

ARMS CASE LEGAL CHALLENGE AGAINST UK GOVERNMENT

Background

On 6th December 2023, Al-Haq and Global Legal Action Network (GLAN), supported by the International Centre of Justice for Palestinians (ICJP), announced the commencement of legal proceedings against the UK government.¹ The filing of the case followed a letter written to Secretary of State for Business and Trade Kemi Badenoch, dated 16th October 2023, in which the organisations set out the obligations under international law which apply to the government's decision making in light of mounting evidence of violations of international law.²

With the government having failed to take the necessary action in response, the Judicial Review was heard at the English High Court of Justice on 19th February 2024, with a request submitted for an expedited timetable for the case and for a mandatory order instructing the suspension of licenses. Following initial dismissal, the Court of Appeals overturned the decision on the 23rd April 2024, paving the way for a court date in October 2024.³ On 13th June 2024, Oxfam, Amnesty International and Human Rights Watch joined the Judicial Review.

Calls for the cessation of arms

The UK government has been made well aware of the risks that UK-made weaponry is being used in operations against Gaza, in actions which likely constitute serious violations of international law. Calls for the immediate cessation of arms transfers to the Government of Israel have been made on 16th October by GLAN and Al-Haq; on 17th October by Campaign Against Arms Trade;⁴ on 8th December by a coalition of UK-based civil society groups including ICJP, Human Rights Watch, and Amnesty International;⁵ and again on the 24th January 2024 by 16 leading humanitarian and human rights organisations including War Child, Oxfam and Save the Children.⁶ On the 23rd February, a joint statement by UN experts called for the immediate cessation of arms to Israel.⁷

The Government's legal obligations

These calls for the suspension of arms sales, and the Judicial Review launched against the government's decision to continue arming Israel, are made in relation to the UK's regulatory framework surrounding arms exports - the Strategic Export Licensing Criteria (SELC). Under this framework, arms cannot be exported where there is a clear risk that they might be used to violate the UK's obligations under international law (Criterion 1) or in the violation of human rights (C. 2b) and violations of international humanitarian law (C. 2c).⁸

Criterion 1 obligations under international law include the prohibitions under the Arms Trade Treaty (ATT), Article 6.3 of which forbids the transfer of arms for the commission of genocide, crimes against humanity, breaches of Geneva Conventions, and attacks against civilians or civilian objects.⁹ The SELC were last updated in December 2021, with a significant update being the enhanced focus on the risk of items being used to commit or facilitate serious acts of violence against women or children – now explicitly cited as a factor to be considered in criteria 2, 3, 4 and 6. According to the UN, women and children are the 'main victims' of the attacks on Gaza, comprising around 70% of the total number of Palestinians killed.¹⁰

¹ Al-Haq. (6th December 2023). '[Legal and human rights groups take UK government to High Court over arms exports to Israel](#)'

² GLAN. (12th January 2024). '[UK Weapons Sales to Israel](#)'

³ Dania Akkad. (23rd April 2024) '[War on Gaza: UK legal challenge over arms sales to Israel revived in High Court](#).' Middle East Eye.

⁴ Campaign Against Arms Trade. (17th October 2023). '[Statement on UK Arms Exports to Israel](#)'

⁵ International Centre of Justice for Palestinians. (13th December 2023). '[UK-based Civil Society Groups call on the Government to immediately halt arms transfers to the Government of Israel](#)'

⁶ War Child. (24th January 2024). '[War Child calls on UK to Stop Sending Arms to Israel](#)'

⁷ UNHCR (23rd February 2024). [Arms exports to Israel must stop immediately: UN experts](#).

⁸ Brooke-Holland, L. (30th November 2023). '[Research Briefing: UK amends its criteria for arms exports](#)', House of Commons Library

⁹ Foreign and Commonwealth Office. (January 2015). '[Arms Trade Treaty](#)'

¹⁰ Lederer, E.M. (20th January 2024) '[Women and children are the main victims of the Israel-Hamas war with 16,000 killed, UN says](#).' AP News.

The UK is also obliged, as a state party to the Genocide Convention, to prevent the commission of genocide using all means within its power as soon as it is made aware of this risk.¹¹ In November 2023, the government was put on notice by the ICJP of the risk of genocide, and the International Court of Justice ruled on 26th January that ‘there is a real and imminent risk that irreparable prejudice will be caused to the rights [of Palestinians].’¹²

With the government therefore made aware of the plausible risk of genocide, continuing to export weapons means that the UK is failing in its duty of prevention, and by arming Israel it may in fact be actively participating. The continued sale of weapons to Israel may also render individuals within government liable for prosecution for having aided and abetted the commission of crimes by Israel as per Article 25 of the Rome Statute.¹³

UK Government position

On 18th December, the Secretary of State for Business and Trade opted not to suspend extant licenses to Israel, nor to stop granting new licenses, and to keep these decisions under ‘continuing careful review’. This decision, recommended by Foreign Secretary Lord Cameron, asserted that there is no clear risk present that items exported to the IDF might be used to commit or facilitate a serious violation of international humanitarian law (IHL),¹⁴ despite the Foreign Office assessment unit raising ‘serious concerns’ about potential breaches of IHL as early as 10th November.¹⁵

In a leaked recording from March 2024, Foreign Affairs Committee Chair Alicia Kearns claimed that the UK government legal advice said that Israel is breaking international law, which would mean the UK would have to cease arms sales immediately.¹⁶ Data released in June 2024 indicated that more than 100 new export licenses items to Israel have been approved since October 2023, leading to a total of 345 licenses.¹⁷ The data also showed that no arms exports had been revoked or refused since October. The UK’s position is at odds with Italy,¹⁸ Spain,¹⁹ the Netherlands²⁰ and others. The Spanish and Italian governments announced that they would end arms exports to Israel whilst a Dutch court orders halt to export of F-35 jet parts to Israel.

Precedent

Arms exports have previously been suspended on humanitarian grounds – with export licenses for Turkey suspended following the invasion of Syria and the assessed risk of a worsening humanitarian crisis in that country. Some arms licenses for naval weaponry for Israel were revoked in 2009²¹ after Israeli military boats fired missiles and shells against the Gaza Strip during a three-week war which killed hundreds of Palestinians. In 2014, twelve licenses were temporarily suspended as they related to parts for equipment possibly used by the Israeli Defence Forces in its 2014 Gaza War,²² a six-week assault that killed over 2,000 Palestinians.

¹¹ United Nations Office on Genocide Prevention and the Responsibility to Protect, 01/2019, ‘[The Convention on the Prevention and Punishment of the Crime of Genocide \(1948\)](#)’, United Nations .

¹² International Court of Justice (ICJ). (26th January 2024). ‘[Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\)](#)’

¹³ International Criminal Court (ICC). (2011). ‘[Rome Statute of the International Criminal Court](#)’

¹⁴ Eadie, Sir J., KC, et al. (12th January 2024). ‘[The King \(on the application of Al-Haq\) v Secretary of State for Business and Trade: Summary Grounds of the Secretary of State](#)’

¹⁵ Apple, E. (19th January 2024). ‘[Revealed: David Cameron advised continuing arms exports to Israel, accepting Israel has a different interpretation of its International Humanitarian Law obligations](#)’, Campaign Against Arms Trade.

¹⁶ Helm. T. (30th March 2024) [UK government lawyers say Israel is breaking international law, claims top Tory in leaked recording](#). The Observer.

¹⁷ Department for Business and Trade. (11th June 2024) [Export control licensing data: 31 May 2024](#). Transparency Data. Export Control Joint Unit.

¹⁸ TOI Staff. (21st January 2024). ‘[Italian FM reveals country ceased arms shipments to Israel starting October 7](#)’. Times of Israel.

¹⁹ TNA, 07/14/2024, ‘[Spain halts arms export licenses to Israel following Gaza war outbreak](#)’, The New Arab.

²⁰ Van den Berg, S., 12/02/2024, ‘[Dutch court orders halt to export of F-35 jet parts to Israel](#)’, Reuters

²¹ Black, I. (13th May 2009). ‘[Britain revokes arms licenses for Israeli navy guns](#)’, The Guardian.

²² DBIS. (12th August 2014). ‘[Government announces findings of review of licensed exports to Israel](#)’, HM Government.