



## ISSUE BRIEF: REPORT ASSESSING CREDIBILITY OF ISRAELI ASSURANCES PURSUANT TO NSM-20

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On May 10, 2024 the Biden Administration submitted its [report](#) to Congress on the use of US defense articles and services by certain partner countries including Israel pursuant to National Security Memorandum 20 ([NSM-20](#)). The report, inter alia, assesses the ongoing “credibility and reliability” of assurances provided by Israel and six other countries engaged in active armed conflict in which US-funded defense articles specified in the memorandum are used.

Despite raising extremely serious “concerns” and “questions” regarding Israeli military conduct in the Gaza war, the report avoids making any definitive conclusions that Israel is currently violating NSM-20’s requirements in a way that would require the administration to take remedial action. Instead, the US government found “instances” since October 7, 2023 in which “it is reasonable to assess” that Israeli security forces violated international humanitarian law (IHL) and best practices for mitigating civilian harm, while also accepting Israel’s assurances to the contrary. This issue brief outlines those instances as well as other key details of the report, and recommends next steps the Biden Administration can take to ensure that NSM-20 achieves its stated goals.

### **What sources does the report rely upon and what challenges are identified in assessing the credibility of Israel’s NSM-20 assurances?**

The Departments of State and Defense relied upon information (such as intelligence, operational planning, and sensitive diplomatic data) collected from the partner governments/authorities, US government contractors, and third parties including other international partners. The report also recognizes the contributions of journalists, NGOs, and humanitarian workers.

The report acknowledges the challenges of collecting “accurate and reliable” information in the context of active conflict, noting in part accessibility constraints faced by the lack of US government personnel on the ground, the fact that Hamas embeds itself in the civilian population, and also the short timeline to collect and review relevant information. Notably the report emphasizes that “Israel has not shared complete information” to assess whether US defense articles covered under NSM-20 were used in potential violations of IHL in Gaza.

### **What are the reported instances that could be reasonably assessed as violations of IHL?**

While acknowledging both US support for Israel’s right to defend itself and the extraordinary military challenge Israel confronts as Hamas deliberately embeds itself within and underneath the civilian population in Gaza, the report concludes that US-funded defense articles specified in 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.” The report states further that “there have been sufficient reported incidents to raise serious concerns,” citing multiple credible UN and NGO sources as well as the State Department’s [2023 Country Report on Human Rights Practices](#). This Country Report details “alleged human rights abuses by Israeli security forces, including arbitrary or unlawful killings, enforced disappearance, torture, and serious abuses

in conflict.” The US Intelligence Community, according to the NSM-20 report, has assessed that while Gazan civilians may not be intentionally targeted, “Israel could do more to avoid civilian harm.”

The report raises specific concerns about **two primary areas** of Israeli military conduct in the Gaza war:

1. **Humanitarian workers and facilities:** Despite Israeli commitments to improve deconfliction and implement other protective measures, the IDF has struck humanitarian workers and facilities, and the UN reports that more than 250 humanitarian workers have been killed and that 169 of its facilities have been destroyed or damaged, the report notes. Israeli military operations have taken place in protected sites, de-conflicted zones, and other areas on the “no strikes” list that the IDF helped to coordinate. The report highlights five specific incidents in 2024, including the [killing](#) of seven World Central Kitchen workers in three IDF airstrikes on April 1, as evidence of potential IHL violations involving humanitarian workers/facilities.
2. **Civilians and civilian objects:** Strikes have occurred in dense population centers without effective warning or precautions to protect civilians, and under circumstances in which the expected civilian harm was excessive relative to the reported military objective, the report notes. UN and humanitarian NGOs have assessed Israeli civilian harm mitigation efforts – consisting of humanitarian pauses, evacuation orders, and corridors – “as inconsistent, ineffective, and inadequate.” Text message and phone call warnings were ineffective during IDF-generated telecommunications blackouts in Gaza, where civilians received inaccurate or vague information about safe evacuation (including via the contrived [IDF map](#) dividing Gaza into more than 300 sectors), and IDF-designated areas for evacuees lacked adequate shelter, food, water, sanitation, and medical care. The report highlights five incidents in 2023 and 2024, including Israeli airstrikes on civilian homes, the Maghazi and Jabaliya refugee camps, and on a marketplace, as evidence of potential IHL violations involving civilians/civilian objects.

### **How does the report assess compliance with Section 620I of the Foreign Assistance Act?**

The report evaluates whether Israel has complied with [Section 620I](#) of the Foreign Assistance Act (FAA), which requires US foreign aid recipients to facilitate and not arbitrarily deny, restrict or otherwise impede, directly or indirectly, the delivery of US humanitarian assistance. Despite finding credible evidence that Israel, particularly at the outset of the war, “did not fully cooperate” with American and international aid efforts, the report concludes that Israel is not currently “prohibiting or otherwise restricting the transport or delivery of US humanitarian assistance within the meaning of Section 620I.”

Recognizing that Hamas is also responsible for impeding aid entry, the report cites the following instances that NGOs note as examples that could be considered Israeli violations of 620I: government officials involved in encouraging protests against humanitarian assistance, prohibitions against humanitarian worker movements and visa acquisition, inconsistent rejection of aid items and the lack of standardized aid delivery processes especially with regard to [“dual-use”](#) items. Consequently, the report notes, “aid levels remain below what is necessary to meet the nutritional, medical, and sanitary needs of the population.”

## **How does the report justify accepting the credibility of Israel’s assurances?**

The report cites the “ongoing dialogue” between Israel and the US on NSM-20, US Defense Department coordination with the Israeli Defense Ministry on IHL adherence, IDF annual training in the US on civilian harm mitigation, as well as Israel’s internal accountability mechanisms for ensuring adherence to international law. Per the report, Israeli military lawyers provide legal advice during military operations, the Israeli Supreme Court may provide judicial review of military conduct, and the Israeli government has provided the Biden Administration with written analysis of its wartime legal positions and legal review processes. Upon request by the US, Israel has also provided “some” information on its targeting choices in Gaza and wartime damage assessments, and the US uses that information to justify accepting the credibility of Israel’s assurances despite the lack of “full visibility” and an abundance of evidence to the contrary.

## **What remedial action taken by the Israeli government does the report include, and in what context were those actions taken?**

The report notes that consistent US pressure has prompted ongoing investigations into potential violations of international law, conducted by the Israeli Military Advocate General and the IDF’s independent, fact-finding assessment mechanism. The report also notes that following the World Central Kitchen strike on April 1 – over which President Biden was reportedly “[outraged](#)” – the Israeli government took remedial action by initiating a new Humanitarian Coordination and Deconfliction Cell, immediately launching an investigation, accepting responsibility, calling the incident a “grave mistake,” acknowledging rules of engagement were not followed, dismissing the four responsible officers, reprimanding the commanders involved, and by considering prosecutions. The report also references remedial steps taken as a result of US urging in order to facilitate humanitarian assistance into Gaza: “If not for the sustained engagement of 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.”

## **Has any new information become available since the report that might call its assessments into question?**

The US government, per the report, has committed to “review existing assessments if they are called into question by new, relevant, credible information that becomes available.” On May 7, prior to the publication of this report, Israel [seized and shut down](#) the Rafah border crossing on the Gaza-Egypt border, preventing the entry of lifesaving humanitarian assistance. Rafah was overtaken by the IDF while Kerem Shalom, the other major point of entry on the Gaza-Israel border, [remained closed](#) since May 5, due to Hamas targeting the crossing. These closures are compounded by the intensified Israeli military campaign in Rafah and evacuation orders issued for [approximately 100,000](#) residents of Rafah. Furthermore, Secretary Blinken recently [noted](#) that the Israeli government has insisted upon a full ground assault on Rafah without sufficient plans to protect civilians or a plan for Gaza’s security, governance or rebuilding.

## **Recommendations for the Biden Administration to achieve the stated goals of NSM-20:**

Despite raising extremely serious concerns, the Biden Administration has avoided the tough question of what to do in the face of the obvious failures – acknowledged in the report and publicly documented – on the part of the Israeli government to comply with American and international law. The Administration should revisit its conclusions in the weeks ahead and take the following actions:

1. **Enforce NSM-20 compliance by withholding certain weapons shipments:** The US government must continue to enforce NSM-20 compliance, including by withholding certain shipments of offensive weapons to the Netanyahu government if Israel is using US-sourced weapons and materiel in ways that contravene American or international law, or if Israel is preventing the delivery of humanitarian assistance. The Biden Administration should consider tying future pauses of weapons shipments – such as the recent [pause](#) over the Rafah incursion – directly to NSM-20 compliance, and clearly lay out the consequences of further violations.
2. **Conduct “ongoing assessments” of NSM-20 compliance:** Recognizing, as the report says, that the US government is required to provide “ongoing assessments” under NSM-20, the Biden Administration should not wait until the next reporting deadline but instead issue public assessments on an ongoing basis as new information arises.
3. **Ensure that Israel shares all information necessary to assess NSM-20 compliance:** The US must ensure that Israel provides complete information to the State Department, and State must fulfill the commitment made in the report to establish a dedicated channel with the Israeli government to “review incidents of concern and to make recommendations to reduce the risk of civilian harm” via the State Department Civilian Harm Incident Response Guidance mechanism.
4. **Press Israel to adhere to IHL and re-evaluate assessment of Israel’s compliance with Section 620I:** Though Israel has confirmed the opening of investigations into IHL violations, the report did not find “any Israeli prosecutions for violations of IHL or civilian harm since October 7.” The Biden Administration must therefore press Israel to conclude its investigations and prosecute any violations. To fulfill the US commitment in the NSM-20 report to “continue to monitor and respond to any challenges to the delivery of aid to Palestinian civilians in Gaza,” the Administration must re-evaluate its assessment of Israel’s compliance with Section 620I and press Israel to protect aid delivery to Gaza.