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NATO obligations cannot override international law

Arms-exporting NATO members cannot overlook their international legal obligations by citing alliance commitments.



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An F-35 fighter jet lands at a location given as Israel's Nevatim Airbase in this screengrab taken from a video released on April 14, 2024 [Handout/Israeli army via Reuters]

On September 2, the British government announced the suspension of 30 of 350 arms export licences to Israel. It said these weapons exports could be used to “commit or facilitate a serious violation of international humanitarian law”.

While this announcement was hailed by some as a positive development that reflects growing international pressure on Israel to stop its genocidal war in Gaza, it in no way fulfils the United Kingdom's obligations under international law. In fact, it reflects NATO members' insistence on overriding international law in order to fulfil alliance commitments.

In the context of the ongoing genocidal Israeli war in Gaza and the West Bank, all states have the duty to impose a full arms embargo on Israel. This duty derives from decisions of the International Court of Justice (ICJ) from January and July that concluded Israel is plausibly carrying out genocidal actions in Gaza in violation of the Genocide Convention and is illegally occupying Palestine.

This duty has also been asserted by the UN Human Rights Council and various UN experts. Stopping the flow of arms, energy and other key exports to Israel is meant to ensure the protection of the Palestinian people.

In its [legal note](#) on the suspension of some arms sales, the British government names violations of Israel's duty to enable the delivery of humanitarian aid and the mistreatment of prisoners as probable violations of international humanitarian law. The UK Foreign Office lawyers who drafted the note seem to accept that Israel's engagement in Gaza and its conduct of hostilities are lawful.

This rationale finds little basis in international law because it has been clearly established that Israel does not have the right of self-defence in territories it occupies and its current offensive conduct is well outside the permitted parameters of self-defence. Some have even [argued](#) that its declared military goal of annihilating Hamas is in itself evidence of genocidal intent.

The British government's interpretation fits within the highly questionable anti-terrorism framework inaugurated by the United States "war on terror" in the 2000s and widely accepted by its NATO allies. This framework is not considered a part of customary international law and represents a flagrant attempt to create an exceptional space for powerful states to continue the proliferation of war in the Global South.

The British government refuses to assert that Israel is committing violations in its conduct of hostilities, such as disproportional targeting of civilians or destruction of civilian infrastructure, including hospitals and schools. It justifies its position by saying available information is not enough to make such assertions. Furthermore, it engages with Israel's claim that Hamas is using Palestinian civilians as human shields.

These statements have fragile legal and factual premises. The UK Foreign, Commonwealth and Development Office is treating evidence presented by Israel as more credible than evidence presented by Palestinians despite Israel's rich history of pathological lying. Furthermore, as repeatedly asserted, [the human shields argument](#) has been historically used in bad faith to justify mass civilian casualties in settler colonial contexts.

The British government has made clear that it will continue to supply parts for the F-35 fighter jet to Israel under a NATO programme despite the fact that this aircraft has been used against civilians in Gaza. In his statement to the House of Commons, Foreign Minister David Lammy justified this exemption by stating that the UK's participation in the programme is "crucial to wider peace and security".

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This choice of words is ironic given that Israel's conduct in Gaza and generally in the Middle East [threatens](#) international peace and security. The notion of "peace and security" is also a cornerstone of the UN Charter, and UN member states have the obligation to preserve them.

Lammy, of course, does not refer to the UN Charter but to NATO's securitised language. According to the military alliance's logic, "peace and security" is whatever serves the current world order spearheaded by the US.

The North Atlantic Treaty, which established NATO, states that the security obligations of the members do not override international law. In practice, however, as the current situation illustrates, state members prioritise NATO obligations over international law. They mask this lack of adherence through fragile interpretations of the relevant law and facts.

NATO states are in defiance of [the ICJ's July decision](#) on the illegality of the Israeli occupation, which clearly established that security concerns cannot override international law. In his separate declaration on the issue, [ICJ Judge Dire Tladi](#) wrote:

"As a first general point, when addressing security concerns, it should be recalled that all States, and not just Israel, have security interests. This includes Palestine. Often, when the "security concerns" claim is made, it is as if only Israel has security concerns or that somehow, Israel's security concerns override those of Palestine's. The second general point to make is that security interests as such, no matter how serious or legitimate, cannot override rules of international law, a point made by the Court."

Similar to the UK, the Netherlands has also refused to disengage from the F-35 combat aircraft programme despite a court decision ordering a suspension of exports to Israel. The Dutch government has been accused of selling parts meant for the Israeli army to the US, which then re-exports them to Israel. In July, a Dutch court refused to prevent the government from doing so and allowed the programme to continue. Again, this decision is not consistent with international law.

Other NATO members, including France and Germany, have also disregarded their international legal obligations and continued exports of weapons to Israel. [Canada](#) suspended new arms licences but has kept existing licences, meaning that the arms flow will not stop. By far the biggest exporter of arms to Israel – the US – has not stopped sending billions of dollars of arms and ammunition despite human rights organisations repeatedly finding evidence that its weapons and bombs have been used in attacks on civilian targets, causing massive death tolls.

The power of the US asserted through NATO casts a long shadow of normalised illegality. Arms-exporting states are maintaining the flow of weapons in service of geopolitical and economic interests, thus becoming directly complicit in the genocide of the Palestinian people. But international law is clear: The supply of weapons to a state engaged in war crimes, crimes against humanity and a plausible genocide is itself a crime.