

Shipments of Death

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This past month, Spain [refused](#) permission for an Israel-bound ship carrying arms to call at the port of Cartagena. The Belgium government, similarly, has considered filing a complaint against an airline [that transported 70 tons of ammunition through its airspace](#). Meanwhile, NGOs have [filed](#) a criminal complaint against a corporation using the port of Antwerp on the course of its trip from Hamburg to Israel to deliver weapons, and a coalition of transport trade unions in Italy, Greece, and Turkey have [called](#) on governments to stop the shipments of weapons heading to Israel.

These efforts represent an increasing recognition among state and non-state actors that diplomatic measures have failed to [ensure respect](#) for international humanitarian law—a failure that calls for the enactment of coercive measures by third-party states. In this short piece, I elaborate on the state duty not to facilitate the transit of arms shipments going to Israel, including the transfer of jet fuel used for warplanes, and show that this duty is overdetermined by a wide array of international law.

Such a duty begins from the reality that Israel is currently undertaking grave violations of international law, which [pose a threat](#) to international peace and security. These violations include, among others, [the violation of the people’s right of self-determination](#), [the violation of the prohibition against permanent displacement of civilian populations](#), [de facto annexation](#), the violation of a wide set of human rights conventions touching upon [the rights of prisoners](#), [the right to water](#), [the right to life](#), [the prohibition against torture and other cruel inhumane or degrading punishment](#), and [the prohibition against racism and apartheid](#).

In addition, provisional measures issued by the ICJ, recognising the risk of genocide, have called upon Israel to stop all genocidal acts, enable access to humanitarian aid, and safeguard evidence. As repeatedly demonstrated by South Africa, however, Israel has failed to comply with the ICJ’s decisions prompting further [provisional measures](#) to halt the assault in Rafah, enable humanitarian access, and facilitate the entry of relevant UN officials among other measures. In response, Israeli officials have [repeatedly undermined](#) the decisions of international institutions in public.

In light of the above, extensive arguments put forth by [lawyers](#), [academics](#) and [UN officials](#) assert that states are obligated to refrain from authorizing arms transfers to Israel or maintaining current licenses. This position was reiterated in the [Human Rights Council Resolution 55/28](#) adopted on the April 16, 2024, which called upon “all States to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel, the occupying Power, in order to prevent further violations of international humanitarian law and violations and abuses of human rights,” as well as to refrain selling or transferring “dual-use” items, “when they assess that there are reasonable grounds to suspect that such goods, technologies or weapons might be used to violate or abuse human rights.”

However, as documented by [academics](#), [independent non-profits](#), and even [recommendations from State Department experts](#), the United States continues to [supply](#) the largest portion of the arms and [jet fuel](#)—without which aerial bombardment would not be possible—sustaining grave, ongoing violations of international law by Israel. Given this reality, other states—who

are obligated to work collectively towards the maintenance of international peace and security—have an obligation not to facilitate these shipments. Such an obligation is supported by customary international law, the Genocide Convention, International Humanitarian Law, the Business and Human Rights framework, and the Arms Trade Treaty, in conjunction with recent decisions by international institutions.

The acts of both the US and Israel have arguably crossed the threshold of gross or systemic failure to uphold international obligations set out in Article 40 of the ILC State Responsibility Draft Articles (ARISWA). In the face of grave illegalities, states have the duties of cooperation and non-recognition. In the assessment of the extent of measures to be taken by the third states, both the gravity and character of the breach are elements to be considered. Moreover, as demonstrated by the collective enactment of state responsibility in response to crimes against international peace and security committed by Apartheid South Africa, the relationship between gravity and state responsibility is proportional: as the gravity of the violation and the risk it poses to international peace and security increases, so does state responsibility.

The high margin of responsibility in this case requires states to undertake exceptional acts that fall under their right to sovereignty, including control over their ports, roads and airports. Relevant international conventions stress the element of state knowledge in the process of facilitating the movement of goods within their jurisdictions, and provide states the sovereign right to refuse the facilitation of goods crossing their borders. For example, under Article 19 of the UN Convention on the Law of the Sea (UNCLOS), innocent passage through territorial waters is questioned when the ship is partaking in activities that violate the principles of international law embodied in the UN Charter. As such, the right of innocent passage may be revoked in such circumstances. Article 94 of UNCLOS extends the jurisdiction of the state to ships flying its flag. Consequently, states must undertake due diligence to ensure adherence to international legal obligations on ships flying their flag.

A reading of state responsibility that stresses economic factors sustaining grave illegalities is also aligned with the UN Guiding Principles on Business and Human Rights (UNGPs). Principle 23 of the UNGPs places a heightened duty of due diligence on states and corporations in conflict-affected areas. [Discussing](#) the context of the Israeli settlements in occupied Palestine, the working group on the issue of human rights and transnational corporations anticipated the heightened possibility of the host state's lack of capacity or interest in the protection of human rights in the context of armed conflict (review similar analysis [here](#) as well). This premise shifts the responsibility to the home states of corporations, who can yield influence to ensure respect. To this end, the UN Working Group on Business and Human Rights [recently asserted](#) that “an end to transfers [of weapons, parts, components, and ammunition] must include indirect transfers through intermediary countries that could ultimately be used by Israeli forces.”

The obligations not to facilitate the transit of weapons can also be found within Arms Trade Treaty (ATT). According to Article 2 of the ATT, the notion of transfer includes the transit of weapons, while Article 9 imposes a duty on states to regulate the transit of weapons in a manner consistent with their international legal obligations—an obligation that [extends](#) to transit licences. This clause in the ATT [reflects](#) common state practice. For example, in South Africa, committees making decisions on transit licenses must consider possible human rights violations by the end user. In 2008, this legal premise was [successfully used](#) to contest the docking of a Chinese ship carrying arms to Zimbabwe, where ample evidence of violations of

international law existed. And, as the ATT does not define the notion “components,” the notion maybe interpreted to include items which are specifically designed for the weapon (Review [commentary](#) at 4.09 and 4.16), including, for instance, the jet fuel JP8, which is specifically made for military use.

Read together, these international legal principles ascertain a state duty not to facilitate the transit of weapons and jet fuel to Israel. As history has frequently demonstrated, states with the intent to dominate and subjugate will not cease until such acts are no longer economically viable. Fortunately, in times of globalisation, the supply chains of death and violence run long, giving third states the privilege and capacity to enact their obligations towards humanity.