

enforcement authorities.<sup>36</sup> Such collaborations, already pursued before FEPA's enactment, may incentivize foreign prosecutors to act against their own officials, bolstering global anti-corruption enforcement and facilitating U.S. prosecutions of those subject to the FCPA.

#### USE OF FORCE, ARMS CONTROL, AND NON-PROLIFERATION

##### *The United States Supports Israel's Use of Force in Gaza*

doi:10.1017/ajil.2024.22

On October 7, 2023, Hamas conducted a surprise attack on Israel from Gaza, killing over 1,200 people and taking over 240 hostages.<sup>1</sup> Following an air bombardment, Israel invaded Gaza on October 27.<sup>2</sup> Hours after the October 7 attack, President Biden stated, “[i]n this moment of tragedy, I want to say to [the people of Israel] and to the world and to terrorists everywhere that the United States stands with Israel. We will not ever fail to have their back.”<sup>3</sup> Since then, the president and other U.S. officials have reiterated the need for a two-state solution, expressed support for Israel's right to defend itself, and asserted the United States' commitment to Israel's security.<sup>4</sup> The United States has transferred arms to Israel, deployed additional U.S. forces in the region,<sup>5</sup> vetoed proposed resolutions in the Security Council that it claimed were not balanced, and made statements criticizing a case brought against Israel by South Africa at the International Court of Justice. At the same time, U.S. officials

<sup>36</sup> The recent case provides a model of how this might work. See U.S. Dep't of Justice Press Release, SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), at <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations> [<https://perma.cc/LL3K-5HUK>]; NPASouthAfrica (@NPA-Prosecutes), X (Jan. 11, 2024, 6:18 a.m.), at [https://twitter.com/NPA\\_Prosecutes/status/1745404691423354926](https://twitter.com/NPA_Prosecutes/status/1745404691423354926) [<https://perma.cc/4YBF-U2EW>].

<sup>1</sup> See Elena Shao & Lazaro Gamio, *Here Are the Statuses of the Hostages Taken into Gaza on Oct. 7*, N.Y. TIMES (Nov. 28, 2023), at <https://www.nytimes.com/2023/11/28/world/middleeast/israel-hamas-hostages-status.html>; Peter Sidel, Summer Said & Anat Peled, *Hamas Took More Than 200 Hostages from Israel. Here's What We Know*, WALL ST. J. (Mar. 17, 2024), at <https://www.wsj.com/world/middle-east/hamas-hostages-israel-gaza-41432124>.

<sup>2</sup> See Patrick Kingsley, *Israel's Strikes on Gaza Are Some of the Most Intense This Century*, N.Y. TIMES (Oct. 25, 2023), at <https://www.nytimes.com/2023/10/25/world/middleeast/israel-gaza-airstrikes.html>; Isabel Kershner, Lauren Leatherby, Vivian Yee & Aaron Boxerman, *Israelis Advance on Gaza City, as Netanyahu Rules Out Cease-Fire*, N.Y. TIMES (Oct. 30, 2023), at <https://www.nytimes.com/2023/10/30/world/middleeast/israel-gaza-netanyahu.html>.

<sup>3</sup> White House Press Release, Remarks by President Biden on the Terrorist Attacks in Israel (Oct. 7, 2023), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/07/remarks-by-president-biden-on-the-terrorist-attacks-in-israel> [<https://perma.cc/2ZZ2-QLKH>].

<sup>4</sup> See, e.g., White House Press Release, Remarks by President Biden in State of the Union Address (Mar. 8, 2024), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/03/08/remarks-by-president-biden-in-state-of-the-union-address-3> [<https://perma.cc/95W2-ZTPF>] [hereinafter State of the Union Address]; U.S. Dep't of State Press Release, Secretary Antony J. Blinken at a Press Availability (Nov. 30, 2023), at <https://www.state.gov/secretary-antony-j-blinken-at-a-press-availability-43> [<https://perma.cc/42BX-RUZV>] [hereinafter Blinken Press Availability].

<sup>5</sup> See U.S. Dep't of Defense Press Release, Statement From Secretary Lloyd J. Austin III on U.S. Force Posture Changes in the Middle East (Oct. 8, 2023), at <https://www.defense.gov/News/Releases/Release/Article/3551716/statement-from-secretary-loyd-j-austin-iii-on-us-force-posture-changes-in-the> [<https://perma.cc/D4QA-FWCS>]; U.S. Dep't of Defense Press Release, Statement from Secretary of Defense Lloyd J. Austin III on Steps to Increase Force Posture (Oct. 21, 2023), at <https://www.defense.gov/News/Releases/Release/Article/3564874/statement-from-secretary-of-defense-loyd-j-austin-iii-on-steps-to-increase-fo> [<https://perma.cc/MB22-YU5S>].

have repeatedly said, in Secretary of State Antony J. Blinken's words, that "[i]t's imperative that Israel act in accordance with international humanitarian law and the laws of war, even when confronting a terrorist group that respects neither."<sup>6</sup> The United States has expressed concern regarding civilian casualties in Gaza,<sup>7</sup> attempted to provide humanitarian relief to Gazans, declared that new Israeli settlements in Palestinian territories are "inconsistent with international law" (reversing a Trump administration policy),<sup>8</sup> and announced sanctions against Israeli settlers in the West Bank for violence there. In early March 2024, Vice President Kamala Harris called for "an immediate ceasefire" due to "the immense scale of suffering in Gaza."<sup>9</sup>

Following the October 7 attack, the United States' initial efforts focused on Israel's security. Beyond reinforcing the U.S. military presence in the eastern Mediterranean as a protective measure,<sup>10</sup> the United States has provided Israel with "tens of thousands of weapons including bombs and precision guided munitions" in "more than 100 individual arms transfers."<sup>11</sup> The administration has only notified Congress of two of these transfers, and both times the president invoked the Arms Export Control Act's emergency waiver provision that allows the arms sale to take place immediately (and not after the expiration of the statutory period that permits congressional review).<sup>12</sup> On December 8, 2023, Secretary Blinken approved the transfer of tank cartridges and other equipment from U.S. Army inventory estimated to cost \$106.5 million.<sup>13</sup> Subsequently, on December 29, 2023, Secretary Blinken invoked the same authority to bypass congressional review of an arms transfers of artillery ammunition totaling to \$147.5 million, also from U.S. Army stock.<sup>14</sup> The value of the other arms transfers to Israel fell below the statutory threshold that would require congressional notification or the transfers were previously approved and Congress notified.<sup>15</sup>

<sup>6</sup> Blinken Press Availability, *supra* note 4; *see also* State of the Union Address, *supra* note 4 ("Israel also has a fundamental responsibility, though, to protect innocent civilians in Gaza.").

<sup>7</sup> *See, e.g.*, U.S. Dep't of Defense Press Release, "A Time for American Leadership": Remarks by Secretary of Defense Lloyd J. Austin III at the Reagan National Defense Forum (as Delivered) (Dec. 2, 2023), at <https://www.defense.gov/News/Speeches/Speech/Article/3604755/a-time-for-american-leadership-remarks-by-secretary-of-defense-lloyd-j-austin-iii> [<https://perma.cc/R7ZH-S8LY>] ("I have repeatedly made clear to Israel's leaders that protecting Palestinian civilians in Gaza is both a moral responsibility and a strategic imperative.").

<sup>8</sup> *See* note 38 *infra*.

<sup>9</sup> White House Press Release, Remarks by Vice President Harris Commemorating the 59th Anniversary of Bloody Sunday | Selma, AL (Mar. 3, 2024), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/03/03/remarks-by-vice-president-harris-commemorating-the-59th-anniversary-of-bloody-sunday-selma-al> [<https://perma.cc/YSF7-A773>].

<sup>10</sup> *See* note 5 *supra*.

<sup>11</sup> Jared Malsin & Nancy A. Youssef, *How the U.S. Arms Pipeline to Israel Avoids Public Disclosure*, WALL ST. J. (Mar. 6, 2024), at <https://www.wsj.com/world/how-the-u-s-arms-pipeline-to-israel-avoids-public-disclosure-e238de75>; *see also* Abigail Hauslohner, *Democrats Say Biden Must Notify Congress About Israel Arms Transfers*, WASH. POST (Jan. 9, 2024), at <https://www.washingtonpost.com/national-security/2024/01/09/israel-weapons-biden-democrats>; John Hudson, *U.S. Floods Arms Into Israel Despite Mounting Alarm Over War's Conduct*, WASH. POST (Mar. 6, 2024), at <https://www.washingtonpost.com/national-security/2024/03/06/us-weapons-israel-gaza>.

<sup>12</sup> 22 U.S.C. § 2776(b).

<sup>13</sup> *See* Defense Security Cooperation Agency Press Release, Israel – M830A1 120MM Tank Cartridges (Dec. 9, 2023), at <https://www.dsca.mil/press-media/major-arms-sales/israel-m830a1-120mm-tank-cartridges> [<https://perma.cc/V88M-CA52>].

<sup>14</sup> *See* Defense Security Cooperation Agency Press Release, Israel – 155MM Artillery Ammunition (Dec. 29, 2023), at <https://www.dsca.mil/press-media/major-arms-sales/israel-155mm-artillery-ammunition> [<https://perma.cc/2PQW-NJAH>].

<sup>15</sup> Malsin & Youssef, *supra* note 11.

President Biden has also requested over \$14 billion of additional military assistance for Israel.<sup>16</sup> That request has stalled in Congress both because it is paired with assistance to Ukraine and because of the extensive civilian harms and casualties due to Israel's military operation in Gaza.<sup>17</sup> As of March 2024, more than 30,000 Palestinians have been killed, and there are "dire shortages of food, water and medicine creating a humanitarian crisis."<sup>18</sup> Calls for limiting or conditioning military aid were raised early on in the war by some members of Congress.<sup>19</sup> A November 2023 letter from twenty-six senators, representing a majority of the Democratic caucus, asked the president "to inform [them] about what specific mechanisms [he is] putting in place to ensure that Israeli military operations conducted inside Gaza are carried out in accordance with international humanitarian law and to ensure that any U.S.-provided equipment is used in a manner consistent with U.S. law."<sup>20</sup> Those calls have gotten stronger as the war has continued. In February, for example, Senator Van Hollen and three other senators asked the president for documentation demonstrating the administration's compliance with U.S. law and policy regarding arms transfers. They asked for the reports that support the determination that transfers to Israel satisfy the Conventional Arms Transfer Policy,<sup>21</sup> which requires the United States to "assess[] that it is more likely than not that the arms to be transferred will [not] be used by the recipient country to commit . . . serious violations of international humanitarian or human rights law."<sup>22</sup> The senators also asked for a detailed explanation of the administration's conclusion that Israel "has not restricted, directly or indirectly, the transport of delivery of U.S. humanitarian assistance with respect to the requirements under the Humanitarian Corridor Act, Section 620I(c) of the Foreign Assistance Act."<sup>23</sup> Citing the newly issued National Security Memorandum on Safeguards and Accountability With Respect to Transferred Defense Articles and Defense Services (NSM-20),<sup>24</sup> the senators also encouraged the president to obtain from Israel as

<sup>16</sup> See Michael D. Shear & Karoun Demirjian, *Biden Requests \$105 Billion Aid Package for Israel, Ukraine and Other Crises*, N.Y. TIMES (Oct. 20, 2023), at <https://www.nytimes.com/2023/10/20/us/politics/biden-aid-israel-ukraine-taiwan-border.html>.

<sup>17</sup> See Siobhan Hughes & Lindsay Wise, *Senate Passes \$95.3 Billion Ukraine, Israel Aid Package*, WALL ST. J. (Feb. 13, 2024), at <https://www.wsj.com/politics/policy/senate-on-verge-of-passing-95-3-billion-ukraine-israel-aid-package-55d07d5a>.

<sup>18</sup> Michael Crowley, *War in Gaza Presents Biden with Challenges at Home and Abroad*, N.Y. TIMES (Mar. 7, 2024), at <https://www.nytimes.com/2024/03/07/us/politics/gaza-war-biden-state-union.html>.

<sup>19</sup> See Karoun Demirjian, *As Congress Weighs Aid to Israel, Some Democrats Want Strings Attached*, N.Y. TIMES (Nov. 29, 2023), at <https://www.nytimes.com/2023/11/29/us/politics/israel-aid-senate.html>.

<sup>20</sup> Letter from Senator Chris Van Hollen and Twenty-Five Additional Senators to President Joseph R. Biden, Jr. (Nov. 8, 2023), at [https://www.vanhollen.senate.gov/imo/media/doc/letter\\_to\\_president\\_biden\\_on\\_gaza.pdf](https://www.vanhollen.senate.gov/imo/media/doc/letter_to_president_biden_on_gaza.pdf) [<https://perma.cc/8L7U-TXBJ>].

<sup>21</sup> Letter of Senator Chris Van Hollen and Three Other Senators to President Joseph R. Biden, Jr. (Feb. 23, 2024), at [https://www.vanhollen.senate.gov/imo/media/doc/van\\_hollen\\_schatz\\_isr\\_arms\\_transfer\\_letter.pdf](https://www.vanhollen.senate.gov/imo/media/doc/van_hollen_schatz_isr_arms_transfer_letter.pdf) [<https://perma.cc/678U-D96Y>] [hereinafter Van Hollen Letter].

<sup>22</sup> White House Press Release, Memorandum on United States Conventional Arms Transfer Policy, at Sec. 4 (Feb. 23, 2023), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy> [<https://perma.cc/8DMB-N7PN>]. On the policy, see Jacob Katz Cogan, *Contemporary Practice of the United States*, 117 AJIL 500, 501 (2023).

<sup>23</sup> Van Hollen Letter, *supra* note 21.

<sup>24</sup> See National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services, NSM-20 (Feb. 8, 2024), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/02/08/national-security-memorandum-on-safeguards-and-accountability-with-respect-to-transferred-defense-articles-and-defense-services> [<https://perma.cc/YJN4-5DL2>]. NSM-20 requires

early as possible a “promise . . . [that it will] use . . . [U.S. security] assistance in accordance with international humanitarian law and, as applicable, international law.”<sup>25</sup>

In addition to providing Israel with arms, the United States has also provided Israel with diplomatic cover. At the Security Council, the United States has vetoed three proposed resolutions pertaining to the October 7 attacks and the war in Gaza.<sup>26</sup> The United States stated that it objected to the resolutions because they made “no mention of Israel’s right of self-defence,” refused to “condemn[] Hamas’s horrific terrorist attack on Israel,” “call[ed] for an unconditional ceasefire,” and would “negatively impact . . . [‘sensitive and ongoing’] negotiations.”<sup>27</sup> The United States has also been critical of the case brought by South Africa at the International Court of Justice accusing Israel of violating the Genocide Convention. National Security Council Coordinator for Strategic Communications John Kirby described South Africa’s “submission [as] meritless, counterproductive, and completely without any basis in fact whatsoever.”<sup>28</sup> Following the issuance of the Court’s provisional measures order, U.S. Permanent Representative to the United Nations Linda Thomas-Greenfield said that the order was “consistent with the United States’ view that Israel has the right to take action in accordance with international humanitarian law to ensure the terrorist attacks of October 7 cannot be repeated.”<sup>29</sup> She argued that the Court “echoed the United States’ repeated calls for Israel to take all possible steps to minimize harm to civilians and humanitarian workers, to increase the flow of humanitarian assistance, and to address dehumanizing rhetoric.”<sup>30</sup>

As the war has continued, President Biden has increasingly put pressure on Israel to adhere to international humanitarian law, permit humanitarian assistance, and negotiate a

the secretary of state to “obtain credible and reliable written assurances from a representative of the recipient country as the Secretary of State deems appropriate that the recipient country will use any [provided] defense articles [funded with congressional appropriations] in accordance with international humanitarian law and, as applicable, other international law” and that “the recipient country will facilitate and not arbitrarily deny, restrict, or otherwise impede, directly or indirectly, the transport or delivery of United States humanitarian assistance and United States Government-supported international efforts to provide humanitarian assistance.” NSM-20 was issued as the Senate was considering an amendment to a foreign aid bill that would have required states receiving aid to adhere to international law. See Yasmeen Abutaleb & Liz Goodwin, *Biden Says: Countries Receiving U.S. Weapons Must Adhere to International Law*, WASH. POST (Feb. 8, 2024), at <https://www.washingtonpost.com/politics/2024/02/08/biden-memo-weapons-international-law>.

<sup>25</sup> Van Hollen Letter, *supra* note 21. Thirty-seven members of the House of Representatives sent a letter to the president focusing on NSM-20’s application to the situation in Gaza. See Letter of Joaquin Castro and Thirty-Six Additional Members of the House of Representatives to President Joseph R. Biden, Jr. (Mar. 5, 2024), at [https://castro.house.gov/imo/media/doc/letter\\_on\\_rafah\\_to\\_president\\_biden.pdf](https://castro.house.gov/imo/media/doc/letter_on_rafah_to_president_biden.pdf) [<https://perma.cc/RR7F-A8YM>].

<sup>26</sup> See UN Doc. S/PV.9442, at 3 (Oct. 18, 2023); UN Doc. S/PV.9499, at 4 (Dec. 8, 2023); UN Doc. S/PV.9552, at 5 (Feb. 20, 2024). The United States abstained from two resolutions focusing on humanitarian issues that were adopted. See SC Res. 2712 (2023); SC Res. 2720 (2023).

<sup>27</sup> UN Doc. S/PV.9442, at 5 (statement of Ambassador Linda Thomas-Greenfield); UN Doc. S/PV.9499, at 4 (statement of Ambassador Robert A. Wood); UN Doc. S/PV.9552, at 3 (statement of Ambassador Thomas-Greenfield).

<sup>28</sup> White House Press Release, Press Briefing by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby (Jan. 3, 2024), at <https://www.whitehouse.gov/briefing-room/press-briefings/2024/01/03/press-briefing-by-press-secretary-karine-jean-pierre-and-nsc-coordinator-for-strategic-communications-john-kirby-36> [<https://perma.cc/X242-FBS8>].

<sup>29</sup> U.S. Mission to the UN Press Release, Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Briefing on the Situation in the Middle East (Jan. 31, 2024), at <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-briefing-on-the-situation-in-the-middle-east-20> [<https://perma.cc/2R4Q-WQ95>].

<sup>30</sup> *Id.*

ceasefire.<sup>31</sup> Taking aim at Israeli extremists whose activities “constitute[] a serious threat to the peace, security, and stability of the West Bank and Gaza, Israel, and the broader Middle East region” and “undermine . . . the viability of a two-state solution,” the president issued an executive order in February 2024<sup>32</sup> that allows for sanctions “against those directing or participating in certain actions, including acts or threats of violence against civilians, intimidating civilians to cause them to leave their homes, destroying or seizing property, or engaging in terrorist activity in the West Bank.”<sup>33</sup> Four Israeli nationals were immediately designated for sanctions, and three more were added in March.<sup>34</sup> Secretary Blinken issued a visa restriction policy in December “targeting individuals believed to have been involved in undermining peace, security, or stability in the West Bank, including through committing acts of violence or taking other actions that unduly restrict civilians’ access to essential services and basic necessities.”<sup>35</sup>

Dissatisfaction with Israeli Prime Minister Benjamin Netanyahu’s reluctance to negotiate a hostage deal and his refusal to allow sufficient humanitarian aid to reach Palestinian civilians led to the president’s executive order. As U.S. frustration has grown (the president tweeted at the beginning of March: “There are no excuses. The aid flowing into Gaza is nowhere near enough—and nowhere fast enough.”),<sup>36</sup> the United States has considered additional actions to encourage changes in Israeli policy, including reversing the Trump administration decisions that allowed imports of goods to the United States from Israeli settlements to be labeled “Made in Israel” and that deemed new Israeli settlements not per se inconsistent with international law. Sanctions on two high-level Israeli government ministers, Finance Minister Bezale Smotrich and National Security Minister Itamar Ben-Gvir, have also been considered.<sup>37</sup> Thus far, only one of these measures has been adopted: reverting to the characterization of settlements as inconsistent with international law.<sup>38</sup> In his State of the Union Address in March

<sup>31</sup> A temporary ceasefire was in place November 24–30, 2023.

<sup>32</sup> Exec. Ord. 14115, 89 Fed. Reg. 7605 (Feb. 1, 2024).

<sup>33</sup> White House Press Release, Statement from National Security Advisor Jake Sullivan on Action to Promote Peace, Security, and Stability in the West Bank (Feb. 1, 2024), at <https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/01/statement-from-national-security-advisor-jake-sullivan-on-action-to-promote-peace-security-and-stability-in-the-west-bank> [<https://perma.cc/VC3V-WN26>].

<sup>34</sup> U.S. Dep’t of the Treasury Press Release, Issuance of Executive Order Imposing Certain Sanctions on Persons Undermining Peace, Security, and Stability in the West Bank; West Bank-Related Designations (Feb. 1, 2024), at <https://ofac.treasury.gov/recent-actions/20240201> [<https://perma.cc/EK5P-99QQ>]; Johnatan Reiss, Gaya Gupta & Natan Odenheimer, *What to Know About the 4 Israelis Placed Under U.S. Sanctions Over West Bank Violence*, N.Y. TIMES (Feb. 1, 2024), at <https://www.nytimes.com/2024/02/01/world/middleeast/israel-settlers-west-bank-sanctions.html>; U.S. Dep’t of the Treasury Press Release, West Bank-Related Designations; Russia-Related Designation; Counter Narcotics Designation and Designations Updates; Transnational Criminal Organizations Designation Update (Mar. 14, 2024), at <https://ofac.treasury.gov/recent-actions/20240314> [<https://perma.cc/374N-GXGS>].

<sup>35</sup> U.S. Dep’t of State Press Release, Announcement of Visa Restriction Policy to Promote Peace, Security, and Stability in the West Bank (Dec. 5, 2023), at <https://www.state.gov/announcement-of-visa-restriction-policy-to-promote-peace-security-and-stability-in-the-west-bank> [<https://perma.cc/R3YN-A9YZ>].

<sup>36</sup> President Biden (@POTUS), X (Mar. 4, 2024, 11:04 a.m.), at <https://x.com/POTUS/status/1764683471543210432> [<https://perma.cc/F584-YC8D>].

<sup>37</sup> See Dion Nissenbaum & Vivian Salama, *Biden-Netanyahu Relationship at Boiling Point as Rafah Invasion Looms*, WALL ST. J. (Feb. 15, 2024), at <https://www.wsj.com/world/middle-east/biden-netanyahu-relationship-at-boiling-point-as-rafah-invasion-loom-b893bec5>.

<sup>38</sup> U.S. Dep’t of State Press Release, Secretary Antony J. Blinken and Argentine Foreign Minister Diana Mondino at a Joint Press Availability (Feb. 23, 2024), at <https://www.state.gov/secretary-antony-j-blinken-and-argentine-foreign-minister-diana-mondino-at-a-joint-press-availability> [<https://perma.cc/9CFC-VNFW>]. The Trump administration had upended the long-held U.S. view, articulated by the State Department’s Legal

2024, President Biden warned “the leadership of Israel” that “humanitarian assistance cannot be a secondary consideration or a bargaining chip. Protecting and saving innocent lives has to be a priority.”<sup>39</sup> The president did not publicly threaten to condition or withhold military aid, but shortly after the address he warned that an attack on southern Gaza city of Rafah, where one million Palestinians have sought refuge, would be a “red line.”<sup>40</sup> Subsequently, Israel reportedly provided written assurances pursuant to NSM-20 that it is using U.S. defense articles in accordance with international humanitarian law and not restricting the transport or delivery of U.S. humanitarian assistance.<sup>41</sup> Those assurances are under review; arms transfers to Israel continue.<sup>42</sup> On March 25, the Security Council adopted a resolution that “[d]emand[ed] an immediate ceasefire for the month of Ramadan . . . [and] the immediate and unconditional release of all hostages.”<sup>43</sup> The United States abstained from the vote on the resolution, which Ambassador Thomas-Greenfield said was “nonbinding.”<sup>44</sup>

*The United States and Partners Use Force Against the Houthis to Protect Freedom of Navigation in the Red Sea and the Gulf of Aden*

doi:10.1017/ajil.2024.19

Following nearly two months of Houthi attacks on commercial ships traversing the Red Sea to and from the Suez Canal, one of the world’s most critical shipping lanes, the United States and the United Kingdom, with support from Australia, Bahrain, Canada, and the Netherlands, executed strikes against Houthi targets in Yemen on January 11, 2024.<sup>1</sup> The

Adviser in 1978, that Israeli settlements are “inconsistent with international law.” Letter from State Department Legal Adviser Concerning Legality of Israeli Settlements in the Occupied Territories, Apr. 21, 1978, 17 ILM 777. For background, see Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 288, 296 (2000).

<sup>39</sup> State of the Union Address, *supra* note 4.

<sup>40</sup> Michael R. Gordon, Dion Nissenbaum & Vivian Salama, *Biden Warns Netanyahu an Assault on Rafah Would Cross “Red Line,”* WALL ST. J. (Mar. 10, 2024), at <https://www.wsj.com/world/middle-east/biden-warns-netanyahu-an-assault-on-rafah-would-cross-red-line-c78677ba>. With regard to “red lines,” National Security Advisor Jake Sullivan said: “The president didn’t make any declarations or pronouncements or announcements.” Peter Baker & Alan Yuhas, *White House Denies Biden Has Set “Red Lines” for Israel-Hamas War in Gaza*, N.Y. TIMES (Mar. 12, 2024), at <https://www.nytimes.com/2024/03/12/world/middleeast/biden-netanyahu-israel-gaza-red-lines.html>.

<sup>41</sup> See Karen DeYoung & John Hudson, *U.S. to Review Israeli Assurances It Is Not Violating International Law*, WASH. POST (Mar. 20, 2024), at <https://www.washingtonpost.com/national-security/2024/03/20/israel-gaza-weapons-international-law>.

<sup>42</sup> See Karen DeYoung, John Hudson & Yasmeen Abutaleb, *Biden Administration Gauges Israeli Compliance With Laws of War*, WASH. POST (Mar. 22, 2024), at <https://www.washingtonpost.com/national-security/2024/03/22/israel-gaza-arms-transfer-law>; John Hudson, *U.S. Signs Off on More Bombs, Warplanes for Israel*, WASH. POST (Mar. 29, 2024), at <https://www.washingtonpost.com/national-security/2024/03/29/us-weapons-israel-gaza-war>.

<sup>43</sup> SC Res. 2728, para. 1 (2024).

<sup>44</sup> See U.S. Dep’t of State Press Release, *U.S. Abstention from UN Security Council Resolution on Gaza* (Mar. 25, 2024), <https://www.state.gov/u-s-abstention-from-un-security-council-resolution-on-gaza> [<https://perma.cc/P8ZS-M3C2>]; U.S. Mission to the UN Press Release, *Explanation of Vote Delivered by Ambassador Linda Thomas-Greenfield Following the Adoption of a UNSC Resolution on the Situation in the Middle East* (Mar. 25, 2024), at <https://usun.usmission.gov/explanation-of-vote-delivered-by-ambassador-linda-thomas-greenfield-following-the-adoption-of-a-uns-c-resolution-on-the-situation-in-the-middle-east> [<https://perma.cc/342B-5YP7>].

<sup>1</sup> See White House Press Release, *Statement from President Joe Biden on Coalition Strikes in Houthi-Controlled Areas in Yemen* (Jan. 11, 2024), at <https://www.whitehouse.gov/briefing-room/statements-releases/>