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Review of the United Kingdom

The UK's extraterritorial obligations under the International Covenant on Civil and Political Rights to prevent violations linked to its arms transfers

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I. Introduction

Arms transfers have a well-documented and multifaceted impact on human rights. They are enabling factors that equip those who commit human rights violations and facilitate such violations by providing them the means with which to do so.

Many human rights mechanisms have recognised the strong link between the impact of the international arms trade and the availability of weapons on human rights. These include, in addition to the Human Rights Committee, the Human Rights Council (HRC), fact-finding missions and other investigative mechanisms created by the HRC, as well as treaty bodies such as the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESCR), and the Committee on the Rights of the Child (CRC). Recommendations relating to the arms trade have also been made in the context of the Universal Periodic Review (UPR). Reports presented by Office of the United Nations High Commissioner for Human Rights (OHCHR) to the HRC over the years provide overviews of how United Nations (UN) human rights mechanisms have increasingly raised such concerns.¹

This increasing attention is a reminder that all States have obligations under international law regarding strict regulation of arms transfers, obligations stemming, *inter alia*, from human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), to which they are party. States parties to the Arms Trade Treaty (ATT) have additional binding obligations under this treaty.

¹ “Impact of the civilian acquisition, possession and use of firearms, Report of the United Nations High Commissioner for Human Rights” (focus on the role of businesses) 5 May 2023, UN Doc A/HRC/53/49; “Impact of arms transfers on human rights, Report of the Office of the United Nations High Commissioner for Human Rights”, focus on children and youth, 16 September 2022, UN Doc: A/HRC/51/15; “Impact of the civilian acquisition, possession and use of firearms by children and youth : report of the United Nations High Commissioner for Human Rights”, 19 January 2022, UN Doc A/HRC/49/41; “Impact of arms transfers on human rights : report of the United Nations High Commissioner for Human Rights” (focus on gendered impact on the human rights of women and girls), 19 June 2020, UN Doc A/HRC/44/29; “Impact of the civilian acquisition, possession and use of firearms on civil, political, economic, social and cultural rights, Report of the Office of the United Nations High Commissioner for Human Rights”, 3 July 2019, UN Doc A/HRC/42/21; “Impact of arms transfers on the enjoyment of human rights, Report of the Office of the United Nations High Commissioner for Human Rights”, 3 May 2017, UN Doc. A/HRC/35/8, “Human rights and the regulation of civilian acquisition, possession and use of firearm, Report of the Office of the United Nations High Commissioner for Human Rights”, 15 April 2016, UN Doc A/HRC/32/21.

Human rights concerns regarding the United Kingdom (UK)'s arms transfers are not new. For example, as noted later in the text, the UN Group of Eminent Experts on Yemen expressed repeated concerns about arms transfers from the UK to Saudi Arabia and the United Arab Emirates (UAE). The UK has also received recommendations regarding its arms transfers from the CESCR and in the context of the UPR.

This joint submission by Al-Haq, the Women's International League (WILPF), the International Service for Human Rights (ISHR), with the contribution of Saferworld to the analysis on ATT obligations and arms export controls under UK domestic law, highlights concerns about the UK's arms transfers to Israel, especially in the context of the ongoing genocide against Palestinians in Gaza.

Our organisations remind the UK of its obligations under international human rights law, including the ICCPR, International Humanitarian Law (IHL), international criminal law, the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), the ATT, and other relevant international law to immediately stop arms transfers and other forms of military assistance to Israel, and to revoke all licences for arms destined to Israel from its jurisdiction.

While the UK's arms transfers to Israel are arguably in violation of various obligations under international law, for the purpose of this submission we will focus on violations of the ICCPR, especially in the context of Israel's ongoing genocide in Gaza.

II. The UK's international law obligations relating to arms transfers

Among applicable obligations, the UK has the following:

a. Obligations under the ICCPR relevant to the UK's arms trade

In its General Comment 31 on the Nature of the general legal obligation imposed on States Parties to the Covenant, the Human Rights Committee clarified the positive obligations of States associated with the duty to protect, including the obligation to act with due diligence. The Committee stated that "a State party must respect

and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”²

In relation to the right to life, the Committee has clearly stated that States parties must take appropriate measures to protect individuals against deprivation of life by other States and foreign corporations operating within their territory or subject to their jurisdiction.³ This obligation entails taking “appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities undertaken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6, taking due account of related international standards of corporate responsibility and of the right of victims to obtain an effective remedy.”⁴

The Committee has also clarified that “States parties engaged in the deployment, use, sale or purchase of existing weapons and in the study, development, acquisition or adoption of weapons, and means or methods of warfare, must always consider their impact on the right to life.”⁵ Finally, the obligation to protect individuals from violations committed by private entities also entails a positive obligation to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁶ This is relevant to consider in relation to violations of the right to life facilitated by the arms industry.

In its concluding observations, the Human Rights Committee has progressively emphasised the responsibility of States to guarantee that enterprises within their territorial or jurisdictional boundaries adhere to human rights standards, even in their operations abroad.⁷ In relation to States’ arms transfers to third countries, States’

² UN Human Rights Committee, “General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” CCPR/C/21/Rev.1/Add. 13, para. 10

³ UN Human Rights Committee, “General Comment No. 36, Article 6: right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para. 22.

⁴ UN Human Rights Committee, “General Comment No. 36, Article 6: right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para. 22.

⁵ UN Human Rights Committee, “General Comment No. 36 Article 6: right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para. 65.

⁶ UN Human Rights Committee, General Comment No. 31, “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant”, CCPR/C/21/Rev.1/Add. 13, para. 8.

⁷ UN Human Rights Committee, ‘Concluding observations on the sixth periodic report of Canada’ (13 August 2015) UN Doc CCPR/C/CAN/CO/6, para. 6; UN Human Rights Committee “Concluding observations on the fourth periodic report of the Republic of Korea” (3 December 2015) Un Doc CCPR/C/KOR/CO/4, paras 10 and 11; UN Human Rights Committee,

extraterritorial obligations to protect have also been reaffirmed by other UN human rights treaty bodies, including the CRC and CESCR.⁸

The UK is a party to the Genocide Convention. With regard to the prevention of genocide, the Human Rights Committee clarified in its General Comment 36 that:

39. Article 6 (3) reminds all States parties that are also parties to the Convention on the Prevention and Punishment of the Crime of Genocide of their obligations to prevent and punish the crime of genocide, which include the obligation to prevent and punish all deprivations of life, which constitute part of a crime of genocide.⁹

70. (...) At the same time, all States are reminded of their responsibility as members of the international community to protect lives and to oppose widespread or systematic attacks on the right to life, including acts of aggression, international terrorism, genocide, crimes against humanity and war crimes, while respecting all of their obligations under international law. States parties that fail to take all reasonable measures to settle their international disputes by peaceful means might fall short of complying with their positive obligation to ensure the right to life.¹⁰

“Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th session 15 October - 2 November 2012” (12 November 2012) UN Doc CCPR/C/DEU/CO/6, para. 16.

⁸ Committee on the Rights of the Child, “Concluding observations on the fifth periodic report of Sweden” (6 March 2015) UN Doc CRC/C/SWE/CO/5, para. 54; Committee on the Rights of the Child, Concluding observations on the reports under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict by: the Netherlands (8 July 2015) UN Doc CRC/C/OPAC/NLD/CO/1, para. 24; Brazil (28 October 2015) UN Doc CRC/C/OPAC/BRA/CO/1, para. 34; Turkmenistan (20 February 2015) UN Doc CRC/C/OPAC/TKM/CO/1, para. 24; China (29 October 2013) UN Doc CRC/C/OPAC/CHN/CO/1, para. 34; Ukraine (11 April 2011) UN Doc CRC/C/OPAC/UKR/CO/1, para. 26; Republic of Moldova (20 February 2009) UN Doc CRC/C/OPAC/MDA/CO/1, para. 15; Tunisia (6 February 2009) UN Doc CRC/C/OPAC/TUN/CO/1, para. 18; United Kingdom (17 October 2008) CRC/C/OPAC/GBR/CO/1, para. 33; USA (25 June 2008) UN Doc CRC/C/OPAC/USA/CO/1, para. 34; France (15 October 2007) UN Doc CRC/C/OPAC/FRA/CO/1; Committee on Economic, Social and Cultural Rights “Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland” (14 July 2016) UN Doc E/C.12/GBR/CO/6, para. 12; Committee on the Rights of the Child, “Concluding observations on the combined third and fourth periodic reports of Germany” UN Doc CRC/C/DEU/CO/3-4, para. 77; Committee on the Rights of the Child, “Consideration of reports submitted by states parties under article 44 of the convention” (21 October 2010) UN Doc CRC/C/OPAC/MNE/CO/1, para. 25.

⁹ UN Human Rights Committee, “General Comment No. 36 Article 6: right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para. 39.

¹⁰ UN Human Rights Committee, “General Comment No. 36 Article 6: right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para. 70.

With regard to the obligation to prevent genocide, we also recall the International Court of Justice's 2007 judgement regarding the genocide at Srebrenica, which shows that the Court's opinion that the prevention of genocide is a legal obligation, and it is a justiciable obligation that one State effectively owes to the citizens of another State, outside its own territory.¹¹ Responsibility is incurred "if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide."¹²

In its order of 26 January 2024 in the case of *South Africa v. Israel*, regarding Israel's responsibility for genocide against Palestinians in the Gaza Strip, the International Court of Justice explained that "the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can "occur at any moment" before the Court makes a final decision on the case."¹³

In granting the provisional measures, the Court found that the claim of genocide was at least plausible, thus putting on notice all States of their immediate obligations to take actions to prevent or end its commission. In accordance with the jurisprudence, it is therefore clear that by supplying arms in such circumstances, the UK is in violation of that obligation and arguably, may be complicit in genocide, as Israel continues to directly violate the provisional measures ordered.

b. Obligations under the Arms Trade Treaty (ATT)

In addition to its obligations to respect, protect, and fulfil the rights under the ICCPR, as well as its national export control policies (see later in the text, under "Arms export controls under UK domestic law"), the UK has obligations under the Arms Trade Treaty (ATT), to which it is a state party.

¹¹ See, Louise Arbour, "The Responsibility to Protect as a Duty of Care in International Law and Practice," *Review of International Studies*, Vol. 34, No. 3 (July 2008).

¹² *Bosnia and Herzegovina v. Serbia and Montenegro* judgment concerning the application of the Convention of the Prevention and Punishment of Genocide, 26 February 2007, para. 430, available at: <https://www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>

¹³ International Court of Justice, Order, Application of the Convention on the Prevention and Punishment of The Crime of Genocide in The Gaza Strip (*South Africa V. Israel*), 26 January 2024, para. 61, available at: <https://www.icj-cij.org/case/192>

The UK was one of the States that did the most to advance the ATT before and during its negotiations, and was among the first States to become a party to the Treaty upon its entry into force on 24 December 2014.¹⁴ The ATT is an international legally-binding instrument that regulates the transfer of conventional arms by States and aims, *inter alia*, to reduce human suffering by obligating States parties to assess the impact of any weapons transfer against a set of agreed criteria such as genocide, crimes against humanity, war crimes, serious human rights violations, and gender-based violence, among others.

In particular, Article 6(3) of the ATT prohibits authorising arms exports if the State has knowledge at the time of the authorisation that the arms will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

In case an export does not fall within the prohibition of Article 6, Article 7(1) of the ATT stipulates that the exporting State must still assess prior to authorisation the “potential” that the arms:

- (a) would contribute to or undermine peace and security;
- (b) could be used to [inter alia]:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law; (...)

If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences stipulated in Article 7(1) of the ATT, the exporting State Party shall not authorise the export. Article 7(4) of the ATT also requires the exporting State Party to take into account the risk of conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.¹⁵ The UK strongly supported the inclusion of provisions around gender-based violence during the drafting of the Treaty.

¹⁴ United Nations (2014) ‘Arms Trade Treaty’. New York, 2 April 2013. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-8&chapter=26&lang=en.

¹⁵ United Nations (2014) ‘Arms Trade Treaty’. New York, 2 April 2013. Available at: https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253.

It is important to underscore that risk assessments required by the ATT assess just that – the *risk* that the arms in question will be used in any of the ways prohibited by the Treaty. It is not necessary to establish the direct presence of a transferred item as having been used in a specific act in order to prevent future transfers of the same item. If the risk alone is high enough, the transfer must be denied. Given the overwhelming evidence, especially following the International Court of Justice’s ruling that Israel is plausibly committing genocide in Gaza, the UK cannot claim that it is unaware of international crimes and serious violations of international law that have been and continue to be committed by Israel in plain sight. In fact, the UK’s Ministry of Defence assessment of potential violations of IHL carried out in November 2023 concluded that: “Given the paucity of information, the scale and intensity of the conflict, the death toll, the unusual civilian population density coupled with their inability to evacuate and the concomitance mounting effects of the conflict on civilians, HMG’s current inability to come to a clear assessment on Israel’s record of compliance with IHL poses significant policy risks.”¹⁶

It is also not possible for any government to deny that weapons being sent to Israel are not “at risk” of being used to commit or facilitate serious acts gender-based violence or serious acts of violence against women and children. The scale of these violations is so dramatic that in its pleadings in the International Court of Justice, South Africa argued that Israel is “imposing measures intended to prevent births within the group.”¹⁷

c. Arms export controls under UK domestic law

The UK’s transfers of arms and of dual-use items are regulated in domestic law by the UK Export Control Act 2002 and the Export Control Order 2008. Arms exports from the UK are prohibited without express written permission supplied in the form of a licence from the relevant Secretary of State (currently for Business and Trade). Licences are granted, refused, modified, suspended, revoked or refused by the Secretary of State under the advice of the Foreign, Commonwealth and Development Office (FCDO), the Ministry of Defence (MOD), and other government departments and agencies as appropriate. The export control system is administered by the Export Control Joint Unit, part of the Department for Business and Trade, drawing also upon staff from the FCDO and the MOD.

¹⁶ In the High Court of Justice King’s Bench Division Administrative Court, Between: The King (on the application of Al-Haq) v. Secretary of State for Business and Trade, Summary Grounds of the Secretary of State, AC-2023-LON-003634, paras. 35 and 36.

¹⁷ See “ICJ’s Order to Prevent Genocide Applies to the Governments Arming Israel, Too”, Ray Acheson, <https://www.counterpunch.org/2024/01/28/icjs-order-to-prevent-genocide-applies-to-the-governments-arming-israel-too/>.

In December 2021 the UK government laid before parliament a revised version of the UK's licensing criteria for strategic export controls, to be known as the Strategic Export Licensing Criteria (SELC),¹⁸ which the government stated are applied on a case-by-case basis taking into account all relevant information available at the time the licence application is assessed. The SELC are broadly based upon the criteria of European Union Council Common Position 2008/944/CFSP of 8 December 2008, which defines the common rules governing the control of exports of military technology and equipment (EU Common Position), dating from the time when the UK was a member of the EU, though with some changes.

The SELC set out eight criteria upon which the government is to base its assessment of whether to issue an arms transfer licence; criterion 2 refers to the ICCPR explicitly.¹⁹ Based on these criteria, the government is obliged to not grant a licence if:

1. to do so would be inconsistent with the UK's obligations under international law, including for example the ATT
2. it determines there is a clear risk that the items might be used to commit or facilitate internal repression or a serious violation of international humanitarian law
3. it determines there is a clear risk that the items would, overall, undermine peace and security (internal or external).

With respect to points 2. and 3. above, the government is to take into account the risk that the items to be transferred might be used to commit or facilitate gender-based violence or serious acts of violence against women or children.

As underlined in a letter by Human Rights Watch and other NGOs to the UK government in December 2023: "Pursuant to criteria 2(b) of the SELC, the UK Government must also exercise special caution and vigilance in granting licenses to countries where serious violations have been established by the competent bodies of the UN, and certainly such findings of violations are relevant to the determination of 'risk' under international and

¹⁸ UK Secretary of State for International Trade Anne-Marie Trevelyan, 'Trade Policy Update', Statement to House of Commons, UIN HCWS449, 8 December 2021, available at: <https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/hcws449>.

¹⁹ UK Secretary of State for International Trade Anne-Marie Trevelyan, 'Trade Policy Update', Statement to House of Commons, UIN HCWS449, 8 December 2021, available at: <https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/hcws449>.

domestic law.”²⁰ In this regard, please see the **additional information in Annex 1 to this submission**: “Overview of recent concerns, — including some of the concerns expressed by UN human rights bodies—, prepared by the International Service for Human Rights.”

Under criterion 2, the UK is to assess the “Respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law.” In her December 2021 ‘Trade Policy Update’ to the House of Commons, Anne-Marie Trevelyan, UK Secretary of State for International Trade, noted that the “recipient country’s attitude towards relevant principles established by international human rights instruments” is part of the assessment to be carried out prior to licensing transfers of weapons. With regard to this point, we recall the Human Rights Committee’s repeated concerns regarding Israel’s long-standing interpretation that it is not bound to respect the ICCPR in the Occupied Palestinian Territory and rejects the application of international human rights law concurrently to IHL during armed conflict. Israel’s position disregards, *inter alia*, the Committee’s position, reiterated in General Comment on article 6 on the right to life, that the ICCPR applies concurrently to IHL in situations of armed conflict.²¹ We also underline the Human Rights Committee’s recommendations to Israel, most recently in 2022, stressing major concerns over violations of Palestinians’ rights.²²

The ongoing willingness of the UK government to export, for example, components for fighter aircraft that are being used in the attacks on Gaza (see later in the text, under “Exploiting a loophole to arm Israel via the USA”), raises serious concerns about the UK’s application of its export licensing criteria and its obligations under international law.

²⁰ Human Rights Watch, ‘Letter to the UK government calling for an immediate halt to UK arms transfers to the Government of Israel’, 12 December 2023, available at: <https://www.hrw.org/news/2023/12/12/letter-uk-government-calling-immediate-halt-uk-arms-transfers-government-israel>;

²¹ “64. Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields would also violate article 6 of the Covenant. (...) They must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards (see paras. 27–28 above).” UN Human Rights Committee, “General Comment No. 36 Article 6: right to life” (3 September 2019) UN Doc CCPR/C/GC/36, para. 64.

²² UN Human Rights Committee, “Concluding observations on the fifth periodic report of Israel” (5 May 2022), CCPR/C/ISR/CO/5, para. 7.

III. Extraterritorial human rights impacts of the UK's arms transfers

a. Background

Already since 2015, eminent international law experts concluded that the UK Government was in breach of national, EU and international law and policy by supplying weapons to Saudi Arabia and the UAE in the context of Saudi Arabia's military intervention and bombing campaign of Yemen.²³ Concerns have been expressed by international human rights mechanisms, including by the CESCR in 2016, which recommended that the UK "Conduct thorough risk assessments prior to granting licences for arms exports and refuse or suspend such licences when there is a risk that arms could be used to violate human rights, including economic, social and cultural rights."²⁴ Moreover, the UK accepted a UPR recommendation to "carefully assess the transfer of arms to those countries where they are likely to be used for human rights abuses and violations."²⁵ Regrettably, it has only noted a UPR recommendation to "Ensure responsible business conduct in the arms sector, in line with the Guiding Principles on Business and Human Rights, taking into account the information note that the Working

²³ See, "Matrix members find UK Government is in breach of national, EU and international law and policy", reporting on the comprehensive legal opinion by lawyers, Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ní Ghráiligh, who concluded that by supplying weapons to Saudi Arabia "the UK Government is in breach of its obligations under the Arms Trade Treaty, the EU Common Position on Arms Exports and the UK's Consolidated Criteria on arms exports." <https://www.matrixlaw.co.uk/news/matrix-members-find-uk-government-is-in-breach-of-national-eu-and-international-law-and-policy/>. See also UN Human Rights Council, forty-fifth session, 'Detailed findings of the Group of Eminent International and Regional Experts on Yemen: Situation of human rights in Yemen, including violations and abuses since September 2014' (29 September 2020) UN Doc A/HRC/45/CRP.7, paragraphs 61, 412, 414.

²⁴ Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/6 (14 July 2016), para. 12 c). For additional information, see also WILPF, "Explosive Weapons and the Right to Health, Education and Adequate Housing. Extraterritorial Obligations of the United Kingdom under CESCR. Shadow report to CESCR 58th session. United Kingdom", available at <https://www.reachingcriticalwill.org/images/documents/Publications/wilpf-cescr-uk.pdf>; and Christian Aid, The Quakers in Britain and WILPF UK, "The Impact of the UK's Arms Transfers and Military Spending on Women's Rights, Joint shadow report to the CEDAW Committee, 72nd Session (February 2019), https://www.wilpf.org/advocacy_documents/joint-submission-to-the-cedaw-committee-for-the-review-of-the-uk/.

²⁵ "In the context of the defence of the right to life, carefully assess the transfer of arms to those countries where they are likely to be used for human rights abuses and violations (Peru)", Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland, UN Doc A/HRC/36/9, para. 134.132; for the source of the UK's position on the recommendation, see Annex to A/HRC/36/9/Add.1, page 47, both available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/gbindex.aspx>.

Group on the issue of human rights and transnational corporations and other business enterprises published on this topic in August 2022.”²⁶

The UK has also endorsed the Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas.²⁷ Through this declaration, the UK has condemned, among other things, “any attacks directed against civilians, other protected persons and civilian objects, including civilian evacuation convoys, as well as indiscriminate shelling and the indiscriminate use of explosive weapons.”²⁸ The UK has also committed to “adopt and implement a range of policies and practices to help avoid civilian harm, including by restricting or refraining as appropriate from the use of explosive weapons in populated areas, when their use may be expected to cause harm to civilians or civilian objects.”²⁹ While the commitments in the declaration are in relation to the endorsing State’s armed forces, these commitments should also be seen as applying to their material support for other armed forces. If the UK has committed to restrict and refrain from using explosive weapons in populated areas, it cannot supply weapons to other forces actively engaging in such behaviour. This understanding of the declaration is bolstered by the additional commitment to “Strengthen international cooperation and assistance among armed forces, and other relevant stakeholders, including in the context of partnered military operations, with respect to exchanges of technical and tactical expertise, and humanitarian impact assessments, in order to develop good policies and practices to enhance the protection of civilians, particularly with regard to the use of explosive weapons in populated areas.”³⁰

b. The UK’s arms transfers to Israel

The UK’s arms transfers to Israel pre-date the ongoing genocide in Gaza, and in the past, there has been evidence of UK-made components of weapons used by Israel in military aggressions on Gaza.³¹ In 2009 and 2014, the UK

²⁶ Recommendation by Panama, “Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland,” UN Doc A/HRC/52/10 (9 January 2023), para. 43.176; for the source of the UK’s position on the recommendation, see Annex A/HRC/52/10/Add.1.

²⁷ “Protecting civilians in urban warfare”, available at: <https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/#ewipa-dublin-conference-2022>.

²⁸ “Protecting civilians in urban warfare”, para. 2.6, available at: <https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/#ewipa-dublin-conference-2022>.

²⁹ “Protecting civilians in urban warfare”, para. 3.3, available at: <https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/#ewipa-dublin-conference-2022>.

³⁰ “Protecting civilians in urban warfare, para. 4.1 available at: <https://www.gov.ie/en/publication/585c8-protecting-civilians-in-urban-warfare/#ewipa-dublin-conference-2022>.”

³¹ Campaign Against Arms Trade, “CAAT calls for UK to end arms sales and military support for Israeli forces following Gaza killings”, 9 August 2022, available at: <https://www.hrw.org/news/2023/12/12/letter-uk-government-calling-immediate-halt-uk-arms-transfers-government-israel>.

government acknowledged that UK-exported components and weapons had likely been used by the Israeli military in Gaza.³² In 2014, this led the UK government to suspend extant licences for components which could be part of equipment used by the Israeli military in Gaza and to temporarily suspend the issuance of new licences to Israel.³³ Since 2019, several manufacturing locations and offices of Elbit Systems, which is Israel's leading arms producer, are located in the UK.³⁴

According to the analysis by the Campaign against the Arms Trade (CAAT) released on 9 August 2022:

“(…) since May 2015 and until August 2022, the UK has licenced over £442 million worth of arms to Israeli forces, including:

£183 million worth of ML22 licences (military technology)

£117 million worth of ML10 licences (aircraft, helicopters, drones)

£22 million worth of ML4 licences (grenades, bombs, missiles, countermeasures)

£4.6 million worth of ML6 licences (armoured vehicles, tanks)

£1.9 million worth of ML3 licences (ammunition)

£1.1 million worth of ML1 licences (small arms)

The actual level of exports will be significantly higher, as there have also been 47 Open Licences in this period. These are mainly for aircraft equipment. Open Licences allow for an unlimited quantity and value of exports.”³⁵

³² Amnesty International UK, “Briefing Arms exports licences for sales to Israel, 14 December 2023”, available at: <https://www.amnesty.org.uk/files/2023-12/Amnesty%20International%20UK%20Briefing%20-%20Israel%20Arms%20Exports%20-%2014.12.2023%20.pdf?VersionId=jokEuSb4RwO1qRdLHjYzGcQDPXhugMbs>.

³³ Human Rights Watch, “Letter to the UK government calling for an immediate halt to UK arms transfers to the Government of Israel”, 12 December 2023, available at: <https://www.hrw.org/news/2023/12/12/letter-uk-government-calling-immediate-halt-uk-arms-transfers-government-israel>; House of Commons Library, “Arms exports licences for sales to Israel,” (7 December 2023) pages 4-5, available at: <https://researchbriefings.files.parliament.uk/documents/CDP-2023-0223/CDP-2023-0223.pdf>.

³⁴ Action on Armed Violence, “Trading in trauma: do United Kingdom arms exports to Israel violate the Arms Trade Treaty and other arms control regulations?” (8 November 2023), available at: <https://aoav.org.uk/2023/trading-in-trauma-do-united-kingdom-arms-exports-to-israel-violate-the-arms-trade-treaty-and-other-arms-control-regulations/>.

³⁵ Campaign Against Arms Trade, “CAAT calls for UK to end arms sales and military support for Israeli forces following Gaza killings”, 9 August 2022, available at: <https://www.hrw.org/news/2023/12/12/letter-uk-government-calling-immediate-halt-uk-arms-transfers-government-israel>.

c. Exploiting a loophole to arm Israel via the USA

According to Amnesty International UK, “The UK government exploits a loophole, set out in the 2002 “incorporation guidelines”, to arm Israel by supplying components for US-made F16 and F-35 fighter aircraft, in the full knowledge they’re being used in military action in Gaza where thousands of civilians have already been killed and are expected to continue to be killed, following relentless and indiscriminate Israeli attacks.”³⁶ The UK and BAE systems are major partners in the manufacturing of the US F-35 Joint Strike Fighter Program, providing 15% of components of every F-35 warplane.³⁷

According to analysis by CAAT,

“By the end of 2020, the USA had delivered 27 F-35A Joint Strike Fighters to Israel, from a 2010 order for 19 aircraft. (Data from SIPRI Arms Transfers Database). In total, Israel has ordered 50 F-35s in three separate deals. Israel announced in May 2018 that it had used the F-35 in combat for the first time, although the target was not specified. In the most recent Israeli assault on Gaza in May 2021, an Israeli government spokesperson said that F-35s had been used as part of the attack. UK arms exports to the US that relate to the F-35 programme are covered by an “Open General Export License” (OGEL), which allows companies registered for the OGEL to make unlimited deliveries related to the F-35 without further need for licensing, until further notice. The quantities exported under this OGEL are therefore unknowable. However, based on the \$5.5 billion value of two US deals with Israel in 2010 and 2015, covering the first 33 planes, the UK share (15%) would be around \$825 million (£585 million).”³⁸

F-35s are among the planes that Israel is using in its ongoing genocide and relentless bombing campaign of Gaza.³⁹ A US Pentagon executive in charge of the F-35 program has boasted that “Israel’s fleet of F-35s have performed ‘absolutely outstanding’ in the war against Hamas” and that “the F-35 program office is going to ‘learn a lot’ from seeing F-35s used in combat.”⁴⁰

³⁶ Amnesty International UK, “Briefing Arms exports licences for sales to Israel, 14 December 2023”, available at: <https://www.amnesty.org.uk/files/2023-12/Amnesty%20International%20UK%20Briefing%20-%20Israel%20Arms%20Exports%20-%202014.12.2023%20.pdf?VersionId=jokEuSb4RwO1qRdLHjYzGcQDPXhugMbs>.

³⁷ Campaign Against Arms Trade, Country Profile: Israel, available at: <https://caat.org.uk/data/countries/israel/>.

³⁸ Campaign Against Arms Trade, Country Profile: Israel, available at: <https://caat.org.uk/data/countries/israel/>.

³⁹ Business Insider, “The 3 US-made fighter jets Israel is using in its air war over Gaza”, 6 January 2024, available at: <https://www.businessinsider.com/us-fighter-jets-israel-air-war-gaza-2024-1?r=US&IR=T>.

⁴⁰ Defense One, “US rushed new F-35 capabilities to Israel after Hamas attack”, 12 December 2023, available at: <https://www.defenseone.com/technology/2023/12/us-rushed-new-f-35-capabilities-israel-after-hamas-attack/392718/>.

According to data from Action against Armed Violence as of 31 January 2024, explosive weapons used in the Occupied Palestinian Territory since 7 October 2023 killed at least 11,368 people and injured 4,710.⁴¹ For more details, **please see Annex 2 to this submission** “Israel’s genocide in Gaza Since 7 October 2023, prepared by Al-Haq.”

d. Calls to cease UK arms exports to Israel

Numerous calls have been made on the UK to end its ongoing arms exports to Israel including by civil society organisations, workers and UK parliamentarians.⁴² In November 2023, a legal case was introduced by Al-Haq, together with the Global Legal Action Network (GLAN) over illegal attacks on civilians who are trapped and under siege in Gaza, after requests for the government to suspend exports were refused.⁴³ A document submitted by the UK government in the case indicates that after reviewing arms exports to Israel, the Foreign Office assessment unit advising the UK’s Secretary of State for Foreign, Commonwealth and Development Affairs, David Cameron, had “serious concerns” that Israel had breached IHL, specifically with regard to its obligation not to arbitrarily deny access to humanitarian assistance.⁴⁴ Eventually on 12 December 2023, David Cameron decided to continue exports to Israel while keeping them under review on the basis “that there was good evidence to support a judgement that Israel is committed to comply with IHL”.⁴⁵ The government document does not refer to any assessment regarding Israel’s compliance with international human rights law in addition to IHL, despite the UK’s obligations to also assess risks of violations of international human rights law under both the ATT (article 7) and

⁴¹ Occupied Palestinian Territories: AOVAV explosive violence data on harm to civilians, 31 January 2024, available at: <https://aoav.org.uk/2024/occupied-palestinian-territories-aoav-explosive-violence-data-on-harm-to-civilians/>

⁴² Human Rights Watch, “Letter to the UK government calling for an immediate halt to UK arms transfers to the Government of Israel”, 12 December 2023, available at: <https://www.hrw.org/news/2023/12/12/letter-uk-government-calling-immediate-halt-uk-arms-transfers-government-israel>; House of Commons Library, “Arms exports licences for sales to Israel,” (7 December 2023) pages 4-5, available at: <https://researchbriefings.files.parliament.uk/documents/CDP-2023-0223/CDP-2023-0223.pdf>; Campaign Against Arms Trade, “Statement on UK arms exports to Israel,” available at <https://caat.org.uk/news/statement-on-uk-arms-exports-to-israel/>.

⁴³ Global Legal Action Network, UK weapons sales to Israel, available at: <https://www.glanlaw.org/israel-weapons-sales#:~:text=06.12.,deteriorates%20the%20evidence%20is%20clear>; See also, The Guardian, “UK government faces legal challenge over arms exports to Israel”, available at: <https://www.theguardian.com/world/2023/dec/06/uk-government-faces-legal-challenge-over-arms-exports-to-israel>.

⁴⁴ Campaign against Arms Trade, “Revealed: David Cameron advised continuing arms exports to Israel, accepting Israel has a different interpretation of its international humanitarian law obligations?”, 19 January 2024, available at: <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/>.

⁴⁵ The Guardian, “Cameron to be asked to clarify claim he took no decision over Israel arms sales”, 21 January 2024, available at: <https://www.theguardian.com/politics/2024/jan/21/david-cameron-clarify-claim-decision-israel-arms-sales>.

UK domestic arms export control legislation (SELC criterion 2 in particular), as well as under its obligations under the ICCPR particularly with regard to the right to life.

In December 2023, a bill to suspend arms exports to Israel was also introduced by parliamentarian Zarah Sultana and was discussed in the second reading on 19 January 2024.⁴⁶

IV. Recommendations

In light of the above, our organisations urge the Human Rights Committee to make the following recommendations to the UK:

- Immediately stop arms transfers and the licensing of arms and related equipment to Israel, including via third States such as the US, and to any State where there is a risk that these arms might be used in the commission of the crime of genocide, to violate IHL or international human rights law, including the rights protected under the ICCPR, or any other action prohibited or restricted by the Arms Trade Treaty or other relevant international law;
- Ensure that the relevant export authorities in the UK comply with their obligations under the ICCPR, the Arms Trade Treaty, and the UK's Strategic Export Licensing Criteria (SELC), in particular by including in their assessment for granting licences a monitoring of whether the recipient country is using licensed weapons not only in compliance with IHL, but also with international human rights law including the ICCPR;
- Ensure meaningful legislative control over UK arms exported, by increasing transparency around its decision-making process for authorising or denying exports;
- Ensure independent, impartial and prompt investigations in potential violations of IHL and of international human rights law, including of the right to life, related to the UK's transfers of arms and related equipment to Israel; and
- Withdraw the 2002 "incorporation guidelines" in order to remove the loophole that allows the UK government to bypass its own legal obligations to prevent the sale of military equipment where there is a clear risk they might be used for serious violations of international law, including international human rights law.⁴⁷

⁴⁶ Arms Trade (Inquiry and Suspension) Bill, available at: <https://bills.parliament.uk/bills/3567>.

⁴⁷ See recommendation in Amnesty International, "12 December 2023: Westminster hall debate: arms export licences for sales to Israel", available at: https://www.amnesty.org.uk/files/2023-12/Amnesty%20International%20UK%20Briefing%20-%20Israel%20Arms%20Exports%20-%20WHD%2012.12.2023.pdf?VersionId=10n.WIZvDcP6GWcJel_hRvWTFqXyvPyc.