

Fact Sheet: Legal Cases and F-35 Jet Programme

Legal Contexts

All F-35 partners have additional legislation reinforcing their international obligations at either national or European level.

- **Australia's** export control regime is regulated by the Defence Export Control Act 2012, with regard to mandatory criteria found in Defence Export Control Regulations 2013 regulation 8 (and complementary Customs Regulations). This includes consideration of the risk that the goods being licensed, “may be used to commit or facilitate serious abuses of human rights” or “may go to or become available to a country where it may be used in a way contrary to Australia’s international obligations or commitments” amongst a number of other relevant criteria.
- Arms export controls in **Canada** are regulated at the national level under the Export and Import Permits Act (EIPA). Section 7.3(1) states that the Minister of Foreign Affairs is required to review all permits and determine whether the equipment specified could be used to “*commit or facilitate a serious violation of international humanitarian law*”, among other criteria. Under Section 7.4, if there is a substantial risk that any transfers would lead to these negative consequences, and such risks cannot be mitigated, the export must be denied.
- Partners in the **EU**, namely **Denmark, Italy, and the Netherlands** are regulated by the EU Common Position on Arms Export Controls, including Criterion 2 c), which states that member States shall: “*deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.*”
- **Norway:** Norwegian law asserts that the sale of weapons to countries in wars that violate the rules of jus ad bellum is prohibited.
- **The UK** is subject to the Strategic Export Licensing Criteria, including Criterion 2 c):
 “Having assessed the recipient country’s attitude towards relevant principles established by instruments of international humanitarian law, the Government will:
 c) Not grant a licence if it determines there is a clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law.”
- **The US:** Arms transfers to the Israeli government are contrary to US law, which for example, prohibits the transfer of military aid to governments that restrict the delivery of US humanitarian assistance.

Legal Cases: F-35 programme partner countries

Australia

- In **Australia** a group of Palestinian human rights organisations, Al Haq, Al Mezan Center for Human Rights and the Palestinian Centre for Human Rights, represented by the Australian Centre for International Justice, filed for preliminary discovery of all export permits issued since 7 October to Israel in the Federal Court. The case was **discontinued last year**, on account that no permits were issued other than for Australia's own capability.
- However for reasons related to broader issues of transparency, from April to June 2024, the groups engaged in legal submissions and arguments requesting the Defence Minister revoke all current or extant export permits that may go to or become available to Israel and revoke any permits issued to companies that operate on a licence free basis to the US, due to existing treaties.
- As a result of that application, the Government announced in June it was undertaking a review of 66 current or extant permits to Israel. In November it was revealed that Australia had **'lapsed' or 'amended' 16 export licences** to Israel with the review to conclude in December. The Government asserted that the "very high number of civilian deaths" imposed a tougher test on the granting of permits. The groups are concerned that no transparency exists in relation to this review, including whether F-35 parts were in consideration, and whether the reassessments have been done properly according to law, and remain seized of that matter.

Canada

- In January of 2024, Canada suspended the issuance of new export permits for the transfer of military goods to Israel. Later, in September 2024, **Canada announced** it had suspended approximately 30 active export permits to transfer military materiel to Israel. However, all other previously-approved arms transfers to Israel have **continued unabated**, including a **licence** for the direct export of 'Parts and components of Weapons Bay Door of the F-35 Program'. Furthermore, all transfers of F-35 components to Israel through the US are exempt from Canada's individual export permit requirements and therefore would also continue to be transferred. In March 2024, Canadian Lawyers for International Human Rights (CLAIHR) and Al-Haq, together with four individuals, filed an **application for Judicial Review in Canada**. The applicants seek, among other things, to halt the transfer, whether direct or indirect, of Canadian-made F-35 components to Israel.

Denmark

- In **Denmark** a number of organisations have taken a case against the Danish Government, including Amnesty International Denmark, Oxfam Denmark, MS Action Aid Denmark, and Al-Haq. In March, the Danish government announced it was implementing “a very restrictive approach” to arms exports to Israel. However it transpired that these restrictions apply to new export licences only. Existing licences, including those covering exports related to F-35s, remain in place.

Italy

- The **Italian** Prime Minister Giorgia Meloni said in October 2024 that the Italian Government suspended the issuing of all new licences for the export of military materials to Israel from the start of the Israeli operation in the Gaza Strip. However, export licences issued before 7th October are being honoured and have been delivered against during the war.

The Netherlands

- In February 2024 litigation in **the Netherlands** by Oxfam Novib, Vredesbeweging PAX Nederland and The Rights Forum resulted in the Court ordering the Dutch Government to block the export of F-35 parts from the Netherlands to Israel. The court found that there is a clear risk that Israel’s F-35 fighter jets might be used in the commission of serious violations of international humanitarian law.
- In November 2024 the Dutch Supreme Court of the Netherlands was advised by its advocate general to uphold the ruling by the Hague Court of Appeal ordering the Dutch Government to block the export of F-35 parts from the Netherlands to Israel.

UK

- In the **UK** Al-Haq and Global Legal Action Network are taking the UK government to the High Court in a Judicial Review over continued weapons exports to Israel, despite the ongoing violations of international law. The UK Government’s decision on 2 September to suspend 30 arms licences to Israel, excluded components for the global F-35 programme and was taken a day before a hearing was due in the High Court.

US

- Palestinian families supported by DAWN filed a federal lawsuit in December 2024 under the Administrative Procedure Act (APA) challenging the State Department’s arbitrary failure to implement the Leahy Law prohibiting US assistance to abusive Israeli security forces.

- In November 2023 Palestinian human rights organizations, together with Palestinians in Gaza and the US, filed a lawsuit in US federal court against former President Biden, Secretary of State Blinken, and Secretary of Defense Austin for the US officials' failure to prevent and complicity in the Israeli government's unfolding genocide against them. The court found that Israel's assault and siege on the Palestinian people in Gaza plausibly constitutes genocide and "implor[ed]" the Biden administration to examine its "unflagging support" for Israel. Notwithstanding these findings, the court denied the preliminary injunction motion and granted the government's motion to dismiss the case on the grounds that it lacked jurisdiction over the administration's conduct of foreign relations.

Legal cases elsewhere

Germany

- ECCHR has filed several requests for provisional measures against German exports of weapons of war and armaments to Israel, concerning weapons and armaments used in Gaza. Urgent requests have been submitted to administrative courts in Berlin and Frankfurt am Main on behalf of up to five Palestinian plaintiffs, all of whom live in Gaza and have already lost one or more family members as a result of the conduct of the Israeli military. The lawsuits are supported by the Palestinian Center for Human Rights (PCHR) and the Al Mezan Center for Human Rights from Gaza, as well as the Palestinian human rights organization Al Haq from Ramallah in the West Bank.
- In April 2024 lawyers in Berlin filed an urgent application against the German government to stop the approval of war weapons exports to Israel. The urgent appeal was filed on behalf of Palestinians in Gaza who are demanding an immediate halt to the supply of weapons to Israel. The case is supported by the European Legal Support Center (ELSC), Palestine Institute for Public Diplomacy (PIPD), Law for Palestine under the Justice and Accountability for Palestine Initiative, and Forensis.

Belgium

- A group of Belgian NGOs filed a criminal complaint against the Israeli shipping company ZIM for violating Belgium's arms trade decree in May 2024. The NGOs filing the complaint include 11.11.11, Association Belgo-Palestinienne, Al-Haq Europe, Broederlijk Delen, De-Colonizer, Vrede vzw, Oxfam and Vredesactie.

France

- In a decision handed down on 18 June 2024 the Paris Court of Appeal overturned the decision taken by the Bobigny court on 14 June, which had banned the entry of Israeli delegations and Israeli arms subsidiaries into the EUROSATORY arms fair. Al-Haq and its partner organisations Action sécurité éthique républicaines (ASER), Association France Palestine Solidarité (AFPS) had filed an interim injunction against COGES, the organiser of the EUROSATORY arms fair, to take effective measures to prevent Israeli arms companies and their subsidiaries from selling their technologies in France.
- In October 2024 Al-Haq and partners filed a legal notice calling on SOGENA, Organiser of EURONAVAL 2024, to take all measures to prevent weapon sales likely to be used in crimes in the OPT and Lebanon. The notice was filed on behalf of the organisations Al-Haq, EuroPalestine, UJFP, Stop Fueling War and Aser, and the collectives Stop Arming Israel France, Urgence Palestine, Les Comités d'Etudiants en Soutien à la Palestine de Paris.
- In April 2024 11 NGOs including Amnesty International France, ASER and Attac filed a court case to force France to halt arms deliveries to Israel.