at University College London. Before that, between 1974 and 2003, she was a legal adviser in the United Kingdom diplomatic service and took part in the negotiations for the establishment of the International Criminal Court. Her experience has been in public international law generally, with a particular emphasis on the use of force, international criminal law, the law of the United Nations, and international humanitarian law. Her writings and publications in International Criminal Law include the widely used Introduction to International Criminal Law and Procedure (with Robert Cryer, Hakan Friman and Darryl Robinson) (2007, 2010, 2014 Cambridge University Press). She has also co-edited Daragh Murray's Practitioners' Guide to Human Rights Law in Armed Conflict (2016, Oxford University Press).



## Biographies of Academic Advisers



Marko Milanovic is Professor of Public International Law at the University of Reading School of Law. He is co-general editor of the ongoing Tallinn Manual 3.0 project on the application of international law in cyberspace and Senior Fellow, NATO Cooperative Cyber Defence Centre of Excellence. He is also co-editor of EJIL: Talk!, the blog of the European Journal of International Law, as well as a member of the EJIL's Editorial Board. Professor Milanovic was formerly Professor of Public International Law and Co-Director of the Human Rights Law Centre at the University of Nottingham School of Law, and served as Vice-President and member of the Executive Board of the European Society of International Law.

Sandesh Sivakumaran is Professor of International Law at the University of Cambridge, Director of the Lauterpacht Centre for International Law, and Fellow of St Edmund's College, Cambridge. He is a Senior Fellow at the Lieber Institute for Law and Warfare, United States Military Academy (West Point), Fellow of the University of Nottingham Human Rights Law Centre, and Fellow of the Centre on Armed Groups.

