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Case number
2026 / 1349
Date of pronouncement
16 March 2026
Case number
2025/KR/63

Registerable

Not registrable

Reopening of proceedings (Art. 775
of the Judicial Code)

Court of Appeal
of Brussels

Interlocutory judgment

1st CivilChamber
Civil cases

Filed on
Not registrable

In the matter of:

BELGIAN-PALESTINIAN ASSOCIATION (non-profit organisation), registration number 0416 065 662, with its registered office at 154 Rue des Palais, 1030 Schaerbeek;

NATIONAL COORDINATION FOR ACTION FOR PEACE AND DEMOCRACY (CNAPD) asbl, BCE 0467. 256.918, with its registered office at 1000 BRUSSELS, Rue de l'Éclipse, 6,

Mahmoud,

Appellants,

Represented by Maître Vincent LETELLIER, solicitor at 1000 BRUSSELS, Rue Saint-Quentin, 3, Box 3

Against:

THE BELGIAN STATE, BCE 0308 357 951, represented by its Prime Minister, whose offices are situated at 1000 BRUSSELS, Rue de la Loi, 16,

Intimé,

represented by Maître Jérôme SOHIER, solicitor at 1170 WATERMAEL-BOTTSFORT, 181 Chaussée de La Hulpe, PO Box 24.

Having regard to the documents in the case file and in particular

the order of 24 September 2025 of the President of the French-speaking Court of First Instance of Brussels, sitting in summary proceedings, not served
the appeal application of 27 October 2025,
the appellants' written submissions of 13 January 2026 and their hearing note of 9 February 2026, the Belgian State's written submissions of 3 February 2026,
the parties' files.

Having heard the parties' counsel at the hearing in Dublique on 9 February 2026, at which the case was taken under advisement.

I. SUBJECT OF THE DISPUTE

1. The non-profit organisation "Association be!go oa!estinienne", the first appellant, aims *"to generate widespread support for the cause of the Palestinian people through the dissemination of information* and *via any other means available, to generate widespread support for the Palestinian people's right to self-determination; to promote awareness of the art, culture, history and all aspects of the life of the Palestinian people"* (Article 3 of the Articles of Association as amended in 2008).

2. Article 3 of the statutes of the non-profit organisation "National Coordination for Action for Peace and
\a "Democracy", the second appellant, states: *"§1 The association is a coalition of progressive organisations. Its purpose is {...) the struggle for peace and the promotion of democracy, against war, for security and international cooperation, the liberation and development of peoples, for the non-violent resolution of conflicts, and for increased control over the circulation of all weapons with a view to global disarmament* (...)"

3. Mr KULLAB and Mr ALNAJJAR, the third and fourth appellants, state that they are Palestinians, that they arrived in Belgium 'before 7 October 2023' and on 8 July 2024 respectively, where they applied for asylum, and that *"their personal situation is directly linked to the situation prevailing in the occupied Palestinian territory and in particular in the* Gofo *Strip, from which they originate and where they lived with their families until their* arrival *in Belgium to seek asylum there*" (submissions, p. 112)

4. The appellants request that the court, ruling in summary proceedings, order measures compelling the Belgian State, subject to a penalty payment, *'to comply with its international obligations in the face of the (risk of) genocide in the* Gaza *Strip and the ongoing violations of international humanitarian law and international law, both in the Gaza Strip and in the occupied West Bank'.*

h LEGAL
e. FRAMEWORK

5. Article 1 of the Convention of 9 December 1948 'on the Prevention and Punishment of the Crime of Genocide ' (hereinafter the Genocide Convention), signed by Belgium and ratified by the legislature in 1951, provides: *'The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law, which they undertake to prevent and punish'*

Prima facie, this provision imposes on States Parties an obligation to prevent the commission of the crime of genocide where they should normally have been aware of a serious risk of genocide being committed, and thus to employ all means reasonably at their disposal to prevent, as far as possible, genocide (ICJ, judgment of 26 February 2007, Bosnia and Herzegovina v. Serbia and Montenegro
‹ 430. (... it is clear that the obligation in question is an obligation of conduct rather than an obligation of result, in the sense that no State can be required to succeed in preventing, under any circumstances, the commission of genocide; rather, the obligation incumbent upon States Parties is to use all means reasonably at their disposal to prevent, as far as possible, genocide. A State cannot be held liable solely on the grounds that the desired result was not achieved; however, it may be held liable if the State manifestly failed to implement measures to prevent genocide that were within its power and which could have contributed to preventing it.) 431. (A State may only be held liable for a breach of the obligation to prevent genocide if genocide has in fact been committed. (...) This obviously does not mean that the obligation to prevent genocide arises only when the genocide begins to be perpetrated, which would be absurd, since the very purpose of such an obligation is to prevent, or to attempt to prevent, the occurrence of such an act. In reality, the obligation to prevent and the duty to act which follows from it arise, for a State, *at the moment when it becomes aware, or ought normally to have become aware, of the existence of a serious risk of genocide being committed."*

6. The 1949 Geneva Conventions, relating respectively to the improvement of the condition of the wounded and sick in the armed forces in the field, to the improvement of the condition of the wounded, sick and shipwrecked members of the armed forces at sea, to the treatment of prisoners of war, and to the protection of civilians in time of war, and their 1977 Additional Protocols, signed by Belgium and ratified by the legislature in 1952 and 1986 respectively, set out *'the rules which may be regarded as forming the core of contemporary international humanitarian* law' (C. DEPREZ and

L. MONACO, International Humanitarian Law nd edition, Brussels, Larcier-Intersentia, 2025, p. 24).

Article 1 common to the Geneva Conventions states that *'The High Contracting Parties undertake to respect and ensure respect for this Convention in all circumstances'.*

On the face of it, this provision obliges States Parties to take all measures reasonably within their power to prevent and put an end to violations of international humanitarian law (ICJ, Order of 30 April 2024, Nicaragua v. Germany "2S. (...) // *It follows from this provision that each State party to these conventions, 'whether or not it is a party to a specific conflict, has an obligation to ensure compliance with the provisions of the instruments concerned ' (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), pp. 199–200, para. 158). Such an obligation arises not only from the relevant international conventions, but also from the general principles of humanitarian law, of which the conventions are merely the concrete expression" (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, C.I. . Re ueil 1986, p. 1 J4, para. 220).* »)

7. On *the face of it,* according to the Court, Article 1 of the Genocide Convention and Article 1 common to the 1949 Geneva Conventions, which oblige States Parties to ensure compliance with those Conventions, have direct effect in domestic law – defined as the capacity of a provision to be invoked before a court – in that, where a violation of those provisions is alleged, the court is required to assess *(see below),* whether, faced with a serious risk of genocide and grave violations of the 1949 Geneva Conventions by a State Party, the Belgian State acted within the limits set by law and as a normally prudent and competent authority placed in the same circumstances

8. The Euro-Mediterranean Agreement of 20 November 1995, concluded for an indefinite period, which replaced the agreement signed on 11 May 1975 upon its entry into force (on 1 June 2000), applies to the territory of Israel (Article 83 of the Agreement) and states in its preamble *"Having regard to the importance that the Parties attach to the principle of economic freedom and to the principles of the Charter of the United Nations, in particular respect for human rights and democracy, which constitute the very foundation of the Association"* and provides in Article 2 that *"Relations between the Parties, as well as all provisions of this Agreement, shall be based on respect for human rights and democratic principles, which inspire their domestic and international policies and constitute an essential element of this* Agreement"

9. Common Position 2008/944/CFSP of the Council of the EU of 8 December 2008 “defining common rules governing the control of exports of military technology and equipment”, as amended by Common Position 2025/779/CFSP of the Council of the EU of 14 April 2025 (hereinafter the EU Council Common Position 2008/944/CFSP of 8 December 2008) states in its preamble ‘(...) *(4) Member States are determined to prevent exports of military technology and equipment which might be used for internal repression or international aggression, or contribute to regional instability”* and provides

Article 1
1. Each Member State shall, on a case-by-case basis and in accordance with the criteria set out in Article 2, examine applications for export authorisations submitted to it in respect of equipment included in the common list *of military equipment of the European Union*
2. (...)
referred to in Article 12.

Article 2 Criteria
1. First criterion: compliance with the Member States’ international obligations and commitments, in particular sanctions adopted by the United Nations Security Council or the European Union, agreements relating, in particular, to non-proliferation, and other international obligations.
(..)
2. Second criterion: respect for human rights in the country of final destination and that country’s compliance with international humanitarian law.
After assessing the attitude of the receiving country towards the principles set out in this regard *in international human rights instruments, Member States. (...)*
After assessing the attitude of the recipient country towards the principles set out in this regard in international humanitarian law instruments, Member States .
(c) refuse to grant an export *authorisation if there is a clear risk that the technology or military equipment for which export is envisaged will be used to commit serious violations of international humanitarian law.*

3. Third criterion: the internal situation in the country of final destination (existence of tensions or armed conflicts*).*
Member States shall refuse to grant export authorisations for military technology or equipment that is likely to cause or prolong armed conflicts or to exacerbate existing tensions or conflicts in the country of destination.

4. *Fourth criterion: preservation of regional peace, security and stability.*
Member States shall refuse to *grant an* export *authorisation if there is a clear risk that the intended recipient will use the military* technology *or equipment for which the export is being considered in an aggressive manner against another country or to assert a territorial claim by force. When assessing these risks, Member States shall take into account, in particular, the following factors. (...)*
5. Fifth criterion.' (.)
( )
Article 3
This Common Position shall not affect *the right of Member States to pursue a more restrictive national policy.*

Article 4
1. *Member States shall provide details of export authorisations that have been refused in accordance with the criteria set out in this Common Position, stating the reasons for the refusal. Before a Member State grants an authorisation for a transaction that is substantially identical to one that has been refused by one or more other Member States within the last three years, it shall consult the latter Member State or States in advance. If, following consultation, the Member State nevertheless decides to grant an authorisation, it shall inform the Member State or Member States that refused the export, providing a detailed explanation.*
2. The decision to proceed with or to refuse the transfer of military technology or equipment is left to the national discretion of each Member State. A refusal of authorisation means a Member State's refusal to authorise the sale or actual export of the military technology or equipment in question, where *a sale would otherwise normally have taken place or the relevant contract would have been concluded. To this end, refusals that may be notified may, in accordance with national procedures, include a refusal to authorise the commencement of negotiations or a negative response to a prior official enquiry concerning a* potential *order*.
3. Member States shall treat such refusals and consultations as confidential and shall not seek to derive commercial advantage from them.
( )
Article 6
Without prejudice to Regulation (EU) 2021/821 of the European Parliament and of the Council, the criteria set out in Article 2 of this Common Position and the consultation procedure provided for in Article 4 of this Common Position shall also apply to Member States in respect of the dual-use items and technologies listed in Annex I to Regulation (EU)

2021/821 where there are reasonable grounds to believe that the armed forces or internal security forces or similar entities of the country concerned will be the end-users of such goods and technologies. References in this Common Position to military technology or equipment shall be deemed to refer also to such goods and technologies. (..)'.

10. Article 6.3 of the United Nations Treaty on the Arms Trade of 2 April 2013, signed by Belgium and ratified by the legislature on 3 June 2014, provides
'A State Party shall not authorise any transfer of conventional arms covered by Article 2(1) or of goods covered by Articles 3 or 4 if it has knowledge, at the time of authorisation, that such arms or goods could be used to commit genocide, crimes against humanity, *grave breaches of the 1949 Geneva Conventions, attacks directed against civilians or civilian objects and protected as such, OR other war crimes as defined by international agreements to which it is a party*".

On the face of it, this precisely worded prohibition has direct effect in domestic law.

11. Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021
'establishing an EU regime for the control of exports, brokering, technical assistance, transit and transfers of dual-use items', which entered into force on 9 September 2021 (hereinafter 'Regulation (EU) 2021/821'), states in its preamble
'Whereas:
(1) (...)
(2) This Regulation aims to ensure that, in the field of dual-use items, the Union and its Member States take all relevant factors into account. These relevant factors include international obligations and commitments, obligations arising from related sanctions, foreign policy and national security considerations, including those falling within the scope of Council Common Position 2008/944/CFSP, as well as human rights and considerations relating to the intended end-use and the risk of diversion. Through this Regulation, the Union demonstrates its determination to maintain, through this text, robust legal requirements regarding dual-use items, as well as to strengthen the exchange of relevant information and to ensure greater transparency. With regard to cyber-surveillance goods, the competent authorities of the *Member* States *should take particular account of the risk that they may be used for internal repression or in the context of serious violations of human rights or humanitarian law.*
(3) (...)

(...)*".*

Article 2 of this Regulation defines dual-use items as *'products, including software and technology, which can be used for both civilian and military purposes; they include items which can be used for the design, development, production or use of nuclear, chemical or biological weapons or their delivery systems, including all goods which may at the same time be used for non-explosive purposes and contribute in* any *way to the manufacture of nuclear weapons or other nuclear explosive* devices"

III. FACTUAL BACKGROUND

12. The International Court of Justice has ruled on several occasions, at the request of the State of South Africa, that, with regard to the situation in the Gaza Strip following 7 October 2023, the State of Israel must, in accordance with its obligations under the Genocide Convention, take the measures set out therein, in particular

Order of 26 January 2024. '(...) *all measures within its power to prevent the commission, against the Palestinians of* Uo2'o, *of any act falling within the scope of Article II of the Convention, in particular the following acts:*

a) murder of members of the group,
b) serious bodily or mental harm to members of the group,
c) the deliberate subjection of the group to conditions of life calculated to bring about its physical destruction in whole or in part; and
d) measures intended to prevent births within the group",

Order of 28 March 2024 *'in view of the deteriorating living conditions faced by Palestinians in Gaza, in particular the spread of famine and starvation ( )'*
all necessary and effective measures to ensure, without delay and in close cooperation with the United Nations, that all parties concerned provide, without restriction and on a large scale, the basic services and humanitarian aid urgently required, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation products and facilities, as well as medical supplies and care, to Palestinians throughout the Gaza *Strip, in particular by increasing the capacity and number of* land *crossing points and keeping them open for as long as necessary. (...)*

Ensure, with immediate effect, that its army does not commit acts constituting a violation of any of the rights of Palestinians in Gaza as a protected group under the Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, in any way, the delivery of urgently needed humanitarian aid, (...)",

Order of 24 May 2024 *"in view of the deteriorating living conditions faced by civilians in the Rafah Governorate (...) To immediately cease its military offensive, and any other action carried out in the Rafah Governorate, which might subject the Palestinian population of Gaza to living conditions capable of leading to its total or partial physical destruction; (...)".*

13. In an order of 30 April 2024 *(Vicoroguo* v. *Germany),* '(.) *22. The* (International) *Court* of Justice *recalls that, in its order of 26 January 2024, it noted that the military operation conducted by Israel following the attack of 7 October 2023 had resulted in "a very large number of deaths and injuries and caused the massive destruction* of homes, *the forced displacement of the vast majority of the population and considerable damage to civilian infrastructure" (...). It remains, moreover, deeply concerned about the dire conditions in which Palestinians in the Gaza Strip are living, in particular given the prolonged and widespread deprivation of food and other basic necessities to which they are subjected, as it noted in its order of 28 October 2024 (*
23. The Court recalls that, pursuant to Article 1 common to the Geneva Conventions, all States Parties are under an obligation to "respect and ensure respect for" those Conventions "in all circumstances". It follows from this provision that every State party to these Conventions, "whether or not it is a party to a specific conflict, is under an obligation to ensure compliance with the provisions of the instruments concerned" (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory *Opinion*, I.C.I.1. Reports 2004 (I), pp. 199–200, para. 158). *I.C.J. Reports 2004 (I), pp. 199–200, para. 158). Such an obligation "derives not only from the conventions themselves, but from the general principles of humanitarian law of which the conventions are merely the concrete expression" (Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 114, para. 220). With regard to the Genocide Convention, the Court has noted that the obligation to prevent the commission of the crime of genocide, pursuant to Article 1, requires States Parties which were aware, or ought normally to have been aware, of the existence of a serious risk of acts of genocide being committed, to use all means reasonably at their disposal to prevent, as far as possible, the genocide (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and*

and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I), pp. 221–222, paras. 430–431). Furthermore, States Parties are bound by the Genocide Convention not to commit any of the other acts listed in Article III (ibid., p. 114, para. 168).
24. Furthermore, the Court considers it particularly important to remind all States of their international obligations regarding the transfer of arms to parties to an armed conflict, in order to avert the risk that such arms might be used to commit violations of the aforementioned conventions. All these obligations apply to Germany as a *party to the said conventions when it supplies arms to Israel*.

14. On 23 May 2025, the Belgian State invited the regional authorities *"to take stock of the situation regarding arms exports to Israel and the Occupied Palestinian Territory, particularly with regard to transit via Belgium".*

15. On 7 July 2025, the appellants' counsel sent a detailed formal notice to the Belgian State. In particular, it stated

"Re: 'Droit pour Go2'o — *recht voor Go2'o/Belgian* error
Formal notice — breaches of Belgium's international obligations
(...)
B. Justification for the request: a brief overview of Belgium's international obligations in the context of the war waged by Israel in the Gaza *Strip*, *the ongoing genocide, and the illegality of the occupation of Palestinian territory*
(...)
C. Subject matter of the formal notice
28. It follows from all of the above that Belgium, its Government and, consequently, its members in their individual and personal capacities, insofar as their competences and prerogatives are concerned, are legally obliged .'
• *to do everything reasonably within their power to ensure that the 1949 Geneva Conventions and international humanitarian law are respected, in all circumstances, by the State of Israel in the* Gaza *Strip and the West Bank,*
• *to take all possible measures to prevent, if not bring to an end, the genocide in the Gaza Strip in accordance with the obligations of States Parties to the United Nations Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide,*
• *to adopt the necessary measures to compel the State of Israel to put an end to the illegal occupation of the Palestinian Territory, including the West Bank and East Jerusalem, in particular by complying with the advisory opinion of the International Court of Justice of 19 July 2024*

regarding the 'excesses resulting from Israel's policies and practices' in the Occupied Palestinian Territory, including East Jerusalem'.
However, it is clear that Belgium is wrongly failing to adopt any measures to fulfil its obligations and that, through certain of its actions, it continues to encourage or at the very least tolerate the systematic violations of international law, international humanitarian law and the laws of war by the State of Israel, as well as the genocide currently taking place in Gaza.
29. This request also comes in the context of the adoption, on 2 June 2025, of the United Nations General Assembly resolution calling for an immediate ceasefire in Gaza and for States to apply the principle of accountability by adopting, individually and collectively, all necessary measures to ensure that Israel fulfils its obligations.
In this regard, my clients hereby give you formal notice {... to cease all active or passive collaboration, as well as any tolerance whatsoever, with regard to the policy of the State of Israel and in particular (..) *to:* (followed by a list of measures, notably those requested in summary proceedings)'.

16. On 22 July 2025, the appellants brought proceedings against the Belgian State before the President of the French-speaking Court of First Instance in Brussels, sitting in summary proceedings (see /n/ro).

17. On 8 August 2025, the Belgian Government submitted a draft royal decree to the Legislation Section of the Council of State for its opinion a draft Royal Decree 'prohibiting the use of national airspace for the transport of weapons and military equipment from Belgium to Israel and the Palestinian territories, and prohibiting aircraft
carrying out such a transport".

18. In an opinion dated 21 August 2025, the Legislation Section of the Council of State states that
(i) the prohibition as set out in Article 2 of the draft, namely the prohibition on the use of Belgian airspace for the transport of arms and/or military equipment from Belgium to Israel or the Palestinian territories, exceeds the competence of the federal state and should be omitted;
(n) Article 3 of the draft, which enacts a ban on aircraft carrying arms or military equipment flying over national territory, deals with a matter falling within the competence of the federal state.

19. On 2 September 2025, the restricted cabinet of the State of OETGE deliberates *on 'the problem posed by the humanitarian crisis in the Middle East and relations with the State of Israel'* and provides for the following 'sanctions and measures'
« (...)

1. Unilateral

- *Ban on the export and transit of arms*

The Federal Government supports the extension of the ban decided upon during the 2009 inter-federal consultation (i) to all types of transit, ensuring coordination between the measures to be taken at federal and regional levels in accordance with the division of powers (Special Act of 12 August 2003); (ii) to dual-use goods where the end-user is military, and (iii) to all military goods intended for use by Israel, and not only those intended for the Israeli army. The federal government is lobbying the regions in favour of this with a view to reaching a joint decision to this effect. The federal government is actively advocating for an embargo at European level (on arms and dual-use goods where the end-user is military).

Import

In accordance with the judgment delivered by the International Court of Justice on 19 July 2024, and following the example of Ireland and Slovenia, the Federal Ministers for the Economy and Finance are tasked with drafting, in collaboration with the Minister for Foreign Affairs, a royal decree providing for a national ban on the import of goods produced, exploited or processed in territories illegally occupied by Israel; and to provide for the necessary controls to ensure compliance with the import ban.

‹)

- *Overflights*

The Federal Government instructs the Minister for Foreign Affairs to refuse, for as long as the war continues, requests from the Israeli authorities for overflights of our airspace for military flights.

()

2. At European level

Subject, of course, to compliance with the relevant internal Belgian decision-making procedures, Belgium will vote at European level in favour of the adoption of the following measures, which will require a qualified majority:

- *the (complete) suspension of the trade component of the Association Agreement;*
- *the (complete) suspension of the research, innovation and technological cooperation component of the Association Agreement, including Israel's participation in Union programmes such as Horizon Europe;*
- *the suspension of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA, 2012);*
- *the suspension of Israel's participation in the Open Skies Agreement;*
- *the suspension of the technical cooperation provided for under the Neighbourhood, Development and International Cooperation Instrument (NDICI) — including or through the*

Technical Assistance and Information Exchange Instrument (TAIEX), with the exception of funding provided to Israeli NGOs active in the defence of human rights.
(...) *The Federal Government expresses its full support for a decision, also taken at European level, to ban the import of* goods *and services from the settlements, and actively advocates for this, in order to comply with the opinion delivered by the* International *Court of Justice on 19 July 2024 (see letter sent on this subject to the High Representative (...)*".

20. On 8 October 2025, the Belgian State and the Regions concluded the following agreement *'on the policy regarding arms exports to Israel and the Occupied Palestinian* Territory'
'A consultation with the three Regions was organised (.) regarding the export and transit of arms and dual-use goods and technologies to Israel and the Occupied Palestinian Territory.
This type of consultation is provided for in the July 2007 cooperation agreement between the Federal State and the Regions, concerning the import, export and transit of arms, ammunition and equipment specifically intended for military use or for law enforcement, and related technologies, as well as dual-use items and technologies.
During these consultations, it was agreed between the parties.
- not to issue any arms export licences that would strengthen the military capabilities of the forces involved,
- to apply this policy of refusal to transit of any *kind, ensuring coordination between measures to be taken at federal and regional levels, in accordance with the division of powers (Special Act of 12 August 2003),*
to apply this policy of refusal to dual-use goods (as defined in EU Regulation 2021/821 of 20 May 2021), where the end-user is military,
- to apply this policy of refusal (export and transit licences of all types) to all military goods intended for use by Israel, and not only those intended for the Israeli army,
- that Belgium actively advocate for an embargo at European level (on arms and dual-use goods) where the end-user is *military*
This agreement confirms and reinforces the one concluded between the Federal Government and the Regions on 9 February 2009 and contributes to the implementation of the decision of the Federal Government's Council of Ministers of 12 (read 2) *September 2025*.

21. On 17 October 2025, the Belgian State submitted a draft Royal Decree to the Legislative Section of the Council of State for its opinion, "prohibiting overflights of national airspace and banning the non-customs transit of aircraft carrying military equipment and dual-use goods from Belgium to Israel and the Palestinian territories",

explaining that *"The current version of the draft Royal Decree seeks (...) to incorporate the amendments required, on the one hand, by the inter-federal agreement of 8 October 2025 (inclusion of dual-use goods – Articles 1, 4° and 4 new) and, on the other hand, the opinion* (of 21 August 2025 of the Council of State) *(legislative improvements and the inclusion, in a new Article 3, of technical stopovers by aircraft (non-customs transit) within the scope of application of the prohibition regime".*

22. According to the opinion of 22 October 2025 of the Legislation Section of the Council of State, which is limited to examining the extension of the scope of application of the draft to dual-use goods

8. ( ) Regulation (EU) 2021/821 establishes a regime governing the authorisation of exports of dual-use items listed in Annex I thereto, as well as the transit of 'non-Union' dual-use items. The dossier submitted to the Legislation Section does not address how the proposed prohibitions relate to the aforementioned regime.

Subject to the limited review that the Legislation Section has been able to carry out, given the tight *deadline for issuing this opinion, it should be noted, with regard to compliance with* Regulation *(EU) 2021/821, that the prohibitions referred to in Articles 2 (overflight of national territory) and 3 (non-customs transit), the scope of which is extended by Article 4 to dual-use items where the end-user is military.*

a) With regard to 'non-Union' dual-use items listed in
Annex 1."

– *that Article 7(1) of Regulation (EU) 2021/821 does not provide for the possibility, on the part of Member States, to prohibit their transit, as defined in Article 2(11) of that Regulation, unless 'if those goods are or may be intended, in whole or in part, for one of the uses referred to in Article 4(1)', it is for the author of the draft to verify that compliance with that condition is duly established,*
  – *that such a prohibition must be subject to the procedures for notification, review and consultations provided for in Article 16(3) and (5) of Regulation (EU) 2021/821.*

b) With regard to dual-use items for which an export authorisation has been issued by another Member State .'

– *Article 21(3) of Regulation (EU) 2021/821 allows a Member State 'for a period not exceeding the periods referred to in paragraph 4, [to) suspend the export procedure from its territory or, where necessary, [to) otherwise prevent dual-use items, whether or not covered by a valid export* authorisation*, from leaving the Union via its territory', provided that the conditions set out in points (o) and (b) of that*

"(*d provisions* are *met, which it is also for the author of the draft to establish,*

– that these prohibitions would be temporary and conditional pending the completion of the procedures required by Article 21(4) of the Regulation (UE) 2021/821.

9. The proposal will be re-examined in the light of these observations. It is subject to this reservation that the following specific observations are made. (...)"

23. On 18 January 2026, the Belgian State adopted the Royal Decree 'prohibiting the overflight of national airspace and forbidding technical stopovers by aircraft carrying military equipment from Belgium to Israel and the Occupied Palestinian Territory" (hereinafter the Royal Decree of 18 January 2026). Military equipment refers to that covered by the Common List of Military Equipment covered by Council Common Position 2008/944/CFSP of 8 December 2008, as last published in the Official Journal of the European Union (Articles 1(3) and 1(4) of the Decree)

The Belgian State states that *'the Government has decided not to include dual-use goods in* this *decree, in light of the opinion issued by the Legislation Section, given that the circumstances in which movement restrictions are provided for under the applicable European Regulation (No 2021/821) are limited to a few rare situations, which, moreover, notification procedures to other Member States, which appeared incompatible with the urgency of the measures to be taken"* (CONCLUSIONS, p. 17)

IV. BACKGROUND TO THE PROCEEDINGS – APPLICATIONS BROUGHT BEFORE THE COURT

24. *In* the application for interim relief filed on 2 and 2025, the applicants are asking the judge hearing the application for interim relief to order the Belgian State *to comply*, *"subject to a penalty of €1,000 per day of delay and per measure not implemented within the deadline",*

first measure

"to take, within fifteen days of service of the order to be made, all measures ensuring *the effectiveness of the prohibition on any carrier transporting arms, ammunition, related equipment and technologies, including dual-use equipment or products, with a final destination of Israel, from using Belgian territory in this compris son espace aérien ; » ;*

second measure

'to adopt, or have adopted by Parliament if necessary, within fifteen days of service of the order to be made, all necessary measures to ensure

"*effective I a ban on any trade or investment that contributes to the perpetuation of the unlawful situation created by Israel in the Occupied Territory and, in the same vein, a ban on any import of goods or foodstuffs originating from the illegal settlements in the West* Bank",

third measure
'to notify, within eight days of the service of the order to intervene, its intention to denounce the Euro-Mediterranean Agreement establishing an association between the European Union and its Member States, of the one part, and the State of Israel, of the other part, in accordance with Article 82(2) of that Agreement;'

In their submissions of 5 September 202S, the appellants seek an order requiring the Belgian State to take these three measures, amending and supplementing the second measure as follows:

"to adopt (..) provisions (i) *designed to ensure the effectiveness of the prohibition on any commercial trade or investment that contributes to the maintenance of the unlawful situation created by Israel in the Occupied Territory,* in particular with regard to the settlements and the regime associated with them, (ii) necessary to ensure that nationals and companies and entities under Belgian jurisdiction, as well as their authorities, refrain from any act that would imply recognition of the situation created by Israel's unlawful presence in the Occupied Palestinian Territory or that would constitute aid or assistance in maintaining that situation; and (iii) guaranteeing that an end to the importation of any product originating from Israeli settlements, and, where appropriate, to table a bill to that effect in Parliament"

The appellants request the judge hearing the application for interim relief, in the alternative with regard to the third measure, to order the Belgian State to *'notify the State of Israel that it is suspending, pursuant to Article 79 thereof, the effects of the* (Euro-Mediterranean) *Agreement in so far as it concerns him, as an emergency measure* in response to *the clear finding that the State of Israel is systematically violating its commitment to respect human rights and democratic principles, whereas this commitment constitutes an essential element of the Agreement in accordance with Article 2 thereof".*

25. The Belgian State requests the judge hearing the application for interim relief to 'dismiss the application' and to order the appellants to pay the costs of the proceedings, set at €1,883.72 in respect of the State (basic procedural allowance for a claim that cannot be quantified in monetary terms).

26. By the order of 24 September 2025, which is the subject of this appeal, the judge hearing the application for interim relief "dismisses

the action {...) as at the very least unfounded (or, as regards the third claim in its subsidiary part, as moot)" and orders the appellants *jointly and severally* to pay the costs, assessed in respect of the State at €1,883.72, and to pay the FPS Finance the filing fee for the summons (€165)

27. The appellants ask the court to set aside this order and reiterate their original claim with two amendments

> first amendment: '(…) *intended for the military forces, police services, law enforcement and security services of Israel'*
> second measure '( ) *(iii) (to ensure that a bill or draft legislation to that effect is put to a vote in Parliament".*

In the alternative, the appellants limit the temporal scope of the measures sought and, with regard to the third measure, request the court, before ruling on the merits, to refer two questions for a preliminary ruling to the Court of Justice of the European Union (hereinafter the CJEU)

At the hearing on 9 February 2026, taking into account the adoption of the Royal Decree of 18 January 2026, the appellants filed a hearing note supplementing the operative part of their submissions, requesting the court to refer two questions to the CJEU for a preliminary ruling concerning the regime for authorisations for the export of dual-use goods established by Regulation (EU) 2021/821.

28. The Belgian State submits that the appellants' case is unfounded. It does not contest the appellants' standing to bring proceedings within the meaning of Article 17 of the Judicial Code.

29. Each party seeks an order that the other party pay the costs of both proceedings.

V. DISCUSSION – COURT DECISION

V.1. Summary proceedings — conditions

30. Article 584(1) of the Judicial Code provides that 'The *President of the Court of* First *Instance shall make provisional rulings in cases where he recognises the urgency of the matter, in* all *matters except those which the law excludes from judicial power'*

The judge hearing the summary proceedings may, within the limited scope of urgency and provisional measures, make any

to take appropriate action and to order or prohibit certain acts where he finds that a subjective right is under threat. The provisional nature of the measure merely implies that the decision of the judge hearing the application for interim relief does not prevent the parties from proceeding on the merits of the case, nor does it preclude the trial judge. The fact that the decision of the judge hearing the application for interim relief has definitive or irreversible effects has, from the perspective of its provisional nature, no bearing whatsoever.

31. Urgency is both a condition for the jurisdiction of the judge hearing applications for interim relief and a constituent element of the basis of the claim (G. de Laval, 'The Jurisdiction for Interim Relief: Jurisdiction and Procedure' in de Laval, G. (ed.), Judicial Law, Volume 2, Part 1, 2nd edition, Brussels, Larcier, 2021, pp. 203 ff. Civil Procedure Law, Volume 3, 'Interim relief (or provisional measures in urgent cases)', under the scientific direction of J. ENGLEBERT and X. TATON, Anthemis, 2022, pp. 25 et seq.)

32. In this case, urgency was invoked in the summons. Consequently, the appellants' application is admissible

33. As regards the substance of the matter, urgency within the meaning of Article 584(1) of the Judicial Code exists whenever the fear of harm of a certain gravity, or even of serious prejudice, makes an immediate decision desirable. Urgency is a question of fact which must be assessed in the specific circumstances of the case. The claimant must not have, through his own conduct, created the alleged urgency. He is therefore not entitled to bring summary proceedings, in particular where he has delayed taking action when he had the opportunity to bring proceedings on the merits and the dispute could have been resolved in good time under ordinary proceedings, subject, however, to a recent worsening of the existing situation due to new facts or solely as a result of the passage of time (G. De LEVAL, op. *cit.,* p. 203; J. ENGLEBERT and X. TATON, *op. cit.,* pp. 47 et seq.)

In this case, it is necessary to distinguish between the measures sought by the appellants in order to determine whether the condition of urgency relating to the merits of the case is met

V.2. The prohibition on using Belgian territory, including its airspace

34. The appellantsThe appellants are asking the court to order the Belgian State to *'take, within fifteen days of the delivery of the forthcoming judgment, all measures necessary to ensure the effectiveness of the ban on the use of Belgian territory, including its airspace, by any carrier transporting arms, ammunition, related equipment and technologies, including dual-use equipment or products, destined for the forces*

militaires, des services de police, de maintien de l'ordre et de sécurité d'Israël »

A. The urgency

35. The appellants argue that '*the situation in Palestine, and in particular in the Gaza Strip, requires urgent action by third countries, and therefore by Belgium, to bring an end to the ongoing genocide as well as the countless war crimes and crimes against humanity committed systematically by* Israel' and that, in the absence of concrete measures*, 'only summary proceedings are likely to ensure the desired outcome'* (submissions, pp. 117–118).

36. The Belgian State contends that the measure sought *'appears to be without merit as regards* the authority *responsible for air transport and that, at the very least, the allegation …* (that it) *failed to fulfil any international obligations is unfounded in both fact and law'* (submissions, para. 18). It argues that it cannot be blamed *for 'inaction amounting to a tort (...) or "bad faith"'* (submissions, p. 26) and, in addition to the drafting of the Royal Decree of 18 January 2026 lists *'the positions taken by the legislative and executive* branches', including the resolution of the House of Representatives *'on the current situation in Gaza, the West Bank and East Jerusalem and the revival of the Israeli-Palestinian peace* process' of 28 May 2025 (Doc. Chamber 2024–2025, No. 56-0859/006), the Minister for Foreign Affairs' responses to several topical questions in the Foreign Affairs Committee of the House of Representatives on 16 July 2025, the deliberations of the restricted Cabinet on 'the problem posed by the humanitarian crisis in the Middle East and relations with the State of Israel' and the conclusion on 2 September 2025 of an agreement providing for various 'sanctions and measures' (conclusions, D. 23 et seq.)

Court ruling

37. The Belgian State does not dispute the catastrophic humanitarian situation, since 7 October 2023, of the Palestinians in the Gaza Strip.

Furthermore, as stated in the preamble to the Royal Decree of 18 January 2026, there is
'an urgent need to immediately prevent the transport of military equipment by air, which could lead to Belgium breaching its obligations'
international treaties, in particular the United Nations Arms Trade Treaty, prohibits the transfer of arms and military equipment where such arms or equipment could be used to commit genocide, crimes against humanity, serious violations of the 1949 Geneva Conventions, attacks directed against civilians or civilian objects and protected as such, or acts of war as defined by

international agreements *to which it is a party'* and *'that the substantive criterion used by the International* Court *of Justice to establish State responsibility in the context of this obligation is that of knowledge of a serious risk of the commission of an act of genocide, That uncertainty as to whether the specific act of genocide will actually be committed at a later date is not sufficient to exonerate the State, since it is sufficient that the State should normally have been aware of the existence of a serious risk of genocide being committed for it to be subject to this obligation (ICJ, judgment of 26 April 2007, 8OSNle-HPrzégov/nC v. SCFbie and Montenegro)*

38. The urgency referred to in Article 584(1) of the Judicial Code is established in that the measure sought is intended to prevent the use of weapons, military equipment and dual-use goods that could be used to commit, in the Gala region, genocide, crimes against humanity and attacks directed against civilians or civilian objects protected as such, or other war crimes as defined by international agreements to which the Belgian State is a party.

B. The prima facie case

39. The appellants argue that *'the situation in the Gaza Strip requires Belgium to take the measures requested, given the erga omnes obligations arising from the systemic violations of humanitarian law, which continue to this day despite the existence of a ceasefire (..) , and its obligation to prevent the commission of genocide, which continues to be perpetrated due to the inhumane living conditions imposed on Palestinians in the Gaza Strip* (...)" (submissions, p. 121)

The Court's decision

40. Pursuant to Article 6(1), first subparagraph, point 4, of the Special Law of 8 August 1980 on 'institutional reforms' (hereinafter the Special Law of 8 August 1980) I the import, export and transit of arms, ammunition and equipment intended specifically for military or law enforcement purposes, and related technology, as well as dual-use goods and technologies, without prejudice to federal competence regarding imports and exports relating to the army and the police, and in accordance with the criteria set out in Council Common Position 2008/944/CFSP of 8 December 2008, fall within the competence of the Regions.

41. The term 'arms transfer' within the meaning of the United Nations 'Arms Trade Treaty' refers to activities relating to the international trade in arms (Article 2 of the Treaty). On *the face of it,*

this treaty applies to the Federal State insofar as it has the power to authorise the export of arms from the territory of the Union

42. The regulation of air navigation falls within the remit of the federal authority. On this basis, the Belgian State issues air transport authorisations

of arms and military equipment, in accordance in particular with the Convention on International Civil Aviation signed on 7 December 1944 and ratified by Belgium on 30 April 1947, which provides

'( )

Part I Air Navigation

(...)

Chapter V Conditions to be met in respect of aircraft Art. 35

Restrictions relating to cargo

a) War munitions and war material may not be carried within
or *above the territory of a State on board aircraft engaged in international navigation, unless authorised by that State. Each State shall determine by regulation what is to be understood by 'ammunition or war material' for the purposes of this Article, taking due account, in the interests of uniformity, of any recommendations which the International Civil Aviation Organisation may make in this regard.*
b) Each Contracting State reserves the right, for reasons of public order and security, to regulate or prohibit the carriage, within or over its territory, of articles other than those referred to in paragraph (a), provided that no distinction is made in this respect between its own aircraft engaged in international navigation and the aircraft of other States engaged for the same purposes, and provided further that no restrictions are imposed which might hinder the carriage and use, on board aircraft of equipment necessary for the operation or navigation of such aircraft, or for the safety of the crew or passengers",

insofar as they may also relate to weapons

- o explosive products (Royal Decree of 23 September 1958 'laying down general regulations on the manufacture, storage, possession, sale, transport and use of explosive products'),
- o dangerous goods (Royal Decree of 18 November 2005 'regulating the air transport of dangerous goods').

43. The Belgian State, which is the competent authority for adopting air navigation policing measures, cannot adopt a measure that would result in the regulation of the export or transit of arms, military equipment and dual-use goods, which fall within the competence of the Regions (see above)

Consequently, in the present case, the Court must first examine the issue—which falls within the competence of the Belgian State—of authorising the overflight of Belgian territory and non-customs transit (also known as technical transit) by aircraft carrying arms, military equipment and dual-use goods, with a final destination of Israel or the occupied Palestinian territories,, bearing in mind that the drafting of a transport decree requires the completion of the intergovernmental consultation procedure provided for in Article 6,
Section 4(3)(1) of the Special Act of 8 August 1980.

44. Pursuant to this procedure, on 9 February 2009 the Federal Government and the Regions concluded
'an agreement on arms exports to Israel and the occupied territories' in which *they undertook 'not to grant any arms export licence that would strengthen the military capacity of the forces* involved'

The serious risk of the commission of the crime of genocide, crimes against humanity and serious violations of the Geneva Conventions in the Gaza Strip following 7 October 2023 have been known since the order of 26 January 2024 by the International Court of Justice enjoining the State of Israel to comply with its obligations under the Genocide Convention, an injunction reiterated in the orders of 28 March 2024 and 24 May 2024

The gravity of the situation in the Gaza Strip therefore required the States Parties to the Genocide Convention and the Geneva Conventions to take, without delay, all reasonable measures at their disposal to prevent the commission of the crime of genocide, crimes against humanity and serious violations of the Geneva Conventions in the Gaza Strip.

However, it was not until 23 May 2025 that the Belgian State took the initiative to hold a new consultation with the regional authorities *'in order to take stock of the situation regarding arms exports to Israel and the Occupied Palestinian Territory, particularly with regard to* transhipments *via* Belgium'

At first glance, given the time that has elapsed since the first order of the International Court of Justice (26 January 2024) and the convening (23 May 2025) of the inter-federal meeting on

The export of arms and military equipment to Israel or the occupied Palestinian territories, the Belgian State did not immediately do what was within its power to prevent the transfer of arms and military equipment to Israel or the occupied Palestinian territories, which were to be used to commit the crime of genocide, crimes against humanity and serious violations of the Geneva Conventions in the Gaza Strip, and thereby breached its obligations under those conventions.

45. As no binding measures had been adopted by the Belgian State by the date on which the case was reserved for judgment at first instance (15 September 2025), that is to say eighteen months after the order of 26 January 2024 of the International Court of Justice, the appellants were justified in applying to the judge hearing the application for interim relief for an injunction ordering the Belgian State, on pain of a penalty payment, to take the measures within its power to prevent the violation in the Gaza Strip of the Genocide Convention and the Geneva Conventions, such as the prohibition of overflights of Belgian territory and technical transit by aircraft carrying weapons and/or bound for Israel or the occupied Palestinian territories. Subsequently, the appellants' application became partially moot following the adoption of a Royal Decree on 18 January 2026 imposing these prohibitions, which came into force before the court reserved its decision on the case.

46. With regard to dual-use goods, that is to say, goods which are or may be intended, in whole or in part, for military purposes, the Belgian State does not explain what it has done, in consultation with the Regions, in accordance with EU law and in particular Regulation 2021/821, to adopt measures reasonably available to it to prevent their transfer to Israel or the Palestinian territories,, notably, within the scope of its competence, to close Belgian airspace to aircraft transporting such goods to Israel or the occupied territories.

Furthermore, the parties have not commented on the practical implications of the application of Articles 3, 4 and 6 of EU Council Common Position 2008/944/CFSP of 8 December 2008, cited above, and the provisions of EU Regulation 2021/821 on the agreement of 8 October 2025 between thethe Belgian State and the Regions to extend the export ban to dual-use goods destined for TsraöT or the occupied Palestinian territories, with the result that the court is unable to assess the merits of the parties' arguments on this point and the need to refer questions for a preliminary ruling to the CJEU.

It is appropriate to order the reopening of the proceedings for this purpose and to allow the State of Delge to produce the 'July 2007' cooperation agreement with the Regions concerning *the* 'supply, *export and transit of arms, ammunition and equipment specifically intended for*

or law enforcement, and related technologies, as well as dual-use items and technologies'

The court reserves its decision on the remainder of this ground of appeal.

V.3. The prohibition of acts which imply recognition of or assist in maintaining 'Israel's illegal presence in the occupied Palestinian territories' – denunciation of the Euro-Mediterranean Agreement

47. The appellants ask the court to rule against the Belgian State, 'in view *of the situation in Gaza'* and *'in view of the illegality of the occupation of Palestinian territory* – not *only the* Gaza *Strip but also the West Bank and East Jerusalem*, *where Israel is continuing and intensifying its settlement* policy' on the one hand, to adopt measures to effectively prohibit the export of goods, materials and services, as well as investments and financing "which facilitate the occupation" of the Palestinian territories, and any import of products, foodstuffs and services that may originate from Israeli companies or individuals operating illegally in the occupied Palestinian territories; on the other hand, to notify its intention to denounce theEuro-Mediterranean Agreement, in accordance with Article 82, paragraph 2 (conclusions, p. 121)

48. As regards urgency, the appellants state: «(...) // *it is indeed established* (...) *that on the date of* (service of the summons) *neither the European Union nor the Belgian Government would take, at least within a reasonable timeframe given the situation and the* nature *of the rights under threat, the measures which international law nevertheless requires, primarily of States, to take. This finding justified* (their) *bringing summary proceedings to put an end to the unlawful conduct resulting from the Belgian State's culpable failure to fulfil its international obligations {...). {. .) only summary proceedings are capable of securing the desired result, as the processing of a substantive action within the ordinary timeframes does not* allow *for the injunction sought to be obtained in good time in the face of the risk of genocide and in the Gaza Strip, as well as in the face of ongoing violations of international humanitarian law and international law, both in the Gaza Strip and in the occupied West Bank. {, .) in the absence of action by the international community, and therefore in the absence of the Belgian State doing its part, there* is a risk *that the rights of the Palestinians — in particular the right to self-determination — which the action aims to protect, will be irreparably undermined {. .) »* {conclusions, pp. 117–118).

49. As regards the legal basis, the appellants argue that the Belgian State must *'refrain from economic or commercial relations with Israel which would be* such *as to*

reinforce the latter's unlawful presence in the occupied Palestinian territory {...) (and) *take measures to prevent trade or investment that contributes to the maintenance of the unlawful situation created by Israel in the occupied Palestinian territory". They* argue that

> *"The* obligations of the Belgian State) *arise* ( ) *in particular from 'Article 1 of the International Covenant on Civil and Political Rights* (which) *sets out (...) the obligation for States Parties to that Covenant* 'to facilitate the realisation of the right of peoples to self-determination, and to respect that right, in accordance with the provisions of the Charter of the United Nations'." *Article 1 of* (the Geneva Convention relative to the Protection of Civilian Persons in Time of War) *requires ...) States to use all means to ensure compliance with the provisions of that Convention. It follows from these obligations that States may not recognise as lawful the situation resulting from Israel's presence in Palestinian territory and that they may not provide any aid or assistance to the maintenance of the situation created by Israel's illegal presence in that* territory" (conclusions, p. 138)
> *'as a party to* (the Geneva Convention relating to the Protection of Persons
> (civilians in times *of* war), *the Belgian State has an obligation to ensure that Israel complies with international humanitarian law as enshrined in this Convention, and therefore to take all necessary measures—both positive and negative—to induce Israel to treat Palestinians humanely and protect them against any act of violence or intimidation, and to cease its discriminatory policy (Art. 27), to cease the forcible transfer of the Palestinian population and colonisation (Art. 49), to ensure that all Palestinians have adequate access to food, including water supplies (Art. SA), and to exercise its regulatory power over the population in a manner consistent with the Convention (Art. 64)*" (conclusions, p. 139)

The appellants argue that Belgium voted in favour of United Nations General Assembly Resolution RES/ES-10/24 of 18 September 2024, adopted in light of the advisory opinion of 19 July 2024 of the International Court of Justice ' concerning the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem", in which the Court states that Israel's continued presence in the Palestinian territories is unlawful, and that States are under an obligation not to recognise this presence as lawful and not to assist in maintaining this situation. According to the appellants, by voting in favour of this resolution, the Belgian State acknowledged that the measures referred to therein fall within the scope of the international obligations incumbent upon all States (submissions, p. 14 et seq.).

The appellants then argue that *'the maintenance of the privileges enshrined in* [the Euro-Mediterranean Agreement] *is unquestionably contrary to the Belgian State's obligation to do 'everything in its power' to ensure the effective realisation of the Palestinian people's right to self-determination, to put an end to the genocide, the systematic war crimes and crimes against humanity, the illegal occupation and its ongoing expansion in the West Bank and East Jerusalem (...)* that these privileges of the State of Israel *must be brought to an end by ordering* the Belgian State *to notify its intention to denounce the Agreement in accordance with Article 82(2) thereof or, alternatively, to suspend it in so far as it is concerned on the basis of the emergency procedure referred to in Article 79. '* (submissions, p. 171)

50. *Whilst* disputing that it is obliged, in short, to prevent trade or investment with or in Israel in order to compel that State to comply with international law, the Belgian State states that *'within the framework of its subsidiary competence in international trade, it has already taken various measures, notably within the framework of customs competence managed by the AGDA within the FPS Finance,* which *form part of a policy of differentiation based on international case law, in order to give effect to the prohibition on any commercial trade or investment that contributes to the maintenance of the unlawful situation created by the State of Israel in the Occupied Palestinian Territory, as well as the prohibition on any import of products or foodstuffs originating from the settlements (see, in particular, the judgment of the CJEU of 25 February 2010, No C-386/08)* (Opinion, p. 19). With regard to the Euro-Mediterranean Agreement, he states that 'a *Member State cannot, on its own, denounce an association agreement',* that Article 167 of the Constitution confers on the King the power to conduct international relations, including the conclusion of treaties, and that the withdrawal procedure could not be carried out by the federal State alone, without the approval of the federated entities (submissions, p. 21).

Court's decision

51. The second measure sought by the appellants in the present case is set out in paragraphs 5(a) and (b) of the Resolution of 18 September 2024 of the United Nations General Assembly (measures to put an end to acts that imply recognition of or assist in the maintenance of Israel's illegal presence in the occupied Palestinian territories)

Insofar as this measure and your denunciation or suspension of the Euro-Mediterranean Agreement are intended to prevent the commission of the crime of genocide, war crimes, crimes against humanity and serious violations of the Geneva Conventions in the Gaza Strip, the request is unfounded because, *firstly,* the determination and implementation of measures falling within its competence, other than the prohibition of overflight of Belgian territory and transit

The issue of aircraft carrying weapons and/or military equipment bound for Israel or the occupied Palestinian territories falls within the discretionary power of the Belgian State; consequently, firstly, the principle of the separation of powers does not, according to
the Court, *prima facie,* the courts of the judicial order to take the place of the executive and legislative powers in defining the measures necessary to ensure that the State of Israel complies with international law.
The Court recalls in this regard that where public authorities have discretionary powers, the Court of Cassation considers, for the following reasons, which the Court endorses:
'That (.) the administration, when taking a decision by virtue of its discretionary power, has a margin of discretion which allows it to determine for itself how it exercises that power and to choose the most appropriate solution within the limits set by law,' That the judiciary has jurisdiction (pursuant to Articles 144 and 145 of the Constitution) *both to prevent and to provide compensation for an unlawful infringement of a subjective right by the administration in the exercise of its unbound discretion; but that, in this regard, it may not deprive the administration of its freedom of action nor substitute itself for it; that the judge hearing the application for interim relief is equally unable to do so; that, in making a provisional and marginal assessment of the care with which the administration must act, the judge (...) may impose or prohibit certain acts, but may do so only where he reasonably concludes that the administration has not acted within the limits within which it is required to intervene; that, when provisionally assessing the legality of the public authorities' intervention, the judge (...) cannot disregard a criterion that forms the basis of that decision by the public authorities, without ruling that (…) that criterion was not lawfully applied; nor can he substitute, according to his own view, other criteria that would lead to a different decision*
› (Cass. (1st Ch.) RG C.03.0346 N, C.03.0448. N, C 03 0449.N 4 March 2004 (Belgian State v C.T. et al.), *Pas.,* 2004, vol. 3,
374, conclusion by Dubrulle)

52. Furthermore, the application is unfounded in the absence of urgency within the meaning of Article 584(1) of the Judicial Code

Indeed, whilst (i) the occupation of the Palestinian territories has been unlawful since 1967 (see, in particular, United Nations Security Council Resolutions 242 of 22 November 1967 and 298 of 25 September 1971), (ii) the two associations acting as interveners in the present case have had the right to bring an action in the public interest since January 2019, and (iii) Messrs Kullab and Alna3 Ar had been in Belgium for over a year prior to the summons in summary proceedings, neither the former nor the latter brought proceedings against the Belgian State before the court hearing the main action. The appellants have therefore taken no steps to obtain a decision through ordinary proceedings, even though, given the grounds and nature of the measures sought, such proceedings should have been brought. Furthermore, it has not been demonstrated that the situation of Palestinians in the West Bank and East Jerusalem in

The situation would have worsened by 2024, particularly due to the cumulative effect.

V.4. Costs

53. As the court has not exhausted its jurisdiction, it reserves its decision on the costs of both proceedings

VI. OPERATIVE PART

The Court,
ruling after hearing both sides,

Having regard to the Law on the Use of Languages in Judicial

Matters, Upholds the appeal,

Amends the order of 24 September 2025 of the President of the French-speaking Court of First Instance of Brussels, sitting in summary proceedings to rule on the application seeking an order requiring the Belgian State to *'take all measures to ensure the effectiveness of the ban on any carrier transporting arms, ammunition, related equipment and technologies, including dual-use equipment or products, with a final destination of Israel, from using Belgian territory, including its* airspace', and on costs, and ruling again

Without prejudice to the grounds for the decision in this judgment, orders the reopening of the proceedings, and sets the case for hearing on 30 March 2026 at 9.10 am (Courtroom 0 C) for the reasons set out in paragraph 46 of this judgment;

Reserves the costs of both proceedings.

This judgment was delivered by the First Chamber of the Brussels Court of Appeal on 16 March 2026, composed of

H. REGHIF Counsellor, Acting
D. DEGREEF President, Deputy
Y. Judge, Deputy
TOURNAY Counsellor

who attended all the hearings and deliberated on the case affaire.

Y. TOURNAY D. DEGREEF H.@EGHIF
(unable to sign)

The undersigned registrar, A. Monin, hereby records that Ms D. Degreef, deputy judge, is unable to sign the judgment.
The registrar shall inform the Attorney General of this omission in accordance with Article 787 of the of Judicial Procedure.

A. MONIN

It was delivered by Ms H. Reghif, Judge, Acting President, assisted by Mr A. Monin, Clerk.

A. MONIN H. REGHIF