

Sanctions for Justice:

Türkiye's Legal Case for Halting Trade with Israel

Şeymanur Yönt

Sanctions for Justice:

Türkiye's Legal Case for Halting Trade with Israel

Şeymanur Yönt

© TRT TRAINING AND RESEARCH DEPARTMENT

ALL RIGHTS RESERVED

WRITTEN BY

Şeymanur Yönt

PUBLISHER

TRT TRAINING AND RESEARCH DEPARTMENT

June 2024

TRT TRAINING AND RESEARCH DEPARTMENT

AHMET ADNAN SAYGUN STREET NO:83 34347

ULUS, BEŞİKTAŞ

İSTANBUL / TÜRKİYE

TRT WORLD LONDON

PORTLAND HOUSE

4 GREAT PORTLAND STREET NO:4

LONDON / UNITED KINGDOM

TRT WORLD WASHINGTON D.C.

1819 L STREET NW SUITE 700 20036

WASHINGTON DC

researchcentre.trtworld.com

The opinions expressed in this discussion paper represent the views of the author(s) and do not necessarily reflect the views of the TRT World Research Centre.

Introduction

In the face of blatant violations of international law and crimes amounting to genocide, drastic actions are imperative. Türkiye, in a bold move reflecting its stance against Israel's war on Gaza and its commitment to "advocate for justice and the rights of Palestinians" (Türkiye Cumhuriyeti Dışişleri Bakanlığı, 2024a), gradually stopped trading with Israel.

On April 9, Türkiye's Ministry of Trade declared that in response to Israel's blatant violation of international law, as signalled by the United Nations General Assembly resolutions and provisional measures from the International Court of Justice, Türkiye will impose export restrictions on certain products, including aluminium, steel, and aircraft fuel. Türkiye stated that this decision will remain in effect until Israel declares an immediate ceasefire in Gaza and allows for a sufficient and uninterrupted flow of humanitarian aid to the Gaza Strip, in line with its obligations under international law (Türkiye Cumhuriyeti Ticaret Bakanlığı, 2024).

In early May, Türkiye took a step further and suspended all trade with Israel until a lasting ceasefire and the assurance of humanitarian aid in Gaza were achieved (Walsh, 2024). This action is politically and economically significant. The shift to a sharper stance indicates a departure from the longstanding policy between Israel and Türkiye, which has previously aimed to maintain a balance and at least preserve commercial relations.

This shift also underscores Türkiye's firm stance against what it officially characterises as "the brutality perpetrated by Israel in Gaza" (Türkiye Cumhuriyeti Dışişleri Bakanlığı, 2024b). On the other hand, economically, Israel holds significant

trade importance for Türkiye, with Türkiye's exports to Israel reaching nearly 7 billion dollars, while Israel's exports to Türkiye amounted to 2.3 billion dollars in 2022 (OEC, 2024). The loss of such volume would undeniably have considerable implications for both nations, but Türkiye seems willing to disregard these consequences given the gravity of the atrocities committed in Gaza.

This move also has significant implications for international law and requires a thorough assessment from multiple perspectives. Türkiye's total halting of trade with Israel is likely to face scrutiny under three international legal frameworks: the Free Trade Agreement (FTA) between parties, World Trade Organization laws, and finally, rules on state responsibility.

First, the FTA between Israel and Türkiye sets rules that deal with trade-restrictive measures. Though Türkiye's halting of trade could be hypothetically perceived as contrary to such rules, given the gravity of Israel's international law violations and Türkiye's obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, Turkish authorities have multiple political, legal, and ethical grounds upon which they can base their decision on.

Meanwhile, Israel may take measures to remediate the situation it accuses Türkiye of (Reuters, 2024). Israeli authorities could opt for measures that are allowed by the FTA or may suspend its obligations. Moreover, Israel may take the dispute to the Joint Committee established by the parties or refer the dispute to arbitration. Finally, Israel may terminate the FTA. Considering that Türkiye's decision is fundamentally tied to the human rights violations in Gaza and its political stance to disregard economic

costs in the face of such blatant violations of international laws, none of these legal measures can be deemed intolerable for Türkiye.

Second, both Türkiye and Israel are World Trade Organization (WTO) members and are parties to the General Agreement on Tariffs and Trade (GATT), which permits trade-restrictive measures only under certain conditions. Such permitted conditions include national security exceptions as provided by the GATT, which justifies Türkiye's imposition of trade-restrictive measures allowing Türkiye to take any action it considers necessary for protecting its national security interests taken in times of emergency in international relations. Even if Israel may take the dispute over Türkiye's imposition of trade embargo to WTO adjudicatory bodies of Panel[i] and Appellate Body[ii], given Türkiye's justification, there is likely no favourable legal outcome for Israel. Moreover, because the Appellate Body is not operating, taking this route may not be the most suitable option for Israel.

Third, under the rules on state responsibility, Türkiye's halting of trade could be justified as self-defence or countermeasures, absolving Türkiye's responsibility. Primarily, Türkiye's decision to halt trade with Israel is legally grounded in the principle of self-defence under international law. By invoking collective self-defence, Türkiye responds to Israel's ongoing violations of international law and the humanitarian crisis in Gaza. Türkiye's trade embargo is a necessary and proportional measure to address the situation, given the gravity of the crimes committed in Gaza, aiming to protect Palestinian lives and uphold international legal standards.

On the other hand, Türkiye's trade embargo is a justified countermeasure, fulfilling the conditions of a lawful countermeasure under ARSIWA. Above all, imposing a trade embargo is necessary to induce Israel to comply with its international obligations. Moreover, given Israel's tergiversations to end its onslaught on Gaza, it is a last resort option. Also, considering

the gravity of Israel's war on Gaza and civilian suffering, Türkiye's trade embargo passes the proportionality test for countermeasures. Finally, Türkiye fulfils the notification requirement as its statements and initial imposition of trade restrictions targeting a group of products serve as a notification for further actions. Therefore, even if Türkiye's trade embargo is challenged under ARSIWA by Israel before international dispute resolution authorities, Türkiye can justify the embargo and absolve itself of responsibility.

Overall, even though Türkiye faces a legally challenging process regarding the halt of trade, its decision demonstrates a clear and necessary stance against complicity with a state accused of genocide and responsible for the unlawful deaths of thousands of civilians, including those in the Rafah refugee camp. This stance highlights Türkiye's commitment to not being complicit in such actions, which is evidently more important than potential commercial losses or any legal sanctions it might face in this matter.

1- The Free Trade Agreement Between Türkiye and Israel

In 1997, Türkiye and Israel entered into a binding Free Trade Agreement (FTA) aimed at regulating trade relations between the parties (The Free Trade Agreement (FTA) between the Republic of Turkey and the State of Israel, 1997). The FTA's primary objective and, therefore, provisions are about eliminating trade barriers, particularly tariffs and non-tariff barriers, and refraining from imposing new quantitative restrictions, provisions, or limitations on imports and exports between Türkiye and Israel. At first glance, Türkiye's halting of trade may appear to conflict with the FTA provisions. However, looking at the bigger picture, Türkiye deserves the credit for taking such an action. The FTA was signed and entered into force at a time when Israel's violations had not reached their current scale. Since then, Israel's disregard for human suffering, as well as human rights and humanitarian laws, has only worsened. Therefore, Türkiye, by halting the trade, did what it had to do in order not to be complicit with a state accused of and likely to be convicted of committing genocide in Gaza.

Under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), states are obligated to prevent and punish acts of genocide. These obligations include enacting legislation to give effect to the provisions of the Convention, ensuring that individuals committing genocide are tried and punished, and not engaging in any activities that could be interpreted as supporting or facilitating genocidal acts. In the case of Türkiye halting trade with Israel, this action can be seen as a measure to comply with these obligations. Türkiye seeks to avoid being complicit in acts that could be construed as genocidal by withdrawing economic support that could indirectly contribute to the continuation of such acts. In fact, Nicaragua brought claims against Germany before the International Court of Justice, where it alleged that Germany had contributed to the commission of genocide in violation of the Genocide Convention by rendering aid or assistance to Israel. That line of thinking is the very reason behind Türkiye's trade embargo against Israel, serving



(Mehmet Emin Mengüarslan - Anadolu Agency)

as a proactive step to distance itself from and actively oppose any potential complicity in the grave violations occurring in Gaza, thereby upholding its international legal obligations under the Genocide Convention.

As for the legal consequences, if Israel considers that Türkiye has not fulfilled its obligations under the FTA, it can take appropriate measures at its discretion, provided that Israel priorly informs the Joint Committee established by the parties and such measures are the least disruptive to the functioning of the FTA (The Free Trade Agreement (FTA) between the Republic of Turkey and the State of Israel, 1997, Art. 29/2).

There are two points worth mentioning about this article. First, Israel's right to take such measures is grounded in its belief that Türkiye has violated its obligations rather than Israel needing to prove Türkiye's violation. Therefore, regardless of whether there is a real violation of Türkiye, as long as Israel considers Türkiye's action as an unlawful violation, Israel has the right to take measures.

Second, Israel can decide on the measures it will take at its discretion, subject to certain limitations of notification and proportionality, and taking such measures does not require consent. Accordingly, Israel may decide to take trade-restrictive measures such as interfering with those rights protecting Türkiye's right of establishment in Israeli territory or imposing tariffs on imports from Türkiye. In fact, on May 16, Israeli Finance Minister Bezalel Smotrich announced Israel's plan to impose a 100% tariff on other imports from Türkiye (Scheer, 2024). However, if Israel is to base its imposition of a 100% tariff on the provisions of the FTA, it is difficult to prove that this measure meets the requirement of being the least disruptive to the FTA's functioning.

FTA Article 29/2 Fulfilment of Obligations

*If either Party **considers** that the other Party **has failed to fulfil an obligation** under the Agreement, it may take **appropriate measures**. Before so doing, except in cases of special urgency, it shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.*

*In the selection of measures, priority shall be given to those **which least disturb the functioning of the Agreement**.*

Read in conjunction with Article 29/2 of the FTA, provisions of the Vienna Convention on the Law of Treaties (VCLT), both of which Türkiye and Israel are parties to, regarding the suspension of the operation of a treaty as a consequence of its material breach may also be applied. The VCLT allows for the suspension in total or in part of treaty provisions by one party in the event of a material breach by the other party. Suspension of a treaty maintains its existence but grants the party invoking the suspension the ability to halt some or all of the obligations it entails until the material breach is resolved (Vienna Convention on the Law of Treaties, 1969, Art. 60). As a result of Türkiye's complete cessation of trade amounting to a material breach as breaching a provision essential to the accomplishment of the object or purpose of the treaty, and if such cessation is not justified under ARSIWA, Israel may also suspend its FTA obligations such as those on customs and quantitative restrictions upon notification and in the least disruptive way.

VCLT Article 60 Termination or Suspension of the Operation of a Treaty as a Consequence of Its Breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or **suspending its operation** in whole or in part.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a **provision essential to the accomplishment of the object or purpose of the treaty**.

Otherwise, Israel can bring the dispute concerning Türkiye's imposition of trade-restrictive measures to the Joint Committee, even if Türkiye claims its trade-restrictive measures are justified. Each party is then obligated to implement the decision determined by the Joint Committee. Should the issue remain undecided by the Joint Committee within a certain period, Israel has the option to refer the matter to arbitration, with the decision of the arbitrators being binding on both parties (The Free Trade Agreement (FTA) between the Republic of Turkey and the State of Israel, 1997, Art. 30). In this case, the Joint

Committee decision or arbitral award may rule secession of Türkiye's trade restrictions and compensation, however, obtaining a judgment or award for Israel may take months, even years.

FTA Article 30 Settlement of Disputes

1. Each Party may refer to the Joint Committee any **dispute relating to the application or interpretation** of this Agreement.

4. If a dispute referred to the Joint Committee has not been resolved within a period of sixty days after the dispute was referred to it or within such longer period as the Joint Committee has agreed upon, each Party may notify the other of the **appointment of an arbitrator** within forty-five days.

Alternatively, any party may denounce or terminate the FTA upon six months prior written notice to each other. In that case, the obligation of the parties to refrain from implementing trade-restrictive measures under this FTA comes to an end (The Free Trade Agreement (FTA) between the Republic of Turkey and the State of Israel, 1997, Art. 37).

Denunciation means that the cessation of preferential tariffs provided between the parties, and obligation to ensure fair competition in trade, and commitments to undertake anti-dumping measures, would come to an end. That also means neither party will be able to resort to the Joint Committee or arbitration for violations arising after the effective date of the denunciation. In fact, Israel has already signalled its plans to denounce the FTA (Scheer, 2024). As termination does not require a terminating party to provide any reason for termination, Israel may terminate the agreement regardless of whether there is a violation of Türkiye. Therefore, it is only yet to be decided for Israel when Israel will carry out denunciation.

FTA Article 37/2 Expiration

Each Party may **denounce** this Agreement by written notification to the other Party through the diplomatic channels. This Agreement shall cease to apply **six months** from the date of such notification.

When the agreement between the parties and the legal consequences of the violation are considered, it becomes evident that under the FTA, the most severe legal consequence for Türkiye involves terminating the agreement between the parties, along with related economic costs. However, such consequences pale in comparison to the ongoing violence and suffering in Gaza, as well as the gravity of being complicit in genocide, and any country against severe human rights violations would willingly bear such consequences.

On a final note, it is crucial to note that even if the FTA obligations are suspended or terminated, both parties, as members of the World Trade Organization (WTO) and parties to the General Agreement on Tariffs and Trade (GATT), are still obligated to refrain from implementing trade-restrictive measures. Therefore, Türkiye's suspension of trade and Israel's possible response should also be assessed under WTO laws.

2- WTO Laws

The WTO oversees the multilateral trading system, and the GATT, which is among the WTO agreements, is a legal agreement that sets rules to reduce or eliminate trade barriers such as tariffs or quotas. Both Türkiye and Israel are members of the WTO and parties to the GATT and must adhere to their rules. According to WTO rules, discrimination against trading partners and discrimination between foreign entities and domestic entities are prohibited.

However, GATT sets exceptions to this prohibition, provided that certain criteria are met to qualify for them. These exceptions include cases where states take measures necessary to protect public morals, necessary to protect human life and health, and deemed necessary for the protection of their essential security interests. Türkiye's imposition of economic sanctions on Israel is justified on national security grounds as it meets the specific conditions of the exception and is applied in a manner that does not constitute arbitrary or unjustifiable discrimination.

GATT Article 21 Security Exceptions

Nothing in this Agreement shall be construed

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

*(c) to prevent any contracting party from **taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.***



(Fatih Erel - Anadolu Agency)

Türkiye's imposition of economic sanctions is within the security exceptions outlined in Article 21 of the GATT. Because, under GATT Article 21(b)(iii), halting trade entirely with Israel during the current crisis in existing international relations is considered by Türkiye as necessary for the protection of its essential security interests, for example, due to the potentially destabilising effects of the conflict on the region, including security implications for Türkiye as well as ongoing human rights violations' impact on the global order.

Türkiye may satisfy what is necessary to qualify under this exception, first, proving the existence of an emergency in international relations by referring to the UN General Assembly resolutions, such as UN General Assembly Resolution ES-10/22 dated December 12, 2023, regarding the situation in Gaza and the ceasefire.

Moreover, Türkiye can easily prove that it considers halting trade with Israel necessary for the protection of its essential security interests. Türkiye has the sole discretion to determine what constitutes essential security interests, and even if it is not solely up to Türkiye to Türkiye decide on essential security interests, by acting in good faith and not abusing the exception, Türkiye can qualify for the exception (Russia – Measures Concerning Traffic in Transit (2019)). From this vantage point, Türkiye can justify halting trade with Israel under WTO laws.

Even though Türkiye's imposition of a trade embargo is justified, Israel may still initiate dispute settlement proceedings within the WTO framework, alleging that Türkiye's actions violate WTO laws. To resolve the dispute, Israel may commence consultations. If consultations

fail to resolve the dispute, adjudication, including Panel proceedings and, subsequently, Appellate Body proceedings if the Panel decision is appealed, may ensue. Both Panel and Appellate Body proceedings are finalised with the publication of reports containing such bodies' assessments of whether there has been a violation. If the Dispute Settlement Body endorses these assessments, they become binding on the parties. In such a case, the Dispute Settlement Body asks the party in violation to bring measures inconsistent with WTO laws into conformity with them.

If Türkiye is decided to have violated WTO obligations and fails to rectify its actions within a reasonable timeframe, Israel may resort to temporary measures. These measures could involve compensation or the suspension of WTO obligations towards Türkiye. If satisfactory compensation is not agreed upon within a specified period, Israel may request authorisation from the Dispute Settlement Body to impose trade sanctions on Türkiye. It is important to note that Israel may impose trade sanctions on Türkiye only upon the authorisation. Therefore, Israel's planned imposition of 100% tariffs will not be legally appropriate unless authorisation is obtained.

The important point here is that Türkiye can justify its imposition of a trade embargo under WTO laws, making a favourable outcome for Israel in adjudication unlikely. Moreover, the WTO's Appellate Body is currently not operational. Consequently, if one of the parties appeals a Panel decision, as is often the case, the dispute will be referred to a dysfunctional Appellate Body, leaving it in limbo. Hence, taking the dispute to the WTO also becomes impractical for Israel.

3- State Responsibility

Under international law, Türkiye's halting of trade with Israel is not only related to FTA provisions or WTO laws but also articles on state responsibility. Accordingly, both Türkiye and Israel may invoke provisions of the Draft Articles on Responsibility of States for Internationally Wrongful Acts on State Responsibility. ARSIWA stipulates that a state incurs international responsibility if it commits an internationally wrongful act (ARSIWA, 2001, Art. 1, 2).

An internationally wrongful act occurs when a state's conduct, whether through action or omission, is attributable to it under international law and constitutes a breach of its international obligations. These breaches of

international obligations can take the form of committing war crimes or genocide—violations of obligations owed to the entire international community— or violating a bilateral treaty, which constitutes a breach of obligations owed to another state.

However, not every breach of international obligations results in state responsibility, as certain circumstances preclude the wrongfulness of conduct that may otherwise not conform with the international obligations of the state concerned (International Law Commission, 2001, p. 112). Such circumstances can shield states from the consequences of such breaches under international

law. The ARSIWA lists situations where violations of international obligations may be justified: consent, self-defence, countermeasures, force majeure, distress, and necessity. It is important to emphasise that these justifications do not annul or terminate the international obligations themselves. Instead, they serve to justify the breach, thereby preventing any claims for reparation from the affected parties. In these instances, while the obligation remains, the context provided by the justification can legally excuse the breach. For example, a state may invoke self-defence or necessity to justify its actions, effectively protecting it from the requirement to provide reparation.

Considering this situation, the assessment of Türkiye's halting of trade in terms of state responsibility should primarily focus on two acts: Türkiye's trade cessation and Israel's war on Gaza. The key questions are whether these acts can be attributed to Türkiye and Israel, respectively, whether they are wrongful and whether they can be justified in any way. First and foremost, looking at the statements made by high-ranking officials from both states, as well as considering the ongoing procedures before the International Court of Justice for Israel and International Criminal Court related to Israeli officials, such actions may be attributed to both Türkiye and Israel.

With regards to the wrongfulness of actions, as previously discussed, Türkiye's halting of trade constitutes a possible violation of the FTA, thus amounting to a likely breach of Türkiye's international obligations and, therefore, forming an internationally wrongful act. However, Türkiye can justify such wrongfulness under the self-defence or countermeasures justifications provided by ARSIWA. In that case, Israel cannot claim reparations from Türkiye under ARSIWA.

On the other hand, the act related to Israel's war on Gaza will be examined within the context of Türkiye's justifications based on certain circumstances precluding the wrongfulness, including force majeure, self-defence and countermeasures. The relevance of Israel's actions lies in whether they justify Türkiye's halting of trade. As Israel's war is highly likely to be deemed wrongful or unlawful, it renders Türkiye's justifications lawful. Thus, the legality of Israel's actions directly impacts the legitimacy of Türkiye's trade measures.



(Nikos Oikonomou - Anadolu Agency)

a) Circumstances Precluding the Wrongfulness: Force Majeure

ARSIWA Article 23

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to force majeure, that is, the occurrence of an **irresistible force or of an unforeseen event, beyond the control of the State**, making it **materially impossible** in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

(a) the situation of force majeure is due, either alone or in combination with other factors, to the conduct of the State invoking it; or

(b) the State has assumed the risk of that situation occurring

The ongoing humanitarian crisis in Gaza, characterised by severe and widespread violations of international law through even bombing schools and hospitals, constitutes an unforeseen and irresistible event that is beyond Türkiye's control.

In such a context, the principle of legal impossibility intersects with material impossibility. Continuing trade relations under the FTA with Israel would implicate Türkiye in supporting actions that flagrantly violate international humanitarian law, thereby rendering the fulfilment of its trade obligations not only unethical but also legally untenable. This situation creates a de facto material impossibility, as Türkiye cannot comply with the FTA without breaching fundamental international norms and legal standards.

Furthermore, this cessation of trade is a necessary and proportionate response to the grave situation, aiming to compel Israel to adhere to international law and protect Palestinian lives. Consequently, Türkiye's action aligns with the force majeure justification under ARSIWA, which exempts acts that comply with Article 51 of the UN Charter from being wrongful. Therefore, Türkiye's trade embargo is both a legally and morally defensible measure under the doctrine of force majeure.

b) Circumstances Precluding the Wrongfulness: Self-defence

ARSIWA Article 21 Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

UN Charter Article 51

Nothing in the present Charter shall impair the inherent right of **individual or collective self-defence** if an armed attack occurs against a **Member of the United Nations** until the Security Council has taken measures necessary to maintain international peace and security.

To justify its halting of trade, Türkiye can rely on self-defence under Article 21 of the ARSIWA. Article 21 stipulates that acts in conformity with Article 51 of the UN Charter do not constitute wrongful acts. Article 51 of the UN Charter preserves the inherent right of individual or collective self-defence in the face of an armed attack against a UN member until the UN Security Council takes necessary measures to maintain international peace and security. In this context, Türkiye could claim that it is exercising its right to collective self-defence in response to Israel's war on Gaza. Collective self-defence allows a member state to intervene in the defence of another state subject to an unlawful armed attack.

Palestine, despite its non-member status at the UN, has the right to self-defence under customary international law. Palestine's accession to numerous international treaties, recognition by many states, membership in the International Criminal Court (ICC), and the principle of people's right to resist under customary international law are all in support of this. Therefore, Palestine and Türkiye can refer to Article 51 of the UN Charter.

Moreover, Israel's war on Gaza constitutes an unlawful use of force in violation of UN Charter Article 2. Therefore, as Israel's actions are illegal and cannot be justified as self-defence in response to the October 7 attack, Türkiye's

invocation of collective self-defence justification is valid. Israel's self-defence justification is not valid because, while it is clear that the October 7 attack meets the threshold of an 'armed attack' under Article 51 of the UN Charter, there are many legal challenges to classify Israel's war on Gaza as self-defence.

First, self-defence against non-state actors such as Hamas is disputed. On that matter, the International Court of Justice (ICJ), in its advisory Wall opinion, rejected Israel's right to self-defence against terrorist attacks for two key reasons. First, the ICJ stated that Article 51 governs relations between states, and Israel did not assert that the attacks were imputable to a foreign state (International Court of Justice, 2004, p. 12).

Second, the ICJ noted that Israel is an occupying Power, which exerts control over the Occupied Palestinian Territory. Thus, the threats originated from within occupied territories do not fall under the self-defence category (International Court of Justice, 2004, p. 32, 56). The same reasoning applies to Israel's self-defence claims regarding its war on Gaza, as Gaza is also part of the Occupied Palestinian Territory, thereby disqualifying Israel's actions as legitimate self-defence.

Third, regardless of whether Israel invokes a self-defence justification, it must comply with international humanitarian law anyway. For instance, Israel should have weighed the expected civilian harm against the anticipated military advantage of a specific attack. Considering that Israel has conducted numerous attacks contrary to such considerations since October 7, its war on Gaza constitutes an unlawful use of force, both in general and concerning specific attacks. In this respect, Türkiye may invoke the right to collective self-defence, provided other conditions are met.

On the other hand, while the principle of self-defence under international law typically requires an immediate and necessary response to an armed attack, Türkiye's trade embargo, although a prolonged measure, considering the gravity of the situation in Gaza, serves as a necessary and proportional response to the ongoing threat posed by the armed conflict. It aims to compel Israel to cease its actions, thus protecting Palestinian lives and upholding international law. Moreover, the embargo specifically targets bilateral trade and does not constitute a multilateral blockade, minimising the likelihood of severely impacting the Israeli civilian population. Israeli civilians will continue to have access to essential goods and services, such as food and medicine, through other trade channels.

Furthermore, the embargo aligns with international humanitarian law and human rights law by focusing on stopping the violations rather than inflicting undue harm. This approach is consistent with the principles upheld in the International Court of Justice's (ICJ) 2018 decision in *Iran v. United States*, where the Court emphasised the need to mitigate humanitarian impacts. By maintaining that the trade embargo is a targeted and necessary response, Türkiye demonstrates its commitment to both defending Palestinian rights and adhering to international legal standards. Finally, it is important to note that invoking the right to collective self-defence does not strictly require a mutual defence agreement or explicit request for military assistance. Customary international law recognises the inherent right of collective self-defence when a state or people are subject to an armed attack, irrespective of formal agreements.

Given the circumstances, Türkiye's trade embargo can be viewed as both necessary and proportional. It aims to stop the violations and prevent further harm to Palestinian civilians. Therefore, despite potential legal challenges, Türkiye's justification for halting trade with Israel on the grounds of self-defence under international law is both credible and robust. It demonstrates Türkiye's commitment to protecting human rights and maintaining international peace and security.

c) Circumstances Precluding the Wrongfulness: Countermeasures

ARSIWA Article 22

Countermeasures in respect of an internationally wrongful act

*The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that **the act constitutes a countermeasure** taken against the latter State in accordance with chapter II of part three.*

Türkiye can also justify its imposition of a total trade embargo against Israel under the countermeasures exception of ARSIWA, as Israel's actions are unlawful and not justified as self-defence, and the halting of trade meets the criteria of proportionality, reversibility, necessity, proper notice and negotiation.

Türkiye clearly demonstrates that the embargo is proportionate to Israel's severe wrongful acts. Israel's actions in Gaza, constituting breaches of international humanitarian law and the Genocide Convention, are grave enough to warrant such a decisive response. The cases before the International Court of Justice, such as provisional measures ordered by the ICJ urging Israel to provide humanitarian assistance amid Gaza's deteriorating conditions (Keitner, 2024) and the ICC prosecutor's requested arrest warrants for Benjamin Netanyahu and Yoav Gallant (International Criminal Court, 2024), demonstrate how serious is the situation.

Additionally, the harm that the trade embargo may cause does not exceed the damage inflicted by Israel's violations. The embargo is a necessary and proportionate measure aimed at compelling Israel to comply with international law and halt its severe violations. While a total trade embargo is indeed an extreme measure, it is fully justified by the extreme nature of Israel's actions.

Second, countermeasures must be reversible, meaning that they should be temporary and cease once the offending state complies with its international obligations. Türkiye's trade embargo is reversible, as Türkiye's statement indicates the embargo will be lifted once Israel agrees on a ceasefire. Moreover, Türkiye demonstrates that the total trade embargo is necessary to induce Israel to comply with its obligations. The last few months have shown that neither ceasefire talks nor rulings by international courts have convinced Israel to comply with international laws, leaving Türkiye with no other option but to impose a trade embargo.

Finally, before imposing the trade embargo, Türkiye needed to have called upon Israel to fulfil its obligations and offered to negotiate. Türkiye has already fulfilled this obligation with its strong condemnations of Israel's actions in Gaza, labelling them as violations of international humanitarian law and calling for respect for international

laws as well as the Turkish President's offer to be a mediator for the talks between Hamas and Israel.

Besides, the initial implementation of trade restrictions on fifty-four product groups was aimed at compelling Israel to meet its obligations and served as a warning for further measures. Thus, Türkiye has engaged in both public and procedural steps to address the situation before resorting to the full embargo, qualifying the embargo as countermeasures and, therefore, absolving Türkiye of any responsibility.

d) Legal Implications

ARSIWA Article 31 Reparation

1. *The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.*
2. *Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.*

Israel, under ARSIWA Article 31, can claim from Türkiye full reparations for any injury caused by its wrongful act. Reparation could include restitution, which would require Türkiye to cease its embargo and restore the situation to what it was before the wrongful act, as well as compensation for any material and moral damages suffered by Israel. This move could also open the door for Israel to seek satisfaction, which might involve a formal acknowledgement of the breach, an expression of regret, or a formal apology from Türkiye. However, Türkiye's act is justified under ARSIWA, making Israel's chances of being granted reparations slim.

Conclusion

With genocide being broadcast live and thousands of civilians dying, Türkiye's political and legal stance is crucial in demonstrating to the world the importance of complying with international humanitarian laws and not being complicit in genocide. In the case of Türkiye halting its trade

with Israel, the law is also on the side of Türkiye, with justifications absolving it of any responsibility in the face of a horrific genocide. Türkiye's legal and political standing should, therefore, be a guide for all nations that value human lives over any political and economic interests.

Endnotes

[i] The WTO panel is a group of independent experts established to adjudicate disputes between WTO members by examining the case, interpreting the relevant WTO agreements, and issuing reports with findings and recommendations.

[ii] The WTO Appellate Body is a standing body of seven members that hears appeals from panel reports, reviews legal interpretations, and ensures consistency in the interpretation of WTO law. Its reports are final and binding on the parties involved.

References

Caglayan, C. & Hayatsever, H. (2024, May 3). Turkey halts trade with Israel until permanent Gaza ceasefire. Reuters. <https://www.reuters.com/world/middle-east/turkey-says-israel-trade-halted-until-permanent-gaza-cease-fire-2024-05-03/>

General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT] Retrieved from https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

International Court of Justice. (2004, July 9). *Summary of the advisory opinion concerning legal consequences of the construction of a wall in the Occupied Palestinian Territory*, -, International <https://www.refworld.org/jurisprudence/caselaw/icj/2004/en/35595>

International Criminal Court. (2024, May 20). *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine* [Press Release]. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>

International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts [ARSI-WA], Supplement No. 10 (A/56/10), chp.IV.E.1, November 2001, <https://www.refworld.org/legal/otherinstr/ilc/2001/en/20951>

International Law Commission. (2001, November). *Commentaries to the draft articles on Responsibility of States for internationally wrongful acts*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chp.IV.E.2

Keitner, C. (2024, April 2). The ICJ's Modified Provisional Measures Order in South Africa v. Israel. *Lawfare*. <https://libanswers.snhu.edu/faq/190823>

OECD. (2024, May 27). *Bilateral country, Israel / Turkey*. <https://oec.world/en/profile/bilateral-country/isr/partner/tur>

Panel Report, *Russia - Measures Concerning Traffic in Transit*, WTO Doc WT/DS512/R (5 April 2019)

Scheer, S. (2024, May 16). Israel to abolish free trade deal with Turkey in retaliation. Reuters. <https://www.reuters.com/world/middle-east/israel-abolish-free-trade-deal-with-turkey-impose-100-tariff-turkish-imports-2024-05-16/>

The Free Trade Agreement (FTA) between the Republic of Turkey and the State of Israel. (1997). Türkiye-Israel. <https://guides.library.lincoln.ac.uk/c.php?g=683973&p=4892313#:~:text=Reference%20list%20entries%20for%20treaties,or%20convention%20and%20the%20year>

Türkiye Cumhuriyeti Dışişleri Bakanlığı. (2024a, May 27). *Regarding the Social Media Message Posted by the Israeli Foreign Minister* [Press release]. https://www.mfa.gov.tr/no_-99_-israil-disisleri-bakaninin-bir-sosyal-medya-plat-formunda-yaptigi-paylasim-hk.en.mfa

Türkiye Cumhuriyeti Dışişleri Bakanlığı. (2024b, May 10). *Filistin Konulu BM Genel Kurul Kararı Hk.* [Press release]. https://www.mfa.gov.tr/no_-80_-filistin-konulu-bm-genel-kurul-karari-hk.tr.mfa

Türkiye Cumhuriyeti Ticaret Bakanlığı. (2024, April 9). *İsrail'e ihracat kısıtlaması* [Press release]. <https://ticaret.gov.tr/haberler/israile-ihracat-kisilaması>

United Nations. (2018, October 3). *Top UN judicial body orders US to ease Iran sanctions*. <https://news.un.org/en/story/2018/10/1022142>

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331. Retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/v1155.pdf>

Walsh, A. (2024, May 3). Turkey halts trade with Israel over 'humanitarian tragedy' in Gaza. BBC. <https://www.bbc.com/news/world-middle-east-68945380>

World Trade Organization. (2023, January 23). *WTO Analytical Agreement: GATT 1994*. <https://doi.org/10.30875/f2537ced-en>

