

When Courts Intervene: Halting the Transfer of F-35 Parts to Israel

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Global Research, February 14, 2024

Region: [Europe, Middle East & North Africa](#)

Theme: [Law and Justice](#), [Militarization and WMD](#)

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Legal challenges regarding the Israel-Gaza War are starting to bulk lawyers' briefs and courtroom proceedings. South Africa got matters underway with its December application before the International Court of Justice accusing Israel of genocide in its campaign against the Palestinians. While determining whether genocide has taken place, the ICJ issued an [interim order](#) warning Israel to prevent genocidal acts, preserve evidence relevant to the prosecution of any such acts, and ease the crushing restrictions on humanitarian aid.

In the United States, a valiant effort was made in the US District Court for the Northern District of California to restrain the Biden administration from aiding Israel's war efforts. The application, filed by the New York-based Center for Constitutional Rights, argued that President Joseph Biden, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin, had made genocidal conditions possible "because of unconditional support given [to Israel] by the named official-capacity defendants in this case".

The troubled judge, while citing the convention that foreign policy could not be the subject of a court's jurisdiction, nonetheless implored President Biden and his officials to observe the obligations of the UN Genocide Convention. As justice Jeffrey S. White [declared](#),

"the undisputed evidence before this Court comports with the finding of the ICJ and indicates that the current treatment of the Palestinians in the Gaza Strip by the Israeli military may plausibly constitute a genocide in violation of international law."

A Dutch appeals court in The Hague [has further added](#) its name to this growing list of interventions. Judge Bas Boele, in siding with the human rights groups making the application including Oxfam Novib, had no such quibbles with questioning government

policy towards Israel and the shipping of parts vital for the F-35 fighter. While the Netherlands does not assemble or produce the F-35, it [houses at least one storage facility](#) at Woensdrecht, where US-made components are stored for shipping to various countries.

Despite the ongoing conflict in Gaza, which commenced after the attacks by Hamas militants on October 7, 2023 on Israel, the Dutch government had not discontinued deliveries under a permit granted in 2016. This is despite the monumentally lethal nature of a war that has left 28,100 Palestinians dead, and the decision by the ICJ.

The lower court had, in a similar vein to their US counterparts, [adopted the position](#) that decisions regarding export permits of weapon components tended to be of a political and policy nature, warranting wide executive latitude. The judge duly held that the Minister of Foreign Trade and Cooperation had weighed up the relevant interests in the case in deciding to continue with the exports.

Such an artificial distinction – one that finds political acts that may lead to complicity in genocide armoured, if not above legal challenge – was not persuasive to the higher court. “It is undeniable that there is a clear risk that the exported F-35 parts are used in serious violations of international humanitarian law,” the appeals court found. “Israel does not take sufficient account of the consequences for the civilian population when conducting its attacks.” Such attacks had “resulted in a disproportionate number of civilian casualties [in Gaza].”

It followed that, “The Netherlands is obliged to prohibit the export of military goods if there is a clear risk of serious violations of international humanitarian law.” The export and transit of all F-35 parts with Israel as their final destination would cease within seven days.

In [responding to the ruling](#), Oxfam Novib Executive Director Michiel Servaes called it “an important step to force the Dutch government to adhere to international law, which the Netherlands has strongly advocated for in the past. Israel has just launched an attack against the city of Rafah, where more than half of Gaza’s population are sheltering, the Netherlands must take immediate steps.”

Immediate steps have been duly taken, but not along the lines advocated by Oxfam; the Dutch government is appealing to the country’s Supreme Court to return to the status quo. It was always likely to happen and was timed with the February 12 visit by Dutch Prime Minister Mark Rutte to Israel and the Palestinian territories.

“In the government’s view,” went the official [statement](#), “the distribution of American F-35 parts is not unlawful. The government believes it is up to the State to its [*sic*] determine foreign policy.”

The statement also goes on to reveal the sheer scope of the F-35 supply program and its relevance to the Dutch defence industry. Whatever the humanitarian considerations about the devastation caused by Israel’s F-35 fighters, no participant wants to miss out.

“The government will do everything it can to convince allies and partners that the Netherlands remains a reliable partner in the F-35 project and in European and international defence cooperation.”

Being part of the program was also vital to the country’s own security, and that of Israel’s

“in particular with regard to threats emanating from the region, for instance from Iran, Yemen, Syria and Lebanon.”

The Palestinian civilians hardly figure in these considerations, though Gaza warrants the briefest of mentions.

“The Netherlands continues to call for an immediate temporary humanitarian ceasefire, and for as much humanitarian aid as possible to be allowed to reach the suffering people of Gaza. The situation is extremely serious. It is clear that international humanitarian law applies in full and Israel, too, must abide by it.”

As, indeed, Israel implausibly claims to be doing so, even as the starving continues and the graves fill.

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