

Briefing on F-35 Exemption:
Supply Chain, Conduct of Hostilities and Genocide
Campaign Against Arms Trade
December 2024

[CAAT's detailed policy paper on F-35 exemption](#)

F-35 Exemption and Supply chain

It is unprecedented for a UK Minister to cite supply chain issues as the basis of a decision to suspend or grant an arms export licence, particularly when Government has admitted:

- a) that there is a clear risk these items might be used to commit serious violations of international humanitarian law;
- b) assessed that Israel is **not committed to complying** with international humanitarian law (IHL), including in the conduct of hostilities (para 2. and para 5. of Open Position Statement of the Secretary of State.)

Foreign Secretary David Lammy, in his [speech to Parliament](#) on 2nd September, stated he was left *“unable to conclude anything other than that for certain UK arms exports to Israel there does exist a clear risk that they might be used to commit or facilitate a serious violation of international humanitarian law.”* (Criterion 2(c) of the UK's [Strategic Export Licencing Criteria](#).)

The Foreign Secretary stated that the F-35 licence had been exempted by the Business and Trade Secretary from the suspension, because such a suspension would undermine **“the global F-35 supply chain** (emphasis added) that is vital for the security of the UK, or allies, and NATO. Therefore, the Business and Trade Secretary has exempted these licences from his decision.”

Direct vs Indirect exports

The [F-35 licence has been amended](#) by the UK Government to prohibit direct export of F-35 components from the UK to Israel, due to the clear risk of serious violations of international law in Gaza, but the same licence allows indirect transfer via third party countries. (This was not explained in the Foreign Secretary's speech on 2nd September.)

In a [follow up statement](#) the Business and Trade Secretary Jonathan Reynolds specified that *“exports to the global F-35 programme will be excluded from this suspension decision, except where going direct to Israel.”* The explanation given by Reynolds was that *“Due to the nature of the F35 as an **international collaborative programme** (emphasis added), it is not currently possible to suspend licensing of F35 components for use by Israel without **prejudicing the entire global F35 programme** (emphasis added), including its broader strategic role in NATO and our support to Ukraine.”*

International peace and security

The F-35 exemption is not consistent with the UK's legal obligations, and **not even consistent with any lawful departure that the government can make for reasons of international peace and security.**

According to the Government's latest submissions to the High Court '*the F-35 Carve Out is based on detailed advice from the Defence Secretary explaining the collaborative nature of the F-35 programme*', in a letter from the Defence Secretary to the Trade Secretary dated 18 July 2024.

The Defence Secretary's advice stated "***Such a suspension of F-35 licensing leading to the consequent disruption for partner aircraft, even for a brief period, would have a profound impact on international peace and security*** (emphasis added). *It would undermine US confidence in the UK and NATO at a critical juncture in our collective history and set back relations.*"

Evidently, as **direct exports of F-35 parts from the UK were suspended in September**, the judgment is not that Israel itself needs to have F-35s for international peace and security, or, according to their own reasoning, the Government wouldn't have suspended these direct F-35 exports. The only reason that other partner aircrafts would be affected by a suspension of Israel as a named end-user of the F-35 programme, is by a failure to manage the supply chain.

Repeated references to NATO and Ukraine further underline the weakness of the government's argument. Not only is it a distraction tactic, but it essentially means the government's position is that they can't bring the F-35 programme in line with the UK's legal obligations should any end-user use the jet to violate international law. This is unlawful and possibly criminal (in the case of war crimes, crimes against humanity or genocide). Furthermore, it is not plausible that a tracking system for parts from the UK could not be implemented.

F-35 Partner Countries

The Department for Business and Trade [has said](#): "The UK cannot make changes to the F-35 programme unilaterally – any change requires agreement across all Partner Nations". More written parliamentary questions on discussion with partner nations are [here](#). The other F-35 partners are Australia, Canada, Denmark, Italy, Netherlands, Norway and the lead partner is the United States. Effectively, Government are saying that the structure of the programme is such that if any of the 24 F-35 customers reach the "clear risk" threshold, it will never be able to follow its domestic and international legal obligations. F-35 parts being exported to Israel are now the subject of three legal challenges in the UK, Denmark and the Netherlands.

Israel's conduct of hostilities

The government has come to the correct conclusion that Israel is not committed to complying with IHL overall, and this includes conduct of hostilities. This informed the assessment that there is a clear risk UK arms exports to Israel might be used to commit

serious violations of IHL, and the Foreign Secretary's statement to Parliament on 2nd September stating that he was "*unable to conclude anything other than*" this risk exists is absolutely definitive in this regard.

The government has made a number of statements/findings regarding their assessments of Israel's conduct of hostilities. According to the Red Cross [this term](#) 'refers to the means and methods of warfare employed by belligerents in armed conflicts.'

In their Open Position Statement from the Secretary of State, made public in Court by order of the judge on 18th November, it assessed that Israel is **not committed to complying** with international humanitarian law (IHL), **including in the conduct of hostilities** (para 2. and para 5. of Open Position Statement.)

Para 2. states: "*That assessment was based, in summary, on the IHL Cell's analysis that Israel had committed possible breaches of IHL in relation to humanitarian access and the treatment of detainees which undermined Israel's statements of commitment to IHL overall, including in the conduct of hostilities.*"

However on the record of specific incidents, Para 47 goes on to state:

"In relation to Israel's record of compliance in the conduct of hostilities, it was usually not possible to determine whether allegations amounted to possible violations of IHL."

"However, the overall picture was of obvious concern, especially having regard to the number of civilian casualties and the allegations of breaches of IHL that were being made."

This aligns with statements published on 2nd September, (which did not make it clear that the judgment applied to conduct of hostilities overall.) The government [claimed](#) "*it has not been possible to reach a determinative judgment on allegations regarding Israel's conduct of hostilities*", because of a lack of information given by Israel itself, such as "*intended targets and anticipated civilian harm.*"

However their Opening Statement states that the FCDO's IHLCAP Assessments considered 413 incidents of potential violations of IHL by Israel in Gaza. As of the September Decision, the IHLCAP Cell had reached that conclusion [insufficient information to decide either way] in 411 of 413 incidents considered. **We do not have details of these 413 incidents, and questions are needed in this regard.**

The details of these incidents are important in relation to the UK's international obligations as laid out in the Arms Trade Treaty (ATT), in addition to those in the Strategic Export Licensing Criteria.

Article 6(3) of the ATT Provides that: "*A State Party shall not authorize any transfer of conventional arms...if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.*"

Examining hundreds of potential incidents of IHL violations by Israel, and failing to reach a judgment on almost any of them is not credible. This is especially the case in the face of the scale of evidence and multiplicity of findings from authoritative bodies regarding Israel's unlawful conduct of hostilities. Additionally Government is relying on Israel to provide information and evidence of its own crimes, to make these judgments.

Crucially the government at all times has international law obligations regarding war crimes and crimes against humanity. Refusing to make judgments on potential incidents of IHL violations obscures the degree to which the F-35 jets are already complicit in these crimes.

N.B:

On 2 September 2024, the very day the government made its announcement, Danish NGO Danwatch [revealed](#) that an F-35 was used in July to drop [three 2000 lb bombs in an attack](#) on a so-called "safe zone" on Al-Mawasi in Khan Younis, killing 90 people. The attack almost certainly violated IHL and may well have been a war crime.

A UN report in June published an [assessment on six emblematic attacks by the Israeli Defense Forces](#) (IDF) in Gaza last year that led to high numbers of civilian fatalities and widespread destruction of civilian objects, raising serious concerns under the laws of war with respect to the principles of distinction, proportionality and precautions in attack. All of these were with heavy bombs, up to 2,000lbs, the kind which can be carried by F-35s.

Genocide and crimes against humanity

By failing to reach a determinative judgement on conduct of hostilities, refusing to reach a judgment on almost any individual incidents of potential IHL violations, not assessing the overall pattern of these attacks, it appears the methodology being used by the Foreign Office **won't allow the Government to ever reach a point acknowledging the reality of widespread war crimes, crimes against humanity or genocide.**

This is one of the most concerning aspects about the F-35 exemption: not only has the threshold of "clear risk of serious violations of international humanitarian law" been reached, **it now appears there is no threshold of crimes that would force the Government to take action. Indeed they are saying they can't because of the supply chain structure of the F-35.**

The comments by the [Foreign Secretary on 28th October](#) regarding genocide, raise further alarm. He stated "Those terms were largely used when millions of people lost their lives in crises like Rwanda, the Second World War, the Holocaust, and the way that they are used now undermines the seriousness of that term." The definition of genocide, as [per Article II of the Convention](#), is "acts committed with intent to destroy, in whole or in part a national, ethnical, racial or religious group". It does not reference numbers of people killed.

The UK, along with every partner country in the F-35 programme, has an obligation under Article 1 of the Genocide Convention to prevent genocide in Gaza. When asked about this obligation the Foreign Office [has stated](#) "The UK government's long-standing policy is that any formal determination of genocide should be based on the judgment of a competent

national or international court.” **Effectively the government is waiting until it’s been confirmed that a genocide has happened before it will take concrete steps to prevent it.**

This issue has previously been addressed by the International Court of Justice, in the judgment of [Bosnia and Herzegovina v Serbia and Montenegro](#) 2007, which states that it **‘would be absurd’**, to infer that the **‘obligation to prevent genocide only comes into being when perpetration of genocide commences’** (para 431.)

The same judgment states **‘a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit’** (emphasis added).

Key takeaways

- ‘Supply chain’ issues is not a valid defence by governments against complicity in violations of international humanitarian law, war crimes, crimes against humanity, and genocide. Modern electronic stockpile management techniques can allow for the tracing of every single item.
- The Government has effectively shirked its responsibility to regulate the end-use of UK arms exports in accordance with the UK’s domestic and international legal obligations. No explanation has been given thus far as to how this exemption complies with the UK’s international obligations under the Arms Trade Treaty, Geneva Conventions, or the Genocide Convention.
- The Department for Business and Trade [has said](#): “The UK cannot make changes to the F-35 programme unilaterally – any change requires agreement across all Partner Nations”. The other F-35 partners are Australia, Canada, Denmark, Italy, Netherlands, Norway and the lead partner is the United States. Effectively, Government are saying that the structure of the programme is such that if any of the around 24 F-35 customers reach the “clear risk” threshold, it will never be able to follow its domestic and international legal obligations.
- This is not an impossible task, it is simply a task that F-35 partners have refused to undertake. A spokesperson for the F-35 Joint Programme Office [told Middle East Eye](#) that the F-35 supply chain is capable of “controlling material movement based on part/number configuration, no current system, process or business rule is in place to filter out or stop the movement of specific serial numbered material to any specific country based on its country of origin.”
- **Workers involved in administering, manufacturing or transporting items relating to the global F-35 programme are being failed by Government.** There has never been a case where workers have been informed by Government that the

legal threshold to remove an end-user from an arms licence has been met, yet they are being instructed to continue to deliver the items for export.

- **Bringing the F-35 programme in line with the Strategic Export Licensing Criteria requires only the political will to do it.**

Additional Legal Context

The International Criminal Court Act 2001 is one source of domestic jurisdiction over war crimes, crimes against humanity and genocide, to the extent that these have been included in the jurisdiction of the International Criminal Court ("ICC"). Section 50 of the Act provides that for the purposes of the Act, the meaning of "crimes against humanity", "war crimes," and "genocide" are as defined in Articles 7, 8.2 and 6 respectively of the Rome Statute of the International Criminal Court ("the Rome Statute"), the treaty which established the ICC.

Article 8 of the Rome Statute lists the war crimes which come under the jurisdiction of the ICC. These include directing attacks against civilians, disproportionate attacks, wilful killing, and the use of starvation as a method of warfare. Article 7 of the Rome Statute sets out a list of crimes which are crimes against humanity when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". These include murder, extermination, deportation or forcible transfer of population, persecution and enforced disappearance of persons. Article 6 of the Rome Statute criminalises genocide.

Under Section 52(1) of the Act, it is an offence against the law of England and Wales to engage in "conduct ancillary" to a war crime or a crime against humanity. Under Section 55, an "ancillary offence" includes aiding, abetting, counselling or procuring the principal offence.

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