

Far From Ignorant: The European Union, Arms Exports and Israel

By [Dr. Binoy Kampmark](#)

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While international law can, at times, seem an ephemeral creature, vulnerable to manipulation, neglect and outright dismissal, its strictures can surprise. The evolving body of law stripping back the immunity of heads of state for gross human rights abuses, the potential complicity of third parties and powers in aiding such heads of states and their armies, are salutary reminders to politicians and officials the world over: mind your obligations, abide by your duties.

Few more onerous obligations exist in this canon than the prevention and punishment of genocide, as outlined by the United Nations Genocide Convention. While claims that it is taking place against the Palestinians as a feature of Israeli policy have been dismissed by the United States and a core group of ministers in the European Union, the human rights fraternity [are increasingly convinced](#): genocide is, and has taken place, in Gaza.

Even if genocide were not ultimately found to be taking place by the International Court of Justice (ICJ) in the South African [lawsuit](#) against Israel, the broader scope of war crimes and crimes against humanity would be hard to rebut, from policies of deprivation and starvation, to the hefty civilian death toll.

This makes the continued arms sales to Israel not only problematic, but potentially criminal in a secondary liability sense. As with the United States, the EU adopts a preferential approach to Israel on the issue of imposing arms embargoes, leaving the matter to individual member states. In no small part is this due to the EU being Israel's second largest arms supplier after the US. The European External Action Service's COARM database [reveals](#) that between 2018 and 2022, EU member states sold arms to Israel to the value of 1.75 billion euros.

As [reported](#) in *Al Jazeera*, certain states - Italy, the Netherlands, Spain, and Belgium's Wallonia - have made chirpy announcements on suspending arms transfers to Israel, though these have been tardily followed up. In any case, the measures are only temporary or partial in nature, a form of decorative diplomacy.

While the European Union dithers and stalls on responding to this subject, despite the ICJ's [interim rulings](#) that there was a risk of irreparable harm to the Palestinian right to be protected from genocide, bureaucrats have been busy. The EU special representative for human rights, **Olof Skoog**, has been particularly prominent in this regard in [penning a harsh assessment](#) of the conflict for EU ministers ahead of their November 18 council meeting. This was intended to inform debate about a proposal by the then EU foreign policy chief **Josep Borrell** on whether political dialogue should be suspended with Israel. Borrell

had hoped such a decision would bring pressure to bear on Israel to adhere to international law.

The move encountered resistance, with Germany promising ahead of time it would oppose it. Little surprise, then, that the ministers eventually opposed Borrell's suggestion, along with any move to ban arms sales to Israel.

Skoog's assessment, obtained by *The Intercept*, runs the whole gamut of evidence on the warring conduct by Israel, Hamas, and Hezbollah since October 7, 2023 when the Hamas-orchestrated assault killing of 1,200 people precipitated the current, unceasing phase of conflict. The origins of the paper are found in a [request](#) made in February 2024 by Spain and Ireland to the European Commission on whether Israel's military actions in Gaza violated the human rights provisions of the [EU-Israel Association Agreement](#).

In October, the Spanish **Prime Minister Pedro Sánchez** was still waiting for a response.

"The European Commission must respond once and for all to the formal request by two European countries to suspend the association agreement with Israel if it is found, as everything suggests, that human rights are being violated," the Spanish PM [told an event](#) held in Barcelona.

With the European Commission refusing to entertain the matter, Skoog was commissioned by the European External Action Service to conduct a review. This led to an initial assessment in July, one that was subsequently updated in November.

Skoog takes Hamas and Hezbollah to task but lashes the Israeli Defense Forces for failing to adopt a sterner, more discriminating position between civilian and military objects. "Given the high level of civilian casualties and human suffering, allegations focus mainly on how duty bearers, including the Israeli Defense Forces (IDF), have seemingly failed to distinguish between civilians and combatants and to take all feasible precautions to protect civilians and civilian objects against the effects of the attacks, in violation of the fundamental principles of IHL [international humanitarian law]."

As with a burgeoning number of reports, legal submissions and the [arrest warrants issued](#) by the International Criminal Court for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant, the "dehumanizing language" used by Israeli officials vis-à-vis Palestinians draws special attention. "Incitement to discrimination, hostility or violence – such as that made in statements by Israeli officials – constitutes a serious violation of international human rights law and may amount to the international crime of incitement to genocide," Skoog notes.

On the subject of arms sales, the suggestion is made that export licenses be denied in cases where "there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law."

From the standpoint of culpability, this is significant. As **Yanis Varoufakis**, former Greek finance minister and secretary-general of the Democracy in Europe Movement 2025 [reasons](#), EU ministerial ignorance can hardly be pleaded in this case were the ICC to find Netanyahu and Gallant guilty of violating International Humanitarian Law.

"The world now knows that they knew they were in breach of international law because

they were explicitly told so by the EU's own special representative on human rights. History will judge them harshly. And perhaps so will the ICC."

Lawyers across Europe are already drafting their briefs in anticipation, even as reputations get shredded and people continue dying.

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***Dr. Binoy Kampmark** was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University. He is a Research Associate of the Centre for Research on Globalization (CRG). Email: bkampmark@gmail.com*

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