

THE POSTING WARS: ATTRIBUTION IN THE AGE OF INFLUENCERS

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This article explores whether social media posts by influencers that are compensated or commissioned by States can be attributed to those States in international legal proceedings. This article also explores whether those influencers can claim foreign sovereign immunity for those posts under U.S. statutory and case law. The relevant international legal standards for attribution make it unlikely that the posts can be attributed to a state unless it can be proven that the posts would not have been made but for the compensation or direction of the State. While that may spare an influencer from seeing their name cited in applications to the International Court of Justice or other tribunals, the influencers would not be able to claim foreign sovereign immunity in U.S. legal proceedings.

“Hatred has to be cultivated as a civic passion. The enemy is the friend of the people.”

Umberto Eco, *The Prague Cemetery*¹

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1. Umberto Eco, *The Prague Cemetery* (Richard Dixon trans., 2011).

I. INTRODUCTION

Social media is the latest battlefield as States across the world fight for public support and foreign military aid, seeking sway in the courts of public opinion to justify special military operations and incursions. It should not be surprising, therefore, that individuals, corporations, and States are facing liability for international wrongs stemming from social media interactions, communications, and moderation.² Since the October 7, 2023 Hamas-led attack on Israel, and Israel's corresponding military response, Israel is facing a public relations crisis in the United States. Public support for Israel has cratered to record-lows, half of the American public believes Israel is committing genocide in Gaza, and sixty percent believe the United States should no longer send weapons to Israel.³ Outside of the court of public opinion, South Africa instituted proceedings against Israel before the International Court of Justice (ICJ), accusing Israel of perpetrating a genocide in Gaza, and on November 21, 2024, the International Criminal Court (ICC) issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Minister of Defense Yoav Gallant for crimes against humanity and war crimes committed from at least October 8, 2023 until at least May 20, 2024.⁴

To stem the atrophy of public support in the United States, Israel and Netanyahu are turning to social media. In the months following the October 7 attack and corresponding Israeli invasion of Gaza, Israel, through its Ministry of Diaspora Affairs, organized and funded an

2. See, e.g., Application Instituting Proceedings, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Gam. v. Myan.*), 2019 I.C.J. 178, at ¶ 45 (Nov. 11, 2019) (many claims arising from government agents' posts on Facebook); See also, generally, Neema Hakim, *How Social Media Companies Could Be Complicit in Incitement to Genocide*, 21 CHI. J. INT'L L. 83 (2020) (exploring the liability of Facebook for the Rohingya genocide).

3. *US citizens' support for Israel at historic low over Gaza genocide: Poll*, AL JAZEERA (Feb. 27, 2026), <https://www.aljazeera.com/news/2026/2/27/us-citizens-support-for-israel-at-historic-low-over-gaza-genocide-poll>; Philissa Cramer, *Half of US voters believe Israel is committing genocide in Gaza, poll finds*, CLEVELAND JEWISH NEWS (Aug. 29, 2025), <https://www.clevelandjewishnews.com/jta/half-of-us-voters-believe-israel-is-committing-genocide-in-gaza-poll-finds/>.

4. Application Instituting Proceedings, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*S. Afr. V. Isr.*), 2023 I.C.J. 192 (Dec. 29, 2023); Press Release, Int'l Crim. Ct., Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant (Nov. 21, 2024), <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>.

online influence campaign targeting U.S. lawmakers and the American public to foster support for its military campaign.⁵ The campaign used hundreds of fake accounts, posing as real Americans, across Facebook, Instagram, and X (formerly Twitter) to plaster the web with pro-Israel comments.⁶ Israeli officials referred to the campaign's facilitators as "digital soldiers," campaigning on behalf of the country, drawing direct parallels between the physical and digital battlefields.⁷ In a September 2025 meeting with American influencers at the Israeli Consulate General in New York, Netanyahu called social media "the most important weapon" in the fight to secure U.S. support. Some of the firms contracted to wage this social media campaign registered in the United States under the Foreign Agents Registration Act (FARA).⁸ FARA exists to allow the American public to make "informed evaluations" of information coming from Americans at the behest of foreign principals intending to influence public opinion and, ultimately, American policy.⁹

According to recent reporting, however, individual American influencers paid by Bridges Partners, a firm working for the Israeli Ministry of Foreign Affairs, post on behalf of Israel, but any involved influencers have failed to register under FARA.¹⁰ Much is still unknown at this point, including the names of the influencers, the

5. Sheera Frenkel, *Israel Secretly Targets U.S. Lawmakers With Influence Campaign on Gaza War*, N. Y. TIMES (June 6, 2024), <https://www.nytimes.com/2024/06/05/technology/israel-campaign-gaza-social-media.html>.

6. *Id.*

7. *Id.*

8. Simon Speakman Cordall, *Spinning Genocide: How is Israel using US PR firms to frame its Gaza War?*, AL JAZEERA (Oct. 30, 2025), <https://www.aljazeera.com/news/2025/10/30/spinning-genocide-how-israel-is-using-us-pr-firms-to-frame-its-gaza-war>.

9. U.S. Dept. of Justice, *Foreign Agents Registration Act: Frequently Asked Questions*, <https://www.justice.gov/nsd-fara/frequently-asked-questions> (last visited Apr. 28, 2026) ("The central purpose of FARA is to promote transparency with respect to foreign influence within the United States by ensuring that the United States government and the public know the source of certain information from foreign agents intended to influence American public opinion, policy, and laws, thereby facilitating informed evaluation of that information.").

10. Nick Cleveland-Stout, *Israel is Paying Influencers \$7,000 Per Post*, RESPONSIBLE STATECRAFT (Sep. 30, 2025), <https://responsiblestatecraft.org/israel-influencers-netanyahu/>; see also, Press Release, Public Citizen, FARA Complaint Alleges U.S.-Based Social Media Influencers are Acting as Agents of Israeli Government (Nov. 12, 2025), <https://www.citizen.org/article/fara-complaint-alleges-us-based-social-media-influencers-are-acting-as-agents-of-israel/> (announcing official letter of complaint sent to the U.S. Department of Justice).

posts, and the compensation.¹¹ However, this analysis will assume that the influencers' posts are similar to the rhetoric of their benefactors (discussed below in section II) and could therefore reasonably be argued to be incitement to genocide.

It is therefore possible that individual influencers in the United States were compensated by the State of Israel to create posts in support of the Israeli military campaign in Gaza, and that such posts may mirror the rhetoric used by Israeli government officials.¹² Such a situation poses an interesting question of international law: can such outsourced posts be attributed to the State of Israel under international law, and therefore be considered as acts occasioning incitement to genocide in South Africa's case before the ICJ? It also poses an interesting question under U.S. law: if such influencers are sued domestically for defamation, hate speech, or any other action, can they make a claim of foreign sovereign immunity?

First, the article defines incitement, with reference to the relevant case law from the International Criminal Tribunals of Rwanda and Yugoslavia. Then, it applies those definitions to the social media posts at issue. Second, the article analyzes the legal international tests for attribution, looking at the definitions in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, and then at their application in international case law. The tests are then applied to the instant, hypothetical social media posts. Finally, the article analyzes the legal tests for attribution in U.S. statutes and case law, before applying them to the social media posts as well.

The analysis that follows will show that such posts would likely not be attributable to the State of Israel under international law and would also likely fail to qualify for foreign sovereign immunity under American law. This outcome is a double-edged sword. Victims and affected parties would not face jurisdictional roadblocks of immunity to instituting an action in American courts. But non-attribution at the international level leaves a wide loophole open for States to direct and

11. What is uncontroverted is that Israel is certainly paying *some* people or firms to wage their social media campaign—or rather, promised to pay. Nadav Rapaport, *Israel's propaganda directorate being sued by unpaid activists claiming millions*, MIDDLE EAST EYE (Mar. 5, 2026), <https://www.middleeasteye.net/news/israels-hasbara-directorate-being-sued-unpaid-activists-claiming-millions>. As such, the *Responsible Statecraft* allegation seems, at worst, colorable.

12. This comment does not purport to speculate on whether or not the posts at issue did include inciteful rhetoric, nor does it take as factual that such FARA violations have actually occurred. Rather, this comment uses these alleged circumstances to conduct a legal analysis of a highly-relevant hypothetical factual situation for twenty-first century international law. For the relevance of the assumption of rhetoric, see the discussion on incitement, *infra* Section II.

compensate social media influencers to incite genocide while disclaiming international responsibility for such incitement. States may increasingly adopt a “pay-to-post” strategy, leading to a proliferation of online incitement that is directed and compensated by States, and a jurisdictional blind spot that prevents the ICJ from holding States accountable for this international wrong.

A. *Incitement*

While this article does not purport to address whether certain posts and comments would be incitement to genocide under the Genocide Convention, a brief discussion of incitement is necessary to show that the alleged posts in question *could be* relevant to proceedings before the ICJ, a threshold requirement to show the utility of analyzing whether they *can be* included.

B. *Incitement, Defined*

Incitement to genocide is a crime under the Genocide Convention, Article III(c).¹³ To qualify, incitement to commit genocide must be “public” and “direct.”¹⁴ South Africa’s filings against Israel document the vast amount of allegedly inciteful rhetoric used by Israeli government officials, military officials, soldiers, and Israeli civil society writ-large.¹⁵ Law for Palestine maintains a database of content that they consider incitement to genocide.¹⁶ Whether any given expression would itself be considered “public” and “direct” is, of course, a substantive matter for the ICJ, but case law from other international tribunals is useful to help understand what qualifies as incitement.

C. *Public and Direct*

Defining “public” is usually less contentious than defining “direct.”¹⁷ The International Criminal Tribunal for Rwanda (ICTR)

13. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277 art. III(c) [hereinafter Genocide Convention]; Toby Mendel, *Study on International Standards Relating to Incitement to Genocide or Racial Hatred*, 8 (U.N. Special Advisor on the Prevention of Genocide, Apr. 2006).

14. Genocide Convention, *supra* note 13, art. III(c).

15. S. Afr. V. Isr., *supra* note 3, at 101-06.

16. *Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide – Continuously Updated*, LAW FOR PALESTINE (Jan. 4, 2024), <https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>.

17. Mendel, *supra* note 13, at 7.

found that words are public “where they are spoken aloud in a place that is public by definition,” or directed at “members of the general public at large by such means as the mass media, for example, radio or television.”¹⁸ Posts on public social media accounts presumably meet this definition.¹⁹

“Direct” incitement is harder to define. The ICTR in the *Akayesu* Tribunal pointed out that direct need not mean only explicit calls or provocations to engage in a criminal act, stating:

“[T]he direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as “direct” in one country, and not so in another, depending on the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit. Thus, at the time the Convention on Genocide was being drafted, the Polish delegate observed that it was sufficient to play skillfully on mob psychology by casting suspicion on certain groups, by insinuating that they were responsible for economic or other difficulties in order to create an atmosphere favourable to the perpetration of the crime.”²⁰

Rhetoric cited by South Africa in its ICJ application includes the following:²¹

Israeli Prime Minister Benjamin Netanyahu, in his “Christmas Message” on December 25, 2023: “We’re facing monsters, monsters who murdered children in front of their parents . . . This is a battle not only of Israel against these barbarians, it’s a battle of civilization against barbarism.”²²

Prime Minister Netanyahu, on October 28, 2023: “[Y]ou must remember what Amalek has done to you, says our Holy Bible. And we do remember.”²³ The Amalek allusion can refer to the biblical passage: “Now go, attack Amalek, and proscribe all that belongs to him. Spare

18. *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement ¶ 556 (Sept. 2, 1998).

19. The ICJ will have a chance to rule on social media posts as incitement to genocide in their upcoming merits decision in *The Gambia v. Myanmar*. See generally, Gam. v. Myan., *supra* note 1 (Gambia alleging incitement to genocide by Myanmar officials in Facebook posts).

20. *Akayesu*, at ¶ 557. Such a wider definition may sweep in rhetoric less violent than that cited by South Africa, *supra* note 15.

21. Memorial of South Africa, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (S. Afr. V. Isr.), 2023 I.C.J. 192 (Dec. 29, 2023) at 101-107.

22. Israel Ministry of Foreign Affairs, *Christmas message from PM Netanyahu* (YouTube, Dec. 24, 2023) <https://www.gov.il/en/departments/news/christmas-message-from-pm-netanyahu-24-dec-2023>.

23. Address by the Prime Minister of Israel (YouTube, Oct. 28, 2023), <https://www.youtube.com/watch?v=IIPkoDk6isc>.

no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses.”²⁴

Israeli President Isaac Herzog, on October 13, 2023: “It’s an entire nation out there that is responsible. It’s not true this rhetoric about civilians not aware not involved. It’s absolutely not true. . . . and we will fight until we break their backbone.”²⁵

Israeli Defense Minister Yoav Gallant, on October 9, 2023: “We are fighting human animals and we are acting accordingly.”²⁶

Israeli army reservist Major General Giora Eiland, advisor to the Defense Minister, on November 19, 2023: “Israel needs to create a humanitarian crisis in Gaza, compelling tens of thousands or even hundreds of thousands to seek refuge in Egypt or the Gulf . . . Gaza will become a place where no human being can exist... Who are the ‘poor’ women of Gaza? They are all the mothers, sisters[,] or wives of Hamas murderers... they are part of the infrastructure that supports [Hamas]... The international community warns us of a humanitarian disaster in Gaza and of severe epidemics. We must not shy away from this, as difficult as that may be. After all, severe epidemics in the south of the Gaza Strip will bring victory closer . . . It is precisely its civil collapse that will bring the end of the war closer. When senior Israeli figures say in the media ‘It’s either us or them’ we should clarify the question of who is ‘them.’ ‘They’ are not only Hamas fighters with weapons, but also all the ‘civilian’ officials, including hospital administrators and school administrators, and also the entire Gaza population who enthusiastically supported Hamas and cheered on its atrocities on October 7th.”²⁷

Israeli army reservist Ezra Yachin, on October 11, 2023: “Be triumphant and finish them off and don’t leave anyone behind. Erase the memory of them. Erase them, their families, mothers and children. These animals can no longer live... Every Jew with a weapon should

24. I Samuel 15:1-34.

25. Rageh Omaar, *Israeli president Isaac Herzog says Gazans could have risen up to fight ‘evil’ Hamas*, ITV NEWS (Oct. 13, 2023), <https://www.itv.com/news/2023-10-13/israeli-president-says-gazans-could-have-risen-up-to-fight-hamas>.

26. Emanuel Fabian, *Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel*, THE TIMES OF ISRAEL (Oct. 9, 2023), https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel.

27. Giora Eiland, *Let’s not be intimidated by the world*, YEDIOTH AHRONOTH (Nov. 19, 2023).

go out and kill them. If you have an Arab neighbour, don't wait, go to his home and shoot him.”²⁸

Danny Neumann, former Israeli Knesset member, on December 25, 2023: “I tell you, in Gaza without exception, they are all terrorists, sons of dogs. They must be terminated, all of them must be killed.”²⁹

If the alleged posts by American influencers mimic the language used at times by Israeli government officials and soldiers, or by the Israeli mass-media, they may rise to the level of direct incitement.³⁰ Yet, even campaigns that aim to paint the Palestinian population as extremist may fall within the *Akayesu* definition of “direct” incitement, as they seek to engender an atmosphere favorable to the perpetration of genocide.³¹ For the purposes of this article it is assumed that the influencers’ posts mimic the rhetoric of their benefactors or fall within the directives of FARA-registered campaigns that aim to portray Palestinians with ‘suspicion’ or as ‘responsible for [societal] difficulties’ in Gaza, the West Bank, or Israel, and could therefore reasonably be argued to be incitement to genocide.³²

II. ATTRIBUTION IN INTERNATIONAL LAW: ARSIWA

Whether the posts *can be* included in South Africa’s current case before the ICJ is a question of *attribution*. Only States may be parties in cases before the ICJ.³³ An individual influencer cannot be tried before

28. Bazz News (@1717Bazz), X (Oct. 11, 2023, at 7:39 p.m.), <https://twitter.com/1717Bazz/status/1712176168823107986>. Translation by Middle East Eye (@MiddleEastEye), X (Oct. 13, 2023, at 8:48 p.m.), <https://twitter.com/MiddleEastEye/status/1712918166437806294>.

29. *Former Israeli Knesset member calls on the complete destruction of Gaza*, MIDDLE EAST EYE (Dec. 25, 2023), <https://www.middleeasteye.net/live-blog/live-blog-update/former-israeli-knesset-member-calls-complete-destruction-gaza>.

30. *Supra* notes 15-16, 21-29 (citing South Africa’s application and Law 4 Palestine database).

31. For example, according to a FARA filing, “Show Faith by Works has been hired by Israel to run [an online] campaign to ... portray ‘the Palestinian population’ as ‘extremist’.” Speakman-Cordall, *Spinning genocide*.

32. Such an assumption is not unreasonable, given the widespread use of such rhetoric across factions of Israeli society. Such rhetoric was investigated for incitement by the Israeli Attorney General. Jeremy Sharon, *AG decides not to open criminal probes into senior officials for Gaza incitement*, THE TIMES OF ISRAEL (Nov. 25, 2024), <https://www.timesofisrael.com/ag-decides-not-to-open-criminal-probes-into-senior-officials-for-gaza-incitement/>. Even if the influencers’ posts are not as virulent as those cited by South Africa, the *Akaseyu* Tribunal held that “direct” can still encompass rhetoric designed to engender an atmosphere favorable to genocide. *See, e.g.* Speakman-Cordall, (describing the Show Faith Works campaign).

33. Statute of the International Court of Justice art. 34, ¶ 1, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.

the Court, but their actions may be examined by the Court if they are determined to be *attributable to a State*.³⁴

A. ARSIWA Article 8

Attribution is governed by the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).³⁵ Attribution must be assessed to establish jurisdiction before assessing the merits.³⁶ While not a binding treaty, various parts of ARSIWA are codifications of customary international law, as held by the ICJ and other international tribunals. Of central importance is Article 8, recognized as customary law by the ICJ in the *Bosnian Genocide* judgement.³⁷

Article 8 reads:

*"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."*³⁸

Article 8 encompasses the actions of private individuals, regardless of whether their conduct involves sovereign activity or not.³⁹ The difficulty in establishing attribution through Article 8 is establishing that conduct was undertaken "on the instructions of, or under the direction or control of" the State.⁴⁰ The most instructive cases on the matter are *Military and Paramilitary Activities in and Against Nicaragua*, before the ICJ, and *Prosecutor v. Tadić*, before the

34. For brevity's sake, this comment will not discuss the possibility of individual criminal liability under a novel international tribunal or the International Criminal Court. The reader should keep in mind that these remain possibilities.

35. Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts in Report of the International Law Commission on the Work of Its Fifty-Third Session, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10, at 26 (2001) [hereinafter ARSIWA].

36. Jurisdictional Immunities of the State (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 143, ¶ 137 (Feb. 3).

37. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 91, ¶ 398 (Feb. 26), *inter alia*.

38. ARSIWA, *supra* note 35, art. 8 (emphasis added).

39. *Id.* art. 8, comm. 2. The distinction between sovereign and commercial activity becomes pertinent when dealing with state-owned corporations. A common definition of "commercial" is activity that can be undertaken by private actors (not including, for example, regulation or penal powers). Republic of Argentina v. Weltover, Inc., 504 U.S. 607, 615 (1992).

40. ARSIWA art. 8, *supra* note 38.

International Criminal Tribunal for the former Yugoslavia (ICTY).⁴¹ While ICJ judgements are not a binding source of law for the court, decisions from international tribunals are persuasive authority under the Court's defining statute and are often relied upon by parties and the Court itself.⁴²

1. *ARSIWA Article 8 in Paramilitary Activities: A High Bar*

The ICJ in *Nicaragua* analyzed the level of control necessary to attribute conduct to a State. The ILC cited the judgement repeatedly in the ARSIWA commentaries to Article 8 and uses the case as an example of where Article 8 applied.⁴³ The Court found a high bar for attributing the conduct of the Nicaraguan *Contras* to the United States, noting that “despite the heavy subsidies and other support provided to them by the United States,” there was not evidence of such a degree of control over the *Contras* in *all* of their actions which would justify treating the *Contras* as agents of the United States.⁴⁴ Specifically, the *Contras* were an “independent force,” and the only element of control that the United States could exercise was a “cessation of aid.”⁴⁵ American participation—even if preponderant or decisive—in the training, organizing, and financing of the *Contras*, and the selection of targets or the planning of its operations, was still insufficient to attribute the *Contra's* military and paramilitary activities to the United States.⁴⁶ Despite such a situation of “general control” and “a high degree of dependency,” such acts (violations of human rights and humanitarian law) could still have been committed by the *Contras* without the control of the United States.⁴⁷ However, to impute legal responsibility to the *United States*, it was necessary to prove that the United States maintained “effective control of the military ... operations” in which the alleged violations occurred.⁴⁸

41. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits, Judgment, 1986 I.C.J. 14 (June 27); Prosecutor v. Tadić, IT-94-1-A, Appeals Chamber Judgment, ¶ 124 (Int'l Crim. Trib. for the Former Yugoslavia) (July 15, 1999).

42. Statute of the International Court of Justice, *supra* note 34, art. 38 ¶1(d).

43. ARSIWA, *supra* note 35, art. 8, comm. 4.

44. Nicar. v. U.S., *supra* note 41, at ¶ 109.

45. *Id.* This was *not* the case for “Unilaterally Controlled Latino Assets” (“UCLAs”) (here, the Court used the CIA's language for convenience). The Court found the UCLAs' actions to be attributable to the U.S., as they were both “paid by, and acting on the direct instructions of, the U.S. military” or intelligence personnel. *Id.* at ¶ 75.

46. *Id.* at ¶ 115.

47. *Id.*

48. *Id.*

2. ARSIWA Instant Application

A high bar indeed. An Israeli official, for example, acting as a clearinghouse, with final authority to approve or edit a post, would not be enough to find attribution. To satisfy the *Nicaragua* standard for control, it is necessary to prove that Israel went beyond the mere disbursement of compensation and provided proposed text or content for the influencers to post, showing “effective control” (beyond “general control” and “dependency”) in the operations giving rise to the claim. The Court’s language suggests that if “each provision of funds” was sent “in order to set in motion a particular” post, and the post was “planned” by the party providing the funds, the post may be attributed to Israel.⁴⁹ Conversely, if an influencer claims, with evidence, that they would have made the same post without direction or compensation, they could sever the chain of attribution.⁵⁰

B. Article 8 in *Tadić*: Flexibility Demanded

In *Tadić*, explicitly applying Article 8 of ARSIWA, the ICTY Appeals Chamber found the *Nicaragua* bar to be too high and too rigid.⁵¹ Looking to the rationale of the rule, the Chamber noted that Article 8 was designed to prevent States from acting *de facto* through individuals, yet still dissociating themselves from such conduct when the individual breaches international law.⁵² Contrary to the high bar of

49. *Id.* at ¶ 103.

50. *Id.* at ¶ 115 (“Such acts could well be committed by members of the *contras* without the control of the United States.”). The Court uses the word “could,” not “would.” If the Court stands by this language, it may discount any online post, as most people *can* post on social media sites without funding, direction, or permission. It is possible that some online personalities with inconsistent political personas could be proven to have posted exclusively at the behest of Israel. See, e.g., *Azealia Banks admits she got paid for Israel content on social media*, THE EXPRESS TRIBUNE (Mar. 9, 2026), <https://tribune.com.pk/story/2596656/azealia-banks-admits-she-got-paid-for-israel-content-on-social-media> (Banks is known for behaving erratically online). Ironically, disclaiming Israeli direction could undermine any future claim of state immunity in a domestic proceeding arising out of the same posts.

51. See *Tadić*, *supra* note 41, at ¶ 124. (drawing a distinction between the level of control necessary to attribution actions of individuals, as opposed to that of organized groups). It should be noted that in order to protect civilians to the maximum extent possible, the ICTY needed to find that the Yugoslav conflict was an international armed conflict so that the Geneva Convention could apply. Finding attribution was a necessary step to finding international armed conflict, and this colored the Tribunal’s “less rigorous” approach to attribution, compared to the *Nicaragua* test. *Prosecutor v. Zlatko*, IT-95-14/1-A, Appeals Chamber Judgment, ¶ 145-46 (Int’l Crim. Trib. for the Former Yugoslavia) (Mar. 3, 2000).

52. *Id.* at ¶ 117.

the *Nicaragua* decision, the Chamber noted that the *degree of control* necessary to attribute actions to a State varies according to different factual circumstances.⁵³

Tadić laid out two potential situations that may apply to the facts at hand. The first is that of a private individual engaged by a State to perform “specific illegal acts” in the territory of another State.⁵⁴ The second is that of a private individual entrusted to perform lawful actions on the State’s behalf, but in discharging that task, the individual breaches an international obligation of the State.⁵⁵ Both of these situations beg the question, namely, whether an illegal act occurred, but nonetheless are worth exploring at this stage of analysis.

As to the first situation, the *Tadić* court would attribute the acts to the State where it is shown that the State “issued specific instructions concerning the commission of the breach,” or “that the State has publicly given retroactive approval to the action of that individual.”⁵⁶ As to the second, the *Tadić* court reasoned by analogy to rules of attribution regarding State officials acting *ultra vires*: given that a State incurs responsibility for *ultra vires* actions of its officials under international law, the State should incur the same responsibility for a specific request to a private individual to discharge a task on its behalf.⁵⁷

1. *Tadić* Instant Application

The *Tadić* line of reasoning affords a much greater possibility of attributing the hypothetical influencer posts to a State for two reasons.⁵⁸ First, it allows for proof of control by public, retroactive

53. *Id.* Emphasis in original.

54. *Id.*, at ¶ 118. Courts and scholars have tackled the territorial nature of social media and internet activity increasingly of late. *See, e.g.*, Shehabi v. Kingdom of Bahrain, [2024] EWCA (Civ) 1158, [2023] KB 89 [34] (Eng.) (finding that cyber activities are an extension of the actor’s effective control, and establishing jurisdiction in both the physical location of the actor and the location where the harm is felt). *See generally*, Daniel Rosenberg, “Seizing the Means of Disruption: International Jurisdiction and Human Rights in the Expanding Frontier of Cyberspace,” 55 N.Y.U. J. INT’L L. AND POL. 125, (discussing the current deficiencies of territorial jurisdiction over cyberactivity in the Budapest Convention and the Tallinn Manual).

55. *Tadić*, *supra* note 41, at ¶ 119.

56. *Id.*, at ¶ 118.

57. *Id.*, at ¶ 119.

58. The *Tadić* tribunal eventually found attribution as applied to “individuals making up an organised and hierarchically structured group,” e.g. an “armed band of irregulars.” *Id.*, at ¶ 120. But the tribunal’s crystal-clear dicta on attribution *vis a vis* individuals can and should be migrated to the instant fact pattern, since the *Tadić*

approval of the action by the State. What counts as *public* and *approval* raise its own set of questions. For example, a retroactive payment for services rendered would probably not count as public, but if such a payment was registered in a public FARA filing, perhaps it would. Something as innocuous as a re-post by a State official or State-run social media account might satisfy this test.⁵⁹

Second, it allows for attribution even where an influencer has posted content that may be more virulent (and thus, more likely to be incitement) than the posts the State commissioned.⁶⁰ This would circumvent the relatively rigid *Nicaragua* test of planning, financing, and setting into motion a particular action.⁶¹ It would allow for attribution where it can be shown that the State commissioned *some* content, even if the influencer took liberties with the language used, or was given free rein to post what they saw fit.⁶²

III. DOMESTIC ATTRIBUTION: IMMUNITY IN THE U.S.

Whether or not the influencers' posts are attributable to a State, they may face domestic ramifications for hate speech, defamation, or harassment for their posts. A jurisdictional question arises as to whether an influencer can claim foreign state immunity for the commissioned posts.

tribunal was looking to "the principles of international law" concerning attribution, which must transcend hyper-specific fact patterns. *Id.*, at ¶ 117. General principles of international law are themselves a binding source of law. Statute of the International Court of Justice, *supra* note 34, art. 38 ¶1(c).

59. *See* *Lindke v. Freed*, 601 U.S. 187, [204] (2024) (holding that under U.S. jurisprudence, social media activity is state action when the social media account had actual authority to speak on behalf of the State on a particular matter *and* purported to exercise that authority in the relevant posts).

60. *Tadić*, *supra* note 41, at ¶ 119. *See also* ARSIWA, art. 8, comm. 8. (stating "where persons or groups have committed acts under the effective control of a State, the condition for attribution will still be met even if particular instructions may have been ignored.").

61. *Nicar. v. U.S.*, *supra* note 41, at ¶ 103.

62. As regards organized groups, "[i]nternational law [renders any State responsible for acts in breach of international law] regardless of whether or not the State has issued *specific instructions* to those individuals." *Tadić*, *supra* note 41, at ¶ 123 (emphasis in original). If influencers were hired as organized groups, the bar for attribution under *Tadić* would drop significantly. This may apply to organizations such as Show Faith Works, discussed previously. Whether an organized group of social media influencers, or campaign directors, are sufficiently analogous to paramilitary groups is another question.

A. Federal Law and *Broidy*

In the United States, claims of foreign state immunity are either governed by the Foreign Sovereign Immunities Act (FSIA) or federal common law.⁶³ The FSIA does not apply, as the U.S. Supreme Court held that any claim under the FSIA must stand or fall on the Act's text, and the Act specifically does not cover private individuals, even those acting as agents of a foreign State.⁶⁴ Whether residual common law foreign sovereign immunity applies depends on if the U.S. State Department makes a suggestion of immunity, in which case a court will typically give immunity and dismiss the case.⁶⁵ If the State Department does *not* make such a suggestion, the reviewing court will assess whether the "requisites for immunity" are present.⁶⁶ While "requisites" have never been explicitly defined, *Broidy Capital Management LLC v. Muḥḥin* may be the lodestar case on assessing claims of immunity by individuals commissioned to influence public opinion in the United States.⁶⁷

Per *Broidy*, when an individual is retained through an "arms-length, general agreement to provide public relations services to burnish [a State's] reputation, in part by tarnishing that of [an adversary to that State]," immunity should not be granted absent a State Department suggestion.⁶⁸ In *Broidy*, the defendant claiming immunity was hired by Qatar to rehabilitate Qatar's image, the defendant resorted to unlawful means to accomplish that goal, and it was never alleged that Qatar had "requested, approved, or knew of" the unlawful conduct claimed.⁶⁹ Some of the defendants were registered as agents of Qatar under FARA, but the District Court, Circuit Court, and even defendants' counsel agreed that registration as a foreign agent is "absolutely not" sufficient to establish derivative sovereign immunity.⁷⁰

63. Foreign Sovereign Immunities Act, 28 U.S.C. § 1604; *Samantar v. Yousuf* (*Samantar I*), 560 U.S. 305, 316 (2010).

64. *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141-42 (2014). *See also Samantar I*, 560 U.S. at 316 (holding specifically that the FSIA does not cover individuals). This analysis is also notwithstanding the fact that the instant influencers are allegedly American, and the FSIA specifically excludes American citizens. 28 U.S.C. § 1603.

65. *Samantar I*, 560 U.S. at 311. The reviewing court still holds ultimate discretion to accept or decline the State Department's suggestion of immunity.

66. *Id.*

67. *Broidy Capital Management LLC v. Muzin*, 12 F.4th 789, 799-800 (D.C. Cir. 2012).

68. *Id.* at 800.

69. *Id.*

70. *Id.* at 801.

Dismissing an alternative argument, the Circuit Court noted that *domestic* derivative immunity only reaches conduct “specifically ordered” or “authorized and directed” by a government; compensation before or after the act is not enough to show such direction, and derivative immunity does not apply to “contractors exercising discretion” in their work to accomplish broad governmental objectives.⁷¹ With the factual allegations in the case not supporting such a defense, *Broidy* specifically “[did] not suggest” that such a derivative immunity theory would apply in the foreign immunity context.⁷²

This is bad news for an influencer hoping to claim foreign sovereign immunity. If Israel retained or contracted with an influencer using a “general agreement” that gives enough latitude for the influencer to post with their own personality, no immunity applies; yet if an agreement is specific enough to get past the “arms-length” disqualifier in *Broidy*, it is controlling enough to satisfy *Tadić* and possibly even *Nicaragua*. Even so, *any* agreement between Israel and an influencer is almost certainly that of a “contractor exercising discretion,” since the market appeal of contracting influencers is to trade on their sense of personality and social media savvy. And even if such an agreement *is* devoid of any discretion, a reviewing court still has to break new ground and apply a theory of derivative *domestic* immunity to the *foreign* context, which *Broidy* specifically disclaimed.

IV. DOMESTIC AND INTERNATIONAL CASE LAW IN CONVERSATION

Placing *Broidy* in conversation with international jurisprudence reveals a curious array of outcomes. If the influencers’ actions are found attributable before the ICJ under either a strict *Nicaragua* test or a more flexible *Tadić* approach, the influencers’ posts would face the ignominious distinction of being cited as evidence of a violation of the Genocide Convention before the ICJ.⁷³ Their posts may constitute discrete State violations of the Genocide Convention.⁷⁴

71. *Id.* at 802-03 (citing *In re OPM Data Sec. Breach Litig.*, 928 F.3d 42, 69 (D.C. Cir. 2019)).

72. *Id.* at 803.

73. Genocide Convention, art. III(c).

74. Prosecutors would likely include incitement in proceedings for genocide *per se* (or complicity in genocide) where the genocide has occurred, but a “separate charge may also lie in respect of specific acts of incitement which were not successful, even if genocide did take place.” Mendel, *supra* note 13, at 9. Still, complicity and actual genocide are mutually exclusive offences. Prosecutor v. Nahimana, ICTR-99-52-T, Judgement and Sentence, ¶ 1056 (Dec. 3, 2003).

At the domestic level, though, the difference in approach matters.⁷⁵ If their actions reach the *Nicaragua* “effective control” standard, it would also likely establish a factual record sufficient to meet a potential “specific orders” standard of derivative immunity in U.S. proceedings (should such a standard ever be applied to foreign immunity).⁷⁶ Should their actions meet the *Tadić* *ultra-vires*-by-analogy standard, on the other hand, influencers would face a nightmare situation: their acts could be included in ICJ proceedings, yet would substantially mirror the facts in *Broidy* such that they could not claim immunity before U.S. courts.⁷⁷ On top of all of this, regardless of attribution or state immunity at the domestic level, influencers could face individual international criminal charges, either before the ICC⁷⁸ or a specially constituted tribunal.⁷⁹

The most likely outcome is that the posts do not meet the international standards for attribution and are also not shielded by immunity in domestic proceedings. The standards outlined in *Nicaragua* are simply too high to find attribution in a case of mere compensation where an actor would have or could have undertaken the act without the urging of the State. The *Tadić* approach, while more flexible, is still just dicta, and a court applying such a test would be breaking new ground. At the domestic level, U.S. law is relatively clear, and absent a suggestion of immunity by the state department, an influencer would be in a substantially similar situation to the defendant in *Broidy*, and the Supreme Court dispensed with his claim of immunity rather easily. This

75. The analysis assumes the commissioning State does not petition the State Department to suggest immunity. Such a petition would come with its own political and public relations consequences.

76. See *Broidy*, 12 F.4th at 803.

77. This would put the influencer in a similar situation to that of the defendant in *Broidy*.

78. While neither Israel nor the United States is a party to the Rome Statute, the ICC can still exercise jurisdiction if a party to the Rome Statute cedes territorial jurisdiction to the ICC to investigate. “As soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) of the Statute, there is no need for an additional one.” Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18 (Nov. 21, 2024). E.g., if Palestine allowed the ICC to investigate harms in Gaza that were a result of incitement to genocide via social media posts, the ICC has jurisdiction to issue arrest warrants for Americans responsible.

79. E.g., Netanyahu faces individual international criminal charges before the ICC. Note that charges before the ICC or a specially convened tribunal would not be dependent on attribution, but rather on the jurisdiction defined by the statute establishing such a tribunal. See Micaela Frulli, *Jurisdiction Ratione Personae*, in *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY* (Antonio Cassese, Paola Gaeta, and John RWD Jones eds., 2002) (discussing the different jurisdictional bounds over “natural persons” in the ICC, the ICTY, and the ICTR).

leaves the individual influencer holding the bag for what they believed was work for Israel. The influencer faces individual liability (and may not have enough assets to cover assessed damages), Israel separates itself from a corpus of inciteful rhetoric, and the harm to targeted Palestinians continues.

V. CONCLUSION: THINK BEFORE YOU POST

These days, wars are not officially called “wars”; they are special military operations and conflicts.⁸⁰ In the online battlefield, recruited digital soldiers also do not self-identify as such: they are simply the same influencer as yesterday, but now with a new, compensated opinion. Nowadays, governments are wise to find plausible deniability (probably at the behest of their legal counsel).⁸¹ Israel has plenty of it when it comes to these compensated posts. International law must adapt, or it risks losing jurisdiction over a myriad of international wrongs taking place in cyberspace. It is unlikely that the posts in question would meet the *Nicaragua* standard for attribution. Should the question reach the ICJ, however, the Court should take the opportunity to heed the call of the *Tadić* tribunal and allow for a more flexible approach to attribution, one appropriate for the temperaments and nuances of modern times.

If such posts are *not* attributable to a State, States may have unlocked a new digital paramilitary force to fight on the battlefield of social media, notwithstanding that a finding of non-attribution may expose influencers to domestic liability in the United States. Litigators and jurists should continue to develop the laws of attribution for the twenty-first century, lest States seize on the lacunae of jurisdiction and execute massive “pay-to-post” campaigns that cause harm across the world.

Importantly, this article should change the calculus for American influencers and others that earn their living operating online personas. Before accepting payment to post on behalf of another State, influencers should carefully consider their rhetoric and the circumstances surrounding their commissions. Fomenting hatred will always be much riskier, legally, than espousing positivity.

80. Anton Troianovski and Neil MacFarquhar, *Putin Announces Start to 'Military Operation' Against Ukraine*, NEW YORK TIMES (Feb. 23, 2022); Avery Lotz, *Trump says he won't call Iran conflict a war. He keeps doing it anyway*, AXIOS (Mar. 26, 2026).

81. Or perhaps governments are learning the lessons of history. Watergate, anyone?