

Dead letter

How the UK government's arms export policies have eviscerated international humanitarian law



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Contents

Executive Summary 1

Yemen
Gaza
Conclusions

1. Introduction 5

1.1. The rhetoric of erasure and genocide

2. The UK export licensing system and international law 9

2.1. Types of export licence
2.2. The process for deciding arms export licensing
2.3. The Strategic Export Licensing Criteria
2.4. Interpreting the criteria

3. The Saudi war in Yemen, and the first judicial review 14

3.1. The UK's arms sales relationship with Saudi Arabia
3.2. The war in Yemen and the role of UK arms
3.3. The government's position
3.4. CAAT's first judicial review

4. The government's new decision and the second judicial review 24

4.1. The second judicial review and the government's assessment methodology
4.2. CAAT's analysis
4.3. Epilogue: What CAAT's judicial reviews achieved

5. Israel's genocide in Gaza and the government response 30

5.1. Brief background to the war and genocide in Gaza
5.2. The Conservative government's response

6. The partial suspension, the F-35 carve-out, and Al-Haq's judicial review 34

6.1. The F-35 "Carve-out"
6.2. The government's approach to IHL assessments
6.3. Al-Haq's legal challenge
6.4. Analysis and implications
6.5. The Genocide Convention

7. Conclusions and recommendations 43

7.1. Recommendations to government
7.2. Reflections for campaigners

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Executive summary

UK arms export licensing rules are supposed to prevent the export of arms that might be used for serious violations of International Humanitarian Law (IHL – the ‘laws of war’). Yet during the Saudi-led bombing campaign in Yemen from 2015-2022, and Israel’s ongoing genocidal war in Gaza since 2023, the UK has allowed the supply of arms to Saudi Arabia and Israel respectively that have been used in the large-scale killing of civilians. This report lays bare the ways in which this system is fundamentally broken, or rather rigged in favour of pre-determined conclusions.

The UK is Saudi Arabia’s second biggest arms supplier after the US, and UK Tornado and Eurofighter combat aircraft played a major role in the war in Yemen. The UK continued to supply new Eurofighters, along with bombs, missiles, and constant maintenance and logistics support and spare parts supply, throughout the war.

The UK supplies various components of military equipment to Israel that are used in Gaza, most notably for Israel’s F-35 combat aircraft, with 15% of each plane built in the UK. The Conservative government in power up to July 2024 allowed arms sales to continue unrestricted, while the subsequent Labour government suspended some licences, but allowed the crucial F-35 component supply to continue in an explicit and unprecedented exception to the export licensing rules.

In each case, this was in spite of overwhelming evidence of large-scale killing of civilians from the beginning of the wars. These permissive arms export policies are frequently combined with rhetoric that justifies large scale civilian death as a necessary cost of achieving military goals.

Both cases were the subject of legal challenges. These cases allowed a unique insight, through the evidence and arguments presented by the government, into the way export licence decision-making is made, and reveals a process designed to reach a pre-determined conclusion, that the arms sales must continue. In this way, successive governments have effectively eviscerated the role of IHL in arms export policy, and nullified the UK’s international obligations under the Arms Trade Treaty (ATT), the Geneva Conventions, and the Genocide Convention.

Yemen

The UN has estimated that the war in Yemen, which began in March 2015, had killed 377,000 people by the end of 2021, either directly through armed conflict or the resultant humanitarian crisis. The UK government expressed full-throated support for the Saudi-led war effort, and committed itself to supplying all the munitions, maintenance, support and logistics needed by Saudi Arabia to prosecute the war. This continued even as evidence of war crimes committed by coalition air strikes mounted, including indiscriminate attacks on populated areas, hospitals, mosques, public gatherings, and food, water, energy and transport infrastructure, combined with a crippling blockade of rebel-held areas.

The government insisted first that Saudi Arabia and its allies were complying with IHL, then that they had not found evidence that they were *not* complying with IHL. It was only in the face of CAAT's first judicial review challenge that it was revealed that this lack of evidence was the result of a deliberate choice not to look for it – the government had made no assessment of the hundreds of allegations of violations of IHL presented to it, instead relying on its own contacts with Saudi officials to conclude that Saudi Arabia was committed to IHL, and therefore there was no risk of violations taking place.

This failure to even attempt to assess alleged violations was too much for the courts, and in 2019 the Court of Appeal ruled that the government's decision-making over export licences to the Saudi coalition was "irrational and therefore unlawful". It ordered the government to retake the decisions on a lawful basis, insisting that the "attempt had to be made" to assess alleged violations, as a necessary part of deciding whether a risk of future violations existed. Meanwhile, no new export licences would be issued.

However, a year later, the government announced that it had completed this court-ordered review, and had concluded that it had identified a small number of 'possible violations' of IHL, but that these did not constitute a 'pattern', but were rather 'isolated incidents'. It thus concluded that there was no clear risk of further violations, and that arms sales could continue.

CAAT's second judicial review, challenging this new decision, revealed the government's methodology in reaching this conclusion, flying in the face of evidence from the UN and Yemeni and international human rights groups. The government had relied extensively on reports by the Saudi coalition's own internal Joint Incident Assessment Team (JIAT) to assess whether individual incidents were possible violations, and where JIAT investigations had not been conducted – about half the alleged incidents - concluded in almost all cases that there was insufficient information to make an assessment; these incidents were not even considered 'possible' violations.

Moreover, the government had applied a restrictive definition of what counted as a pattern of violations, and argued that the 'isolated incidents' they had identified fell well within the 'margin of error' of such intense military operations. This is a concept with no basis in international law.

This methodology was, unfortunately, accepted by the courts as one which the government was rationally entitled to use – however, it appears clearly designed to minimise the number of incidents classified as possible violations, and then moreover dismisses these as 'isolated incidents', effectively brushing aside the huge civilian harm they represent, to allow arms sales to continue.

Gaza

At the time of writing, the death toll from Israel's war on Gaza has risen to 73,789, while the number of injured people has reached 174,798. Over 20,000 of those killed were children.

Following the Hamas attacks of 7th October 2023, the UK government extended strong support for Israel's attack on Gaza in response, with no more than rote caveats on the need to respect IHL. They maintained this support for many months, even as Israel killed hundreds of civilians daily, and imposed a near total blockade – a move which, infamously, then opposition leader Keir Starmer initially supported.

The government avoided a clear response to whether Israel was complying with IHL for as long as possible. Faced with a legal challenge from Al-Haq, they fell back on a line that took the Yemen reasoning to an absurd extreme: since they did not have information for any incident on Israel's targeting as to *why* they attacked any particular target, they did not have enough information to assess whether any such incident might be a violation of IHL. Essentially, an attack could only be assessed to be a violation if Israel provided information to confirm it so. As with Yemen, this approach represents a form of 'strategic ignorance', designed to ensure continuing arms sales.

After Labour came to power in July 2024, they reviewed their policy, and announced their conclusion that Israel was not committed to IHL. This was specifically in relation to their denial of access to aid, and their treatment of Palestinian prisoners; as to the conduct of hostilities itself by Israel, they only admitted to 'concerns'. Nonetheless, the government acknowledged there was a clear risk that UK-supplied military equipment might be used in IHL violations, and thus suspended 29 licences for equipment that could be used by Israel in Gaza.

However, they made one huge exception to this suspension, namely the supply of components for the F-35 combat aircraft, so long as these exports went via the United States or the global pool of spare parts for the aircraft managed by the US. They argued that, once exported, they could not control where F-35 components were sent, and that therefore they could only stop them reaching Israel by stopping their supply altogether, supposedly harming global peace and security.

To make this exception, they invoked a clause completely setting aside the Strategic Export Licensing Criteria (SELC) that govern export licensing, including those relating to IHL, human rights, and the UK's international obligations under treaties such as the Genocide Convention.

When Al-Haq's challenge, focusing on the F-35 'carve-out' came to court in 2025, the court allowed the government's decision to stand. Crucially, the court stated that, with the SELC set aside, key aspects of international law had no 'domestic foothold' in UK legislation; the question of whether the government was complying with such treaties was therefore non-justiciable.

Conclusions

Through a combination of shifting legal and political reasoning, strategic ignorance, and when all else fails, the complete abandonment of export licensing rules, UK governments have effectively nullified the impact of IHL on arms export decisions. With the courts deferring to the executive on matters of international law and national security, an apparently perfect firewall has been created between international law and arms export policy. International Humanitarian Law was supposed to be an absolute minimum, universal standard for the protection of civilians in armed conflict; but in UK law and policy it has been gutted, leaving civilians in Yemen, Palestine, and beyond with nothing.

Recommendations to government

Given this record of utter wilful blindness and indifference from successive governments, there has been little evidence to suggest that the UK Government is an institution interested in a judicious assessment of evidence

and ideas. Nonetheless, the new government has an opportunity to change course, and it is important to reiterate the core demands, not just of CAAT, but those shared by a significant range of civil society and international legal experts around the world. Namely,

- The UK government should stop all arms supplies to Israel for so long as its genocide in Gaza and denial of freedom, dignity and self-determination for the Palestinian people continues;
- This should involve a two-way arms embargo, ending all arms purchases from and sales to Israel;
- So long as the genocide in Gaza continues, states must take all possible measures to prevent, halt, and punish this genocide, including political and economic sanctions on Israel. A ban on trade with illegal Israeli settlements, and sanctions on those participating in the settlement enterprise, is a bare minimum;
- The UK should close the loophole in the export licensing system that allows for the Strategic Export Licensing Criteria (SELC) to be set aside at the whim of the government;
- The government should introduce legislation to write the UK's legal obligations on the protection of civilians in conflict, including the Genocide Convention and the ATT, into domestic law;
- The government should adopt a precautionary approach to evaluating the risk of human rights abuses, IHL violations, and other key aspects of the SELC, rather than the present approach of requiring almost absolute proof of violations before it will refuse or suspend licences.

Reflections for campaigners

The cases also raise serious questions for activists and civil society as to how to pursue campaigns and engage with the government and the legal system, in the face of governments that are so single-minded in their determination to protect the interests of the arms industry and relations with key military allies, and the deference of the courts to the government.

But it would be wrong to abandon the legal system entirely – even when unsuccessful, such cases can be instrumental in revealing the government's information sources and decision-making processes, that would otherwise not be in the public domain. They provide an opportunity for much wider media coverage of the issue than in normal. And even partial and temporary wins such as CAAT's first judicial review on arms to Saudi Arabia, can have a significant impact on the ground in the conflicts they relate to.

Ultimately, international law and fundamental human rights do not uphold themselves, and governments cannot be trusted to do so of their own volition. Strategic interests and the power of the military industrial complex tend to dominate such concerns in a great many cases. Even the weight of public opinion is rarely on its own sufficient. Activists and civil society must reckon with the fact that government commitment to the arms trade is exceptionally strong, and can withstand adverse headlines, general popular distaste, and even the loss of votes.

To conclude, the arms export control system is rigged and broken. Only a radical uprooting of the systems of power and interest that underlie it can bring about real change.

1. Introduction

The past 10-15 years have been marked by political upheaval and crisis, a retreat from democracy in much of the world, and an upsurge of armed conflict where the norms of international law established after the end of World War 2 have been increasingly flouted by all sides. One of the most damaging trends has been a continual lowering of the bar regarding the killing of civilians in conflict. We have seen, in some quarters, a proliferation of political rhetoric that seeks to characterise military action in which large numbers of people are killed as a necessity, and a corresponding increase in civilian deaths in conflicts globally.¹

Despite the government's decision² on 2 September 2024 to suspend arms export licences to Israel, which the government assessed were for use by the Israeli military in Gaza, they are still allowing the supply of crucial components for Israel's 45 F-35 combat aircraft, so long as they are supplied indirectly via the US or other countries, rather than directly to Israel. These are used to bomb Gaza, at an extraordinary level of intensity, requiring a constant supply of spare parts. Government ministers, such as Foreign Secretary David Lammy, often seek to minimise this, and even claim, falsely, that they have completely ended the supply of military equipment for use by Israel in Gaza. But, by its own admission at the time of the decision, the government accepts that these UK-supplied components may well be used by Israel to violate International Humanitarian Law (IHL, also known as the "laws of war") in Gaza.

While the UK's direct role in these conflicts has been limited, it has been a steady and at times enthusiastic supplier of arms to warring parties engaged in egregious violations of IHL, notably Saudi Arabia during its war in Yemen, and Israel during its ongoing genocidal war in Gaza and wars in Lebanon and Iran.³ These arms sales have continued in spite of the UK's arms export control laws that, on the face of it, ought to have made them impossible, not to mention the UK's participation in and strong support for the Arms Trade Treaty (ATT).

From CAAT's experience as an organisation campaigning for an end to the global arms trade, and having been the claimant in two judicial reviews challenging UK arms exports to Saudi Arabia, it has become clear that this extreme violence against peoples, and the lengths that the government has gone to protect and sustain this violence, has played a major role in sustaining these devastating conflicts. Accordingly, the UK shares responsibility – along with the US, Russia, and others – for the undermining of IHL and of any semblance of a rules-based international system.

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¹ See e.g. <https://www.statista.com/chart/35559/documented-conflict-related-deaths-of-civilians/>

² <https://www.gov.uk/government/news/uk-suspends-around-30-arms-export-licences-to-israel-for-use-in-gaza-over-international-humanitarian-law-concerns>

³ The UK has also been a major supplier of arms to Ukraine in the face of Russia's invasion. While Ukraine has been accused of violations of IHL in the course of the war, these have not been of the widespread and systematic nature that has characterised the wars in Yemen, Gaza and Lebanon. This conflict, and the UK's role in arming Ukraine, is not discussed in this report.

This report exposes how, in the face of the egregious killing and abuses committed by the countries it has armed, and the unspeakable human suffering caused, the UK government has used a series of bureaucratic and legalistic devices to circumvent UK arms export control law. In doing so, the government evades responsibility for upholding the principles of IHL, and even the duty incumbent on all states to prevent genocide.

Whatever the legal reasoning used, the conclusion has been pre-determined: the arms sales must go on.

In relation to UK arms exports, there is moreover a catastrophic accountability gap and democratic deficit. It seems the government will go to any lengths to secure impunity for its allies, and the government's own role in abetting and abetting those crimes. This issue could not be any more urgent.

We have taken two judicial reviews against the government's decision to continue arming Saudi Arabia throughout the war in Yemen despite overwhelming evidence of war crimes. As a result of one of these challenges, we successfully halted new licences being issued for a year. Yet, once again, the government found a way around this ruling to find an interpretation of the UK's export licensing laws that allowed arms sales to resume, and to survive subsequent judicial review.

When it came to arms sales to Israel, faced with a legal challenge from Palestinian human rights group Al-Haq, the government suspended some licences, but went even further – it invoked a little-noticed clause in the export control rules to completely set aside the normal licensing criteria, most notably that relating to IHL, to allow the continued supply of components for Israel's F-35 combat aircraft, arguably the single largest and most significant element of UK arms sales to Israel.

1.1. The rhetoric of erasure and genocide

Successive UK governments (and in the case of Israel, politicians from the Official Opposition) have not only supported continuing arms sales; in many cases it has appeared that, in its support for continued arms sales to Saudi Arabia and Israel, the UK government has upheld a genocidal logic of erasure in relation to the Yemeni and Palestinian victims of these wars. This has been done in the name of mantras such as “maintaining international peace and security”, or the right of nations to “self-defence”. They have even at times encouraged Israel as it actively committed crimes against humanity.

Then Opposition Labour Party leader, later Prime Minister, Sir Keir Starmer, was asked during a radio phone-in on 11 October 2023, if Israel had the right to cut off all power and water to Gaza, as the Israeli government had announced. He answered “I think that Israel does have that right” – a flagrant contradiction of every principle of international humanitarian law.⁴

⁴ <https://www.middleeasteye.net/news/israel-palestine-war-keir-starmer-criticised-right-cut-gaza-water-power>

Nine days later, he walked back the statement,⁵ but the damage had been done, and the clear message communicated that the opposition, no more than the government, would seek to place few if any constraints on Israel's conduct in Gaza.

Similarly, in November 2023, then Labour Shadow Foreign Secretary David Lammy said: "I understand why so many are calling for a ceasefire now. We all want the bloodshed and suffering to end. But a ceasefire now would just embolden Hamas."⁶

Applying similar logic, former Conservative Prime Minister Boris Johnson wrote in April 2024, by which time the extent of the genocide was abundantly clear, that it would be "insane" for the UK to end military support, which he said would be "willing the military defeat of Israel and the victory of Hamas".⁷ He continued, "Remember that in order to win this conflict, Hamas only has to survive. All they need at the end is to hang on, rebuild, and go again." He goes on to say: "We see the suffering of Palestinian women and children and it weakens our resolve."

Such consensus illustrates how genocidal logic infiltrates not just arguments on why the UK should continue to arm, but is at the centre of the understanding of conflict and resolution put forward by many senior UK politicians. There is an implication that there is no resolution, and there cannot be resolution. The only path forward is elimination, erasure and genocide. The elimination of peoples is the goal, not any transformation of the dynamics or structures that have led to this conflict. Hamas (which according to the government's own submission to the High Court includes all Palestinian men as they only describe women and children as civilians) might hang on and 'rebuild'.

The logic of such argumentation is that one cannot call for a halt to death and destruction, because to do so would embolden Hamas. If one insists on the application of international law, it would embolden Hamas. If one calls for an end to the killing, it would embolden Hamas. Therefore the killing must take place.

The methods that the government have used to continue to issue arms export licences, are another expression of this logic. The global militarised economic system that we live within, and the UK's position in it must be sustained at any costs.

In Yemen, the UK government's position was that the Saudi-led coalition was fighting a justified war to restore the legitimate government of Yemen following the takeover of much of the country, including the capital Sana'a, by the Houthi rebel movement. The imperative to restore the "legitimate order" apparently justified or outweighed the thousands of civilians killed in coalition bombing, the destruction of ancient cities, schools, hospitals, mosques, and crucial infrastructure including agricultural and water facilities, and a blockade that imposed malnutrition and starvation on millions. One UN estimate suggested that, by the end of 2021, the war

⁵ <https://political-lies.co.uk/i-was-not-saying-that-israel-had-the-right-to-cut-off-water-food-fuel-or-medicines/>

⁶ <https://www.theguardian.com/world/2023/nov/04/labour-will-work-for-a-palestinian-state>

⁷ <https://www.dailymail.com/debate/article-13276141/BORIS-JOHNSON-insane-Britain-ban-arms-sales-Israel-sooner-denounce-idea-better.html>

had caused 377,000 excess deaths, with the Saudi bombing and blockade a leading cause. Even as the failure of the war to achieve its stated goals became apparent, and the civilian toll mounted, the UK's determination to support its Saudi ally, politically and with arms sales, was maintained.

The rest of this report tells the story of the UK's role in arming these two conflicts, and the shifting justifications used to allow the arms sales to continue, in the face of public outrage and legal challenges, and how these justifications have steadily undermined the UK's respect for international humanitarian law, rendering this cornerstone of post-World War 2 international law effectively a "dead letter".

Section 2 begins by setting out the UK's arms export licensing system, and the role of IHL within this, as well as some of the key principles of IHL.

Section 3 discusses the Saudi war in Yemen, the government's response, and CAAT's first judicial review that attempted to challenge UK arms sales to Saudi Arabia. **Section 4** explains how, after CAAT's Court of Appeal victory in the first judicial review, the government applied a new set of reasoning to allow it to resume export licensing to Saudi Arabia, and CAAT's (unsuccessful) 2nd judicial review challenging this.

Section 5 moves on to Israel's genocidal war in Gaza, and the response of the then Conservative government, and how the government tried to avoid coming to any conclusion on Israel's violations of IHL. **Section 6** discusses the policies adopted by the new Labour government from September 2024, including the partial suspension of export licences to Israel and the "carve-out" for the F-35, and Al-Haq's legal challenge to this decision, unpicking the government's logic, accepted by the courts, that allowed the government to jettison its supposedly 'rigorous and robust' export control rules in their entirety. It also discusses how the UK has evaded its responsibilities under the Genocide Convention in order to allow continued arms sales.

Section 7 concludes, presents policy recommendations, and considers the implications for civil society, in the UK and internationally, in their efforts to uphold basic human rights in the face of governments that seem determined to undermine the very concept.

2. The UK export licensing system and international law

The export of controlled goods, i.e. military goods and dual-use goods, requires an export licence from the government to be legal. This includes equipment, software, and technology. “Military” goods refer to goods that are specifically designed or adapted for military use, while “Dual-Use” goods refer to certain categories of goods that have both military and civilian applications. A complete list of goods subject to strategic export controls (military and dual use) is available [here](#)⁸. The regime governing export control, including export licensing, is based on the Export Control Act of 2002, and the Export Control Order of 2008, implementing the Act. As part of the Act, the government must set out a set of official guidance to govern how export licensing decisions are to be made. This guidance includes the Strategic Export Licensing Criteria (SELC), discussed below.

2.1. Types of export licence

There are three principal types of export licence:

- 1) Single Individual Export Licences (SIELs). These authorise the transfer of a fixed quantity of specified goods (equipment, software, and/or technology) to a specified end-user, for a specified value, during the period of validity of the licence, which is generally 2 years. These are the only type of export or trade control licence to which a financial value is attached.
- 2) Open Individual Export Licences (OIELs). These authorise the transfer of unlimited quantities of specified goods to end-users in one or more destination countries, with no limit on value, for the period of validity of the licence, which is generally either 3 or 5 years.
- 3) Open General Export Licences (OGELs). These are pre-issued licences, covering one or more destinations and a specified list of goods or categories of goods. Companies may register for these OGELs, subject to certain conditions. Once registered, companies can export unlimited quantities and values of goods covered by the licence to destinations covered by it, subject to certain conditions.

2.2. The process for deciding arms export licensing

Applications by companies for export licences are made to the Export Control Joint Unit (ECJU), which sits within the Department for Business and Trade (DBT)⁹. However, the export licensing process also involves the Ministry of

⁸ <https://www.gov.uk/government/publications/uk-strategic-export-control-lists-the-consolidated-list-of-strategic-military-and-dual-use-items-that-require-export-authorisation>

⁹ Recently renamed the Department for Business, Innovation, Science and Trade (BIST)

Defence (MOD) and the Foreign, Commonwealth and Development Office (FCDO), who carry out the evaluation against the various licensing criteria.

Export licences may be issued (approved) or refused, but in some cases the application may be withdrawn by the applicant, or stopped by the ECJU, for example if the company fails to supply additional information requested.

The basis of export licensing decisions is a “case-by-case” analysis relating to the potential use of specific equipment to be exported rather than based on the nature of the recipient government and the activities of its armed forces; for example, the fact that the recipient is a highly repressive regime is not in principle a bar to an export licence, so long as the specific equipment is not considered likely to be used for internal repression.

2.3. The Strategic Export Licensing Criteria

The basis on which the government normally assesses export licence applications is the Strategic Export Licensing Criteria (SELC, or the Criteria), which themselves form part of a wider set of Guidance issued by the Secretary of State for Business and Trade. The current Guidance, including the current version of the SELC, was announced to Parliament in December 2021.¹⁰ Prior to Brexit (and the transition period ending at the beginning of 2021), the UK was bound by the EU Common Position on arms exports, and the SELC were taken directly from those in the Common Position. The December 2021 Guidance made some changes to the Criteria, but also some critically important changes to the broader Guidance, as will become apparent later.

The Criteria remain similar to those of the EU Common Position, and the UK’s export control regime is also influenced by numerous other international agreements and treaties.

The criteria are, in summary:

Criterion 1: “Respect for the UK’s international obligations and relevant commitments, in particular sanctions adopted by the UN Security Council, agreements on non-proliferation and other subjects, as well as other international obligations”

This states that the government shall not issue a licence if the proposed export would violate the UK’s international commitments, including UN and OSCE arms embargoes, and various international treaties and instruments, including the Arms Trade Treaty (the only legally binding international treaty governing the conventional arms trade), the treaties on landmines and cluster munitions, which ban the production, export and use of these weapons, the nuclear Non-Proliferation Treaty, the Missile Technology Control Regime, which controls the proliferation of long-range missiles; and the Wassenaar arrangement, signed by most significant arms exporters, which guides the lists of controlled goods, military and dual use.

Criterion 1 also covers specific UK measures such as full or partial arms embargoes.

Criterion 2 relates to human rights and international humanitarian law, and states that,

¹⁰ <https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/hcws449>

“Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, the Government will:

- a) Not grant a licence if it determines there is a clear risk that the items might be used to commit or facilitate internal repression;
- b) Exercise special caution and vigilance in granting licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN or the Council of Europe;
- 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.”

Criterion 2c) is the key criterion that has been invoked in legal challenges to UK arms exports to Saudi Arabia and Israel.

Criterion 3 relates to internal peace and security (in the recipient country), and states that the government shall not issue a licence if it assesses that there is a clear risk that the proposed export would, overall, undermine internal peace and security. This assessment is to be based on a range of factors including provoking or prolonging armed conflict, and the recipient’s national security needs.

Criterion 4 relates to peace and security more broadly, and states that the government shall not issue a licence if it assesses, once again based on a wide range of factors including conflicts in which the recipient is engaged, and their own national security needs, that there is a clear risk that the proposed export would, overall, undermine peace and security.

Criterion 5 relates to the national security of the UK, overseas territories, and allied and friendly countries, including the risk of exported goods being used against the UK and its allies, and protection of classified information and capabilities.

Criterion 6 relates to “The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism and transnational organised crime, the nature of its alliances and respect for international law.”

This states that the government shall not issue a licence if there is a clear risk that the items could be used to violate international treaties the UK is party to, or commit or facilitate acts of terrorism or international organised crime. It also requires the government to take into account the recipient’s compliance with international obligations, including the use of force, IHL, non-proliferation, etc.

Criterion 7 relates to the risk of diversion of the exported items to an unauthorised end-user or end-use. It sets out a range of factors to be taken into account in assessing this risk, including the risk of unauthorised re-export, diversion to terrorist organisations, the recipient’s export control capacity, the risk of reverse engineering, and the risk of the items being put to an “undesirable” use.

Criterion 8 Relates to whether the export would undermine the economy or sustainable development in the recipient country.

The Guidance issued in 2021 also contains a clause however, which did not exist under the Common Position, that states that “The application of these

Criteria will be without prejudice to the application to specific cases of specific measures as may be announced to Parliament from time to time.” This rather opaque sentence was effectively used to mean, in the case of F-35 component exports to Israel, that the government can make exceptions to the rules whenever it wishes.

International Humanitarian Law

International Humanitarian Law (IHL) is often called the “laws of war”, and includes the Geneva Conventions. It is a body of international law that applies only in situations of armed conflict – as opposed to international human rights law, for example, which applies in both peace and war time – and which is intended to protect civilians in war, as well as military personnel who have been wounded, captured, or are otherwise *hors de combat*. It has *universal* application, which means that it is binding on all states and on any non-state actors who are taking part in armed conflict, such as rebel groups, whether or not they have agreed to it.

IHL forbids, among other things, direct, deliberate attacks on civilians, and civilian objects such as hospitals and schools. It also includes principles such as *discrimination* – that is, attacks that do not discriminate between military and civilian targets are prohibited, the requirement to take all reasonable *precautions* to avoid civilian casualties, and (very hard to interpret) *proportionality*, that is, any incidental or collateral harm to civilians and civilian objects caused by an attack must not be disproportionate to the military advantage gained by the attack on the primary (military) target. In other words, it is OK if an attack on a military target kills some civilians as “collateral damage”, but not too many. (How many is too many is not precisely defined).

IHL also requires warring parties to ensure access to food, medical, and other humanitarian aid for civilians, and governs the treatment of prisoners taken during the course of conflict.

Civilian infrastructure and buildings are considered “protected” objects, but can lose their protection under IHL if they are used by armed forces to carry out attacks. Hospitals and other medical facilities have a special status and can only lose their protection under exceptional circumstances, and even so considerations of discrimination and proportionality still apply.

War crimes involve serious violations of IHL, but not all such violations are war crimes – there must be a “mental element” to the violation, that is there must not only be an act that violates IHL (the *actus reus* in legal terms), but criminal intent, or recklessness, or some other mental state behind the act, the *mens rea*. For example, if an air force bombs a target because faulty intelligence tells them it is being used as a military base, and kills civilians, then this would still be a violation of IHL, but might not be a war crime.¹¹

¹¹ See e.g. <https://www.numberanalytics.com/blog/mens-rea-war-crimes-guide>, also Rome Statute of the ICC, Article 30, “Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.”, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

The term “**Serious violation**” of IHL, as used in Criterion 2c), is a “term of art” in IHL with a specific meaning. It refers to a “breach of a rule [of IHL] protecting important values” involving “grave consequences for the victim”.¹² In particular, the concept of serious violation is different from, and broader than, the concept of a “war crime”. Furthermore, a serious violation of IHL may, in principle, be committed absent any intent, recklessness or, indeed, any mental element on the part of the state which perpetrates the serious violation (for example, by a failure to take all feasible precautions in attack).

2.4. Interpreting the criteria

The proof of the pudding, however, is in how the Criteria are applied and interpreted, and it is here that the government’s claims to a “rigorous and robust” system of export controls is most open to challenge, as will be made clear in the remainder of this report. While the process of assessing export licences is technically meticulous, the political considerations that guide this process, and the framework that governments set for interpreting the criteria, CAAT has regularly argued, create what is in practice a highly *permissive* system, that allows arms exports to continue to highly repressive regimes and countries engaged in brutal armed conflicts, where this is politically convenient and/or important for the arms industry. Professor Anna Stavrianakis has discussed in depth the way this has worked in numerous cases in the past – in relation to India and Pakistan, Israel, Sri Lanka, and Saudi Arabia – in her 2022 report *Missing in Action: UK arms export controls during war and armed conflict*.¹³

Prof. Stavrianakis finds that, rather than being proactively engaged to prevent the harms set out in government policy, export controls are primarily mobilised by the state to manage controversy once criticism emerges from civil society and Parliament. Risk assessments not only fail to take past patterns into account or develop preventive orientations to likely future scenarios, but the control regime is routinely deployed as a means of deflecting calls for restraint. Overall, export controls serve a primarily legitimising function in an attempt to mollify parliamentary opposition, NGO and media criticism and domestic public opinion, and to signal good international citizenship in the face of ongoing exports to conflict zones in violation of international humanitarian and human rights law.

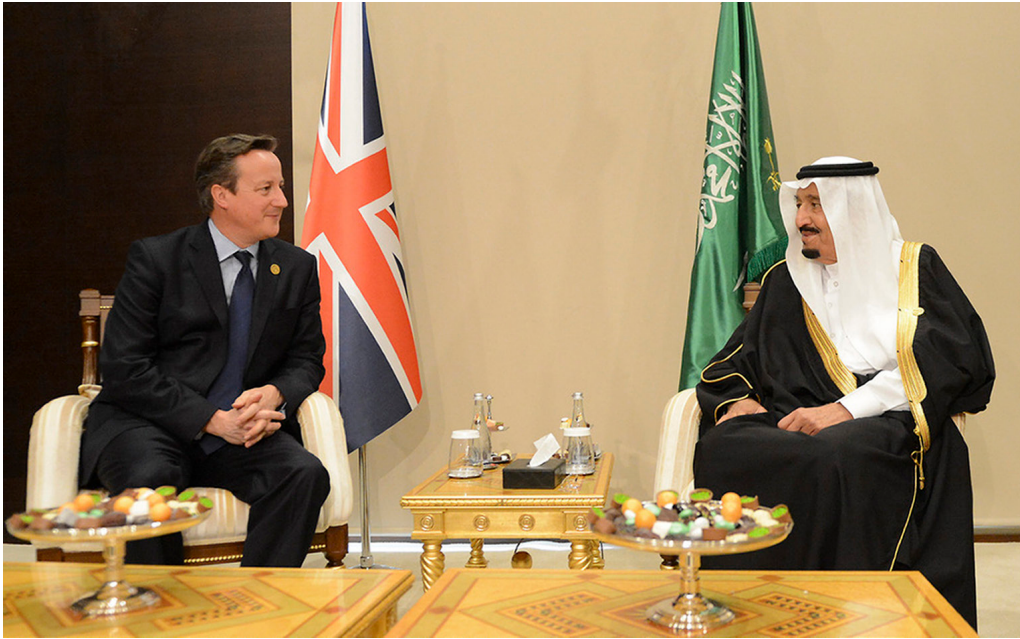
This report builds on this work, and other analysis by CAAT and others, with a particular focus on the Saudi war in Yemen and Israel’s genocide in Gaza, drawing in particular on public statements made by ministers and others in relation to the conflicts and UK arms exports, evidence submitted by the government in CAAT and Al-Haq’s judicial review cases, and the arguments advanced in these cases to justify continued arms sales.

¹² See *Prosecutor v. Tadic*, Appeals Chamber, IT-94-1 Decision on Interlocutory Appeal on Jurisdiction [91], para 94, <https://www.refworld.org/jurisprudence/caselaw/icty/1995/61438>

¹³ <https://worldpeacefoundation.org/blog/missing-in-action-uk-arms-export-controls-during-war-and-armed-conflict/>

3. The Saudi war in Yemen, and the first judicial review

3.1. The UK's arms sales relationship with Saudi Arabia



David Cameron meets King Salman of Saudi Arabia (Credit: Georgina Coupe, Crown Copyright)

Saudi Arabia has been one of the UK's most important arms customers since the 1980s, with the signing of the Al Yamamah deals starting in 1985, involving the sale of combat and trainer aircraft, warships, and missiles. This was followed by the 2007 Al Salam deal for 72 Eurofighter Typhoon combat aircraft, and associated weaponry.¹⁴ The deals were government-to-government contracts between the UK and Saudi Arabia, with BAE Systems the prime contractor producing the weapons or procuring them from other companies. As well as the provision of equipment, the programmes involve extensive ongoing defence cooperation between the UK and Saudi Arabia, including the maintenance and support of the Saudi Air Force by BAE Systems. In 2025, the company had more than 7,000 employees in Saudi Arabia supporting these contracts, working alongside UK MOD personnel.

Then BAE CEO Mike Turner stated in 2005 that the Al Yamamah deals would be worth £43 billion in revenue to the company by 2007. Since then, based on figures from BAE annual reports, they have received nearly £49 billion more up to 2025. Even in years where there have been no new major deliveries – the last Eurofighters were delivered in 2017 – BAE tend to receive around £2.3-2.5 billion from the Saudi Ministry of Defence and Aviation for ongoing maintenance and support.

¹⁴ See <https://caat.org.uk/data/countries/saudi-arabia> and <https://corruption-tracker.org/case/al-yamamah-arms-deals> for more details.

The Al Yamamah and Salam arms sales are therefore far more than simply one-off deals – they are part of an ongoing strategic relationship between the UK and Saudi Arabia that forms a core part of BAE Systems’ business model, especially when it comes to combat aircraft. This fact has a key bearing on decisions taken during the war in Yemen, namely the government’s determination to maintain UK arms sales to Saudi Arabia at all costs.

The extent of this commitment was made clear already in 2006 when, following massive corruption allegations concerning the Al Yamamah deals – amounting to £6 billion worth of bribes paid through various agents and shell companies by BAE to Saudi princes and decision-makers, often with government connivance – then Prime Minister Tony Blair forced the cancellation of an investigation by the Serious Fraud Office into the deals, which had been making substantial progress and was reportedly close to being able to file charges. This unprecedented political interference in an ongoing criminal investigation paved the way for the Al Salam deal for Eurofighters the following year. Later in 2010, BAE Systems were fined \$400 million by the US Department of Justice in relation to corruption in the Saudi and numerous other arms deals.

3.2. The war in Yemen and the role of UK arms

The background to the civil war in Yemen was the overthrow in 2012 of long-time dictator President Ali Abdullah Saleh, as part of the “Arab Spring” uprisings. As part of a Saudi-brokered deal between different Yemeni factions, he was replaced by his Vice President Abdrabbuh Mansour Hadi, following an election in which he was the sole candidate. However, ongoing negotiations between the factions failed to make progress, and dissatisfaction with the post-Saleh government grew.¹⁵

In 2014, rebel forces from the northern Yemen-based Shia group Ansar Allah, also known as the Houthis, who had long held grievances against the central government, allied with forces loyal to their former enemy Saleh, and launched a rebellion against the Hadi government. They swiftly captured the capital Sana’a and most of the populated regions of the north of the country in September of that year.¹⁶ Hadi and his government fled first to Aden in southern Yemen, which remained in government hands, and then to Saudi Arabia. In 2015, as it appeared that the Iranian-backed Houthis could take control of the whole country, a coalition of Arab states led by Saudi Arabia launched a bombing campaign against the Houthis, aimed at restoring the Hadi government, on 25th March 2015.¹⁷

The Saudi-led bombing campaign, accompanied by an either partial or at times total land, air, and maritime blockade of Houthi-controlled regions, quickly brought the war to a stalemate, and failed to restore the Hadi government to control of most of the country, but did cause enormous death and suffering to Yemen’s civilian population. According to the Yemen Data Project, the Saudi coalition carried out over 25,000 air strikes up to

¹⁵ See e.g. <https://www.bbc.co.uk/news/world-middle-east-44466574>

¹⁶ Ex-President Saleh subsequently fell out with the Houthis, and was killed by their forces in fighting in Sana’a in 2017. <https://www.theguardian.com/world/2017/dec/04/former-yemen-president-saleh-killed-in-fresh-fighting>.

¹⁷ See e.g. <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>, and

a ceasefire on 1st April 2022, the majority probably carried out by Saudi Arabia itself, which killed almost 9,000 civilians in attacks that directly targeted civilians (thus not counting ‘collateral’ civilian deaths in attacks on military or uncertain targets). Air strikes hit residential areas, hospitals, schools, mosques, market places, civilian gatherings such as weddings and funerals, agricultural land and infrastructure, water facilities, fishing vessels and fishermen, and other civilian infrastructure, often with no evidence of any nearby military target.

The combination of the blockade and the destruction and displacement caused by the bombing and the war in general led to what at the time was described by the UN as the world’s worst humanitarian crisis. The great majority of the population faced food insecurity, with 2.3 million children under 5 and 1.2 million pregnant and breastfeeding mothers suffering from acute malnutrition by the beginning of 2022, according to the World Food Programme. By the end of 2018, it was confirmed for the first time that nearly one quarter of a million people were facing “catastrophic food consumption gaps”, reaching the highest level, phase 5, of the UN’s Integrated Phase Classification scale for food insecurity – conditions on the verge of famine.

At the time, half of the Saudi air force used for the bombing campaign consisted of UK-supplied Eurofighter Typhoons, the other half being US-made F-16s. In both cases, the continued operation of these aircraft depended critically on the supply of spare parts from the UK and US respectively, and the continuous maintenance and support activity carried out by UK and US companies and personnel on the ground, namely BAE Systems in the case of the UK aircraft. The UK and US both continued to supply bombs and missiles used in the campaign. Bruce Reidel, Senior Fellow at the Brookings Institute, wrote in 2018: “The Royal Saudi Air Force (RSAF) is entirely dependent on American and British support for its air fleet of F15 fighter jets, Apache helicopters, and Tornado aircraft. If either Washington or London halts the flow of logistics, the RSAF will be grounded.”

In fact, the US Administration of President Joe Biden did stop the supply of munitions and support for “offensive operations” in Yemen after coming to power in January 2021 – although they continued to provide spares and maintenance for the F-16s. But UK support for the Saudi war effort – new Typhoon aircraft delivered in 2015 and 2017, Paveway IV guided bombs, Brimstone and Storm Shadow air-to-surface missiles, and the constant supply of spare parts and maintenance and logistic support – continued unabated throughout the war, except when temporarily (and partially) halted by the courts as a result of CAAT’s judicial review. This was in spite of the huge devastation caused by the war, the famine-like conditions it caused, and the brutal murder of journalist Jamal Khashoggi in 2018 by Saudi officials at the orders of Crown Prince Mohammed bin Salman, to global outrage. The UK commitment to the Saudi alliance – and to BAE Systems’ profits – was unshakeable.

***UK support for the
Saudi war effort
continued unabated
throughout the war***

3.3. The government's position

The above narrative has been covered by CAAT and others on various occasions.¹⁸ The purpose of this report is to delve into the details of how the government justified and defended its policies, in public, Parliament, and in court, how these justifications shifted over time, while maintaining the same ultimate outcome, and how the legal and procedural strategies it adopted served to nullify UK and international law. Key to this story are documents presented by the government to the courts in the course of CAAT's two judicial review challenges to the government's decisions to continue allowing export licences for arms supplies to Saudi Arabia.

At the start of the war, the UK's position was one of full support for the Saudi coalition's military action. In a press briefing on the 27th March 2015,¹⁹ Foreign Secretary Philip Hammond stated "We'll support the Saudis in every practical way short of engaging in combat." He further said, "[The] Saudis are, as I understand it, flying British-built aircraft in the campaign over Yemen and we have a significant infrastructure supporting the Saudi air force generally and if we are requested to provide them with enhanced support – spare parts, maintenance, technical advice, resupply – we will seek to do so."

Later that year, the government confirmed that Saudi Arabia was using UK-made aircraft in the bombing campaign, and that the UK was supplying them with Paveway IV guided bombs for the purpose.²⁰ Evidence presented by the Foreign and Commonwealth Office to the Parliamentary Committees on Arms Export Controls (CAEC) in March 2016 gave more detail of UK support.²¹ In response to Saudi requests for support at the beginning of the war, "...the Government has: accelerated delivery of Paveway precision-guided bombs; provided increased training in targeting and weapon use to help improve Saudi processes; provided liaison officers in Saudi headquarters to observe Saudi processes, increase the UK's insight into the air campaign and help to improve maritime access to Yemeni ports by identifying vessels that may be breaching the arms embargo; and scoped and met Saudi training needs to help strengthen defences at the Saudi southern border which has suffered repeated cross border raids." The document also said the provision of munitions was ongoing. On UK arms used in the conflict, the document said "UK-built and licensed Typhoon and Tornado aircraft from the Royal Saudi Air Force have been deployed on combat missions in the Yemen campaign. UK-sourced weapons (including Paveway precision-guided bombs and small numbers of Dual Mode

18 See e.g. <https://caat.org.uk/publications/from-revolving-door-to-open-plan-office-the-ever-closer-union-between-the-uk-government-and-the-arms-industry/>, <https://caat.org.uk/publications/eight-years-of-war/>, <https://worldpeacefoundation.org/wp-content/uploads/2024/03/Missing-in-Action-UK-arms-export-controls-during-war-armed-conflict.pdf>, *Monstrous Anger of the Guns*

19 <https://www.telegraph.co.uk/news/worldnews/middleeast/yemen/11500518/UK-will-support-Saudi-led-assault-on-Yemeni-rebels-but-not-engaging-in-combat.html>

20 <https://questions-statements.parliament.uk/written-questions/detail/2015-10-14/11948>

21 <https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/committees-on-arms-export-controls/use-of-ukmanufactured-arms-in-yemen/written/31698.html>

Brimstone and Storm Shadow missiles) have also been used. In addition, we have in the past supplied the UAE with PGM 500 precision-guided bombs (also known as the Hakim 2) that have also been used in the conflict.”

The government’s approach was not merely that supplying arms to Saudi Arabia for use in the conflict was acceptable and in compliance with the export licensing criteria, and thus something to be permitted, but that it was actually *desirable*, something to be encouraged with a stepping up of supplies of munitions, along with logistics and intelligence support. The war was – as the FCDO’s evidence cited above made clear – a just one. By this time, in March 2016, the evidence of huge civilian loss of life and destruction of civilian infrastructure was overwhelming, but this was presumably considered an acceptable price in pursuit of the war’s – already failing – goals.

The question of whether Saudi Arabia’s bombing campaign involved violations of IHL was critical to arms export licensing decisions. The key clause in the SELC being:

“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.”

As allegations of serious violations of IHL, including war crimes, abounded,²² the government responded with the usual bromides about the UK’s rigorous and robust export licensing system, and that the government took accusations of violations seriously, but had assessed that licences for arms to Saudi Arabia for use in Yemen were in line with the SELC.²³

A written answer by Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, Tobias Elwood, in February 2016, went further. He stated *“We have assessed that there has not been a breach of IHL by the coalition”*.²⁴ However, in answer to a further Parliamentary Question, a further answer on 24 February was phrased differently: “We have not assessed that there has been a breach of IHL by the coalition.” – verbally similar, but critically different in implication. A corrected answer was later recorded: “I regularly review the situation with my own advisers and have discussed it on numerous occasions with my Saudi counterpart. **Looking at all the information available to us we have been unable to assess that there has been a breach of IHL by the Saudi led coalition.** The situation is kept under careful and continual review.”

²² See e.g. Oxfam, “British Aid and British Arms: a Coherent Approach to Yemen?”, 11 September 2015, <https://oxfamlibrary.openrepository.com/server/api/core/bitstreams/9b8a65bf-cad6-44e0-b6d6-08cf92b752af/content>; and Amnesty International, “Yemen: ‘Bombs fall from the sky day and night: Civilians under fire in northern Yemen’”, 7 October 2015, <https://www.amnesty.org/en/documents/mde31/2548/2015/en/>

²³ See e.g. Parliamentary answers in November 2015, <https://questions-statements.parliament.uk/written-questions/detail/2015-11-03/14515>, December 2015, <https://questions-statements.parliament.uk/written-questions/detail/2015-12-10/19536>

²⁴ Court of Appeal judgment in CAAT’s first judicial review, para. 79, <https://caat.org.uk/app/uploads/2020/09/2017-07-10-judgment.pdf>

This, or similar, linguistic construction has now been used for the last 10 years to obscure the realities of potential IHL violations in conflict zones where UK weapons are being used. The exact same formation has been used in relation to the Government's finding of no serious risk of genocide in Gaza.

The government maintained a robust defence of Saudi Arabia's conduct in the FCO evidence to CAEC in March 2016 (para 46):

"In particular we note that: (1) the Saudi-led Coalition is not targeting civilians; (2) Saudi Arabian processes and procedures have been put in place to ensure respect for the principles of IHL; (3) Saudi Arabia is investigating incidents of concern, including those involving civilian casualties; (4) Saudi Arabia has throughout engaged in constructive dialogue with the UK about both its processes and incidents of concern; (5) Saudi Arabia has been and remains genuinely committed to IHL compliance. The Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK's export licensing criteria. We continue to urge all sides to the conflict to conduct thorough and conclusive investigations into all incidents where it is alleged that IHL has been breached.

The government also claimed to be taking an active role (para 38): *"We take all allegations of IHL violations very seriously. We continue to monitor the situation closely, seeking further information where appropriate. The MOD monitors and analyses allegations of IHL violations arising from air strikes in Yemen conducted by the Coalition."*

The strong implication being that a careful assessment was being made of each incident, and that, after careful analysis (from the many sources, including its own intelligence and Saudi reports that the FCO said they had access to), the government had concluded that Saudi Arabia was exercising full compliance with IHL.

What all these statements hid was the shocking fact that the government was making no attempt to assess whether any individual incident may have violated IHL – they "monitored" them, and relied on Saudi assurances and their own impression of Saudi good intentions, but did not actually come to any conclusion about individual incidents. Thus, when Elwood corrected his statement, stating that they had been "unable to assess" that Saudi had violated IHL, the truth the government was hiding was that they were not making any *attempt* to assess whether or not Saudi Arabia had violated IHL! They merely assured themselves that Saudi Arabia intended to follow IHL.

This verbal trickery was noted by the Court of Appeal judges (see below). They said (para 82 of the judgment), *"It would appear that the government's public description of the process moved from an assertion that there was a process of review with a finding of no breaches of IHL, to a more ambiguous formulation, albeit one capable of being read as implying a continuing review and assessment of whether breaches had taken place. Yet there was no such assessment."*

Yet, this was not mere verbal slipperiness. It was language designed to obscure reality, reflecting a decision-making process that was designed to achieve a pre-determined outcome; if no assessment is made of actual, real-life incidents where Coalition bombing had killed civilians, then there was no danger of the government finding out information that would jeopardise this outcome, namely that arms supplies to Saudi Arabia must continue.

What all these statements hid was the shocking fact that the government was making no attempt to assess whether any individual incident may have violated IHL



A Saudi Arabian Eurofighter Typhoon aircraft

3.4. CAAT's first judicial review

The reality behind the government's statements was not revealed until the proceedings for CAAT's first judicial review against arms sales to Saudi Arabia.

CAAT's legal challenge against the government began in January 2016 with a "pre-action protocol" letter to the government, followed by a formal application to seek judicial review in March. After permission was initially refused, a High Court hearing in June led to CAAT being granted permission to bring the case for a full judicial review hearing.

The full hearing was held in February 2017, and in July that year the Divisional Court (a Court presided over by one High Court and one Court of Appeal judge) issued its judgment in favour of the government, ruling that they were rationally entitled to conclude that there was no serious risk of serious IHL violations using UK weapons. CAAT appealed, and was granted leave to appeal in May 2018.

It was in the course of the Court of Appeal hearings in April 2019 that the key evidence regarding the government's decision-making process came to light.

While the evidence presented in court – by CAAT's lawyers and other organisations intervening in support of CAAT – of the horrific levels of death and destruction caused by Coalition bombing undoubtedly made an impact on the courts, this on its own was not considered sufficient to establish a 'clear risk' of serious violations of IHL. For a given attack to violate IHL, it would need to involve a deliberate attack on civilians or civilian objects, or be indiscriminate (unable to distinguish between civilian and military targets), or disproportionate (causing civilian harm out of proportion to any military advantage gained), or otherwise contrary to the principles of IHL. Of course, a government could legitimately interpret the criteria in a precautionary manner, to say that the degree of civilian harm itself created at least a 'clear risk' of violations, unless a clear legal justification *could* be provided for the attacks. But to show that the government's decision was

illegal, it was necessary to establish that the interpretation they applied could not be rationally justified. (See box below on judicial reviews).

The evidence, pieced together from government submissions and ministerial statements, showed that the government had not attempted to assess, for any specific incident where air strikes hit civilian targets, whether or not the attack was likely to be a violation of IHL. Evidence showed that the MOD kept a “tracker” of incidents where IHL violations were alleged, containing over 400 such incidents. Initially, the table used by the tracker contained a column for whether the incident was assessed to be a possible violation, but this column was later removed.

CAAT’s Special Advocates (court-appointed lawyers able to see secret government evidence not available in open court, and to appear in closed hearings), provided key material. The judgment notes (para. 83):

The Ministerial Statement making corrections in relation to Parliamentary Questions and Debates stated: *“It is important to make clear that neither the MOD nor the FCO reaches a conclusion as to whether or not an IHL violation has taken place in relation to each and every incident that comes to its attention. This would simply not be possible in conflicts to which the UK is not a party, as is the case in Yemen”*.

The Special Advocates said: based on the evidence submitted by the Government, this statement was “strictly speaking, generally correct”, but was “potentially misleading by giving the impression that a conclusion is reached in relation to some alleged incidents of IHL violation.”

“The true position (as it appears to the SAs) is that it appears that D has deliberately decided not to make any assessment of the likelihood or otherwise of a breach of IHL in relation to any specific incident contrary to the most obvious interpretation of the assertion by GLD on 16.2.16.”

This was confirmed by evidence supplied by the government (para 84):

On 24 January 2017 the Defendant [i.e. the Secretary of State for Business and Trade, ultimately responsible for export licensing decisions] provided further information, of which the following may be stated in OPEN: “When the Tracker was initially created it was thought that the MOD would be able to come to conclusions in relation to individual allegations of breaches of IHL. Although it was quickly realised that this was not the case this was not immediately rectified administratively. The decision to change the column heading was reached in approximately July 2016. There are no documents recording this decision.”

This assertion by the government of its own lack of ability to come to any sort of judgement on individual incidents served a key tactical purpose in its goal of finding a way to avoid a conclusion of a ‘clear risk’ of IHL violations, and thus to continue arms exports. If no assessment could be made of individual allegations of violations (and, unstated, no conclusion drawn from the sheer number of such allegations, and the appalling level of civilian harm), then the government could instead rely, in its assessment of risk, on its assessment that Saudi Arabia was committed to observing IHL, and had the capability to do so, an assessment based on UK MOD and intelligence services’ close interactions with their Saudi counterparts. The evidence of what was actually happening in Yemen could be effectively discounted.

This breathtaking piece of logical and moral sleight of hand was what

proved too much for the judges. In their judgment, the Master of the Rolls, Rt Hon Sir Terence Etherton; Lord Justice Irwin; and Lord Justice Singh concluded in their judgment that it was **‘irrational and therefore unlawful’** for the Secretary of State for International Trade to have made the export licensing decisions **without making at least some assessment as to whether or not past incidents amounted to breaches of IHL** and, if they did, whether measures subsequently taken meant there was no longer a “clear risk” that future exports might do so. The judges said:

“The question whether there was an historic pattern of breaches of IHL ... was a question which required to be faced.”

They went on to say that while this could not likely be done for all such alleged incidents, it could for many, if not most. “At least the attempt had to be made.”

They also stated (para 141) that perhaps the most important reason for making such assessments is that, if the result of historic assessments was that violations were continuing despite positive efforts towards reducing them, including by the UK and the relevant customer of arms exports, “then that would unavoidably become a major consideration in looking at the “real risk” in the future.”

As a result of this landmark decision, the government was ordered to retake all decisions to export arms to Saudi Arabia in accordance with the law and to stop issuing new arms export licences to Saudi Arabia. The government applied the same restrictions to licences to its coalition partners, UAE, Bahrain, Kuwait and Egypt, for use in Yemen. However, existing licences remained valid. This meant that the maintenance and support of the Saudi air force, including the supply of spare parts, could continue. On the other hand, the supply of munitions was interrupted for a significant period, as the last remaining extant licence (an OIEL) for such munitions expired not long after the court ruling.

However, the government’s efforts to avoid responsibility for enforcing IHL in its arms export decisions were not over.

What is a judicial review?

A judicial review is a case that comes under the category of “Administrative Law” (as opposed to civil or criminal law), whereby a complainant seeks to challenge a decision or policy enacted by a public body, including the central government. The complainant must show that the government’s actions were unlawful, that is that they involved an interpretation of the relevant law that could not be legally justified, or that they violated some other law, for example human rights law, which is often invoked in many such cases.

In the case of CAAT’s judicial reviews against arms sales to Saudi Arabia, the claim was that they violated the UK’s arms export control law, and specifically criterion 2c of the Strategic Export Licensing Criteria (SELC), that forbade the issuing of an export licence where there was a clear risk that the items exported might be used to commit a serious violation of International Humanitarian Law

(IHL). Thus, the claim was that the government's interpretation of this criteria could not be legally justified in the light of the law and the facts. Al-Haq's judicial review over the government's decisions on arms exports to Israel was slightly different, in that it challenged the "carve-out" invoked by the government from the SELC, to allow the continued indirect supply of F-35 components to Israel, despite acknowledging that such exports would violate criterion 2c. The claim was that this carve-out violated international law (such as the Arms Trade Treaty or the Genocide Convention) in a way that was illegal under UK law, and that the carve-out was an irrational application of the export control Guidance that the government said allowed such exceptions to the SELC to be made.

The bar for the Courts to find that a public body has broken the law in a judicial case – especially the elected government – is high. It is not supposed to be the role of the courts to decide what is the *correct* decision or even the best interpretation of the relevant law, only whether the government's decision is legally permissible. Typically, this means that the claimant must show that the government's interpretation of the law and the evidence is "irrational" – that is, no rational person could reasonably come to that conclusion. Arguably, the bar is set especially high in cases that involve foreign, defence and security policy, where courts tend to defer to the government's judgement on what constitutes a threat to national security.

4. The government's new decision and the second judicial review

The government refused to accept the Court of Appeal judgment and was granted permission to appeal to the Supreme Court. This case was due to be heard in November 2020. Then, on 7 July 2020, the Secretary of State for International Trade Liz Truss issued a written statement to Parliament, setting out the outcome of the government's retaking of export licensing decisions, as ordered by the Court of Appeal (the "new decision"). She said the government had determined that any violations of international law were a "small number" of "isolated incidents", that did not indicate any "pattern" of failure to observe IHL, stating that violations occurred at "different times, in different circumstances, and for different reasons". In the government's reasoning, therefore, such violations did not create a "clear risk" of further violations, and that therefore the condition for criterion 2c) for refusing export licences was not met.

The government considered that this fulfilled the Court of Appeal's order to retake the decisions on a lawful basis. They would therefore resume issuing new licences for arms sales for use in Yemen: "clearing the backlog of licence applications for Saudi Arabia and its coalition partners." As a result, the government abandoned its Supreme Court challenge to the Court of Appeal decision.

Hence, the government had moved from a position of enthusiastic support for the war, to one of supporting a ceasefire, but still supporting Saudi Arabia with arms and maintenance and logistics; and from claiming that Saudi Arabia was not violating IHL, to saying they had "not assessed" that they were, to admitting that they hadn't tried to assess if they were, but assuring everyone that Saudi Arabia was very committed to IHL, to accepting that actually Saudi Arabia *had* violated IHL on numerous occasions, but not enough to matter.

The idea that this represents an objective process of assessment, rather than grasping for different ways to reach a predetermined conclusion, beggars belief.

4.1. The second judicial review and the government's assessment methodology

Accordingly, on 26 October 2020 CAAT filed a new Judicial Review application into the legality of the UK government's decision to renew arms sales to the Saudi-led coalition. CAAT challenged the government's new decision on several grounds, including the claim that there were only a "small number" of

“possible violations” of International Humanitarian Law committed by Saudi Arabia, the claim that there was no “pattern” to these violations, and the conclusion that, as a result, there was no “clear risk” that UK arms might be used to commit further violations.

On 20 April 2021 CAAT was granted permission for its challenge to proceed to the High Court, with the judge acknowledging that CAAT’s case was “arguable”. After much delay, the hearing for this second judicial review finally took place from 31 January – 2 February 2023. Unfortunately, on 6 June, the judges handed down their judgment, rejecting CAAT’s case on all grounds.

The basis for the government’s new decision, which was the subject of scrutiny in CAAT’s 2nd judicial review, was an assessment of each of the 486 incidents of alleged civilian harm in the MOD’s tracker.²⁵ They first assessed whether each incident was “credible”, that is whether it is likely that it actually happened. Secondly, for those assessed as credible, whether they were carried out by Saudi Arabia, by another coalition country, or if the perpetrator was uncertain, and thirdly if it was carried out by a fixed-wing aircraft or other means (i.e. excluding attacks by helicopters, artillery, naval vessels, etc.).

Attention was then limited to those carried out by Saudi Arabia, or where the attacker was unknown, and with fixed wing aircraft (the latter limitation was challenged by CAAT). The government then assessed, based on evidence available, whether the incident was a “possible” IHL violation, was “unlikely” to be a violation, or if there was “insufficient information” to make an assessment. This latter category, insufficient information, comprised about half the “credible” allegations. “Possible” violations were treated as actual violations. While the exact number of such cases is not known, the information provided in the government’s evidence suggest it was about 20.

There were several key problems with the government’s methodology. First, in assessing whether incidents were possible violations, they relied heavily on investigations carried out by the Saudi Coalition’s own Joint Incidents Assessment Team (JIAT), supposedly independent, but in practice the Saudi government investigating itself. For the government’s methodology, two elements were required to determine that an incident was a possible violation of IHL – the “what” and the “why”. The “what” is what happened – were civilians killed or injured, or civilian objects harmed. The “why” was why this particular target was chosen, what the attacker was aiming for, what precautions they did or did not take, etc. Thus, JIAT’s conclusions, for example blaming mechanical failure, or poor visibility, or faulty intelligence, were largely taken at face value, as the government rarely had other intelligence to weigh it against. Information from outside bodies, such as the UN or local or international NGOs, who often were present on the ground or spoke to people who were, and who in many cases found that there was no evidence of a nearby military target in attacks causing civilian harm, seem not to have been given much or any weight.

²⁵ This is detailed in the government’s evidence presented to the court, and in the arguments presented by the government and CAAT. See <https://caat.org.uk/data/countries/saudi-arabia/caats-legal-challenge/legal-challenge/appeal-documents/>

Evidence from Yemeni NGO Mwatana for Human Rights, who acted as an intervenor in support of CAAT in the 2nd judicial review, as well as from others such as Human Rights Watch and a UN panel, cited in CAAT's skeleton argument, found that in many cases JIAT investigations were severely wanting, either making contradictory claims, presenting flawed justifications for attacks, and/or contradicting evidence from the ground. Nonetheless, the government's treatment of JIAT as a reliable source – often the only reliable source – was accepted by the courts.

Moreover, it appears from the evidence that in the vast majority of cases where JIAT had not carried out an investigation – such investigations happening only when the coalition authorities decided (sometimes under international pressure) to hold one, a conclusion of “insufficient information” was reached. In other words, even if the government accepted that an attack harming civilians happened, was credible, and even if on-the-ground sources showed that there was no clear military target, the government generally would; not count it as even a *possible* violation without the evidence of a JIAT report.

In other words, for the government to accept that IHL had been violated, they almost always required that the Coalition itself must have chosen to investigate *and* to incriminate itself.

However, the courts had accepted in the first case that the government was rationally entitled to treat JIAT as a reliable source, and this had not been overturned on appeal. (Again, this is not a finding that JIAT *was* a reliable source, simply that the government, in exercising its discretion, was not acting irrationally in taking that approach). Thus, the judgment concluded (para 130):

“We reject the submission that there was any irrationality in the approach that resulted in a rough correlation between cases which concluded that there was insufficient information to form a view on breach of IHL, and the absence of a JIAT report in such cases. JIAT was the main source for what was regarded as a competent and independent assessment of the material which could answer the ‘why’ question.”

Given this, it was fairly inevitable that the court accepted that the government could draw the conclusion it did, that there were only a ‘small number’ of violations of IHL. The question of whether these were ‘isolated incidents’ or represented a ‘pattern’ of violations was another key issue: the government leaned heavily on the Court of Appeal ruling’s wording that “The question whether there was an historic pattern of breaches of IHL ... was a question which required to be faced.” (emphasis added). Thus, in their assessment of whether there was a ‘clear risk’ of future serious violations of IHL, they insisted that to establish such a risk, there must not merely be a record of previous violations, but a pattern; and then drew the definition of pattern sufficiently narrowly that the incidents they identified did not meet it.

However, given that the question of what does or does not constitute a ‘pattern’, what commonalities must be observed among incidents to

conclude that they form a pattern, etc., is a matter of debate, again it is unsurprising that the courts concluded that the government's interpretation was one they were legally entitled to take (again, not necessarily *endorsing* the government's decision as the correct one). **What is significant is that, once again, we see the government twisting definitions to achieve a result it had already decided upon: twenty attacks violating IHL, even though some involved horrific civilian loss of life, do not matter for export licensing decisions unless they meet some arbitrary standard of a 'pattern'.** It is, of course, of little comfort to grieving relatives or those suffering life-changing injuries to know that the bombing that shattered their lives and their communities was not part of a wider pattern, or that it happened in a different circumstance and for different reasons than other such atrocities.

The final strand of CAAT's argument was that, even if there were only a 'small number' of 'isolated incidents' of IHL violations, surely this still means that there is a 'clear risk' of further such 'isolated incidents' occurring in the future? And once again, the government's reasoning to avoid such a conclusion, and the court's judgment in accepting this conclusion, raise serious concerns, and undermine the principles of IHL still further.

4.2. CAAT's analysis

CAAT Advocacy Manager Katie Fallon, the lead author of this report, put it thus in her analysis of the judgment, which we repeat here at some length (some emphasis added):

The word 'margin' appears five times in the judgment in reference to a 2020 Government Decision Paper which states that the detail of possible IHL breaches "*is consistent with a limited number of errors, well within the margin that would be expected in a conflict of this nature*".

We need to be very clear that when the government is talking about a 'margin of error' this is referring to the death of civilians by Coalition bombings, and the far-reaching suffering caused by violations of International Humanitarian Law. **We would like to live in a world where international law to protect civilians in conflict is the lowest bar of protection we can expect, but even the principles of proportionality and taking feasible precautions are deemed by our government as flexible. In fact, as the quote above illustrates, they are 'expected'.**

You might ask yourself if governments are selling arms to conflicts where they are expecting violations of IHL, surely that means there is a clear risk of serious violations of IHL – a clear risk which they are already aware of.

This point was argued in court – that given the mountain of evidence... such violations were likely to continue, and so it would be irrational to conclude that there was no clear risk of future serious violations. **Eight years into the war this 'expected margin' is no longer theoretical, but real people whose lives have ended, real families who have lost loved ones.**

Conveniently for the Government, the Court found that repeated breaches of the principles of IHL, including proportionality and taking feasible

precautions, did not constitute a pattern, because it was *“too much of a leap to say that such commonality must be a concerning pattern.”*...

The judgment makes numerous references to ‘numbers’: numbers of airstrikes, numbers of possible serious IHL violations. These numbers are compared and contrasted in disingenuous and harmful ways, and it is worth re-emphasising that there are real people behind all of them. They are not just a useful legal construct on behalf of the Secretary of State for International Trade.

For example: *“Whilst care must be taken in drawing comparisons across different conflicts (as the Decision Paper said), it is to be noted that in the Syria/Iraq conflict in which a similar number of airstrikes were carried out, a similar number of allegations were recorded against the coalition forces.”*

This quote again illustrates the fact that in government and supported by the court, **there is an expectation and acceptance of IHL breaches in conflict**. There is also no further explanation of why the allegations in the Syria/Iraq conflict are not of concern.

...

Rather than looking at a high number of credible allegations of violations as needing thorough investigation, the government created an exercise which allowed evidence of systemic weaknesses to be filed under ‘insufficient information’, circumventing its obligations once again.

In court our legal team argued that as the government’s new ‘Decision Paper’ concluded that there have been new breaches of IHL since the previous decision to issue licences, it follows that the previous decision was wrong in its assessment of future risk.

The judges rejected this argument and stated that: *‘To conclude from that fact that the previous assessment of future risk must have been flawed, making special caution and vigilance essential this time round, is in our view an inappropriate application of hindsight.’*

A judgment that deals with rationality and assessments of risk may sound quite academic and legal, but this quote illustrates a common sense understanding of logic is missing. **Essentially the Government can continue to make assessments that always reach the same conclusion – no clear risk of serious violations of IHL and arms exports to Saudi Arabia can continue.** Applying hindsight is deemed ‘inappropriate’, allowing the government to ignore real violations which should be the most important factor in calculating risk, or explain them away as ‘isolated incidents’.

It makes even less sense when we take into account the ‘margin of error’ as discussed above; that the Government ‘expects’ serious breaches of IHL to occur, makes assessments that there is no clear risk of IHL, and then once these violations take place, the Government does not apply hindsight to future assessments.

Throughout this process, International Humanitarian Law, which is supposed to be an essential minimum standard for the protection of civilians in war, and in particular a fundamental pillar of the UK’s export control system, is reduced to a technical problem to be elided by any legal and administrative means necessary, and where a certain number of breaches can be excused and written off as ‘isolated incidents’ that need not interrupt the flow of arms.

Yet, if the Yemen case severely eroded the status of IHL and international law more generally in the UK's foreign policy and arms exports, the response to Israel's genocide in Gaza has arguably killed it altogether, as the next section will show.

4.3. Epilogue: What CAAT's judicial reviews achieved

Despite the ultimate failure of CAAT's legal challenges to arms sales to Saudi Arabia, we have strong reason to believe that the mere fact of the challenges, and the measures it forced on the government, saved lives in Yemen. We have heard from numerous, well-connected sources, that it led to stronger pressure from the UK on Saudi Arabia to act with more restraint in its bombing campaign, and indeed this is reflected in a reduced rate of civilian casualties after 2017. Moreover, the temporary halt to new export licences after the Appeal Court ruling in 2019 definitely led to a halt to the export of munitions to Saudi Arabia, that lasted several years.²⁶ Shortly after the "new decision" and the resumption of export licensing, the government issued a number of ML4 export licences in 2014 covering £698 million worth of "components for bombs", almost certainly the guidance systems for Paveway IV bombs, produced by Raytheon UK in Glenrothes, as well as for air-to-surface and air-to-air missiles.

However, in January 2025, the incoming US Biden administration halted the supply of munitions to Saudi Arabia, and since Paveway IVs are based on the US-produced Paveway II bombs, this appears to have halted these deliveries from taking place. Raytheon UK's annual report and accounts for 2020 records a one-off charge of several hundred million pounds against profits, on account of the inability to fulfil a contract for precision-guided munitions to an unstated Middle East customer, owing to the Biden administration's restrictions.

An almost identical licence was issued - £698m for components for bombs (presumably again to Raytheon UK) – almost exactly two years later, when the original licence would have been about to expire, presumably in the hope that, following the April 2022 ceasefire, the US would allow deliveries to resume. However, this did not happen until summer 2024, around when a third identical licence was issued, which presumably was now able to be used. Thus, the 1-year delay in export licensing due to the Court of Appeal verdict ultimately led to a 5-year delay in the delivery of these bombs that had been extensively used during the bombing campaign.

²⁶ See CAAT Annual Report for 2024.

5. Israel's genocide in Gaza and the government response

From the outset it is very important to say that what has happened over the last three years has come from the intersection of two equally abhorrent systems - an utterly failed UK arms export control regime, and decades of impunity by the UK and others for Israel's occupation and apartheid.

What makes this very clear is that since Israel's latest genocidal assault on Gaza began, in terms of the policy issues within the arms export regime, we see exactly the same dynamics and failings as CAAT has been campaigning on in relation to UK arms exports to Saudi Arabia for use in the war in Yemen: **that the expectation of IHL violations is built in to, and protected by the arms export system - well within the "margin" that would be expected.**

5.1. Brief background to the war and genocide in Gaza

Israel's genocidal assault on the Gaza Strip began after a mass incursion into Israel by Palestinian armed groups, principally Hamas, on 7 October 2023, during which 1,195 people, including at least 828 civilians, were killed. Hamas took 251 Israelis, civilians and military personnel, hostage into Gaza.²⁷

From the immediate aftermath of this attack, it became obvious that Israel's response would be grossly disproportionate and indiscriminate, both from their actions and from the rhetoric of political and military leaders. At the time of writing, over 74,000 people have been killed in Gaza, including over 20,000 children, and over 174,000 injured; but even by the end of October 2023, the death toll was already over 8,800, including 3,650 children.²⁸ By comparison, 1,424 children were killed by Saudi coalition bombing during the 7 years of its war in Yemen.²⁹ Over 10,000 people are thought to be buried under the rubble. The number of people who have died as an indirect result of Israel's air and ground assaults, and the near-total Israeli blockade of Gaza that has blocked the vast majority of needed aid from reaching the Palestinians of Gaza, is not yet known but is likely to run to the hundreds of thousands. This includes deaths from hunger and malnutrition, disease, and the lack of proper medical treatment due to the widespread Israeli destruction of Gaza's health care sector (including the killing of large numbers of medical personnel), and the blocking of medical supplies from entering the Strip.³⁰

²⁷ <https://www.hrw.org/news/2024/07/17/october-7-crimes-against-humanity-war-crimes-hamas-led-groups>

²⁸ https://www.goodshepherdcollective.org/data/gaza_deaths, similar figures from other sources.

²⁹ <https://yemendataproject.org/data/>

³⁰ See CAAT's resources on Israel and the Gaza genocide, and links to other sources, <https://caat.org.uk/data/countries/israel>

The US, Israel's main political backer and arms supplier, strongly supported the Israeli attack from beginning to end, and maintained and indeed rapidly increased the supply of arms, including huge volumes of munitions, and spare parts for the aircraft involved in the war. US military aid to Israel, which has been running at levels of about \$4 billion a year, increased to \$21.7 billion since the war started, up to September 2025.³¹



Scenes of destruction
in Gaza.
Photo: Jaber Jihad Badwan.
Source: Wikimedia

5.2. The Conservative government's response

The UK and other western governments likewise supported Israel's "right to defend itself" and to seek to use military means to recover the hostages, and largely continued existing arms supplies. While such support was accompanied by rote reminders that Israel must abide by the laws of war in its operations, in the first few months UK ministers expressed little if any concern over the methods employed by Israel and the huge civilian toll of death and injuries caused.

In seeking to justify continued arms sales to Israel as the genocide unfolded, the Conservative government applied a familiar approach of "strategic ignorance" regarding Israeli war crimes and violations of IHL, studiously avoiding coming to conclusions that might compromise arms sales, as it had in Yemen – as well as the simpler tactics of stonewalling and evasion. As in Yemen, it involves disregarding the near unanimous evidence presented by NGOs, and UN bodies and Special Rapporteurs, of war crimes committed by Israel, as insufficient, while failing to offer any evidence of its own.

Indeed, the government's position on Israel's compliance or otherwise with IHL only became apparent through documents provided to the courts in response to the initial legal challenge to the government's decision to

³¹ <https://quincyst.org/research/u-s-military-aid-and-arms-transfers-to-israel-october-2023-september-2025/#h-introduction>

continue issuing export licences to Israel by Al-Haq and the Global Legal Action Network (GLAN). These documents found that the government's assessment on 10 November 2023 stated that:

“Given the paucity of information, the scale and density of the conflict, the death toll, the unusual civilian population density coupled with their inability to evacuate and the concomitant mounting effect of the conflict on civilians, HMGs current inability to come to clear assessment on Israel’s record of compliance with IHL poses significant policy risks.”

On 27 November 2023, a second assessment was produced that states that *“Israel has made formal commitments to comply with IHL but overall commitment remains unclear”*. Just days later, however, the Foreign Office Minister Andrew Mitchell answered a question in Parliament on the issue saying simply, “The hon. Member will know that the President of Israel, President Herzog, has made it clear that his country will abide by international humanitarian law.”³²

Briefings from the FCDO’s assessment unit raised “serious concerns” that Israel was violating IHL, in particular in relation to the blocking of aid. However, the unit later wrote to the Israeli government and was said to be satisfied by ‘reassurances’ that Israel was committed to IHL – albeit that Israel had a different interpretation of IHL to the UK!³³ It concluded that there was “insufficient information to determine whether Israel had violated IHL in four cases assessed.

This finding of “insufficient information” was all the government needed to justify continuing arms sales – based on the Saudi-Yemen model, if the government cannot make an assessment of possible IHL violations, then there is no ‘clear risk’ of future violations – taking the logic of the second judicial review to absurdity.

In an oral evidence session with the House of Commons Foreign Affairs Committee on 9 January 2024, Foreign Secretary David Cameron was highly evasive and misleading in response to questions as to whether he had seen evidence that Israel had violated IHL. He responded “My job is not to make the legal adjudication, because I’m not a lawyer.” When further asked if he had not seen any document from Foreign Office lawyers or others suggesting that there might have been such violations, he replied “I cannot recall every single bit of paper that has been put in front of me.”

The consensus, from outside the government, that Israel was in fact violating IHL on a systematic basis, mounted as the genocide went on. In April 2024, 600 lawyers, academics, and former senior judges, including 3 former Supreme Court judges, wrote a letter to the Prime Minister warning that the UK was breaching international law by continuing to arm Israel.³⁴ Moreover, evidence that the government’s own lawyers were saying the same emerged, when the Chair of the Foreign Affairs, Conservative MP

This finding of “insufficient information” was all the government needed to justify continuing arms sales– taking the logic of the second judicial review to absurdity.

³² <https://caat.org.uk/news/revealed-david-cameron-advised-continuing-arms-exports-to-israel-accepting-israel-has-a-different-interpretation-of-its-international-humanitarian-law-obligations/>

³³ <https://caat.org.uk/news/revealed-david-cameron-advised-continuing-arms-exports-to-israel-accepting-israel-has-a-different-interpretation-of-its-international-humanitarian-law-obligations/>

³⁴ <https://www.theguardian.com/world/2024/apr/03/former-supreme-court-judges-say-uk-arming-israel-breaches-international-law>

Committee Alicia Kearns was recorded at a Tory fundraising event saying that government lawyers had given the government advice to this effect.³⁵

The government's position remained unchanged. On 3 April, defending the continued arming of Israel in the wake of the World Central Kitchen attack that killed three British humanitarian workers, Rishi Sunak said, "I think we've always had a very careful export licensing regime that we adhere to... There are a set of rules, regulations and procedures that we'll always follow, and I have been consistently clear with Prime Minister Netanyahu since the start of this conflict that while of course we defend Israel's right to defend itself and its people against attacks from Hamas, they have to do that in accordance with international humanitarian law".

The government's logic had essentially become this:

- 1) We will not issue a licence if there is a clear risk that the equipment might be used to commit or facilitate serious violations of IHL;
- 2) How do you assess if such a risk exists? We assess if there is a pattern of such violations committed by the recipient country that involves this type of equipment;
- 3) How do you assess if there is such a pattern of violations? We would need to look at each individual incident where there is an alleged violation to see if it is a possible violation;
- 4) How do you make such an assessment of individual incidents? We can't. There is not enough information about why they chose the targets they did. Whether any incident is a war crime is not a judgement we can make, as it is a matter for the courts.

Thus, the prohibition on allowing arms exports that might be used in violations of IHL had been effectively nullified – no amount of evidence could ever be sufficient to reach the threshold of a 'clear risk' according to the government's logic, unless the Israeli government were to helpfully provide information about their attacks that told on themselves.

It is possible that this position would have been untenable in court, in the face of the Al-Haq/GLAN judicial review. This was never tested, as the incoming Labour government, a day before a hearing of the case was due, made a fresh assessment of Israel's IHL compliance, and a resulting new decision on export licences. However, while some licences were suspended, the new decision in some ways undermined the place of IHL in UK law even further – rather than finding new ways to avoid the conclusion that Israel was violating IHL, to protect the UK's place in the F-35 stealth combat aircraft programme, the government instead threw the entire Strategic Export Licensing Criteria, IHL included, out of the window.

³⁵ <https://www.theguardian.com/world/2024/mar/30/uk-government-lawyers-say-israel-is-breaking-international-law-claims-top-tory-in-leaked-recording>

6. The partial suspension, the F-35 carve-out, and Al-Haq's judicial review

It may well be that the risk of a successful court challenge – combined with widespread public anger about what was happening in Gaza, and the expectation that a Labour government would be different – that led to a new approach taken by the incoming Labour government of Keir Starmer that took office in July 2024. In September 2024, Foreign Secretary David Lammy made a statement to Parliament in which he announced that the UK government finally found that it was “unable to conclude anything other than” that for certain UK arms exports to Israel, including F-35 jets, there is a clear risk that they might be used to commit or facilitate a serious violation of international humanitarian law in Gaza. It suspended 29 arms licenses to Israel.

Lammy stated that, while Israel's assault on Gaza had caused huge civilian death, suffering, and destruction, “...in many cases, it has not been possible to reach a determinative conclusion on allegations regarding Israel's conduct of hostilities, in part because there is insufficient information either from Israel or other reliable sources to verify such claims.”

However, the government had assessed that “Israel could reasonably do more to ensure that lifesaving food and medical supplies reach civilians in Gaza, in the light of the appalling humanitarian situation,” and “This Government are also deeply concerned by credible claims of mistreatment of detainees, which the International Committee of the Red Cross cannot investigate after being denied access to places of detention.”

It was on the basis of these two issues that the government concluded that Israel was not committed to IHL, triggering the partial licence suspensions.

6.1. The F-35 “Carve-out”

However, an unprecedented loophole was announced to Parliament by the Foreign Secretary allowing the ongoing transfer of UK made components for F-35 combat aircraft to Israel, via the global supply pool (see box on the F-35s).

The government had to depart from its own law. Lammy stated,

“This suspension will not prejudice the international, collaborative, global F-35 programme... Indeed, the effects of suspending all licences for the F-35 programme would undermine the global F-35 supply chain that is vital for the security of the UK, our allies and NATO. Therefore, the Business and Trade Secretary has exempted these licences from his decision.”

In other words, for the most significant UK arms supplies to Israel, it would be business as usual without interruption.

To quote the government's position they submitted to court in May 2025 (para 221) : *“The F-35 Carve Out was thus premised on the basis that there was a clear risk that Israel might commit serious violations of IHL in the conduct of hostilities in Gaza, including through the use of F-35s.”*

Never before had this threshold been allowed to be crossed – where the government fully recognised that the arms they were exporting risked being used in serious violations of IHL, yet even so, the government would allow their export, jettisoning its own Strategic Export Licensing Criteria, the foundation of the UK’s supposedly robust system of export controls, entirely for the purpose. The “carve-out” relied on a particular clause in the export control Guidance (see section 2) of which the SELC are part – namely “The application of these Criteria will be without prejudice to the application to specific cases of specific measures as may be announced to Parliament from time to time.”³⁶ – effectively, that the government can make exceptions to the Criteria when it wishes to, provided it tells Parliament about it.

Extraordinarily, the government later stated in material presented to the courts, that the threat to “international peace and security” that would be caused by an interruption to the F-35 supply chain was “a matter of such gravity that it would have overridden any [...] further evidence of serious breaches of IHL”.³⁷ **Effectively, there are no circumstances in which this supply of F-35 components would be suspended.**

International Humanitarian Law was supposed to be an absolute minimum standard of protection for civilians in conflict. With the government’s approach, the Palestinians have nothing, as far as UK law is concerned.

The principles of IHL have been degraded to nothing. As the title of this report states, they have become a dead letter.



Lockheed Martin F-35,
Joint Strike Fighter.
Source: US Air Force

³⁶ See e.g. <https://questions-statements.parliament.uk/written-questions/detail/2024-09-12/5587>

³⁷ <https://glaanlaw.org/news/new-review-of-f-35-exports-reveals-no-red-lines-for-uk-government-in-context-of-atrocities-in-gaza/>

The F-35 stealth combat aircraft and the UK's role

The information below comes from CAAT's 2025 report "How the UK arms and supports Israel's genocide in Gaza". See this report for more information.³⁸

The F-35 Lightning II Joint Strike Fighter is a US-produced "5th generation" stealth combat aircraft. It is the most expensive weapons programme in history and, despite numerous problems plaguing the programme, is widely regarded as one of the most effective military aircraft flying today. It is the subject of an international collaboration involving 8 Partner Nations: Australia, Canada, Denmark, Italy, the Netherlands, Norway, the UK, and the US itself, as well as numerous export customers, including Israel. The UK is the leading partner after the US, with 15% of each aircraft by value produced in the UK. This includes the rear fuselage, the "active interceptor system", targeting lasers, bomb release cables, ejector seats, tyres, and much more.

Israel has so far received 48 F-35 aircraft, which are specially customised for its requirements, with the involvement of Israeli arms companies. Israel has used the F-35 extensively in its bombing campaign in Gaza, with reports from the Israeli military saying they have been operating it at five times the normal peacetime rate. They have operated the F-35s in "beast mode", carrying extra munitions, including up to three 2,000lb bombs, sacrificing the stealth capability which is not needed as Gaza has no air defences. This high intensity of operations requires a constant stream of spare parts, and US officials said they had been working at "breakneck speed" to increase the flow of these parts.

Spare parts for all users of the F-35s are supplied via a global pool operated by the US, to which all producers, including UK companies, contribute. The government's claim in exempting the supply of F-35 components via the US (for the production of new aircraft) or the global pool was that it could not control the final destination of components supplied to the US or the global pool, and that thus it could only prevent components from going to Israel by stopping the supply altogether, thus interrupting the F-35 supply chain for all users.

Specifically, the government claimed in its submissions to the courts that *"Due to the nature of the partnership agreed at the outset of the international collaborative programme and enshrined in the F-35 Memorandum of Understanding, it is not currently possible to suspend licensing F-35 components for use by Israel without having an impact on the entire F-35 programme. ... A suspension of UK licensing for all F-35 nations, leading to the consequent disruption for partner aircraft, even for a brief period, would have a profound impact on international peace and security."*³⁹

This claim assumes that the UK could not have preconditioned the continued supply of components on an agreement not to export them onward to Israel.

³⁸ <https://caat.org.uk/publications/how-the-uk-arms-and-supports-israels-genocide-in-gaza/>

³⁹ Open position statement of the Secretary of State, in the case of AL-Haq vs the SoS for Business & Trade, 24 Nov. 2024, https://gfanlaw.org/wp-content/uploads/2025/04/20241112_Al-Haq-v-SSBT_SSBT-OPEN-Position-Statement.pdf

6.2. The government's approach to IHL assessments

Lammy claimed in his statement to Parliament (see above) that “...in many cases, it has not been possible to reach a determinative conclusion on allegations regarding Israel’s conduct of hostilities...”. This was highly disingenuous, in that in fact, as was later revealed the government had not reached such a conclusion in virtually *all* such cases, applying the logic of the Saudi case to say that, unless there was information on why targets were chosen, it was impossible to determine if an attack was even a “possible” violation of IHL.

Turning a blind eye to the atrocities that Israel has committed against Palestinians in its “conduct of hostilities” in Gaza in this way is the foundation upon which F-35 parts are exported, and how UK government tolerance for the unspeakable slaughter, and man-made famine have been built.

Government Ministers might speak to violations of international humanitarian law in relation to the distribution of “aid” or “treatment of detainees” – read “starvation” and “torture” – but they would not admit to even a “possible” violation of international humanitarian law by Israel against a Palestinian civilians in Gaza involving an airstrike.

As GLAN argued, the government’s approach to assessing Israel’s compliance with IHL in its attacks on Gaza was deeply flawed.⁴⁰ It took an approach that, intentionally, failed to see the wood for the trees, demanding incident-by-incident intelligence regarding targeting intent - which could only realistically come from Israel itself – while ignoring the catastrophic scale of the killing and destruction, the clear conclusions of UN reports, and consistent patterns such as attacks on hospitals, journalists and medical workers. Indeed, the government admitted that the “tempo of killing” was “so overwhelming” that the UN Office for the High Commissioner for Human Rights (OHCHR) was unable to maintain daily reporting.⁴¹

At an oral evidence hearing of the Foreign Affairs Committee in December 2024,⁴² a government minister admitted that the FCDO had assessed 413 incidents of alleged violations of IHL by Israel in Gaza as of September 2024. They reached the conclusion that there was “insufficient information to decide” either way in 411 of 413 incidents considered. This is in almost every single incident, that is 99.5% of all cases. “The one incident they concluded amounted to a “possible” breach of IHL - the terrible strike involving World Central Kitchen (WCK) – involved no Palestinians. **We need to call this what it is - stark racism.**

And so the government’s strategy around the F-35s becomes clear. It admits serious concerns about starvation and torture, and ‘overall’ concerns over conduct of hostilities. But on individual violations – or rather atrocities

⁴⁰ <https://glanlaw.org/news/uk-suspends-trade-talks-but-hearing-reveals-governments-flawed-assessment-of-genocide-in-gaza-in-effort-to-keep-arms-flowing-to-israel/>

⁴¹ <https://glanlaw.org/news/uk-suspends-trade-talks-but-hearing-reveals-governments-flawed-assessment-of-genocide-in-gaza-in-effort-to-keep-arms-flowing-to-israel/>

⁴² <https://committees.parliament.uk/event/22521/formal-meeting-oral-evidence-session/>

- specifically conducted using jets and bombs, the very incidents that would evidence the crimes that the F-35s are being used to perpetrate, it just says nothing.

6.3. Al-Haq's legal challenge

Palestinian human rights group Al-Haq, represented by the activist law firm Global Legal Action Network (GLAN), first launched their legal challenge against the then Conservative government's decision to continue to allow arms export licences to Israel in December 2023, seeking a Judicial Review.⁴³ After an initial refusal based on written submissions, at a hearing in April 2024 the case was given permission to go ahead to a full Judicial Review hearing in October. However, the new government's decision in September 2024, suspending some licences, changed the ground on which the case would be fought. Following a hearing in November, a full hearing of a revised case – now principally limited to the legality of the F-35 carve-out – was scheduled for May 2025, bundling the usual “permission” hearing (which decides if there is enough grounds for the case to proceed) and the full hearing into one.⁴⁴

Following the High Court hearing in May 2025, Al-Haq's challenge was rejected on all grounds in a judgment issued in June.⁴⁵ A subsequent request by Al-Haq and GLAN for permission to appeal was refused in October 2025, effectively ending all legal avenues for challenging the government's decision.

Through the course of the case, position statements submitted by the government made several points clear:

- That the government had concluded that Israel was not committed to IHL, specifically evidenced by its treatment of detainees and its blocking of humanitarian aid;
- That, while the government had not come to definitive conclusions as to whether Israel had violated IHL in almost all specific incidents, this conclusion as to Israel's lack of commitment to IHL extended to the conduct of hostilities, regarding which the government admitted to ‘concerns’;
- That the ‘clear risk’ of UK-supplied equipment being used to commit or facilitate serious violations of IHL that the government had concluded exists, includes components for the F-35s;
- That in invoking the clause in the Guidance that “The application of these criteria shall be without prejudice to specific measures applied to specific measures” to enable the F-35 carve-out, the government was setting aside the SELC *in their entirety* in relation to F-35 components supplied to third countries that might eventually be supplied to Israel.

The last point is crucial to the judges' reasoning in their judgment. One of the key questions in the case presented by GLAN and Al-Haq was the government's obligations under international law – notably, its obligations

⁴³ <https://glanlaw.org/cases/uk-weapons-sales-to-israel/>

⁴⁴ Ibid.

⁴⁵ <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2025/1615?query=AL+Haq>

under the Genocide Convention to do all in its power to prevent genocide, and its Arms Trade Treaty obligations, which forbids the export of arms where there is an “overriding risk” of their use to commit or facilitate violations of IHL. The Geneva Conventions, which include much of the key elements of IHL, and to which the UK is a High Contracting Party, were also relevant.

The judges ruled that, since these treaties are not directly written into UK law, the government’s adherence to them or otherwise is ‘non-justiciable’ – not something on which the courts can rule, but a matter solely for the “democratically accountable executive”. The only “domestic foothold” that these treaties have in UK law is in fact the SELC – Criterion 1 states that the government shall not issue a licence if it would violate the UK’s international obligations, providing a non-exhaustive list of relevant treaties, including the ATT. However, the fact that the government had completely set aside the SELC in applying the F-35 carve-out meant that this “domestic foothold” no longer existed – the courts could not make any judgment on whether the government was complying with international legal obligations or not.

As to the legality of the carve-out itself, the judges accepted that the government was entitled to reach the conclusion it did regarding the impact of halting the supply of F-35 components on “global peace and security”, as matters of national security were again something for the executive, and not the courts. They rejected the Claimant’s submission that the UK ought to have sought to persuade other partner nations to suspend the supply of F-35 aircraft and spare parts to Israel, based on the UK’s conclusion that Israel was not committed to compliance with IHL, as unrealistic. Such matters of foreign policy and relations with the US and other F-35 partners are, once again, not something on which the courts wish to chime in.



Protesters outside the Royal Courts of Justice, 13 May 2025. Source: CAAT

6.4. Analysis and implications

In this way, the government and the courts between them have constructed a near-perfect firewall between the government and its obligations under international law. The only aspect of *domestic* law that constrains the government to follow the ATT, the Genocide Convention, and much of the rest of IHL, is the SELC; beyond this, it is up to the government alone to interpret international law, and its own compliance therewith, not the courts. But the SELC themselves can be set aside in their entirety, when the government so chooses. Exactly what reasons for doing so, what applications of “specific measures to specific cases” the courts would accept as rational and legal, and whether there are some they might reject, is not completely clear; but invoke the phrase “national security”, matters of foreign policy, and possible harm to relations with other states, and it seems highly unlikely that any UK court would object.

As the lead author of this report wrote in response to the Court of Appeal verdict, refusing permission to appeal:⁴⁶

To put it plainly, not only can the government throw out the domestic law and policy that gives effect to the UK’s arms controls at will, even for the most serious cases including genocide, but the Courts are happy to agree that the existing international legal obligations referenced in this domestic policy get thrown out with it.

The government has the audacity to claim that the F-35 carve out is consistent with the UK’s international obligations, while arguing tooth and nail that it has departed from every piece of domestic legislation and policy which gives rise to these obligations.

Moreover, in relation to the government’s choice, and the court’s acceptance of this choice, to prioritise relations with F-35 partners, in particular the US, over its international obligations, she wrote:

*Of course, the critical issue here is that arms controls and the implementation of foundational international legal instruments – which protect the most vulnerable people in conflict, when so many of their human rights will have already been violated – are **not optional**. In attempting to justify an unforgivable position the government and the courts have contributed to the degradation of international law, which has been a key factor in the international community allowing, and in some case supporting, Israel’s genocide in Gaza.*

While there are 8 F-35 partner nations (many others of which have also halted or limited arms exports to Israel due to their conduct of the war in Gaza),

...the reality is there is one partner, the US, that the UK and others will apparently go to any lengths to appease. The US has been the largest exporter of arms to Israel throughout the genocide, provided unending military and political support, and for almost a year has put forward plans for a reconstruction of Gaza that amount to mass ethnic cleansing, forced displacement and ongoing genocide.

In attempting to justify an unforgivable position the government and the courts have contributed to the degradation of international law

⁴⁶<https://caat.org.uk/news/caat-statement-court-of-appeal-refuses-al-haq-permission-to-appeal-regarding-arms-licences-to-israel/>

6.5. The Genocide Convention

Particularly egregious is the way the government has interpreted its obligations under the Genocide Convention, which require all states to take whatever action is within their power to prevent and punish the crime of genocide, wherever it takes place. This should, in principle, mean taking action when a risk of genocide is identified, rather than waiting till a genocide has already taken place. As early as January 2024, the International Court of Justice gave a preliminary ruling in the case brought against Israel by South Africa, that there was a “plausible” risk that Israel was committing genocide in Gaza.⁴⁷ Many scholars have argued that this ruling triggers the duty to prevent for all states – especially those supplying arms to Israel.⁴⁸

Yet the government, while recognising in theory that there is a duty on all states to prevent genocide, argued that it cannot be said to have breached its obligation to prevent genocide unless and until a ‘competent court’ has found a genocide to have taken place.⁴⁹

Evidence presented by the government in court revealed that, as early as June 2024, the government’s Export Control Joint Unit (ECJU) came to the devastating finding that “it is uncontentious that conduct which could, in principle, satisfy the physical component of genocide continues to take place in Gaza”.⁵⁰ The key question therefore was whether Israel showed genocidal intent.

Despite previously claiming that the government could not assess the risk of genocide, their lawyers revealed in court that they had in fact assessed that there was no serious risk of genocide in Gaza. To make a judgement on intent, two factors were emphasised; statements by Israeli officials and the targeting of civilians. The ‘troubling comments’ made by Israeli politicians and senior officials, including a statement by the Prime Minister of Israel,⁵¹ were simply dismissed.

Crucially, in relation to Israel’s conduct of hostilities, the government claimed “areas of most acute concern with respect to compliance with IHL do not relate to Israel making civilians the object of attack. No evidence has been seen that Israel is deliberately targeting civilian women or children”.⁵² But this conclusion involved flagrantly ignoring evidence, including that presented in court, of children and elderly people being shot directly in the head and heart, and even refused to disclose to GLAN and Al-Haq its own internal report, “Research Report: Long-Range Shootings or Shootings of Minors.”⁵³ On this wilfully deluded basis the government argues that Israel did not show genocidal intent. The judges, however, declined to rule on the government’s genocide assessment.

On this wilfully deluded basis the government argues that Israel did not show genocidal intent.

⁴⁷ <https://www.aljazeera.com/news/2024/1/26/icj-rules-israel-must-prevent-acts-of-genocide-in-gaza-key-takeaways>; ruling at <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

⁴⁸ E.g. Jinan Bastaki, “The ICJ’s Provisional Orders Measures and the Responsibility of Third States”, *Opinio Juris*, 5th February 2024, <https://opiniojuris.org/2024/02/05/the-icjs-provisional-orders-measures-and-the-responsibility-of-third-states/>

⁴⁹ <https://www.middleeasteye.net/news/uk-assessed-there-was-no-serious-risk-israel-committing-genocide-gaza>

⁵⁰ Al-Haq Judgment, <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2025/1615?query=AL+Haq>, para 28.

⁵¹ Al-Haq vs SSBT, Claimant’s Skeleton argument, para 265, available on request.

⁵² Al-Haq judgment, para 33.

⁵³ <https://glanlaw.org/news/uk-suspends-trade-talks-but-hearing-reveals-governments-flawed-assessment-of-genocide-in-gaza-in-effort-to-keep-arms-flowing-to-israel/>

How could anyone rationally make this finding of no genocidal intent, when for every incident or airstrike which might actually show Israel making civilians the object of attack you've claimed you don't have enough information to decide if it is even possibly a violation? Not only is this reasoning absurd and irrational, it is a stain on our collective humanity to deny complicity in 21 months of near non-stop airstrikes by Israel against Palestinians as it carries out a genocide.

Even when Israel engaged in some of its most blatantly genocidal acts in the summer of 2025, shooting starving civilians queuing for aid, which Foreign Secretary David Lammy roundly condemned in a Parliamentary debate in July 2025,⁵⁴ he still maintained the government's line that there was no serious risk of genocide, and bizarrely said that "it is for the international courts to make any determination of genocide", repeating only the conclusion that there was a "clear risk of a breach of international humanitarian law". The rationale behind this is a mystery. Did FCDO not bother to assess the killings of Palestinians queuing for aid? Did they not have enough information to decide if it was a 'possible' violation? Or could they not decide if these violations fall under 'withholding aid' or 'conduct of hostilities'? This is the kafkaesque nightmare that underpins a globally sanctioned genocide.

The government's position on the risk of genocide involves ignoring crucial evidence, and ignoring the clear conclusions of numerous NGOs, UN Special Rapporteurs, and a report from the UN Human Rights Commission that Israel was indeed committing genocide in Gaza.⁵⁵ When all else fails, they fall back on the logic that no conclusion can be reached and no breach of the UK's obligations can be found to have taken place until a competent international court has definitively ruled on whether genocide has taken place. In doing so, they effectively eviscerate the Genocide Convention, in particular the duty of all states to take all possible measures to prevent genocide, once a risk is identified. The pledge of "never again" made after the Holocaust during World War II, one which the world has failed to fulfil numerous times since, in Timor Leste, Rwanda, and Darfur – the latter possibly for a second time this century – has been rendered null and void by a government determined to support the interests of the arms industry at all costs.

The pledge of "never again" made after the Holocaust has been rendered null and void by a government determined to support the interests of the arms industry at all costs.



UK Foreign Secretary David Lammy with Israeli Prime Minister Binyamin Netanyahu, July 2024.
Source: FCDO

⁵⁴ <https://www.parliament.co.uk/mp/david-lammy/debate/2025-07-21/commons/commons-chamber/middle-east>

⁵⁵ <https://www.ohchr.org/en/press-releases/2025/09/israel-has-committed-genocide-gaza-strip-un-commission-finds>

7. Conclusions and recommendations

The two cases of Saudi Arabia's war in Yemen and Israel's genocidal war in Gaza, the UK's role in arming Saudi Arabia and Israel, and the legal challenges by CAAT in the first case and Al-Haq in the second, demonstrate with absolute clarity the lengths to which the UK government will go to protect the arms industry and maintain relations with key military allies, regardless of the human consequences. They also demonstrate the reluctance of the courts to challenge the executive on matters of foreign policy and national security.

More than that, they show how successive governments, Conservative and Labour, have acted systematically to nullify the impact of International Humanitarian Law on their decision-making, and their international legal obligations under the Geneva Conventions, the Genocide Convention, and the Arms Trade Treaty – not to mention their domestic legal obligations under export control legislation.

Their approach involves systematic and strategic ignorance, avoiding coming to conclusions on atrocities, war crimes, and other serious violations of IHL, even where the evidence is staring them in the face, either by avoiding making assessments at all, or – when the courts finally balked and ruled that unlawful – by demanding information and levels of proof that they know it will be impossible to obtain. They design assessment methodologies and approaches to evidence around the pre-determined goal of allowing arms sales to go ahead, and where all else failed, as in the case of the F-35 carve-out, they announced that their vaunted rigorous and robust export licensing criteria were in fact optional, and could be jettisoned when circumstances demanded it.

Not only has this led to the UK's continued support for and complicity in the most horrific atrocity crimes, including genocide, it has fundamentally undermined the framework of International Humanitarian Law that is supposed to be the bedrock of protection for civilians in conflict, and the Genocide Convention that is supposed to ensure that all states act in whatever way they can to prevent genocide wherever and whenever a risk of it arises.

The UK has of course not been alone in this, with many countries sharing complicity in the genocide in Gaza through arms sales and other political and military support. The United States has led the way in its support and enabling of genocide, as Israel's principle arms supplier and military partner, with no prospect of any legal challenges even reaching court. But other states have shared in the UK's weasel-worded logic and equivocation over arms sales and violations of IHL. While numerous countries have imposed at least some restrictions on arms sales to Israel, no country involved in the F-35 has stopped the indirect supply of F-35 components to Israel, via the US or the global pool, although a legal case against this remains active in the Netherlands. Among European nations, only Spain (which is not involved in the F-35) has imposed an absolute arms embargo.

7.1. Recommendations to government

In the face of such utter wilful blindness and indifference by successive governments to the impact of their arms sales and the demands of international law, it may seem almost superfluous to give recommendations to government. As this report has illustrated, there has been no evidence in recent years that the UK Government is an institution interested in a judicious assessment of evidence and ideas, rather than one that has made up its mind about a policy and will fit the evidence and methodology to reach the desired conclusion, come what may. Nonetheless, the recent change in personnel at the top of government does present an opportunity to reverse course, and it is important to reiterate the core demands, not just of CAAT, but in many cases shared by an overwhelming consensus of civil society and international legal experts around the world. Namely,

- **That the UK government and all states should stop all arms supplies to Israel for so long as its genocide in Gaza and denial of freedom, dignity and self-determination for the Palestinian people continues;**
- **CAAT further argues that this should involve a two-way arms embargo, ending all arms purchases from Israel as well as sales to Israel;**
- **That so long as the genocide in Gaza continues, states must take all possible measures to prevent, halt, and punish this genocide, including a wide range of political and economic sanctions on Israel, of which a ban on all trade with illegal Israeli settlements, and sanctions on all individuals and entities participating in the settlement enterprise, is a bare minimum;**
- **That the UK should close the loophole in the export licensing system that allows for the Strategic Export Licensing Criteria (SELC) to be set aside when the government so decides;**
- **That the government should bring forward legislation to write the UK's legal obligations regarding the protection of civilians in conflict, including those flowing from the Geneva Conventions, the Genocide Convention, and the Arms Trade Treaty, into domestic law;**
- **That the government should adopt a precautionary approach to evaluating the risk of human rights abuses, IHL violations, and other key aspects of the SELC, rather than the present approach of requiring almost absolute proof of violations before it will refuse or suspend licences.**

7.2. Reflections for campaigners

The cases also raise serious questions for activists and civil society as to how to pursue campaigns and engage with the government and the legal system, in the face of governments that are so single-minded in their determination to protect the interests of the arms industry and of relations with key military allies, and courts that display such a high level of deference to the government.

It might be tempting to conclude that there is little or no point in bringing legal challenges to governments' arms export decisions, and certainly the outcomes of these and other cases internationally should give pause for thought. The Arms Trade Litigation Monitor, run by NGO Saferworld, documents numerous cases worldwide relating to legal challenges to the arms trade, including civil, criminal, and public law cases like those discussed here, with few clear examples of favourable rulings.

But it would be wrong to abandon the legal system entirely – even when unsuccessful, such cases have often been instrumental in revealing government's decision-making processes and the information they have available, that would otherwise not be in the public domain. They provide an opportunity for much wider media coverage of the issue than is normally available. And even partial and temporary wins such as CAAT's first judicial review on arms to Saudi Arabia, can have a significant and substantive impact on the ground in the conflicts to which they relate, as discussed in section 4. Of course, the decision to pursue legal action is one that always needs careful consideration, being a costly and time-consuming affair, and the goals of such action, which are not always simply to do with winning the case, must be clearly thought out.

Ultimately, international law and fundamental human rights do not uphold themselves, and nor can governments be trusted to do so of their own volition. In the UK as in most major powers, strategic interests and the power of the military industrial complex tend to dominate such concerns in a great many cases. Even the weight of public opinion is rarely on its own sufficient. Activists and civil society must reckon with the fact that government commitment to the arms trade is exceptionally strong, and can withstand adverse headlines, general popular distaste, and even the loss of a certain number of votes. Likewise, the system that sustains and enables arms sales to the very worst regimes and that support the very worst atrocities is not one that can be fixed with a few reforms, or even international treaties such as the ATT, where governments have sufficient determination to find ways around them.

The system is fundamentally broken, or rather rigged in favour of pre-determined conclusions, and only a radical uprooting of the systems of power and interest that underlie it can bring about real change.



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