

NSM 20 REPORT TO CONGRESS
KEY FINDINGS

Supporting foreign partners through appropriate transfers of defense articles by the Department of State and the Department of Defense is a critical tool for advancing United States foreign policy and national security interests. Our defense relationships with other nations are particularly valuable in this period of intense geopolitical competition and are instrumental to upholding the rules-based international order in the face of challenges by authoritarian regimes and terrorist organizations.

Equally critical is ensuring that appropriate safeguards and accountability exist with respect to transferred defense articles and services. As a matter of longstanding policy, the United States always seeks to promote adherence to international law and encourages other states and partners to do the same. To that end, National Security Memorandum 20 (NSM-20), issued on February 8, 2024, at President Biden's direction, seeks to enhance our understanding of foreign partners' adherence to international law. This voluntary undertaking demonstrates our commitment to hold ourselves and our partners accountable to ensure respect for human rights, international humanitarian law, and the rule of law. Since February 8, we have also sought to leverage the assurance and reporting requirements under NSM-20 in our engagements with partner governments to induce improvements in their policies and practices where necessary. In this regard, NSM-20 has proved a valuable new tool, in addition to the many existing tools we have for ensuring our defense relationships advance U.S. interests and values.

NSM-20 Assurance Status and Considerations

NSM-20 requires the Secretary of State to obtain certain assurances from foreign governments receiving covered U.S. defense articles. The State Department sought and obtained credible and reliable assurances from the following partner governments determined to be currently engaged in an active armed conflict: Colombia, Iraq, Israel, Kenya, Nigeria, Somalia, and Ukraine.

The USG assesses on an ongoing basis the credibility or reliability of assurances received to date. While in some countries there have been circumstances over the reporting period that raise serious concerns, the USG currently assesses the

assurances provided by each recipient country to be credible and reliable so as to allow the provision of defense articles covered under NSM-20 to continue.

NSM-20 Reporting Requirements

NSM-20 requires that the Secretaries of State and Defense provide periodic congressional reports to ensure meaningful transparency. These reports are to include assessments and analysis regarding partner governments' use of covered defense articles in a manner that adheres to international humanitarian law and established best practices for civilian harm mitigation, as well as their cooperation with U.S. humanitarian assistance efforts.

This first report provides country-specific assessments for the seven countries determined to be engaged in an active armed conflict in which covered defense articles are used. The report includes available information and reporting collected for the period between January 1, 2023 and late April 2024, with certain exceptions.

In making these country assessments, the USG gathered information through engagement with partner governments, reviewed internal assessments and analysis, including the State Department's annual Human Rights Report and relevant products from the intelligence community, and gathered information from publicly available sources, including the reports from civil society and the media. Within the State and Defense Departments, relevant bureaus with regional, subject matter, technical, and legal expertise provided their input and contributed to the drafting of this report.

This first report under NSM-20 highlights the robust and significant security relationships with seven partners who are in active armed conflict. It also reflects the various challenges that the USG faced when developing this report. In the context of active conflict, it is challenging to collect accurate and reliable information. USG personnel are often constrained from accessing a conflict zone. This means much of the information must be collected from the partner nation, USG contractors, or other third parties, including other international partners. We appreciate deeply the work of journalists, humanitarian workers, and other entities and organizations, especially those operating on the ground, who have provided information relevant to this report and that was duly considered in preparing it.

Our assessments remain ongoing. We will update existing assessments if and as new, relevant information becomes available, including new information received from parts of the USG, NGOs, and other entities and organizations.

Israel-Hamas Conflict

Given the significant Congressional attention on the ongoing conflict in Gaza, we thought it useful to summarize the main elements of the Israel country section. The report primarily focuses on the period since October 7, when Hamas, Palestinian Islamic Jihad, and other Palestinian terrorists launched an unprovoked, large-scale attack on Israel from the Gaza Strip, killing an estimated 1,200 individuals, injuring more than 5,400, and abducting 253 hostages, including American citizens. Israel has conducted a sustained military operation in Gaza in response to the October 7 attacks and hostage-taking, with the stated objectives of destroying Hamas' military capabilities and dismantling its infrastructure. The conflict has resulted in the deaths of an estimated 34,700 Palestinians, an estimated 78,200 injured and has displaced the vast majority of Palestinians in Gaza and resulted in a severe humanitarian crisis. The Hamas-controlled Gaza Ministry of Health is the primary source for these numbers, which international organizations generally deem credible, but do not differentiate between Hamas fighters and civilians.

Israel has had to confront an extraordinary military challenge: Hamas has embedded itself deliberately within and underneath the civilian population to use civilians as human shields. The United States has supported Israel's right to defend itself in the wake of October 7, both from the continuing threat it faces from Hamas and in the broader region. We have also made clear the imperatives as Israel defends itself of adhering to IHL, protecting humanitarian workers, facilitating the flow of humanitarian assistance, and minimizing civilian casualties.

International Humanitarian Law

Throughout this period, the USG has engaged at all levels with the Government of Israel to understand Israel's view of the applicable legal frameworks relevant to the ongoing Israel-Hamas conflict, as well as to further our understanding of the procedures and mechanisms upon which Israel relies to integrate IHL compliance into its approach to combat operations, civilian protection, and humanitarian assistance. Israeli officials have stated that Israel complies with IHL and have

identified a number of processes for ensuring compliance that are embedded at all levels of their military decision-making. Although we have gained some insight into Israel's procedures and rules, we do not have complete information to verify whether U.S. defense articles covered under NSM-20 were specifically used in actions that have been alleged as violations of IHL or international human rights law during the period of the report. The nature of the conflict in Gaza makes it difficult to assess or reach conclusive findings on individual incidents.

Nevertheless, given Israel's significant reliance on U.S.-made defense articles, it is reasonable to assess that defense articles covered under NSM-20 have been used by Israeli security forces since October 7 in instances inconsistent with its IHL obligations or with established best practices for mitigating civilian harm.

Mitigating Civilian Harm

The USG received and reviewed credible UN, NGO, and media reports of Israeli military activity impacting civilians and civilian objects unrelated to humanitarian operations that have raised questions about Israel's compliance with best practices for mitigating civilian harm. Because Hamas uses civilian infrastructure for military purposes and civilians as human shields, it is often difficult to determine facts on the ground in an active war zone of this nature and the presence of legitimate military targets across Gaza.

The IDF has undertaken steps to implement IHL obligations for the protection of civilians in the current conflict, including the requirements related to distinction, proportionality, and precautions in offensive operations. In addition, the Government of Israel has asserted it takes steps to mitigate the risk of civilian harm when conducting military operations, such as providing advance warnings, employing specific procedures for determining targets and carrying out attacks, including choice of weapons and munitions, and implementing restrictive measures to protect sites such as hospitals, schools, places of worship and UN facilities. However, UN and humanitarian organizations and IHL experts have reported Israeli civilian harm mitigation efforts as inconsistent, ineffective, and inadequate, failing to provide protection to vulnerable civilians who cannot or chose not to relocate. While Israel has the knowledge, experience, and tools to implement best practices for mitigating civilian harm in its military operations, the results on the ground, including high levels of civilian casualties, raise substantial questions as to whether the IDF is using them effectively in all cases.

Humanitarian Assistance

Since October 7, the United States has led international efforts to address the humanitarian crisis in Gaza, including providing significant contributions for food, water, medical, and other essential supplies and coordinating delivery mechanisms with Israel, Egypt, Jordan, UN agencies and humanitarian partners. If not for sustained engagement by the United States with the Israeli government at the highest levels, the humanitarian crisis that has persisted for the past several months would have been even more dire.

Getting aid to Palestinians in Gaza is a complex undertaking in an active war zone. The destruction of civilian infrastructure, the embedding of Hamas in the civilian population, and ongoing military operations by the IDF have complicated delivery and exacerbated the humanitarian crisis. Hamas has sought to direct the distribution of humanitarian assistance not to maximize the benefits to civilians in Gaza but rather to try to maintain its effective control of governance functions.

During the period since October 7, and particularly in the initial months, Israel did not fully cooperate with United States government efforts and United States government-supported international efforts to maximize humanitarian assistance flow to and distribution within Gaza.

The USG worked with the Government of Israel, international partners, and humanitarian organizations to resolve these and other challenges. More recently, Israel has significantly increased humanitarian access and aid flow into Gaza, reaching significantly higher levels that require continued upward trajectory to meet immense needs.

While the U.S. has had deep concerns during the period since October 7 about action and inaction by Israel that contributed significantly to a lack of sustained and predictable delivery of needed assistance at scale, and the overall level reaching Palestinian civilians – while improved – remains insufficient, we do not currently assess that the Israeli government is prohibiting or otherwise restricting the transport or delivery of U.S. humanitarian assistance within the meaning of section 620I of the Foreign Assistance Act. This is an ongoing assessment and we will continue to monitor and respond to any challenges to the delivery of aid to Palestinian civilians in Gaza moving forward.

In recent weeks, with NSM-20 serving as useful inducement, Israel acted on a number of these steps and the volume of aid entering Gaza measurably increased. Israel must sustain these actions and implement a number of commitments not yet acted upon in order to stabilize humanitarian conditions in Gaza.