
International law and its impact on transfers of weapons to Israel

19 February 2024

On 26 January 2024, the International Court of Justice (ICJ) said that Israel's actions pose a "real and imminent" risk to Palestinians in Gaza and that there is a plausible risk that Israel is violating the Genocide Convention. The Court proceeded to issue an order for provisional measures against Israel concerning its actions in the Gaza Strip. Coupled with growing evidence of serious violations of international humanitarian law violations in Gaza, the ICJ's order prompts questions about the legality of arms supply to Israel.

On Wednesday 21 February 2024, the parties to the [Arms Trade Treaty](#) (ATT) will meet in Geneva, Switzerland, to discuss arms transfers to the Israel and Palestine conflict. The meeting in Geneva will be the first time that there is a formal discussion of non-compliance under the ATT, and takes place just one week after a Dutch court ordered the government of [the Netherlands](#) to stop the export of F-35 fighter jet parts to Israel within seven days due to the Netherlands' legal obligations under the ATT and EU law.

Transfer of weapons to Israel

Several countries are currently exporting weapons to Israel. While much information about arms exports is not always publicly available, it is known that the United States, Germany and the United Kingdom are supplying Israel with weapons. In addition, companies in or owned by entities in Canada, the Netherlands, Denmark, China, Italy, Norway, Finland, Spain and Japan are [known or assumed to be involved](#) in supplying weapons, weapon delivery systems or components thereof to Israel directly or indirectly via another country. All of these countries are states parties to the ATT, except for the United States. The United States signed it in 2013 but has not ratified it, and due to the Trump administration's "withdrawal of signature" in 2019, it remains unclear what legal implications the ATT has on the United States.

On 12 February, the Hague District Court ordered the government of [the Netherlands](#) to stop the export of F-35 fighter jet parts to Israel within seven days due to the risk of serious violations of international humanitarian law and referred to both the ATT and the [EU Common Position 2008/944/CFSP](#). While the government of the Netherlands has announced that it will appeal the decision, the order raises expectations for ongoing similar lawsuits in other EU member states or ATT states parties. National processes in the United States, the United Kingdom, and

Canada are underway, and parliamentarians in other countries are using the Dutch court ruling, for example in [Denmark](#), to call on their governments to cease arms exports to Israel.

Following the ICJ order, the Foreign Minister of [Italy](#), the Foreign Minister of [Spain](#) and the local government of the Walloon region of [Belgium](#), have announced a halt to arms exports to Israel. The order has also prompted the [Japanese Itochu Corporation](#) to end its strategic cooperation with Elbit Systems, an Israeli defense company.

In a related development, Nicaragua has asked to intervene in the ICJ case between South Africa and Israel. In a [press release](#) published on X, Nicaragua also claims that it has notified the United Kingdom, Germany, the Netherlands and Canada of its decision to hold these countries responsible for “gross and systematic violations” of the Genocide Convention and international humanitarian law, citing these countries’ “supply of arms, ammunitions, technology and/or components to Israel”.

The Arms Trade Treaty

Adopted in 2013, the [ATT](#) is a multilateral agreement that seeks to prevent and reduce human suffering by establishing common international standards for the transfer of conventional weapons. To date, [113 countries are bound by the treaty](#).

The ATT stipulates that each state party “shall not authorize” any transfer of conventional arms or related parts or components “if it has knowledge at the time of authorization” that they would be used to commit genocide, crimes against humanity, or war crimes. All countries also have an obligation to prevent genocide and other international crimes.

Parties to the ATT may argue that they do not have sufficient indications that supplied arms are contributing to such crimes. However, proposed exports to any other state party, including Israel, are also subject to a further assessment of whether they could be used to commit or facilitate a serious violation of international humanitarian law or of international human rights law. If the risk is “overriding”, the export must not proceed. The ICJ order would therefore seem to preclude export of weapons that are likely to be used during the hostilities in Gaza.

National and regional regulation

In addition to the ATT, transfers of weapons are regulated under domestic and regional legislation. In the United States, the [Leahy Law](#) requires that the US government vet any foreign military unit receiving US training or arms to ensure it has not been responsible for “gross violations of human rights”. In theory, this assessment must take account of an order or judgment of the ICJ.

EU member states are bound by the terms of the [EU Common Position 2008/944/CFSP](#) of 8 December 2008 and are, *inter alia*, required to “deny an export license if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.”