

Working paper by the State of Palestine

Upholding legal obligations under the Arms Trade Treaty: the case of the Palestinian people

Gaza is a besieged occupied enclave of Palestinian land which is home to 2.3 million people, nearly 50% of them children and 70% of them refugees. It is one of the most densely populated places on Earth.

From 7 October 2023 until 21 February 2024 (date of writing of this working paper), Israel, the occupying Power, has unleashed in Gaza the most sustained and intense bombing campaign of a populated area in history, with the explicit stated intent to maximise destruction. More than 65,000 tonnes of explosives have been dropped on Gaza, equivalent in weight to four nuclear bombs of the kind dropped by the United States on Hiroshima at the end of the Second World War. Nearly 30,000 people have been killed—among them more than 13,000 children. This does not account for the over 8'000 more trapped under the rubble, presumed dead or dying a slow death suffocated by the remains of their homes. More than 69,000 people have been injured. In the meantime, Israel continues to target hospitals, doctors, nurses, patients, and the healthcare system has collapsed with not one hospital left that is fully operational in Gaza.

The Israeli Prime Minister vowed to turn Gaza into a “deserted island”. And this is exactly what has been implemented. During the first three months of its carpet bombing campaign, Israel destroyed or rendered uninhabitable 70% of all homes and civilian infrastructure in Gaza. Schools, hospitals, homes, refugee camps, bakeries, mosques, churches: destroyed. Children, infants, men, women, children, doctors, poets, writers, journalists, ambulance workers, UN staff: killed. 85% of the population of Gaza has been forcibly displaced from their homes to so-called “safe places” where they are then bombed. If they do not die of the epidemics and diseases that are spreading in the unhygienic conditions of the crammed schools, hospitals, churches or tents in which they are being forced to live, they are dying from famine, and if not famine, from bombs, and if not bombs, from desperation. The scope and scale of what is being done in Palestine is more than the human mind can grasp.

These are some of the words that eyewitnesses, legal experts or United Nations officials have used to describe Gaza: the most sustained and intense bombing campaign of a populated area in history; the highest number of UN fatalities recorded in a single conflict; the highest number of journalists killed over a four-month period in a single conflict. One Palestinian child killed every 10 minutes. Children between the ages of 5 and 8 reported to be found with single sniper shots to the head. The most dangerous place on Earth to be a child. A graveyard for children. Hell on Earth.

Israel is setting new lows for humanity. And in this frenzy of unhinged genocidal violence, the intent to commit international crimes has been explicitly and publicly stated by Israeli officials and military leaders.

Let us repeat it once again: Collective punishment is a war crime. Forcible transfer is a war crime. The targeting of civilians and civilian infrastructure is a war crime. Using starvation as a means of warfare is a war crime. Blocking the delivery of humanitarian aid is a war crime. Ethnic cleansing is a crime against humanity. Incitement to commit genocide is an international crime. Genocide is the crime of crimes. Moreover, the overall context of the 56-year occupation of Palestine is in itself a grave illegality that threatens international peace and security in contravention to the UN Charter.

On 26 January, the International Court of Justice formally ruled that Israel is “plausibly” committing genocide in Gaza and issued provisional measures in the case *South Africa v. Israel* ordering Israel to take “all measures within its power”, to prevent acts that could amount to genocide against Palestinians in Gaza. Instead of acting accordingly, Israel intensified its military operations in Gaza. Currently, 1.4

million Palestinians who were forcibly displaced from their homes are sheltering in the overcrowded Rafah District, which Israel had told them was a “safe space”, and there they are being bombed. And Israel is threatening a ground incursion, with the aim of pushing them out to Egypt. A ground incursion is likely to lead to mass killings of Palestinians on an even greater scale than the atrocities we have witnessed in the last four and a half months.

It is in this tragic context of unconscionable devastation that we requested an ad hoc discussion among ATT States Parties, Signatories, and other stakeholders, held on 21 February 2024. This situation is of the utmost urgency and demands the utmost attention.

Israel’s actions in the past four and a half months were facilitated with the use of a **wide range of imported weapons, aircrafts, and other equipment**. In light of the facts coming out of occupied Palestine, coming out of the International Court of Justice, the United Nations and countless civil society organisations worldwide, and in light of the law, including Arms Trade Treaty Articles 6 and 7, Common Article 1 of the Geneva Conventions, the International Law Commission’s Draft Articles on State Responsibility, the Convention on the Prevention and Punishment of the Crime of Genocide, we are once again reaching out to **exporting or transit States to urge them to explain their respective policies on arms exports to Israel**, including:

The United States, Germany, the United Kingdom, Italy, the Netherlands, France, the Czech Republic, Canada, Australia, Japan, Norway and other States that may be involved as “transit States” including Greece, Cyprus and Belgium.

Specifically, we would be grateful to receive details of **all extant arms export, transit and brokering licenses (particular or general) for the supply of military items (including components or spare parts) and dual use items to Israel**. This should include **not only direct but also indirect supply**- for example, licenses for items exported to other countries in the knowledge or reasonable expectation that these items would subsequently be exported or incorporated into sub-assemblies or finished items/systems for onward export to Israel. Moreover, **please advise whether any licenses have been suspended, revoked or issued since 7 October 2023**. We also request to be provided with the **status of any license applications currently under consideration and your State’s policy with regard to license applications that might be received at this time**.

We call on States to **provide this information as a matter of urgency** and request the holding of further discussions on this issue.

Finally, we remind all States that in order to retain to abide by their legal obligations, they must cease all transfers of military equipment, assistance, components and munitions to Israel, and revoke all extant licences to Israel and undertake not to grant any further licences until Israel ceases to violate international law; they must halt the provision of any material, equipment or other commodity that may foreseeably be used in the commission of serious violations of international law including international crimes; they must refrain from concluding any military cooperation agreements, including military training and intelligence operational cooperation; they must refuse to have their ports and airports used for transferring arms to Israel. Crucially, States must also cease any imports of Israeli arms. Indeed, Israel is known to experiment its weapons on occupied Palestinians, to then market them as “battle-tested” in order to then sell them to countries across the globe for profit. This is not only morally repugnant, but also illegal and States have a legal obligation not import arms that have been tested in this way.