



Kent Academic Repository

Hammouri, Shahd (2026) *Reckoning with the paradox of regulating the arms industry: The context of Palestine*. *Business and Human Rights Journal*, 11 (1). pp. 95-102. ISSN 2057-0201.

Downloaded from

<https://kar.kent.ac.uk/113472/> The University of Kent's Academic Repository KAR

The version of record is available from

<https://doi.org/10.1017/bhj.2026.10046>

This document version

Publisher pdf

DOI for this version

Licence for this version

CC BY (Attribution)

Additional information

Versions of research works

Versions of Record

If this version is the version of record, it is the same as the published version available on the publisher's web site. Cite as the published version.

Author Accepted Manuscripts

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding. Cite as Surname, Initial. (Year) 'Title of article'. To be published in **Title of Journal**, Volume and issue numbers [peer-reviewed accepted version]. Available at: DOI or URL (Accessed: date).

Enquiries

If you have questions about this document contact ResearchSupport@kent.ac.uk. Please include the URL of the record in KAR. If you believe that your, or a third party's rights have been compromised through this document please see our [Take Down policy](https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies) (available from <https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies>).

DEVELOPMENTS IN THE FIELD

Reckoning With the Paradox of Regulating the Arms Industry: The Context of Palestine

Shahd Hammouri 

Kent Law School, University of Kent, UK
Email: s.hammouri@kent.ac.uk

Abstract

War is a lucrative business for the military industry, particularly in contexts of mass and structural violence, extensive violations of international law and genocide. For economically advanced states, the profits generated by military businesses are often seen as beneficial under the dynamics of the military-industrial complex. Israel's genocide in Gaza, which has caused untold suffering that has 'scarred the consciousness of humanity', aptly illustrates this dynamic.

In such a context, states and corporations arguably have a duty under international law not to contribute to or benefit from the war economy of the state committing such violations. In practice, however, adhering to these obligations conflicts with the lucrative economic and geopolitical opportunities that this war economy provides. This essay reflects on the argumentative techniques used by states and corporations to justify continued military support for Israel, despite its clear contradiction with their international legal obligations.

Keywords: conflict-affected areas; genocide; Israel; occupation; Palestine; The Politics of International Law

1. Introduction

War is a lucrative business. Since the retaliatory escalation of Israel's violence in response to the October 7th attack, the revenues of some of the largest global arms corporations have surged, in part due to the increase in the export of arms to Israel.¹ These exports have been sustained despite reports of significant levels of violence perpetrated by Israel, one of the most advanced military powers in the world,² in the Gaza Strip (Gaza), a densely populated territory of refugees who have lived under siege for 17 years, with over 55% of the population under the age of 18.³

Arms transfers by global corporations and States have been and are taking place in the context of serious violations of international humanitarian law. The result of the most

¹ Guilia Carbonaro, 'Military Contractor Stocks Have Skyrocketed Since Israel War Started', *Newsweek* (16 October 2023).

² SIPRI, *SIPRI Yearbook 2023: Disarmament and International Security (Summary)* (Cambridge: Cambridge University Press, 2023) 11.

³ LPHR, 'Does the Closure of Gaza Constitute the Crime Against Humanity of Prosecution? Independent Legal Opinion' (5 December 2022), <https://lphr.org.uk/wp-content/uploads/2024/01/Public-version-Legal-Opinion-on-the-Gaza-closure.pdf> (accessed 10 June 2024).

recent hostilities has been the near-complete destruction of Gaza, the mass displacement of its residents, and the murder of tens of thousands of Palestinians, with some estimates reaching over a hundred thousand,⁴ a huge proportion of whom are children.⁵ Tens of thousands of Palestinians have suffered from life-altering injuries, amputations, torture, sexual violence, arbitrary detention and famine.⁶ Images coming out of Gaza, resembling historical imagery of colonial genocide and unspeakable suffering, have been shared and watched by the world on a daily basis for over a year.⁷ This prompted the International Court of Justice (ICJ) to determine as ‘plausible’ that Israel’s actions resulted in violations of ‘the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts’.⁸ Yet to this day, the lack of political will to address Israel’s crimes in Gaza and the West Bank finds echo in the major accountability gap for such crimes. This status quo of impunity and escalation of crimes is maintained, in part, by the continued supply of arms to Israel, which is supported by the intersecting and converging interests of the arms industry and economically advanced states.⁹ The Office of the High Commissioner of Human Rights in June 2024 warned that arms ‘sustain, exacerbate, and prolong armed conflicts’.¹⁰ The proliferation of war means profit for the military industry of economically advanced states with the capacity to influence war economies, including the USA, the UK, Germany and Israel.¹¹

To protect the Palestinian people, states and military corporations must adhere to their international obligations. At the same time, these obligations faced the challenge of having to be applied in the current context, where economically advanced states and military corporations share closely affiliated interests, otherwise known as the military-industrial complex.¹² In managerial terms, the state and corporate costs of adhering to international legal obligations are outweighed by the minimal risks of non-compliance. This essay offers reflections on some examples of the argumentative techniques used by states and corporations to sustain this paradox in the case of Palestine.¹³ Such techniques are not unique to this context, but the extremity of the violence unfolding in Palestine offers sharp

⁴ Rasha Khatib, Martin McKee, and Salim Yusuf, ‘Counting the Dead in Gaza: Difficult but Essential’ (2024) 404:10449 *The Lancet* 237–8.

⁵ Review for example: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* ‘Urgent request for the modification and indication of provisional measures pursuant to article 41 of the statute of the International Court of Justice and articles 75 and 76 of the rules of court of the international court of justice’ (10 May 2024).

⁶ UN Office of the High Commissioner for Human Rights, ‘Israel: UN Expert Calls for Probe of Allegations of Torture and Mistreatment Against Palestinian Detainees’, Press Release (23 May 2024).

⁷ For example, refer to images found in Göran Olsson’s documentary ‘Concerning Violence’ (2014).

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, 192 ICJ (24 January 2024).

⁹ United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, ‘Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide’, Report A/HRC/60/CRP.3, at recommendation 267 (b) (16 September 2025), Rosa Luxemburg, *The Accumulation of Capital* (Oxfordshire: Routledge, 2015) Chapter 32; Ali Kadri, *Arab Development Denied: Dynamics of Accumulation by Wars of Encroachment* (London: Anthem Press, 2014) Chapter 5. See also ‘The Companies Arming Israel and Their Financiers’, *Pax for Peace* (June 2024), <https://paxforpeace.nl/wp-content/uploads/sites/2/2024/06/The-Companies-Arming-Israel-and-Their-Financiers-June-2024.pdf>

¹⁰ UN Office of the High Commissioner for Human Rights, ‘States and Companies Must End Arms Transfers to Israel Immediately or Risk Responsibility for Human Rights Violations’, Press Release (20 June 2024).

¹¹ SIPRI, note 3.

¹² For example, William D. Hartung, *Prophets of War: Lockheed Martin and the Making of the Military-Industrial Complex* (New York: Nation Books, 2010); Katherine C. Epstein, *Torpedo: Inventing the Military-Industrial Complex in the United States and Great Britain* (Harvard: Harvard University Press, 2014).

¹³ Argumentation depends on the creation of logical structures—some argumentative techniques can be designed to evade responsibility or distort the truth. The study of such techniques is often anchored in the

insights into the current limitations of attempts at international regulation of the arms industry.

II. State international legal obligations

In its decision on the legal consequences of the Israeli occupation of Palestine, the ICJ stressed the structural, systemic and grave nature of the violations committed by Israel in occupied Palestine.¹⁴ In effect, the Court asked states to refrain from any ‘economic dealings which may entrench its [Israel’s] unlawful presence in the territory’,¹⁵ to ‘take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation’,¹⁶ and ‘not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the occupied Palestinian territories’.¹⁷ This decision ought to be read in conjunction with the provisional measures issued by the ICJ under the Genocide Convention of 1948 in the case of *South Africa v. Israel*, which engages the state duty to prevent genocide¹⁸ and undertake all measures within their influence to protect the civilian population from mass violence.¹⁹ In April 2024, the UN Human Rights Council adopted a resolution where it called upon states to ‘cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel’.²⁰ These duties find further support in extensive arguments put forth by lawyers, activists, and UN officials who ascertain that, in this context, an arms embargo is a necessary measure to protect the Palestinian people against irreparable damage.²¹

Articles 6 and 7 of the Arms Trade Treaty (ATT) require exporting states to refuse authorisation where transfers would violate their international obligations or where there is an overriding risk that the arms will be used to commit serious violations of international humanitarian or human rights law. Article 6 lays down absolute prohibitions, including where a state knows the weapons would be used to commit genocide, crimes against humanity or grave breaches of the Geneva Conventions, while Article 7 obliges states, in all other cases, to conduct a risk assessment and to deny exports when the risk of such serious violations is overriding after considering any mitigation measures.

The EU Common Position 2008/944/CFSP similarly obliges EU member states to assess export licence applications against binding criteria, including respect for international humanitarian law, human rights and regional peace and stability, and to deny licences where there is a clear risk that the military equipment might be used for serious violations.

study of logic. Review: Douglas Walton, *Fundamentals of Critical Argumentation* (Cambridge: Cambridge University Press, 2006).

¹⁴ *Legal Consequences Arising From the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, ICJ Advisory Opinion 186 (19 July 2024).

¹⁵ *Ibid.*, para. 278.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, para. 279.

¹⁸ Note 1.

¹⁹ *Ibid.* Further review: Jinan Basktaki ‘The “Capacity to Influence”, State Responsibility, and the Obligation to Prevent Genocide’ *Opinio Juris* (30 March 2024) <http://opiniojuris.org/2024/03/30/the-capacity-to-influence-state-responsibility-and-the-obligation-to-prevent-genocide/> (accessed 5 June 2024).

²⁰ Human Rights Council, *Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, and the Obligation to Ensure Accountability and Justice A/HRC/RES/55/28* (16 April 2024) para. 14.

²¹ Al Haq ‘Ending Complicity in International Crimes: A Two-Way Arms Embargo on Israel’ (8 November 2023), <https://www.alhaq.org/advocacy/22123.html> (accessed 5 June 2024); Irene Pietropaoli ‘Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza’, SOMO (5 June 2025); OHCHR, ‘States and Companies Must End Arms Transfers to Israel Immediately or Risk Responsibility for Human Rights Violations: UN Experts’ (20 June 2024), <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk> (accessed 27 July 2024).

In view of the violations described above, it is clear that the Article 6(3) ‘knowledge’ threshold and the Article 7 ‘overriding risk’ standard are plainly met, such that continued transfers of arms and military components to Israel are incompatible with both the ATT framework and the EU Common Position criteria.

How can such obligations be translated into action in relation to the global value chains facilitating such serious violations of international humanitarian law? What influence should third state parties be expected to have and exert vis-a-vis the Israeli war economy, considering both direct and indirect forms of participation in the supply chains feeding Israel’s war?

III. Rhetorical and legal state practice failing obligations

A few states, such as Colombia, Brazil and Mexico, took positive steps to meet their international obligations by revising their military, political, financial and diplomatic relations with Israel in relation to the occupation of the Palestinian Territory.²²

Others failed to take such steps and employed argumentative techniques to evade scrutiny. One such technique is questioning the legal premises of such obligations or the authenticity of factual evidence from Palestinian and international sources.²³ This technique was used by US and UK state representatives, who later reversed their positions.²⁴ For example, the UK government repeatedly denied that Israel is violating international law—censoring those who made such claims.²⁵

Another argumentative technique employed by states has been to opt for a technical and narrow interpretation of their international obligations.²⁶ The US assesses the arms trade with Israel under the National Security Memorandum 20 (NSM20),²⁷ which requires the Secretary of State to obtain assurances from the beneficiary state that US-supplied weapons will not be used in contravention of international humanitarian law (IHL), and that it will facilitate the transport of US humanitarian assistance.²⁸ The US government’s assessment of arms sales to Israel is based on proving a direct causal relationship between the supplied

²² Hillary Goodfriend ‘Progressive Governments Across Latin America Are Condemning Israel’ *Jacobin* (20 November 2024), <https://jacobin.com/2023/11/latin-america-progressive-governments-condemn-israel-lula-boric-arce-petro> (accessed 5 June 2024); Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, ‘Legal analysis and recommendations on implementation of the International Court of Justice, Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem’, 18 October 2024, available at: <https://www.un.org/unispal/document/position-paper-commissionof-inquiry-18oct24/>.

²³ This form of argumentation is one that unreasonably shifts the burden of proof to the other side. Walton, *note* 13, 71–85.

²⁴ Toby Helm, ‘UK Government Lawyers Say Israel Is Breaking International Law, Claims Top Tory in Leaked Recording’ *The Guardian* (31 March 2024); Gabrielle Tétrault-Farber, ‘Despite Biden’s Doubts, Humanitarian Agencies Consider Gaza Toll Reliable’ *Reuters* (28 October 2023).

²⁵ Dominic Penna, ‘Downing Street Slaps Down Lammy After Claim Israel Broke Law’ (2025).

²⁶ ‘The grammar that From Apology to Utopia sketches may thus also be read as an analysis of the possibilities and limits of political contestation through the adoption of a culture of formalism in a particular institutional environment’. Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2005) 571.

²⁷ Review: Special Task Force, ‘Report to Congress Under Section 2 of the National Security Memorandum on Safeguards and Accountability With Respect to Transferred Defense Articles and Defense Services (NSM-20)’ *Just Security* (24 April 2024), <https://www.justsecurity.org/wp-content/uploads/2024/05/Report-to-Congress-under-Section-2-of-the-National-Security-Memorandum-on-Safeguards-and-Accountability-with-Respect-to-Transferred-Defense.pdf> (accessed 28 July 2024).

²⁸ *Ibid.*, 1.

weapon and an IHL violation.²⁹ This threshold of assessment is higher than that required by the ATT and in ICL jurisprudence, where the notion of aiding and abetting does not require a direct link with the principal crime. This approach obfuscates indirect forms of participation in Israel's war through the provision of weapons and shifts the burden of proof away from the state in a context where evidence collection is almost impossible.³⁰

Similarly, narrow interpretations of the notion of 'influence' were adopted in Dutch courts in response to a civil society lawsuit against the Dutch government to challenge its licensing decision to participate in the NATO F35 programme, parts of which carry the clear risk of ending up in Israel.³¹ In response to the plaintiffs' appeal, the Hague Court of Appeal held that contribution to the US F35 programme bears insufficient influence to be able to suspend supplies.³² This preferencing of state influence prioritises regional security agreements, such as those with NATO, over various actors' international legal obligations to end arms supplies as set out by various international authorities.³³

Other states, like Canada, gave the illusion of an embargo by halting new licenses while continuing existing licenses, ensuring a continuous flow of arms to Israel.³⁴

Meanwhile, the German government has adopted an argumentative technique premised on a forced illogical distinction between 'war weapons' and 'other military equipment', such as components or weapons that are indirectly lethal,³⁵ thus obfuscating Germany's arms transfers' central role in Israel's war economy.³⁶ Weapons are complex, lethal structures; all parts are required for their function, rendering each component equally lethal. The German government's insistence on a fragmented reading of the machine's structure is arguably a bad-faith act, designed to distort the fundamental reality of machine functionality.

Such argumentative techniques are reinforced by states withholding information about arms licenses, and Israel's denial of access to and destruction of information about arms licenses. For example, efforts by civil society actors in Australia to invoke the Defense Exports Act 2012 in order to challenge the exports were obstructed by the government's non-disclosure of information.³⁷ To challenge this lack of transparency, in a particularly novel step (with limited application to other cases of arms exports), activists in Belgium successfully mobilised the right to environmental information to receive data that led the Walloon regional government to suspend exports of explosive powder to Israel, arguing "The

²⁹ Ibid, 18–32.

³⁰ William Worster, 'The Inadequacy of the US State Department Report on Arms Exports Assurances: Part II' *Opinio Juris* (21 June 2024), <http://opiniojuris.org/2024/06/21/the-inadequacy-of-the-us-state-department-report-on-arms-exports-assurances-part-ii/> (accessed 27 October 2024).

³¹ 'Civil Suit Against the State of the Netherlands for Transfer of F-35 Parts to Israel', *Arms Trade Litigation Monitor*, <https://armstradelitigationmonitor.org/case/civil-suit-against-the-state-of-the-netherlands-for-transfer-of-f-35-parts-to-israel/> (accessed 5 June 2024).

³² 'Geen dwangsom Staat op verbod levering F35-onderdelen naar Israël', *De Rechtspraak* (12 July 2024), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Nieuws/Paginas/Geen-dwangsom-Staat-op-verbod-levering-F35onderdelen-naar-Israel.aspx> (accessed 1 August 2024).

³³ Human Rights Council, note 12.

³⁴ Andrew Mitrovica, 'The Canadian Arms Embargo That Was Not', *Al Jazeera* (March 2024), <https://www.aljazeera.com/opinions/2024/3/24/the-canadian-arms-embargo-on-israel-that-was-not> (accessed 25 August 2024).

³⁵ Otfried Nassauer and Christopher Steinmetz, "'Made in Germany" Inside Components—the Forgotten Arms Transfers', *Oxfam and Berlin Information Centre for Transatlantic Security* (March 2005), <https://www.bits.de/public/pdf/oxfam-zfe.pdf> (accessed 29 July 2024).

³⁶ Forensis, *Short Study: German Arms Exports to Israel 2003–2023* (2 April 2024).

³⁷ The Arms Trade Litigation Monitor, 'Administrative Challenge in Federal Court of Australia', <https://armstradelitigationmonitor.org/case/administrative-challenge-in-federal-court-of-australia/> (accessed 10 June 2024).

January 26 order of the International Court of Justice (...) as well as the unacceptable deterioration of the humanitarian situation in the Gaza Strip.³⁸

These argumentative techniques undermine states' international legal obligations towards the Palestinian people as rights holders and mask the interests of the military-industrial complex invested in the proliferation of armed conflict that effectively enable supply chains that sustain grave illegalities.

IV. The obligations of arms corporations in the context of Gaza

Corporations and corporate senior officials have heightened corporate duties to respect human rights in conflict-affected areas and take measures not to benefit from or contribute to grave violations of international law as elaborated in the UN Guiding Principles on Business and Human Rights (UNGPs).³⁹ The UNGPs require exporting states to regulate companies,⁴⁰ including, when appropriate, through extraterritorial jurisdiction and providing access to their courts for individuals who suffer harm as a result of a company's negligent or criminal arms exports.⁴¹ In conflict-affected areas, companies bear a 'heightened' due diligence duty, as recently outlined in guidance from the UN Working Group on Business and Human Rights.⁴² Responding to their duties, the aviation unit of the Japanese corporation Itochu cut ties with the Israeli arms corporation Elbit.⁴³

Individual criminal liability for corporate managers and executives also exists to address the adverse humanitarian consequences of such economic activity.⁴⁴

Responsibility for criminal complicity in Israel's serious violations of humanitarian and human rights law, and *prima facie* international crimes, including genocide, may also extend to corporations supplying fuel for Israeli fighter jets.⁴⁵ The *Lafarge, Van Anraat and Kouwenhoven* cases⁴⁶ affirm that the elements of material contribution of substantial effect on a war crime and knowledge are met through such supplies.⁴⁷

³⁸ Business and Human Rights Resources Centre, 'Belgium: Regional Govt Suspends Arms Export Licenses to Israel, Citing ICJ Ruling Ordering Israel to Prevent Genocidal Acts' (6 February 2024), <https://www.business-humanrights.org/en/latest-news/belgium-regional-govt-suspends-arms-export-licenses-to-israel-citing-icj-ruling-ordering-israel-to-prevent-genocidal-acts/> (last accessed 18 March 2025).

³⁹ Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011) Principle 23.

⁴⁰ For a detailed account, refer to: HRC, 'Business and Human Rights in Conflict-Affected Regions: Challenges and Options Towards State Responses' (11 May 2011) UN Doc. A/HRC/17/32.

⁴¹ Daria Davitti, *Investment and Human Rights in Armed Conflict: Charting an Elusive Intersection* (London: Bloomsbury Publishing, 2019) 222.

⁴² United Nations Development Programme, et al., *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide* (16 June 2022).

⁴³ 'Japan's Itochu to End Cooperation With Israel's Elbit amid Gaza war' *Reuters* (5 February 2024).

⁴⁴ Review reasoning in *Hostage Case, United States of America against Wilhelm List, et al.* Military Tribunal V, Case No. 7 (1948) 1236.

⁴⁵ Lydia de Leeuw and Misa Norigami, *Fuelling the Flames in Gaza: Exploring The Legal Consequences for States and Corporations Involved in Supplying Jet Fuel to the Israeli Military* (Netherlands: SOMO, 2024).

⁴⁶ *Ibid.*, 12–18. Sherpa, 'Communiqués de Presse: Lafarge Poursuivi Pour Financement Presume de Terrorisme' (15 November 2016). Cour de cassation (7 September 2021) Pourvoi n° 19-87.036; Public Prosecutor v. Frans Cornelis Adrianus van Anraat [2005] District Court of The Hague, The Netherlands, 09/751003-04; The Public Prosecutor v. Guus Kouwenhoven, ECLI:NL:HR:2018:2349.

⁴⁷ *Ibid.*

V. Corporate (legal) strategies to evade accountability

Despite their own clear obligation to respect human rights, the primary technique employed by arms corporations to evade their own normative obligations is hiding behind state actors. In response to the Business and Human Rights Resource Centre's (BHRRRC) as well as to the Working Group on Business and Human Rights' inquiry about corporate adherence to international obligations in Palestine, BAE Systems and Thyssen Krupp respectively referred to their compliance with 'applicable defence export controls [...]'⁴⁸ as the 'benchmark for all economic activities'.⁴⁹

These responses obscure the fact that corporations' have normative responsibilities (often distinguished from legal duties) existing independently from those of the state—a duty that according to the UNGPs 'exists over and above compliance with national laws and regulations protecting human rights'⁵⁰ and 'constitute a global standard of expected conduct applicable to all businesses in all situations',⁵¹ especially when the state's adherence to its international obligations is questioned.

Moreover, the defence sector's policies rely on the standards of security and defence organisations such as NATO. For example, Rolls-Royce responded to the BHRRRC, noting: 'Rolls-Royce supports NATO and its allies in providing power solutions for defense purposes. In doing so, we abide by all applicable export control and sanctions laws'.⁵² This is despite the ICJ having asserted in its Advisory Opinion on the Legality of the Israeli Occupation of Palestine that 'security concerns' cannot override international legal obligations.⁵³

The urgent need for responsible disengagement by the arms sector is being pursued through strategic litigation led by civil society actors, unions and concerned governmental actors. For example, in Belgium, representatives from the Workers' Party have filed a case against the shipping company ZIM for illegal arms transfers via the port of Antwerp.⁵⁴ Similarly, Belgium's Minister for Mobility filed a criminal complaint against Challenge Airlines over the transport of detonators, explosives and smoke munitions to Israel.⁵⁵

It must be noted that the ICC's institutional reluctance to act against corporate complicity despite the overwhelming prima facie evidence of international crimes⁵⁶ reinforces the perception that the impunity of the defence sector prevails and enables business as usual: in the absence of incentives to disengage, corporations will continue their involvement in the

⁴⁸ Business and Human Rights Resource Centre, 'BAE Systems' Response to Urgent Call by UN Experts to Cease the Transfer of Arms to Israel' (11 July 2024), <https://www.business-humanrights.org/en/latest-news/bae-systems-response-to-urgent-call-by-un-experts-to-cease-arms-transfer-amid-israels-war-in-gaza/> (accessed 30 July 2024).

⁴⁹ Business and Human Rights Resource Centre, 'Thyssenkrupp's Response to Urgent Call by UN Experts to Cease the Transfer of Arms to Israel' (12 July 2024), <https://www.business-humanrights.org/en/latest-news/thyssen-krupps-response-to-urgent-call-by-un-experts-to-cease-the-transfer-of-arms-to-israel/> (accessed 30 July 2024).

⁵⁰ HRC note 35, Principle 11, Commentary.

⁵¹ Office of the High Commissioner of Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (Geneva: United Nations, 2012) UN Doc. HR/PUB/12/02, 13–14.

⁵² Business and Human Rights Resource Centre, 'Rolls Royce Power Systems' Response to Urgent Call by UN Experts to Cease the Transfers of Arms to Israel' (12 July 2024), <https://www.business-humanrights.org/en/latest-news/rolls-royce-power-systems-response-to-urgent-call-by-un-experts-to-cease-the-transfer-of-arms-to-israel/> (accessed 30 July 2024).

⁵³ ICJ Advisory Opinion note 14, para. 205, 254; Judge Tladi's Separate Declaration para. 44.

⁵⁴ Sander Bral and Peter Mertens 'klaagt rederij ZIM aan voor illegale wapentransporten naar Israël via Antwerpse haven', *HLN* (17 January 2024).

⁵⁵ Bruno Struys, 'Minister Gilkinet dient strafklacht in tegen Challenge Airlines voor vervoer wapens naar Israël', *De Morgen* (31 May 2024).

⁵⁶ Linde Bryk and Miriam Saage-Maaß, 'Individual Criminal Liability for Arms Exports Under the ICC Statute: A Case Study of Arms Exports From Europe to Saudi-Led Coalition Members Used in the War in Yemen' (2019) 17 *Journal of International Criminal Justice* 1117.

Israeli war economy. Beyond silently fostering impunity, the lack of accountability and ICC's silence on the responsibility of arms traders in the context of Gaza (and Yemen) has deterring effects: it credibilises the arms industry's misleading and exonerative narrative of a 'neutral business' conducted under the control of state institutions for the purpose of clear defence and security frameworks.

VI. Concluding remarks

Against the background of existing legal frameworks, calls from the international community for the stopping of arms trade, and the constant flow of unequivocal evidence of grave international law violations and prima facie international crimes committed in Gaza, the persistence of arms transfers indicates that those with the power and privilege to stop the bloodshed lack the interest to do so.⁵⁷ States and corporations have resorted to argumentative techniques to sustain this paradox by using narrow and technical interpretations of relevant obligations and by preferencing frameworks of 'defence and security' through lack of transparency.

Arms sales are drivers of wars. Corporate compliance of businesses that profit from these wars cannot be reasonably incentivised without binding obligations. The prospects of 'international peace and security' depend on an honest reckoning with the military-industrial complex and the economic dynamics shaping the proliferation of war. As long as this political and economic reality is sustaining the paradox, the international legal community will remain paralysed in the face of acts which outrage 'the conscience of mankind'.⁵⁸

Competing Interests. The author declares none.

⁵⁷ Shahd Hammouri and Wesam Ahmad 'Reflections on the Binding Treaty Process: War Economies & Voices From the Global South', *Business and Human Rights Resource Centre* (15 September 2023), <https://www.business-humanrights.org/en/blog/reflections-on-the-binding-treaty-process-war-economies-voices-from-the-global-south/> (accessed 1 August 2024).

⁵⁸ Universal Declaration of Human Rights (1948), Preamble.