

February 27, 2024

The Honorable Lloyd Austin
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Austin:

I write with regard to a recent decision by a Dutch appeals court that could threaten our ability to ship F-35 aircraft components stored in the Netherlands to Israel.¹ The court case is the latest attempt by anti-Israel pressure groups to prevent Israel from continuing its justified military campaign to destroy Hamas and other terrorist groups responsible for the October 7, 2023 massacres. The Dutch government, a strong U.S. ally, is doing what it can to reverse this damaging decision by The Hague Court of Appeal.² However, there is no guarantee it will succeed. It is unsettling that foreign courts, pressured by foreign activists, could have the power to block shipments of U.S.-owned military components to an ally during wartime.

Three anti-Israel groups, led by the Netherlands branch of Oxfam International, organized the appeal after a lower court refused their request to block F-35 components stored in a regional warehouse in Woensdrecht from being shipped to Israel. On February 12, 2024, the appeals court sided with these anti-Israel groups and ordered the Dutch government to halt, within seven days, shipments of components for the F-35 components to Israel. This decision could endanger the national security of the United States and our ally, Israel. It also threatens to set a dangerous precedent for foreign activists and courts to stymie U.S. and allied military operations through “lawfare.”

The recent International Court of Justice (ICJ) ruling added fuel to the fire for these anti-Israel activist groups to continue the push against the U.S., Israel, and other like-minded countries from taking necessary military actions against terrorist groups. If these types of campaigns are successful, they will only compound an already difficult supply chain environment and embolden our adversaries to exploit our inability to supply our allies, partners, and our own military in times of crisis. The U.S. must reject the biased and one-sided findings of the ICJ in condemning the actions of Israel. We ask that you take all appropriate measures to counteract de facto boycotts of Israel based on the findings of the court and reject efforts to isolate Israel internationally. It remains the policy of the United States that politically motivated

¹ <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Den-Haag/Nieuws/Paginas/The-Netherlands-has-to-stop-the-export-of-F-35-fighter-jet-parts-to-Israel.aspx>

² <https://www.government.nl/latest/news/2024/02/12/state-lodges-appeal-in-cassation-against-judgment-on-distribution-of-f-35-parts-to-israel>

boycotts of Israel, including commercial and defense trade, are illegal and can result in penalties and sanctions against those responsible.

The F-35 program was developed in collaboration with allies, including the UK and the Netherlands. These countries have demonstrated the importance of advanced aircraft development to their national security through significant investment in the program. These partnerships, including overseas bases and stockpiles, are necessary to deter and outpace our adversaries. While international cooperation on programs such as the F-35 is commendable, the United States must never allow our military decision-making and national security to be vetoed by foreign activists or foreign courts. Nor can we allow them to prevent Israel from conducting operations against a group the Secretary of State designates as a Foreign Terrorist Organization. As such, I request answers to the following questions:

1. What practical effect will The Hague Court of Appeal's order, if it goes into effect, have on our ability to supply Israel with F-35 components?
2. What steps is the DoD taking to combat lawfare by foreign activists aimed at undermining the national security of the United States and our allies?
3. What contingency planning is in place for the DoD to prevent unexpected disruptions in the supply of critical components stockpiled overseas, and the ability for these components to be expeditiously transferred to allies and partners as needed?
4. What has the DoD done to ensure that adequate production and stockpiles of critical components are maintained under U.S. jurisdiction?

I appreciate your attention to this important issue.

Sincerely,



Marco Rubio
U.S. Senator