



**International
Development
Committee**

Thursday, 26 June 2025

Rt Hon Jonathan Reynolds MP
Secretary of State for Business and Trade
[by email]

Cc: Rt Hon David Lammy MP, Secretary of State for Foreign, Commonwealth and Development Affairs

Exemption of F-35 components from suspended arms exports to Israel

Dear Jonathan,

On 12 June 2025, the International Development Committee published a report on humanitarian access and adherence to international humanitarian law (IHL).¹ I look forward to the Government's response to this report. As the Committee identified in its report, there are a number of avenues for accountability in response to violations of IHL, including the suspension of arms export licences. I remain concerned that there is a real risk that weapon components, manufactured in the UK, could be used in attacks, including those on aid workers or humanitarian infrastructure.

The Government's decision to exempt F-35 components from the suspension of arms export licences

Since 2 September 2024, the Government's position has been that Israel is not committed to complying with international humanitarian law (IHL) and that, accordingly, there is a "clear risk" of serious violations of IHL by Israel in Gaza. On the basis of those conclusions, the Government decided to suspend export licenses for items that might be used in carrying out or facilitating Israel's military operations in the current conflict. However, you decided to allow the continued export of components used in the manufacture and maintenance of F-35 planes which are transferred from the UK to Israel indirectly. I note the letter from Minister Doughty to the Chair of the Business and Trade Committee, in which he explained:

¹ 'Protection not permission: The UK's role in upholding international humanitarian law and supporting the safe delivery of aid', Fifth Report of Session 2024-25, HC526



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*"The F-35 programme has a significant dependence on the UK, which provides unique and critical components. Due to the highly integrated nature of the programme's structure and supply chain, the only way to avoid the export of UK components to Israel would be to suspend exports to the entire programme, which includes many of the UK's closest Allies and partners. The Defence Secretary has advised, and the Business and Trade Secretary agreed, that such a suspension would have a critical impact on international peace and security....."*²

It is my understanding that the Government's decision turned on balancing (i) the clear risk that F-35s with UK-supplied components might be used to commit serious violations of IHL in Gaza against (ii) the damage to national and international security to which a ban on the export of those components would give rise.

The compatibility of the Government's decision with international law

Adherence to the rule of law, including international law, is fundamental if we are to take a position of leadership on the world stage. We must respect, and ensure respect for, IHL.

I am concerned by the decision to exempt F-35 components from the suspension of arms export licences, given your assessment that there are "clear risks" of serious violations of IHL by Israel in Gaza.

I note that there are public law challenges to this decision, which are currently being litigated before the High Court.³ I am concerned exclusively with matters concerning the UK's compliance with international law. In particular, I am concerned that the 'balancing' approach does not appear to be compatible with the UK's legal obligations under the Arms Trade Treaty and other relevant instruments such as the Genocide Convention, the Geneva Conventions. It also raises questions as to the UK's obligations under customary rules on state responsibility.

Compatibility with the Arms Trade Treaty and other conventions

The Arms Trade Treaty (ATT) is legally binding on the UK. Article 6 strictly prohibits an ATT state party from transferring licenced items where, *inter alia*, the transfer "would

² Letter from Minister Stephen Doughty to Chair of the Business and Trade Committee, Liam Byrne MP, 23 December 2024: committees.parliament.uk/publications/46149/documents/230810/default/

³ R (Al Haq) v Secretary of State for Business and Trade



violate its relevant international obligations under international agreements to which it is a Party” (Article 6(2)). Article 6 also strictly prohibits exports “if [a state] 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” (Article 6(3)).

Compatibility with the Genocide Convention for the purpose of Article 6(2) ATT

Article 6(2) includes obligations such as those under the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (Genocide Convention) and the Geneva Conventions 1949, as these are “international agreements to which [the UK] is a party”.

Article 1 of the Genocide Convention imposes on the UK an obligation to prevent genocide. This is binding on the UK as a matter of treaty and customary international law (CIL). A state’s obligation to prevent genocide arises 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.”⁴ This duty cannot be sensibly interpreted in a manner that would allow states to wait for the courts to make legal determinations. The obligation arises at the instant there is a “serious risk”. The International Court of Justice (ICJ) has been clear that even where UN organs (including the ICJ) are seized of the question of genocide, “this does not mean that the States parties to the Convention are relieved of the obligation to take such action as they can to prevent genocide from occurring”.⁵

The deliberate infliction of conditions of life calculated to bring about the physical destruction of the Palestinian population in Gaza would constitute an act of genocide. Evidence put before the ICJ concerning the conditions of life in Gaza demonstrate a prolonged and widespread deprivation of food and basic necessities such as water and medicine. The ICJ found, on 26 January 2024, that there existed “a real and imminent risk” that “irreparable prejudice” will be caused to the “rights found by the Court to be

⁴ ICJ, Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 26 February 2007, para 431; Nicaragua v. Germany Order, para 23

⁵ ICJ, Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 26 February 2007, para 427



plausible”.⁶ The plausible rights in question are the rights of “Palestinians in the Gaza Strip to be protected from acts of genocide and related prohibited acts....”.⁷

Q1: Does the Government accept that the duty to prevent genocide has been triggered? If so, at what point was this duty triggered? If not, why not?

If the duty has been triggered due to the existence of a “serious risk” of genocide, the scope of the duty requires states to “employ all means reasonably available to them, so as to prevent genocide so far as possible”⁸ and “to do all in their power to prevent the commission of any such acts in the future”.⁹ The obligation to employ “all means” and do “all in their power” must, in accordance with the natural meaning of these words, include preventing genocide by suspending arms which may be used in the commission of genocide. The ICJ has expressly recognised the transfer of arms as falling within the scope of the duty.¹⁰

Q2: If the Government accepts that the duty to prevent genocide has been triggered, what steps is the UK taking to employ “all means” and do “all in their power” to prevent genocide, as far as possible?

Q3: How does the exemption for F-35 components comply with the duty to prevent genocide?

Compatibility with the Geneva Conventions for the purpose of Article 6(2) ATT

Common Article 1 (CA1) of the Geneva Conventions requires the High Contracting Parties to “respect and to ensure respect for the present Convention in all circumstances.” The Government has put forward the view that CA1 does not contain third party obligations

⁶ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, paras 74

⁷ ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, para 66

⁸ ICJ, Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 26 February 2007, para 431; ICJ Nicaragua v. Germany, Order, para 23

⁹ ICJ, Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993, p. 3, para 45

¹⁰ ICJ, Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany). The ICJ reminded “all States of their international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate the [Genocide Convention and the Geneva Conventions]”, Order of 30 April 2024, para 24



and does not, therefore, require the UK to ensure respect of IHL by other states.¹¹ However, the ICRC commentary is explicit: “whether or not they are themselves party to an armed conflict, to ensure respect for the Conventions by other High Contracting Parties and non-State Parties to an armed conflict. The interests protected by the Conventions are of such fundamental importance to the human person that every High Contracting Party has a legal interest in their observance, wherever a conflict may take place and whoever its victims may be.”¹² Further, the ICJ has held that “all the States parties to the Fourth Geneva Convention have the obligation [...] to ensure compliance by Israel with international humanitarian law as embodied in that Convention”.¹³ The view of the ICRC and the ICJ is clear – CA1 engages third party obligations.

Q4: What is the Government’s legal basis for the contention that CA1 does not contain third party obligations and does not, therefore, require the UK to ensure respect of IHL by other states?

CA1 has been interpreted as imposing both negative and positive obligations on state parties, meaning they must not encourage, aid and assist violations of IHL (negative), and they must do everything reasonably within their power to ensure respect for IHL by third parties (positive).¹⁴ If the export of F-35 components aid and assist violations of IHL, the exports would fall within the scope of this duty.

Q5: In light of the Government’s assessment that there is a “clear risk” of serious violations of IHL, does the Government accept that F-35 components may be used to aid and assist violations of IHL?

Q6: Does the Government accept that, if the duty under CA1 entails third party obligations, the export of F-35 components is incompatible with the duty to ensure respect for IHL?

¹¹ [Explanation of Vote](#) by Archie Young, UK Ambassador to the General Assembly, at the UN Fourth Committee on Palestine, 22 November 2024: “However I wish to make clear we do not believe that Common Article 1 of the Geneva Conventions establishes third party obligations.”

¹² ICRC Commentary to GC I (2016), paras 199 and 153-154, 158, 162; ICRC Commentary to GC III (2021), paras 186-187, 191, 195

¹³ ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024, para 279.

¹⁴ ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, paras 116, 220, 256; ICRC Commentary to GC I (2016), paras 153-154, 158, 162; ICRC Commentary to GC III (2021), paras 186-187, 191, 195



Compatibility with Article 6(3) ATT

Whether the Government has breached Article 6(3) ATT will turn on the extent of its knowledge as to whether these items would be used in the commission of the listed crimes (genocide, crimes against humanity, grave breaches etc).

The commentary on the ATT states that a state party “has an obligation not to transfer where there is a certain risk of a future event and it has to evaluate that risk”.¹⁵ The ATT commentary makes clear that the relevant knowledge threshold is met when there is “real risk” of commission of one of the specified wrongs.¹⁶ Arms “would be used” to commit the crimes where “there is sufficient information, or reasonable grounds, or a reasonable basis for believing the arms would be used for that purpose”.¹⁷ The ICRC considers that Article 6(3) is engaged where the state party “has substantial grounds to believe, based on information in its possession or that is reasonably available to it, that the weapons would be used to commit genocide, crimes against humanity or war crimes.”¹⁸ The knowledge threshold is, therefore, met if there are “substantial” or “reasonable” grounds to believe the arms would be used to commit the listed crimes.

Q7: In circumstances where the Government has determined that there is a “clear risk” of serious violations of IHL being committed by Israel, does the Government accept that there are “substantial” or “reasonable” grounds to believe that the F-35 components would be used in the commission of such crimes?

Compatibility with Article 7 ATT

Even if the test in Article 6(2) or (3) is not met such that the export is not strictly prohibited, Article 7 ATT may nevertheless apply. A state party must, applying the procedure set out in Article 7(1), assess the “potential” that the items, *inter alia*:

- a. “would contribute to or undermine peace and security”;
- b. “could be used to commit or facilitate”:
 - i. “a serious violation of [IHL]”,

¹⁵ Casey-Maslan, S., et al, The Arms Trade Treaty, A Commentary, 2016, para 6.95

¹⁶ Casey-Maslan, S., et al, The Arms Trade Treaty, A Commentary, 2016, para 6.99

¹⁷ Da Silva and Neville, “Article 6: Prohibitions” in da Silva and Wood (eds), The Arms Trade Treaty: Weapons and International Law, 2021, p. 134

¹⁸ ICRC, Understanding the Arms Trade Treaty (2016), pp. 26 and 29.



ii. “a serious violation of [IHL].....”

An ATT state party is also required to consider measures that could be undertaken to mitigate risks identified, “such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States”.¹⁹ However, if “after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences”, they “shall not authorize the export”.

Article 7, therefore, requires state parties such as the UK to undertake an assessment of risk. This includes assessing the risk of serious violations of both IHL and IHRL. It is accepted that there is a “clear risk” of serious violations of IHL. In circumstances where there are prolonged blockades of humanitarian aid including food, water and medicine, as well as evidence indicating the mistreatment of detainees by Israel, there are clearly risks of serious violations of the right to life, health, food security, and the prohibitions on cruel, inhuman and degrading treatment and torture. The clear risks of serious IHL and IHRL violations are undisputable.

The Government’s position appears to be that it was entitled to rely upon wider considerations of peace and security and balance these considerations against the risk of serious violations of IHL. It is correct that, if the exports are not strictly prohibited by Article 6, then Article 7 permits states to consider the potential positive contribution of an export to peace and security. It also requires states to perform a risk assessment of each of the factors listed in Article 7. If there is the “potential” for an “overriding” risk of serious violations of IHL/IHRL, then the UK must not authorise the export. To undertake a balancing exercise of the nature proposed by the Government would create a loophole whereby states could argue that the security benefits of the exports outweigh serious violations of IHL/IHRL.

Q8: What legal authority does the Government reply upon to support its position that a positive contribution to peace and security is to be balanced against a clear risk of the arms being used to commit serious violations of IHL/IHRL?

¹⁹ Article 7(2) ATT



Compatibility with the UK's customary obligations under the law of state responsibility

In addition to the UK's treaty obligations, under customary international law, the UK has an obligation not to aid or assist in the commission of an internationally wrongful act.²⁰ A state breaches this obligation if (i) it provides aid or assistance to a state committing an internationally wrongful act; (ii) it transfers this aid with knowledge of the circumstances of the internationally wrongful act; and (iii) the act would have been wrongful if done by the assisting state. The ILC commentary makes clear that the aid or assistance must be given with a view to facilitating the commission of that act, and it must actually do so.²¹

Q9: Does the Government accept that it has knowledge that Israel is committing internationally wrongful acts?

Q10: Does the Government accept that the export of F-35 components is aiding or assisting in the commission of these internationally wrongful acts?

I would be very grateful for a response by 11 July, which we will publish alongside a copy of this letter.

Yours sincerely,

Sarah Champion MP
Chair of the International Development Committee

²⁰ Article 16 of the Draft International Law Commission Articles on State Responsibility

²¹ ILC Commentary to Article 16, para (3).