

Brief: Arms Embargo on Israel as Legal Obligation

Summary

Israel's genocide against 2.3 million Palestinians in the illegally occupied Gaza Strip has been ongoing for more than 11 months. Despite the clear order by the International Court of Justice (ICJ) on January 26th for Israel to stop the killing of civilians, and despite worldwide outrage at Israel's massacres and induced starvation of Palestinians, the Israeli military continues the genocidal assault on civilians, destroying or damaging humanitarian "targets" such as hospitals, refugee camps, UN schools, universities, and shelters.¹

The ICJ ruling in July denouncing Israel for violating Art.3 of CERD, which prohibits the crime of apartheid, and affirming that Israel's presence and military occupation of Gaza and the West Bank, including East Jerusalem, are illegal, has confirmed the obligation to stop arms trade with Israel.² All states - including the EU and its member states - must comply with their duties under international law, including imposing a military embargo on Israel.³

Following this ruling, on September 18, the UN General Assembly overwhelmingly approved the first UN resolution recognizing Israel's apartheid system and the first resolution since 1982 calling for a military embargo and concrete, albeit limited, sanctions.

Therefore, Palestinians stand united in calling for *"a mandatory and comprehensive two-way military embargo on Israel including all arms, security, surveillance equipment, jet fuel, training and joint exercises, and stop all export, import and transfer, including parts and components and other dual-use items, to and from Israel. Where applicable, States must suspend all military cooperation with Israel, including joint military and dual-use research and military-industry partnerships."*

While [sanctions](#) have finally been tabled in the discussions of the EU, the EU Foreign affairs chief, Joseph Borrell, has [stated](#) that "If you believe too many people are killed, maybe you should provide less arms." Every Palestinian killed is one too many. The EU has to stop all military and dual-use trade, research, funding and cooperation now to comply with international law.

Until Israel adheres to its obligations under international law, the European Union and its member states have to immediately:

- **suspend all export, import and transfer of weapons, military equipment and components, and dual-use items.**
- **suspend Israel from the Horizon Europe programs, most importantly all projects that include Israel's military companies or relate to research and development in the military, security or dual-use sector.**
- **review and suspend all cooperation with Israeli authorities and acquisition of military and dual-use items from Israeli military and security forces that European agencies (including but not limited to Frontex, EMSA, Europol) entertain.**

Failure of compliance risks state as well as individual liability for complicity in genocide, war crimes and crimes against humanity.

¹ <https://news.un.org/en/story/2024/09/1154206>

² <https://antiapartheidmovement.net/en/updates/view/sanctions-now-palestinian-civil-society-demands-immediate-international-compliance-with-the-icj-findings-on-israels-unlawful-occupation/29>

³ <https://antiapartheidmovement.net/updates/view/following-icj-ruling-on-palestine-ungas-failure-to-sanction-israel-would-condemn-international-law-to-oblivion/30>

The Legal Framework

UN General Assembly (UNGA) - On September 18 2024, the UNGA overwhelmingly and with the favorable votes of 124 in favor, 14 against and 43 abstentions, endorsed the Advisory Opinion of the ICJ of July 19 2024 and called, inter alia, upon all States *“to take steps towards ceasing the importation of any products originating in the Israeli settlements, as well as the provision or transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory;”*

UN Human Rights Council (UNHRC) - On April 5 2024, the UNHRC passed Resolution A/HRC/55/L.30, with the favorable votes of Belgium, Finland and Luxembourg, which *“Calls upon all States to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel, the occupying Power, in order to prevent further violations of international humanitarian law and violations and abuses of human rights, and to refrain, in accordance with international norms and standards, from the export, sale or transfer of surveillance goods and technologies and less-lethal weapons, including “dual-use” items, when they assess that there are reasonable grounds to suspect that such goods, technologies or weapons might be used to violate or abuse human rights.”*

UN Special Rapporteurs - Thirty eight UN legal and human rights experts have underlined that Third States have to immediately take action to *“cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel.”* They add that an *“end to transfers must include indirect transfers through intermediary countries that could ultimately be used by Israeli forces“* and highlight that *“[i]n this context, continuing arms transfers to Israel may be seen as knowingly providing assistance for operations that contravene international human rights and international humanitarian laws and may result in profit from such assistance.”*⁴

The legal expert opinion on the duties arising from the orders of provisional measures of the ICJ regarding South Africa’s case against Israel under the Genocide Convention - Dr. Irene Pietropaoli states that *“Third States should impose an arms embargo, ceasing the sale, transfer and diversion of arms, munitions and other military equipment to Israel and refrain from the export, sale or transfer of jet fuel, surveillance and technologies and less-lethal weapons, including ‘dual-use’ items’ where there’s reason to suspect their use in the commission of genocide.”* She adds that *“home States should stop buying and importing arms from Israeli companies and should require corporations domiciled in their territories to do the same.”* Otherwise, they risk legal liability and criminal litigation. She further points at:

- **Arms Trade Treaty**⁵ - *“States Parties to the UN Arms Trade Treaty (ATT) have additional obligations to deny arms exports if they ‘know’ that the arms ‘would’ be used to commit international crimes, or if there is an ‘overriding risk’ that the arms transferred ‘could’ be used to commit serious violations of international humanitarian law. 103 Under Article 6(3) of the ATT, States Parties undertake not to authorise any transfer of arms if they have knowledge that those would be used in the commission of genocide, crimes against humanity, or other war crimes. Under Articles 7 and 11, State Parties undertake not to authorize any export of conventional arms, munitions, parts, and components that*

⁴ <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>

would undermine peace and security or be used to commit serious violations of international humanitarian law and international human rights law.”

- **European Council Common Position-** “EU Member States are further bound by EU Common Position on Arms Exports (EUCP). Article 2 requires EU Member States 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.’ To this end, the EUCP states that a ‘real risk’ is sufficient for triggering the license’s denial. The ICJ Order would satisfy the low knowledge threshold of ‘a clear risk’.”

ANNEX I:

Israel’s ongoing genocide in Gaza would not have been possible without Western, including European, support. In light of Israel’s ammunition shortages,⁶ the U.S, UK, and EU states have created an illegal supply chain of weapons, ammunition and dual-use items, implicating them in genocide.

Ten EU states have been identified as key participants in the illegal transiting of weapons to Israel: Belgium, Cyprus, France, Germany, Greece, Ireland, Italy, Portugal, Slovenia and Spain. The transiting of weapons by air or by sea to Israel is illegal, given that the ICJ ruling on plausible genocide triggers a firm legal responsibility to prevent genocide.⁷

The sale, import and transiting of weapons to Israel is a violation of international law and must immediately stop. European states carry a heavy burden of responsibility.

Austria: despite its formal neutrality, Austria has joined the Skyshield air defense alliance in July 2023,⁸ which Germany is leading. The Skyshield strategy is based on a contract with Israel’s largest state-owned arms company IAI (Israel Aerospace Industries) for the Arrow3 system,⁹ for which the enormous sum of 4 billion Euros is paid. This is the largest export contract in the history of Israel, which finances Israel’s war machine. IAI uses the income from the sale of Arrow3 to develop attack drones and heavy missiles which are used against civilians in the Gaza Strip. Austria must withdraw from Skyshield.

Belgium: although the Walloon region has set an example for respecting international law by canceling the export permits for explosives to Israel,¹⁰ Belgium must ratify the policy at the state level and adopt a ban on the import and transiting of weapons, especially through the Antwerp seaport.

⁶ <https://www.newarab.com/news/israel-army-running-out-ammo-tanks-amid-gaza-war-report>

⁷ <https://lpeproject.org/blog/shipments-of-death/>

⁸ <https://www.euractiv.com/section/defence-and-security/news/neutral-austria-switzerland-join-european-sky-shield/>

⁹ <https://www.defensenews.com/global/europe/2024/07/24/israels-iai-plugging-away-at-german-arrow-3-order-amid-gaza-war/>

¹⁰ <https://www.business-humanrights.org/en/latest-news/belgium-regional-govt-suspends-arms-export-licenses-to-israel-citing-icj-ruling-ordering-israel-to-prevent-genocidal-acts/>

Cyprus: despite widespread protests in Cyprus, the Cypriot government has failed to take action to stop the use of the Akrotiri military base in its territory to transit weapons to Israel.¹¹ Cyprus is also the headquarters of the Israeli spyware company Intellexa, which has been sanctioned by the U.S.¹²

Denmark: after donating its artillery to Ukraine, Denmark has signed a contract to purchase artillery from Israel's Elbit Systems,¹³ the very same self-propelled 155mm howitzers which have become the deadliest and most destructive weapon which Israel has been using to commit genocide in the Gaza Strip.¹⁴ Denmark has failed to act against the cargo ship *Marianne Danica*, which sails under a Danish flag and is owned and operated by a Danish company, which illegally carried rocket components and explosives to Israel. The *Marianne Danica* was denied port of call in Spain,¹⁵ announced that it will sail to Montenegro and then turned off its transponders and sailed to Israel. This is the behavior of criminals, and despite widespread calls, protests and a lawsuit in Denmark, the Danish government failed to meet its legal obligations under the Genocide Convention.

France: France claimed to have suspended arms sales to Israel during the genocide, but investigative journalists found evidence that France authorized the sale of machine guns and ammunition to Israel, of a type ("minimi") which was documented in use against civilians in Gaza.¹⁶ France must take action to investigate the illegal arms sales and hold accountable the officials who authorized the sales, and those who tried to cover it up.

Germany: Germany is the second largest arms supplier to Israel. The extent of Germany's violations is larger than the extent of the rest of the EU combined.¹⁷ A German company owns the *MV Kathrin* which illegally carries explosives to Israel.¹⁸ Germany provided warships to Israel even after videos proved that Israel uses warships to shell civilian neighborhoods in Gaza.¹⁹ Germany also "loaned" its Israel-made attack Heron-TP drones to the Israeli airforce after October 7th in order to facilitate dropping large amounts of ordnance on Palestinians in the occupied and besieged Gaza Strip, which is a war crime in itself.²⁰ As Germany is facing both a legal, a political, a diplomatic and an internal public opinion crisis over its complicity in genocide and is answering a charge at the ICJ, other EU member states have an obligation to prevent their dealings with Germany to turn them into complicit in Germany's crimes.

Greece: Greece has extensive military cooperation with Israel's military, including training in the Kalamata airbase,²¹ the use of the Alexandroupolis airbase and seaport for the transiting of weapons to Israel²² and the

¹¹ <https://www.aljazeera.com/news/2024/1/15/uk-bases-in-cyprus-protests>

¹² <https://therecord.media/us-hits-intellexa-sanctions-treasury>

¹³ <https://www.janes.com/osint-insights/defence-news/land/denmark-receives-first-atmos-sphs-and-puls-mrls>

¹⁴ <https://www.jpost.com/israel-news/defense-news/article-774833>

¹⁵ <https://www.swissinfo.ch/eng/spain-denied-port-of-call-to-ship-carrying-arms-to-israel/77730327>

¹⁶ <https://www.france24.com/en/france/20240326-france-denies-supplying-arms-to-israel-for-gaza-war>

¹⁷ <https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>

¹⁸ <https://bip-jetzt.de/die-mv-kathrin-verstoesset-gegen-internationales-recht/>

¹⁹ <https://defence-network.com/letzte-korvette-der-saar-6-klasse-in-dienst/#:~:text=Fast%20zweieinhalb%20Jahre%20nach%20der,2023%20in%20Dienst%20gestellt%20worden.>

²⁰ <https://www.bmvg.de/de/aktuelles/heron-tp-drohnen-fuer-israel-5687836>

²¹ <https://www.timesofisrael.com/israeli-built-flight-school-takes-off-in-greece-as-athens-seeks-edge-over-ankara/>

²² <https://www.haaretz.com/israel-news/security-aviation/2024-03-07/ty-article/.premium/open-source-intelligence-reveals-the-unprecedented-extent-of-u-s-arms-airlifts-to-israel/0000018e-1976-d021-aded-9f77c76c0000>

purchase of Israeli weapons, especially the Spike missiles from the state-owned company Rafael, which Israel is using regularly to massacre civilians in Gaza.²³ These acts of support for Israel's crimes must end.

Ireland: although Ireland rhetorically condemns Israel's atrocities in Gaza, it has allowed the Shannon airport to transit weapons to Israel.²⁴

Italy: Italy's government claimed to have suspended arms exports to Israel after October 7th, which turned out to be untrue. Leonardo continues to trade weapons with Israel.²⁵

Luxembourg: Luxembourg is the headquarters of Israel's spyware company NSO Group. From Luxembourg, NSO Group signs contracts for the distribution of dangerous and illegal spyware, used to violate the privacy and human rights of lawyers, activists, journalists and politicians in the EU and around the world. Luxembourg was warned repeatedly that harboring NSO Group opens it to liability over the criminal acts of this company, but chose not to take action so far.²⁶

Netherlands: like Denmark, the Netherlands is also buying the 155mm PULS artillery from Elbit Systems,²⁷ which has been tested against civilians in the course of Israel's ongoing genocide in the Gaza Strip. The Dutch government is fighting a legal battle and seeks loopholes in order to sell F35 components to Israel even after a Dutch court ruled against those deliveries.²⁸

Portugal: Portugal is in the process of purchasing Israel's underwater drone from the company Elta.²⁹ Portugal has also allowed the ship MV Kathrin illegally carrying weapons to Israel to fly the Portuguese flag. The Portuguese islands of the Azores archipelago are used by the U.S to illegally transit weapons to Israel during the genocide.

Slovenia: after Turkey closed its ports to vessels carrying weapons to Israel, the Slovenian port of Koper was chosen by Israel as an alternative hub for transiting weapons.³⁰ The Slovenian government has refused to search ships which were suspected of transiting weapons to Israel illegally.

Spain: prime minister Sanchez was caught lying when he announced that Spain suspended arms exports to Israel after October.³¹ The public outrage in Spain led to legislation to impose an arms embargo.³² Spain continues to buy Israeli weapons, however, and has a contract with Elbit Systems for producing artillery³³ and with Rafael for Spike missiles.³⁴ Those contracts are illegal.

²³ <https://www.defensenews.com/land/2023/04/10/greece-buys-rafaels-anti-tank-spike-missiles-from-israel/>

²⁴ <https://www.ontheditch.com/military-cargo-plane/>

²⁵ <https://www.atlasofwars.com/leonardo-italys-state-owned-company-involved-in-gaza-conflict/>

²⁶ <https://delano.lu/article/luxembourg-important-business->

²⁷ <https://www.janes.com/osint-insights/defence-news/defence/first-puls-mrl-arrives-in-netherlands>

²⁸ <https://www.government.nl/latest/news/2024/02/12/state-lodges-appeal-in-cassation-against-judgment-on-distribution-of-f-35-parts-to-israel>

²⁹ <https://www.intelligenceonline.com/surveillance--interception/2024/04/25/portuguese-navy-boosts-underwater-intelligence-with-israeli-drone,110219809-art>

³⁰ <https://en.globes.co.il/en/article-israeli-importers-examine-indirect-routes-from-turkey-1001476275>

³¹ <https://www.newarab.com/news/gaza-war-spain-halts-arms-export-licences-israel>

³² <https://novact.org/en/el-congreso-de-espana-aprueba-poner-fin-al-comercio-de-armas-con-israel/>

³³ <https://defence-industry.eu/spain-selects-puls-system-in-eur-700-million-programme/>

³⁴ <https://www.janes.com/osint-insights/defence-news/weapons/spain-procures-spike-ir2-atgw-systems>

Sweden: Sweden has a policy of not supplying weapons to conflict areas, but has allowed the company Aimpoint to export laser scopes for rifles which are used by Israel's military in Gaza, as if the scopes are not a weapon. The scandal was exposed in Swedish media but the export permits were not suspended.³⁵

The complicity of European states and the European Union³⁶ in Israel's genocide, apartheid system, illegal occupation and war crimes committed against Palestinians is both immoral and illegal, as well as shortsighted and unwise. The first voices in European halls who will speak up against the injustice, surrounded by a wall of silence, will not be forgotten.

³⁵ <https://www.etc.se/inrikes/svenskt-bolag-bidrar-till-israeliska-bosaettares-vaald>

³⁶ <https://www.tni.org/en/publication/partners-in-crime-EU-complicity-Israel-genocide-Gaza>