



**Briefing for United Kingdom Parliamentarians, House of Commons
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Arms Transfer to Israel in the Gaza Conflict

**Remarks of the Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism, Ben Saul**

Honourable Members

It is my honour to address you as the United Nations Special Rapporteur on human rights and counter-terrorism. I recently led the call by 43 United Nations independent experts for all countries to stop transferring weapons or ammunition to Israel for use in Gaza, since there is a clear risk that they would be used by Israel to violate international humanitarian law.

We also emphasized that arms transfers to Palestinian armed groups are prohibited, given their obvious grave violations of international law.

We welcomed that many countries have suspended arms transfers, and the European Union has discouraged them. A few countries continue to permit exports or provide military aid.

There are four reasons why arms transfers are unlawful. First, all countries have a legal duty to “ensure respect” for international humanitarian law by the parties to an armed conflict. The duty arises under the Geneva Conventions of 1949 and customary international law.

The duty requires all countries to refrain from transferring any weapon or ammunition – or parts for them – if it is expected, given the facts or past behaviour, that they would be used to violate humanitarian law. Transfers are prohibited even if the exporting State does not intend the arms to be used to violate the law, or does not know with certainty that they would be so used, as long as there is a clear risk.

In the present conflict, the risk is clear given Israel’s many violations in Gaza over the past four months. A Dutch Court of Appeal recently ordered The Netherlands to halt exports of F-35 fighter jet parts to Israel. It found that “there are many indications that Israel has violated the humanitarian law of war in a not insignificant number of cases”. As a result, it found there was a “clear risk” that the parts would be used to seriously violate international humanitarian law.

The Court highlighted the extensive civilian casualties; the destruction of 60% of homes and extensive damage to hospitals, water and food supplies, schools and religious buildings; widespread severe hunger; and the displacement of 85% of residents. It also pointed to Israel’s prolific use of imprecise “dumb bombs”; deliberate, disproportionate and indiscriminate attacks; failures to warn civilians; and incriminating statements by Israeli soldiers.

This assessment is consistent with the documentation of violations by the United Nations and its independent experts. Almost 100,000 Palestinians in Gaza have been killed or injured in a few months, and the overwhelming majority are non-combatant women and children.

Israel has rebuffed demands from even its closest ally, the United States, to respect international law. It has not changed tactics since the International Court of Justice ordered it to avert a plausible risk of genocide. Indeed, the humanitarian catastrophe has worsened, with relief still obstructed, deaths rising – including the horror of children now starved to death – and a devastating offensive looming against the last civilian refuge in Rafah.

Secondly, countries that have accepted the Arms Trade Treaty of 2012 have treaty 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.

Thirdly, the Genocide Convention of 1948 requires countries to employ all means reasonably available to them to prevent genocide in another state as far as possible, particularly where they have influence with the other state. This necessitates halting arms exports in light of the International Court’s order to prevent genocide.

Finally, state officials involved in arms exports may be individually criminally liable for aiding and abetting international crimes in Gaza where they knew that the arms would be so used. All other states under the principle of universal jurisdiction, and the International Criminal Court, may be able to investigate and prosecute such crimes.

In closing, international law does not enforce itself. I call on all countries to not be complicit through arms transfers where the risks of violations are so starkly evident, amidst an unrelenting humanitarian catastrophe in Gaza.

Thank you.