

April 16, 2024

The Honourable Lloyd J. Austin
Secretary
U.S. Department of Defense
Washington, DC 20301

The Honourable Antony Blinken
Secretary
U.S. Department of State
Washington, DC 20520

The Honourable Avril Haines
Director of National Intelligence
Office of the Director of National Intelligence
McLean, VA 22102

Dear Secretary Austin, Secretary Blinken, and Director Haines:

We write to express our deep concern regarding the U.S. Department of State's recent comments regarding assurances from the Israeli government, under National Security Memorandum (NSM) 20, that the Israeli government is using U.S.-origin weapons in full compliance with relevant U.S. and international law and is not restricting the delivery of humanitarian assistance. In the face of mounting credible and deeply troubling reports and allegations that Israel has used U.S. arms in ways that violate U.S. and international law, including international humanitarian law as it relates to civilian protections and aid flow, we believe a failure to question, at minimum, the Netanyahu government's assurances, violates the very spirit of the NSM-20 process. The NSM requires the Secretaries to report to the President if their validity has been called into question. As such, we would like to understand whether and how the State Department and Department of Defense (DoD), in collaboration with U.S. intelligence community, have been provided with the opportunity to contribute substantively in support of this, and related, policy processes.

For months, elected representatives, intergovernmental bodies, international courts, Israeli and global human rights observers – along with government officials themselves – have persistently expressed grave concerns regarding the actions of the Netanyahu government. These include its conduct throughout the war in Gaza, its policies regarding civilian harm and military targeting, unauthorized expansion of settlements and settler violence in the West Bank and potential use of U.S. arms by settlers in addition to limitations on humanitarian aid supported by the US. We are concerned that some of Israel's actions may not be consistent with international humanitarian law, which the United States has an interest in consistently upholding.

On March 23, over 20 major nongovernmental organizations issued a statement noting that “the humanitarian response in Gaza, including U.S. funded humanitarian assistance, has been consistently and arbitrarily denied, restricted, and impeded by the Israeli authorities. Bureaucratic constraints are preventing a humanitarian scale-up, on top of the conduct of the conflict. These constraints include the continued closure of vital border crossings, including crossings into northern Gaza; rejections of aid items for entry based on arbitrary, opaque and

shifting justifications, including definitions of dual use; lengthy delays and unpredictable processes for the inspection of trucks; and denial of movement requests within Gaza. In addition, there have been repeated attacks on aid workers, convoys, distributions and humanitarian sites, including those submitted to the Israeli authorities as part of the humanitarian notification (“deconfliction”) process.¹”

We remain concerned by the stark differences and gaps in the statements being made by the State Department and White House on how Israel has not been found to be in violation of international humanitarian law, either when it comes to the conduct of the war or when it comes to the provision of humanitarian assistance, which are contradictory to those made by prominent experts and global institutions. Given the dire and catastrophic nature of this war, it is critical to ensure that the U.S. government is fully utilizing the expertise of State Department and DoD officials and legal experts, accounting important intelligence community assessments and data, in thoroughly assessing Israel’s actions in Gaza. Non-political experts’ substantive analysis is vital to ensuring the accuracy and credibility of any and all of the assessments under NSM-20, as well as in the arms transfer review process and security assistance obligation process. As such, we are seeking to understand whether, and how, legal experts and other officials within the State Department and DoD have been formally or informally tasked to examine these issues, and more specifically:

1. Which agencies conducted or been directed to conduct any assessment of Israel’s conduct in Gaza, including whether the use of U.S.-origin weapons has been in accordance with U.S. best practices, or international law, or has violated any human rights? Will the results of the assessment be incorporated into the first reports to Congress as required by the NSM on May 8th?
2. Has the U.S. Intelligence Community been tasked with supporting the development of the Congressional Reports required under National Security Memorandum-20 (NSM-20)? Will the results of the assessment be incorporated into the first reports to Congress as required by the NSM on May 8th?
3. Has the Office of DoD General Counsel conducted, or been directed to conduct, any general assessment of whether Israel’s conduct in Gaza since October 7th complies with international humanitarian law or other aspects of international law? Will the results of the assessment be incorporated into the first reports to Congress as required by the NSM on May 8th?
4. Has the Office of the Legal Adviser conducted, or been directed to conduct, any general assessment of whether Israel’s conduct in Gaza since October 7th complies with international humanitarian law or other aspects of international law? If so, will the results of the assessment be incorporated into the first reports to Congress as required by the NSM on May 8th?

¹ <https://www.rescue.org/press-release/joint-ngo-submission-under-national-security-memorandum-20-state-humanitarian>

5. Has the Office of the Legal Adviser conducted, or been directed to conduct, any substantive assessment in support of a decision on the authorization of a Foreign Military Sales case or issuance of a Direct Commercial Sales license to Israel, since October 7th, of whether Israel's conduct in Gaza complies with U.S. law, international humanitarian law or other aspects of international law, or of whether the transfer of an armament may violate U.S. commitments, or any international convention or treaty to which the U.S. is a party, or the spirit of the Arms Trade Treaty, to which the U.S. is a signatory? If so, will the results of this assessment be included on May 8th?
6. Has the Office of the Legal Adviser conducted, or been directed to conduct, any assessment of whether Section 620I of the Foreign Assistance Act (22 USC 2378-1) has been or should be triggered by Israel's restriction of U.S.-funded humanitarian assistance to, or in, Gaza? If so, will the results be incorporated in the May 8th assessment?
7. As a part of the assessment of the assurances provided by Israel subject to NSM-20, was the Office of the Legal Adviser in the Department of State requested to provide, or did it otherwise provide any substantive analysis of the credibility of the assurances? If so, will the results be incorporated in the May 8th assessment?

Thank you for your attention to this matter. Given its urgency, we kindly request a response to these questions by May 1, 2024.

Sincerely,



Veronica Escobar
Member of Congress



Joaquin Castro
Member of Congress



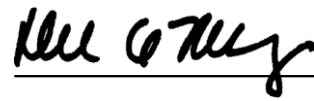
Mark Pocan
Member of Congress



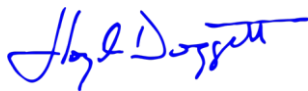
Madeleine Dean
Member of Congress



Eleanor Holmes Norton
Member of Congress



Delia C. Ramirez
Member of Congress



Lloyd Doggett
Member of Congress



Pramila Jayapal
Member of Congress



James P. McGovern
Member of Congress



Stephen F. Lynch
Member of Congress



Greg Casar
Member of Congress



Rashida Tlaib
Member of Congress



Ilhan Omar
Member of Congress



Jesús G. "Chuy" García
Member of Congress



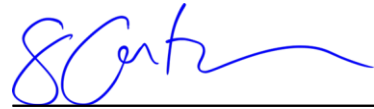
Jim Tokuda
Member of Congress



Cori Bush
Member of Congress



Maxwell Alejandro Frost
Member of Congress



Sean Casten
Member of Congress



Bonnie Watson Coleman
Member of Congress



Mark DeSaulnier
Member of Congress



Earl Blumenauer
Member of Congress



Ayanna Pressley
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress



Henry C. "Hank" Johnson,
Jr.
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress



André Carson
Member of Congress

CC:

Richard C. Visek, Principal Deputy Legal Adviser, U.S. Department of State
Joshua A. Geltzer, Legal Advisor, National Security Council
Caroline Krass, General Counsel, Department of Defense

