

Briefing Paper for Arms Trade Treaty (ATT) Delegations Regarding Arms Transfers to Israel

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This briefing paper, prepared by the Reaching Critical Will programme of the Women's International League for Peace and Freedom, provides delegations with information about their legal obligations under the ATT in relation to arms transfers to Israel, including in the context of the International Court of Justice (ICJ)'s ruling that Israel is plausibly committing genocide of Palestinians and the interim measures the Court imposed on Israel to prevent this genocide. We hope these points are useful for delegations to use when engaging in the Sub-working Group on current and emerging implementation issues, to be held on 21 February 2024 under the auspices of ATT Working Group on Effective Treaty Implementation.

ATT and international law

The ATT sits within the existing framework of international law and should be guided by the interpretation and application of the law as it pertains to acts referenced in the Treaty, namely: genocide, violations of international humanitarian law (IHL), international human rights law (IHRL), and the gendered impact of the use of weapons. Hence, WILPF would submit that findings by courts, tribunals, special procedures of the UN, and treaty bodies must inform the interpretation of relevant sections of the ATT.

To this end, specific reference should be made to the **interim findings** of the ICJ in 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. In that decision, the Court found that Israel is plausibly committing genocide and indicated certain measures to be implemented in order to prevent said genocide.

Additionally, special procedures of the UN and treaty bodies, as well as civil society, have gathered evidence of human rights abuses, violations of IHL, war crimes, and gender-based violence in the context of Israel's war on Gaza, as laid out in more detail below in this briefing paper. This evidence needs to influence states' implementation of Articles 6, 7 and 9 of the ATT.

National courts have already started to reflect this understanding. So far, cases have been brought in the United States, United Kingdom, and Netherlands. In the latter, a court **ordered** a block on all exports of parts for the F-35 fighter jet, stating, "It is undeniable that there is a clear risk the exported F-35 parts are used in serious violations of international humanitarian law." **Italy and Spain** have suspended arms transfers to Israel, **Belgium** has suspended two licences for gunpowder, and Japanese company Itochu Corporation **ended** its partnership with Elbit Systems specifically mentioning the ICJ decision.

ATT prohibitions

The following points outline core obligations for ATT states parties in relation to arms transfers to Israel:

- Article 6(3) of the ATT prohibits authorising arms exports if the state has knowledge at the time of the authorisation that the weapons, parts, components, or ammunition 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.
- The International Court of Justice (ICJ) has **found** that it is plausible that Israel is committing genocide and will continue its investigation; in the meantime it called for provisional measures to prevent genocide. This decision puts all states on notice of their immediate obligation under the Genocide Convention to take actions to prevent or end the commission of genocide.
- Supplying weapons, and/or their parts, components, and ammunition, to Israel in such circumstances is a violation of this obligation in accordance with the **jurisprudence**, and may amount to complicity in genocide.
- In addition to genocide, Israel's actions also fall under the other prohibitions of Article 6(3). With its extensive use of explosive weapons throughout the densely populated Gaza strip, including its bombing of houses, hospitals, schools, markets, and all other civilian infrastructure, and the death toll of Palestinian civilians now up to at least 28,500, Israel is clearly directing attacks against civilians and civilian objects.
- There is also extensive evidence demonstrating that Israel has committed war crimes. Balakrishnan Rajagopal, the UN Special Rapporteur on the right to adequate housing, **said**, "Carrying out hostilities with the knowledge that they will systematically destroy and damage civilian housing and infrastructure, rendering an entire city— such as Gaza city— uninhabitable for civilians is a war crime." He added that the systematic or widespread bombardment of housing, civilian objects, and infrastructure also amount to crimes against humanity when directed against a civilian population.
- Amnesty International **gathered** evidence of four unlawful strikes in Rafah and concluded that they should be investigated as war crimes. Human Rights Watch also **warned** that the Israeli military's repeated unlawful attacks on medical facilities, personnel, and transport are further destroying Gaza's healthcare system and should be investigated as war crimes. UN experts also **stated** that Israel's alleged undercover killings in occupied West Bank hospitals may amount to extrajudicial killings and war crimes.
- Israel's **targeted killing of journalists** also amounts to a war crime. The Committee to Protect Journalists has **reported** that as of 16 February, at least 88 journalists and media workers have been killed since 7 October. In addition, 16 have been injured, four are missing, and at least 25 have been arrested. The International Committee of the Red Cross **notes** that journalists are protected

as civilians under international humanitarian law against direct attacks unless and for such time as they take a direct part in hostilities. Violations of this rule constitute a grave breach of the Geneva Conventions and Additional Protocol I and can amount to a war crime under the Rome Statute of the International Criminal Court.

ATT provisions on arms export risk assessments

- In case an export does not fall within the prohibitions of Article 6, Article 7(1) of the ATT stipulates that the exporting state must still assess prior to authorisation the potential that the weapons, parts, components, and ammunition could be used to commit or facilitate a serious violation of international humanitarian law or international human rights law. If a state party determines there is an overriding risk of such violations, it cannot authorise the export.
- Article 7(4) of the ATT also requires the exporting state party to take into account the risk of weapons, parts, components, and ammunition being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
- The 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, as laid out below, states cannot claim they are unaware of international crimes and serious violations of international law that have been and continue to be committed by Israel.

ATT provisions on transit and trans-shipment

- Article 9 of the ATT says that each state party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of weapons covered by the Treaty.
- Given the plausibility of genocide and the commission of war crimes, violations of IHL, and human rights abuses being committed by Israel, ATT states parties have an obligation not to allow the transit or trans-shipment of weapons to Israel through their territory, ports, or airports.

Examples of IHL violation and human rights abuses

The list of human rights and international humanitarian law violations is extensive; just a few examples are highlighted here:

- In just over four months, the Israeli army has **killed** over 28,500 Palestinians in Gaza, while some 10,000 people are missing, presumed dead under the rubble. Nearly 70,000 are injured, many maimed for life, and some 1.7 million people—75% of the population—have been displaced, while the entire civilian population is at risk of starvation.

- Daily, relentless massacres, the latest ones inflicted in Rafah, where over 1.4 million Palestinians are struggling to survive, are being committed. The **use** of air-dropped explosive weapons by the Israel Defense Forces, as well as the intensity and frequency with which they are used in densely populated areas in Gaza, have had catastrophic impacts on Palestinian civilians.
- Israel has been consistently attacking medical facilities, personnel, and transport, in violation of international humanitarian law. Tlaleng Mofokeng, UN Special Rapporteur on the right to health, **said** that “Israel has declared an ‘unrelenting war’ on the health system in Gaza.” 22 hospitals are no longer **functioning**, and 123 ambulances have been destroyed. Only 12 Emergency Medical Teams and 2 field hospitals are **operational**. More than 200,000 cases of acute respiratory infections have been **recorded**.
- As a **report** from PAX shows, the massive use of explosive weapons in populated areas and rural communities in Palestine are creating reverberating environmental health risks in the medium and long-term. The destruction of buildings “leaves millions of tons of rubble mixed with toxic materials such as asbestos and other hazardous pulverized building materials,” while the destruction of water infrastructure deprives the civilian population of access to water for drinking, sanitation, and health. “Raw sewage is flooding through the streets and worsening public health problems, while contaminating soil and water sources.” Bombardments, military movements, and forced displacement “have affected over a quarter of all agricultural land, including orchards, crops and greenhouses that have been destroyed.”

Examples of gender-based violence and sexual violence

- Thousands of pregnant people are being killed by Israeli soldiers, denied access to healthcare, forced to give birth in **extremely unsafe conditions**, facing escalating rates of premature births and the death of newborns from preventable causes.
- The UN Committee on the Elimination of Discrimination against Women (CEDAW) **warned**, “The very principles of the Convention protecting women and girls are challenged when mothers in the Gaza Strip have been put in a situation of burying at least 7,729 children in the past four months, and 5,500 women don’t know if they will be able to deliver their children safely within next month.” The Committee also recognised “that the continuing war and siege cause grievous harm to all women and girls, including pregnant women and women with disabilities.”
- Men, often **targeted** in armed conflict under the assumption that men are militants, not civilians, are also subject to gender-based violence by the Israeli forces. There have been many reports that IDF soldiers and settlers have **sexually assaulted**, abused, and tortured Palestinian men since October, including those in **detention**.

Examples of violence against children

- As **explained** by Save the Children, “In conflicts, children are especially vulnerable and experience unique hardships compared to adults. They suffer physical harm, disruptions in healthcare and education, hunger, malnutrition, and witness traumatic events. These experiences have both immediate and long-term mental and emotional consequences.”

- The organisation **stated** that “The dramatic escalation in violence witnessed in Gaza and Israel is deeply alarming with horrendous consequences for children’s lives and wellbeing. With the death toll climbing, children are at risk and terrified, not to mention suffering from serious longer term mental health impacts.”
- Even before the current war broke out, the organisation had produced **research** pointing out multiple levels of violence faced by children: “Our research earlier this year painted an alarming picture of children’s mental health in Gaza. It found that after 15 years of blockade and multiple cycles of violence from all parties to the conflict, four out of five children in the Gaza Strip report that they live with depression, grief, and fear, and caregivers reported that three out of five are self-harming. With every airstrike or rocket launched, children’s sense of safety is ripped away yet again, with a devastating psychological toll.”
- More than 12,500 children have been killed so far. On average, ten children per day have **lost** one or both legs. UNICEF **estimates** that at least 17,000 children are unaccompanied or separated from their parents, and almost all of Gaza’s 1.2 million children are in need of mental health and psychosocial support.

Recommendations

All ATT states parties currently transferring or allowing the transit or trans-shipment of weapons, parts, components, and ammunition to Israel must stop, and must halt all arms export and production licences with Israel. States parties involved in transit and trans-shipment must stop facilitating these transfers.

In addition, all ATT states parties should demand that:

- Any ATT state party that is currently providing Israel with weapons, parts, components, or ammunition must immediately stop arms transfers and the licensing of arms and related equipment to Israel, including via third states, 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 international humanitarian law or international human rights law, or any other action prohibited or restricted by the Arms Trade Treaty.
- All ATT states parties must abide by their obligations under the Treaty, including by conducting thorough risk assessments that examine in full the likelihood of weapons, parts, components, and ammunition being used in the commission of IHL and IHRL violations, including gender-based violence and violence against children. In such risk assessment processes, states must include reports from UN agencies, international humanitarian organisations, and civil society groups.
- States importing arms and surveillance technology from Israel immediately halt all such imports.
- Transit states should refuse to have their ports and airports used for transferring arms to Israel.
- All ATT states parties must cooperate within relevant international and regional organisations to impose a two-way embargo on transfers of military items to and from Israel, including by supporting the prompt organisation of an extraordinary meeting of the Conference of States Parties, as provided in Article 17(5) of the ATT.

ATT states parties should also call for:

- Independent, impartial, and prompt investigations into potential violations of the Genocide Convention, Geneva Conventions, and international humanitarian law and international human rights law facilitated by arms exports from ATT states parties.
- Increased transparency from all ATT states parties about their risk assessment processes and the decisions they have taken to export weapons or grant licences in cases of serious concern.
- An immediate ceasefire, the unconditional and unimpeded access of fuel and humanitarian aid, including water, food, and medical supplies, into the Gaza Strip to alleviate the dire humanitarian crisis, and the immediate lifting of the 16-year-long illegal blockade and closure Gaza, and an end to Israel's occupation of Palestine and imposition of apartheid policies against Palestinians.

Reaching Critical Will (RCW) is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest feminist peace organisation in the world. RCW works for global disarmament and demilitarisation, and for an end to war, militarism, and violence. It also investigates and exposes patriarchal and gendered aspects of weapons and war and provides an intersectional feminist analysis on disarmament issues.

RCW monitors and analyses international processes on disarmament at the United Nations and beyond. RCW provides timely and accurate reporting, analysis, and advocacy on all relevant conferences and initiatives and maintains a comprehensive online archive of all statements, resolutions, and other primary documents on disarmament. RCW also produces research studies, reports, statements, fact sheets, and other publications on key issues relevant to disarmament and militarism. and works in coalitions with other civil society groups to achieve change.

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