



International Responsibility of States Supplying Arms to an Aggressor State in War: An International Law Perspective

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Article info

Received: 21.06.2026

Accepted: 22.10.2026

Available Online: 22.10.2026

Checked for Plagiarism: Yes

Keywords:

International Responsibility, War,
Arming an Aggressor,
International Law

ABSTRACT

A state incurs international responsibility when it commits an internationally wrongful act. Assuming that conduct consisting of an act or omission has occurred, Article 2 of the Draft Convention on the International Responsibility of States requires two elements for an international wrong to be established. First, the act or omission must be attributable to a state under international law. Second, the conduct must constitute a breach of that state's international obligations. Together, these two conditions provide a sufficient basis for establishing international responsibility. In some cases, the respondent state may argue that its act or omission was justified, for example, on the grounds of self-defence or force majeure. Under international law, such defences or justifications are referred to as "circumstances precluding wrongfulness." This study aims to explain the international responsibility of states that arm a country recognised as an aggressor in a war. For example, despite international agreements, the United States has supplied Israel with tactical and strategic weapons on a daily basis over the past year. Invoking the concept of self-defence, Israel has waged an extensive war against Muslim countries and has conducted this war with American weapons. Accordingly, this study examines the international responsibility of states such as the United States for international violations involving the supply of arms to aggressor states, including Israel. Two principal issues are considered. The first concerns the conduct of states such as the United States which, despite knowing that Israel uses their weapons in warfare against civilians, may be regarded as complicit in its international crimes. The second concerns the validity of the United States' reliance on self-defence to justify arms transfers to Israel, a position that faces serious challenges under international law.

Introduction

International law sets out the conditions under which a state may incur responsibility for providing aid or assistance to another state. The current framework is Article 16 of the International Law Commission's 2001 Articles on Responsibility of States for Internationally Wrongful Acts. It provides that a state is internationally responsible when it aids or assists another state in committing an internationally wrongful act, does so with knowledge of the circumstances of that act, and the act would have been internationally wrongful had it been committed by the assisting state.

The precise mental element remains debated, particularly whether knowledge alone is sufficient or whether the assistance must also be given with a

view to facilitating the wrongful conduct (International Law Commission, 2001, art. 16; Jørgensen, 2014; Moynihan, 2018). Arms transfers are therefore not unlawful merely because weapons are supplied. Responsibility depends on the applicable primary obligations, the assisting state's knowledge, and the connection between the assistance and the recipient state's wrongful conduct (Moynihan, 2018; Schaller, 2023).

In many cases, including Iraq's invasion of Iran, the International Law Commission maintained that a state could be considered to have assisted or participated in aggression and the wartime killing of another country's population only if the states supplying arms to Iraq were aware of the recipient state's purpose and intentions. Only under this

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condition could their conduct be characterized as assistance in violating international law. It is apparent that such accounts of attacks by states such as Iraq against Iran or Israel against occupied Palestine do little to clarify the relevant international agreements. Even under the most favorable interpretation, they create confusion about the provisions of international law; under a less favorable interpretation, they amount to a violation of those provisions. (International Law Commission, 2001, art. 16; Moynihan, 2018)

In the contemporary world, the United States, through its unequivocal support for the Israeli occupying state, has provided the conditions for war crimes in the Gaza war (2024) and has subsequently become a party to the continuation of the war and the suffering and deprivation endured by the Palestinian people. During the year that has passed since the outbreak of the Gaza war, the United States, in accordance with its military agreements with Israel, has neither prevented the delivery of highly destructive tactical weapons to Israel nor refrained from invoking the notion of self-defense and Israel's legitimacy in the killing of Palestinians. In practice, this position has rendered international agreements meaningless. Under international law, self-defense is defined as the right to immediately repel an unlawful attack in accordance with the circumstances prescribed by law. At the level of international law, the right of self-defense was recognized through Article 51 of the 1945 Charter of the United Nations, while at the level of international criminal law, it has been addressed in the statutes of criminal tribunals, particularly Article 31 of the 1998 Rome Statute of the International Criminal Court (Shariat Bagheri, 2013, p.21). However, even when these legal provisions are taken into account, the legality of continued assistance by the United States requires assessment under the applicable rules on aid or assistance, arms transfers, international humanitarian law, and the prevention of genocide by a state that has, without concealment, played a vital role in the continuation of the war and the killing of civilians in Gaza and Lebanon. This raises the central question of the present study: under the rules of international law, what factors determine and shape the interpretation of a state's international responsibility for supplying arms to another state? This study seeks, through an in-depth examination of the international responsibility of states for the commission of internationally wrongful acts by other states, to assess the international criteria governing the provision of military assistance by one state to another. (International Court of Justice, 2024a; Office of the United Nations High Commissioner for Human Rights, 2024a; Dannenbaum & Dill, 2024)

Research Method

The primary purpose of selecting a research method is to help the researcher obtain answers to the research questions more efficiently and accurately. Research methods can also be classified according to various criteria, including the research objective, time frame, data collection procedures, and the characteristics of the research problem (Sarmad et al., 2011). Accordingly, the present study adopts a descriptive-analytical research method. The data for this study were collected through library research, and the data collection instrument consisted of note-taking from relevant sources. The collected data were subsequently analyzed qualitatively.

The study also seeks to develop a deeper understanding of the different dimensions of the subject and to present findings that may contribute to clarifying and expanding the existing ambiguities concerning the international responsibility of states for supplying arms to other countries. Following the collection and analysis of the data, the findings are systematically categorized and critically examined so that readers can more readily develop a clearer understanding of the issues under consideration.

Theoretical Literature of the Research International Responsibility:

As a result of the historical development of international law, states are regarded as the primary subjects of international law. Most international obligations are also imposed on states, which are generally responsible for fulfilling those obligations. For example, although human rights conventions recognize rights for individuals, the corresponding obligations are primarily imposed on states. Where other legal persons have obligations concerning human rights, such obligations are derived from, or considered in relation to, the human rights obligations of states. In this sense, state responsibility constitutes the model of responsibility at the international level. Accordingly, international legal doctrine has offered various definitions of international responsibility (Bikzadeh, 2002)

Charles Rousseau, a French professor of public law, defines state responsibility as follows: "International responsibility is a legal institution under which a state that has violated an international rule is required to compensate for the legal injury resulting from that violation vis-à-vis the nationals of another state" (Madani, 2009, p.279).

However, the Dictionary of International Law Terms defines international responsibility as follows: "International legal responsibility is an obligation imposed on a state by international law to compensate another state for damages resulting from a violation of the rules of international law through an act or omission in the performance of its duties" (Madani, 2009, p.280). Alongside these views, Article 1 of the International Law Commission's Articles on Responsibility of States for

Internationally Wrongful Acts expressly provides: “Every internationally wrongful act of a State entails the international responsibility of that State” (Factory at Chorzów, 1927, p.21). On the basis of this provision, the International Court of Justice, in the Corfu Channel and Military and Paramilitary Activities cases, referred to the principle that every international wrongful act entails the international responsibility of the state. Furthermore, in the Barcelona Traction case, the International Court of Justice stated: “An essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes” (Crawford, 2002, p.77). Every state, by virtue of its membership in the international community, has a legal interest both in safeguarding fundamental rights and in fulfilling the particular obligations associated with their protection. The Court cites the prohibition of acts of aggression, genocide, and violations of fundamental human rights as examples (Ajvevski, 2008, p.22). However, as the International Court of Justice stated in its advisory opinion on “Reparation,” international legal persons other than states also exist. Regardless of the legal system to which they are subject, such entities benefit from international law and are required to comply with international responsibilities. As a result, replacing the term “State” with “international organization” or “international legal person” in Article 1 of the Convention does not pose a difficulty, and this fundamental proposition appears applicable to all international legal persons. With regard to international organizations, it can be stated with confidence, on the basis of the principle of pacta sunt servanda, that a breach of obligations assumed by such organizations entails their international responsibility. The same reasoning applies to rules of general international law. The potential responsibility of international organizations under general international law has also been recognized. The difficulties concerning the responsibility of international organizations are primarily matters of enforcement, since the international enforcement system, including the jurisdiction of courts and international tribunals, has been structured with states, rather than international organizations, in mind. (International Law Commission, 2001, arts. 40-41)

Domestic legal systems often distinguish between different types or degrees of responsibility according to the source and origin of the obligation that has been breached. The most important distinction is

between criminal and civil responsibility (Ajvevski, 2008, p.16). Domestic legal systems generally divide civil responsibility into two distinct categories: contractual responsibility and non-contractual responsibility. Contractual responsibility arises from the failure to perform an obligation arising from a contract and results from a breach of the terms of a private agreement. Non-contractual, or tortious, responsibility arises where no contractual relationship exists between the parties to the dispute and the basis of responsibility is the breach of general legal duties. It appears that no such general distinction exists in international law. In other words, responsibility in its international meaning and application is understood broadly and without the classifications found in domestic law. Accordingly, when an act or omission by a state results in the breach of an international obligation, international responsibility arises (Moqtader, 2022, p.146). As the Arbitral Tribunal stated in the Rainbow Warrior case: “The general principles of international law relating to international responsibility are applicable to breaches of contractual obligations as well, since international law does not distinguish between contractual responsibility and delictual responsibility; consequently, any breach of a state’s obligations, regardless of their source, gives rise to international responsibility” (Ebrahim-Gol, 2011, p.87).

This principle also affirmed in Article 12 of the Commission’s Draft Articles: “There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.” In fact, the rules of the law of treaties determine when a contractual obligation is binding on a state and what that obligation entails, including how it is interpreted. The rules governing international responsibility, in turn, determine the legal consequences of a breach of that obligation, including matters such as the payment of compensation. Although these two matters are closely related, they are legally and logically distinct. A state faced with a material breach of a contractual obligation may, at its discretion and in accordance with the rules governing the contract, suspend or terminate the contract and thereby release itself from the obligation to perform its contractual obligations in the future¹. Such action, however, does not preclude the state concerned from claiming compensation for the breach of the obligation.

The Concept of Self-Defense:

Many states that supply military equipment to other countries generally justify the export of their semi-automatic and highly advanced weapons by invoking the concept of self-defense, which is recognized in certain circumstances under

international law. For several decades, the United States has supplied weapons to Israel on the grounds that Israel is a country that is continually subjected to missile threats from its neighboring states and therefore has the right to defend itself. Although the bilateral agreements between the United States and Israel include certain legal restrictions intended to serve as necessary conditions for the use of U.S. weapons, it is widely understood that Israel would face considerable difficulty conducting the war without American weapons. Self-defense, however, has been justified in various ways throughout history. The purpose of this section is to examine why and on what basis "self-defense" has been recognized in the criminal laws of different countries. Accordingly, the following discussion considers the various views advanced by legal scholars concerning the legal and philosophical basis for the legitimacy of self-defense.

A. The Natural Right to Self-Defense Theory

The first foundational justification advanced for self-defense is the exercise of a "right," specifically a "natural right." Cicero (the well-known Roman statesman and orator, 106-43 BCE) regarded self-defense in his writings as a principle of natural law. Later, scholars such as the Dutch jurist Grotius and the Italian jurist Carrara also supported this theory. They maintained that no right is higher or more valued than the right to life (Kalantari, 2004, p.92). When this right is violated or attacked, the person subjected to the attack is consequently entitled to defend himself or herself. Such defense is regarded as a natural and legitimate right of every individual. This is based, first, on the view that human beings instinctively respond to danger by resisting the threat. Second, individuals regard self-defense as a right they possess and as a duty toward others. Third, human relations, particularly social relations, require individuals to recognize that, in the event of an unjustified attack or aggression, others will not remain passive and that the law will not punish those who act under conditions of self-defense.

This theory has been criticized by many scholars. Its opponents argue that accepting it would lead, first, to limiting the right of self-defense to the protection of life rather than property, because the right to property is not a natural right. Second, the right of self-defense would have to be limited to protecting one's own life rather than that of another person, since no one naturally possesses a right to defend another. Acceptance of this theory would also imply that individuals should have the right to respond to wrongdoing with wrongdoing not only during an attack but also outside the circumstances of an attack. This would encourage personal retaliation and a return to a period in which everyone was entitled to defend his or her rights personally (Mohseni, 1997, p.217). Moreover, if this theory were accepted, the defender would acquire the

authority to determine and impose punishment on the aggressor. In other words, the defender would effectively assume the position of the governing authorities in administering punishment, because the aggressor's violation would create a right in the defender to respond.

B: The Theory of Moral Compulsion

Under ancient French law, a person who killed or injured another while acting in self-defense was considered guilty but was not punished. The rationale was that the attack had deprived the person of freedom of will and compelled him or her to commit the offence (Sanaei, 1998, Vol. 1, p.194). Since, in such circumstances, the offence lacks a moral and psychological element, it is logically necessary to exempt the defender from prosecution and punishment, particularly because such a person does not pose a danger to society. According to this theory, the criminal act does not change in nature when committed in self-defense; rather, because the defender's will has been constrained, the act cannot be attributed to him or her. Accordingly, the defender's exemption from punishment has a personal, rather than objective, basis (Ardabili, 2005, Vol. 1, p.198).

However, the theory of moral compulsion does not correspond to reality. A person who acts in self-defense acts with full intent and free will, without being compelled by an external factor, and deliberately intends to injure or kill the attacker. It is true that the defender's motive is self-preservation rather than the commission of a criminal act. Nevertheless, motive does not affect the nature of an act performed intentionally and voluntarily; it may only have an effect on the mitigation of the offender's punishment. Moreover, it is evident that where a person acts in defense of another's life or property, which demonstrates the exercise of full choice and free will, the theory of moral compulsion is not accepted.

C: The Theory of the Conflict of Two Rights

Some legal scholars, such as René Garraud, invoke the theory of the conflict of two rights as a philosophical justification for self-defense and regard self-defense as the culmination of a conflict between two rights. The theory holds that whenever one of two rights must be sacrificed for the other, the less important right should give way to the more important one. It is evident that the interests of society require greater protection for the rights of a person who has been wrongfully attacked than for those of the attacker. The person who initiated the aggression is therefore considered more deserving of having his or her right sacrificed. The attacker is regarded as a corrupt member of society, and consequently, the loss of that person's right does not affect society. By contrast, the violation of the rights of an innocent person who has been attacked without

justification has a greater effect on society's sentiments.

This theory does not have some of the difficulties associated with other theories. Under this view, the defense of property and the defense of another person can also be justified. Some critics of the theory have stated: "The sacrifice of the attacker's right on the ground that it is less important than the defender's right cannot always be regarded as certain and correct in the absolute manner in which it has been expressed. In some cases, sacrificing part of each of the two rights may be closer to justice, and in a conflict between two rights, the elimination of neither right may be necessary where defense is permitted; for example, when shouting causes the attacker to withdraw and flee." (Salari Shah-Babaki, 1988, p.117).

This criticism, however, does not apply to the theory in question. First, the loss of a right does not always mean the complete loss of that right; the loss of part of a right also constitutes a loss of the right. Second, how could the loss of the rights of an innocent person be considered closer to justice? Moreover, the theory does not mean that one of the two rights must always be sacrificed whenever they conflict. Rather, it means that when the conflict necessarily entails the loss of one of the rights, the attacker's right is more deserving of being sacrificed.

D: The Theory of the Exercise of a Right and the Performance of a Duty

According to the theory of the exercise of a right, Hegel (1831-1770), the well-known German philosopher, was among its proponents. Aggression is the negation of a right, while defense is the negation of that negation and therefore constitutes the exercise of a right (Khosravi, 1995, p. 50). Accordingly, self-defense in such circumstances is, in principle, not a criminal act for which punishment can be contemplated. Some also maintain that defending oneself against unlawful aggression is not merely the exercise of a right; it is also the performance of a moral and even legal duty. In Islam, such defense is regarded as an instance of cooperation in righteousness. (Ardabili, 2005, p.199) This theory has likewise not been widely accepted. Its opponents argue that accepting the theory would mean that individuals should have the right to defend themselves not only when an attack or aggression occurs, but also outside such circumstances, by responding to wrongdoing with wrongdoing. Ultimately, acceptance of this theory would promote personal retaliation and return society to a period in which everyone was entitled to defend himself or herself personally.

Main Discussion

Components Involved in the International Responsibility of States:

The three principal components of international responsibility, namely attribution of conduct to a state, breach of an international obligation by a state, and circumstances precluding wrongfulness, may be regarded as the main elements of state responsibility. Once each of these elements is established, a state may be considered involved in a war and, in legal terms, responsible for any destruction and mass killing of civilians resulting from the conflict. (International Law Commission, 2001, arts. 1-2 and 20-27)

A: Attribution of Wrongful Conduct to a State

Although states appear to their citizens as real entities, they are, from a legal perspective, abstract persons. Like corporations under domestic law, states necessarily act through their organs or agents. Accordingly, the rules of attribution must determine which conduct of particular agents, whether generally or in specific circumstances, may give rise to state responsibility. In theory, the conduct of all individuals, companies, or institutions connected to a state through nationality, residence, or place of incorporation could be attributed to that state. Under international law, however, the general rule is that conduct attributable to a state is conduct carried out by governmental organs or by other persons acting under the direction, instigation, or command of that state, who are regarded as state agents (Crawford, 2002, p.87). In other words, the act or omission must be attributable to the state itself, rather than to individuals or organs acting in their own capacity. For example, a state's failure to comply with the provisions of a treaty constitutes an act of the state. By contrast, where an act is committed by individuals or organs acting on their own behalf, a violation of international law by the state does not arise (Moqtader, 2022, p.155).

The International Court of Justice addressed this point in the case concerning the immunity from legal process of a rapporteur of the Commission on Human Rights. Under a customary rule of international law, the conduct of every state organ must be regarded as an act of the state to which that organ belongs. Accordingly, where an individual holds such an official position, the attribution of his or her acts and conduct to the state may reasonably be accepted. Identifying state organs and examining each state's practice are therefore highly relevant to establishing state responsibility. Under Article 4 of the Draft Articles, the conduct of any state organ is attributable to that state, and such an organ may be any person or entity that is regarded as an organ under the domestic law of that state. There is no specific classification of state organs for the commission of an international wrongful act; in

practice, any organ may be the source of unlawful conduct (Higgins, 2005, p. 272).

It should be emphasized that the issue here is responsibility arising from conduct that breaches the international obligations of a state. It is distinct from the question of which official authorities may initially have the power to accept such obligations on behalf of the state. Attribution of conduct to a state for the purpose of establishing responsibility must therefore be distinguished from other processes of international law under which particular organs are authorized to undertake obligations on behalf of a state. Such relationships have no bearing on the attribution of conduct to a state. The rules governing attribution are intended specifically for this purpose and not for other situations in which recognition of the state or its government may be required. Only the highest-ranking state officials (the head of state or government, the foreign minister, and, in certain circumstances, diplomats), possess the necessary authority to create obligations for a state. By contrast, even a lower-ranking state employee may commit an internationally wrongful act that is attributable to the state. For example, local police or military personnel may torture a prisoner or cause his or her disappearance, or a municipality may expropriate a factory. (International Law Commission, 2001, arts. 4 and 7)

From another perspective, states do not generally guarantee the security of foreign nationals, the safety of their property, or the success of their investments within their territory. Where any damage occurs, the state must have been involved in the commission of the conduct complained of. In general, a state is responsible only for the conduct of its organs or officials². Purely private acts do not, as a general rule, give rise to state responsibility. However, in certain circumstances, a state may be held responsible for failing to prevent such acts or for failing to punish those who committed them.

From another perspective, the scope of state responsibility for the acts of its agents is broad, and the definition of an “organ” for this purpose is likewise extensive. No distinction is made on the basis of the rank of the officials concerned within the state hierarchy. As long as they act within their official capacity, their conduct may give rise to state responsibility. Moreover, responsibility is not confined to the central executive authority; it may also arise from the conduct of federal, provincial, or even local government officials. The distribution of powers among governmental branches is likewise irrelevant. In principle, the concept of an “organ” encompasses all legislative, executive, and judicial authorities at every level.³

An act or omission of any state organ or agent is attributable to the state if, at the relevant time, the organ or agent was acting within its capacity, even

where the conduct exceeded the limits of its authority. In principle, a state official must act within the scope of their official capacity rather than for purely personal purposes. Where an individual, using the means and powers associated with a public function, commits a wrongful act, that act is attributable to the state, even if the official acted contrary to instructions or beyond the limits of their authority. Foreign states and foreign nationals cannot reasonably be expected, nor are they required, to determine in every case the precise scope of authority granted to state officials. Accordingly, the general rule is that a state remains responsible even where a state organ has acted beyond the limits of its jurisdiction. (International Law Commission, 2001, art. 7)

For example, in the “Cair” case, an officer and two soldiers of the armed forces under Mexican control threatened Mr. Cair, a French national, with death and demanded that he pay them a large sum of money. When he refused and stated that he did not have a sufficient amount of money, they detained him for some time and subsequently killed him by gunfire. The Franco-Mexican Claims Commission held Mexico responsible for the conduct. The Commission considered states internationally accountable for acts contrary to international law committed by their officials or formal organs. It recognized an exception only where the conduct had no connection whatsoever with an official function and was, in substance, carried out in a purely private capacity. This situation should not be confused with that of an organ that acts in a similar manner but exceeds its lawful authority or violates the rules governing the performance of its duties. In the latter case, the organ has nevertheless acted in the name of the state. The application of this criterion, however, requires each case to be examined in light of its particular facts and circumstances. The court stated that, for acts committed by officials beyond the limits of their authority to be attributable to the state, the officials must at least have acted in their capacity as competent state agents or have employed powers or methods appropriate to their official authority. By contrast, states are not responsible for the acts of insurgents or private individuals. Their conduct is attributable to the state only where they have in fact acted under the authority or control of the state, or where the state has subsequently approved the conduct. (Caire case, 1929; International Law Commission, 2001, art. 7 commentary)

An incident may also involve a combination of these two forms of conduct. For example, a breach of an international obligation may initially be committed by individuals who are not state agents and have no connection with state organs, while the state may subsequently approve their conduct and, in effect, assume responsibility for acts that have already been

committed by private individuals. An act that has not been committed by a state organ or agent is not, in itself, attributable to that state. Nevertheless, the state may incur responsibility if it has failed to fulfil its obligation to prevent the act. The same applies to wrongful acts committed by private individuals, rather than by persons acting as state agents, where the state in whose territory the acts occurred fails to take an appropriate response. In such circumstances, the state may incur international responsibility (Amerasinghe, 2005, p.6). For instance, a state may be held responsible if it fails to take the necessary measures to prevent attacks against foreign nationals or their property, or if, after such unlawful acts have occurred, it fails to prosecute and punish those responsible in accordance with the law. In cases involving violence or other unlawful acts against foreigners, the state is not regarded as responsible for the acts of the private individuals themselves. Rather, responsibility arises where the state has failed to discharge its own obligations, that is, where its conduct does not conform to the standards of international law.

International law also addresses the status of certain special persons. Although these individuals do not hold formal government positions or offices, they may in practice play an important role in the exercise of governmental authority. They may, in effect, act under the power and control of superior government officials. It is therefore logical to attribute the conduct of such individuals to the state as a whole. Accordingly, where their conduct violates international law, the state to which they belong should incur international responsibility.

As in other legal systems, international law does not limit attribution to the conduct of a state's ordinary officials or organs. The concept extends to conduct carried out by persons who have been authorized by the state to act, or who have at least acted under the state's actual direction or control. The attribution of conduct that has, in fact, been authorized by a state has been recognized extensively in international judicial practice. For example, in the case concerning Military and Paramilitary Activities in and against Nicaragua, the principal issue was the extent to which a state's instructions must govern conduct for that conduct to be attributable to the state. In that case, the Court had to determine whether violations of international humanitarian law committed by certain insurgents during the civil war in Nicaragua, who were regarded as rebels against the central government, could be attributed to the United States. The Court distinguished three groups of persons (Wallace, 2022). (Military and Paramilitary Activities in and against Nicaragua, 1986)

The first group consisted of members of the United States government and members of its armed forces, whose conduct was unquestionably attributable to the United States. The second group consisted of

Latin American spies, known as UCLA or the Unilateral Latin American Group. The Court noted that the conduct of this group was also attributable to the United States (Crawford, 2002, pp. 110-111), because either their expenses were paid by the United States government and U.S. officials provided them with specific instructions and supervised them, or U.S. officials participated in the planning, direction, support, and execution of specific operations carried out by UCLA against oil facilities and reserves or in the bombing of underground oil pipelines at Nicaraguan ports. The third group consisted of the Contras. The Court stated that, in order for their violations and disregard of international humanitarian law to be attributed to the United States, it was necessary to establish that they had been under the effective control of that state. This meant that the United States government had issued specific instructions to the opposition forces concerning the commission of unlawful acts. It appears that the Court proposed two successive criteria for attributing wrongful conduct. The first was whether the individuals concerned were state agents. The second, if they were not state agents, was whether they had acted under the state's effective control. This required determining whether the state had provided them with financial support, coordinated their conduct, and issued specific instructions concerning each of the wrongful acts in question.

It is true that this standard was applied by the majority of the judges of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the Tadić case, where they preferred the overall-control standard, which extended beyond merely providing financial support and equipment to such forces and also encompassed participation in the planning and supervision of military operations (Crawford, 2002, p.111). The issue in that case, however, was not state responsibility. The Chamber sought to determine whether the Bosnian Serb forces were under the control of the Yugoslav army. If such control were established, the conflict would acquire an international character and the broader rules of international humanitarian law applicable to international armed conflicts would consequently apply. The context was therefore entirely different: merely accepting that an armed conflict had become international did not mean that the state assumed responsibility for the acts of local paramilitary forces involved in the conflict. (Prosecutor v. Tadić, 1999; Application of the Genocide Convention, 2007)

Apart from the Nicaragua case, the International Criminal Tribunal for the former Yugoslavia stated that international law provides three successive criteria for determining whether an individual acts under the supervision of a state entity. The first is whether individuals or unorganized military groups act pursuant to specific instructions or under the

general approval of a state. The second is whether armed groups or unorganized military groups have been under the state's overall control, meaning that the state has, necessarily, given them instructions concerning the particular conduct in question. The third is whether these individuals act as state agents pursuant to the state's instructions⁴.

The reasoning of the majority was persuasively criticized by Judge Shahabuddin in his separate opinion. He stated that the issue was not whether the Yugoslav Army was responsible for violations of international humanitarian law committed by Bosnian Serb paramilitaries, but whether the Yugoslav Army had resorted to force against Bosnia and Herzegovina through those paramilitaries⁵.

It appears that, in its most recent draft on State responsibility, the International Law Commission substantially endorsed the criteria adopted by the Court in the Nicaragua case. Article 8 of the International Law Commission's 2001 Articles provides for the exercise of authority over individuals by a State and, in effect, treats such individuals as State organs acting on behalf of the State. This includes conduct carried out pursuant to instructions issued by a State, as well as conduct undertaken under the direction or control of a State in the commission of unlawful acts. (International Law Commission, 2001, art.8)

It may therefore be concluded that, in each of these respects, the governing principle is the independence of responsibility. This means that a State is responsible for its own conduct, including the conduct of its organs or agents, but is not responsible for the acts of private individuals unless specific circumstances exist that justify attributing those acts to the State. The same principle applies, a fortiori, where a State participates in the conduct of a third State, since the third State is ordinarily responsible for its own internationally wrongful conduct⁶. However, the principle of independent responsibility has another dimension. A State cannot conceal itself behind the involvement of other States in a joint act. Where a State participates in conduct to the extent that its own actions have assisted that conduct, it may be held responsible for its own actions. Thus, in the Nicaragua case, the acts of the Contras were not attributable to the United States; however, the United States was responsible for its own internationally wrongful conduct in training and financially supporting the Contras and in carrying out certain specific operations, including the mining of Nicaraguan ports⁷. Likewise, where several States jointly administer a territory, each State is responsible for its own conduct in administering that territory.

There is another particular form of attribution in which a State may be held responsible for the

conduct of an insurgent movement, namely where the State is in fact established by that insurgent movement. This rule is somewhat unusual because attribution is determined not on the basis of circumstances existing at the time of the conduct, but on the basis of subsequent events, namely the success or failure of the rebellion. At the outset, the acts of members of an insurgent movement are regarded merely as acts of private individuals and may be treated in the same manner as acts committed by persons or groups participating in a riot or mass demonstration. On this basis, such acts are not attributable to the State. Once an organized movement establishes itself as a State, however, its acts may be attributed to that State, because the State is no longer in a position to exercise effective authority over the activities of the movement. The general rule that the acts of an insurgent movement are not attributable to the State rests on the assumption that the movement's structure and organization are independent of those of the State and remain so. Accordingly, when the movement achieves its objective and establishes itself as the new government, the acts of the insurgent movement become attributable to that State.

B: Breach of an International Obligation by a State

The second element of State responsibility is the breach of an international obligation by a State. To determine whether an act attributable to a State constitutes a breach of its international obligations, attention must first be directed to the primary obligation. The primary obligation must be interpreted and applied to the circumstances under consideration in order to determine the nature of the conduct required of the State and the result that was expected to follow from that obligation. The essence of the State's actual conduct to conform to the conduct required of it under the relevant international obligation (Crawford, 2002, p.255).

Under international law, the necessary condition for a state's conduct to be inconsistent with its international obligations is that such conduct must conflict with an obligation arising from an applicable rule or principle of international law (Helmi, 2011, p.37). Some legal scholars do not distinguish between international wrongs according to the source of the obligation breached. Brownlie, for example, states on this basis: "The nature of international responsibility is not based on a violation of domestic law; rather, international responsibility concerns the breach of treaty obligations as well as the breach of other obligations under international law."

This statement means that it is immaterial whether the obligation arises from a customary rule, a treaty, or a binding decision of an international organization. For State responsibility to arise, the obligation in question must have been binding on the State at the time of the breach. Wrongful conduct may consist either of an act or of a failure to take a lawful action (omission). Moreover, an internationally wrongful act may occur as a single, instantaneous act or may continue through a series of other wrongful acts. (International Law Commission, 2001, arts. 12-15)

An initial distinction must be drawn between State responsibility arising from a direct violation vis-à-vis another State and State responsibility in the context of diplomatic protection (damage to aliens or their property). This distinction applies even where the relevant obligations are treaty-based and their breach would, in principle, give rise to direct State-to-State responsibility. The International Court of Justice carefully maintained this distinction in the *ELSi* case. In that case, the United States sought to base its claim on the violation of a bilateral treaty. The Court, however, held that the United States' claim was diplomatic in nature and therefore subject to conditions such as the exhaustion of local remedies. Many of the difficulties that arise in the context of diplomatic protection, including the nationality of the claimant and the exhaustion of local remedies, do not arise in direct State-to-State disputes. In direct State-to-State cases, the issue is simply whether conduct attributable to State B caused legally cognizable injury to State A in violation of international law. If the answer is affirmative, State responsibility will *prima facie* arise.

At first sight, this prerequisite for establishing State responsibility for a breach of an international obligation appears straightforward. Several issues nevertheless arise, including the relationship between cause and effect, the concept of injury, the temporal element (the rules concerning the non-retroactivity of international law and continuing acts), and related matters. It should first be recalled that international law constitutes a distinct and separate legal system from national legal systems. Under its own rules, international law prevails in the event of a conflict with national law and operates independently of the approach adopted by a domestic legal system. This independence has several consequences. First, a State cannot invoke its domestic law to justify non-compliance with its international obligations, whether treaty-based or otherwise. The fact that an act or omission is lawful (or unlawful) under domestic law does not determine whether it is lawful (or unlawful) under international law. Second, the content of domestic law is a matter of fact for international law; in theory, the two operate in separate spheres and are connected through the rules governing the

admissibility and assessment of evidence. Third, a State cannot invalidate the binding nature of its international obligations by referring to domestic legal requirements that it has failed to comply with (Akehurst, 1987, p.36). (Vienna Convention on the Law of Treaties, 1969, arts. 27 and 46)

C: Continuing Wrongful Acts and the Role of the Temporal Element in Determining State Responsibility

The basic rule is that a State may incur international responsibility for a treaty obligation only if that obligation was in force and binding on the State at the time of the alleged breach. It is therefore necessary to determine precisely when a binding obligation was breached and at what point the breach ended. For example, in the *Mende* case, a claim was brought by a Canadian company alleging that the United States had violated Chapter Eleven of NAFTA concerning investment protection. The claimant argued that measures taken by the City of Boston had effectively expropriated the value of its interests in urban construction and development projects. However, all of these measures had occurred before NAFTA entered into force on January 1, 1994. Accordingly, the United States authorities rejected the claimant's claim under United States law. The court held that NAFTA could not operate retroactively in respect of acts occurring before its entry into force. This left open the possibility of invoking reliance on equity (*estoppel*) by the United States judicial authorities after NAFTA entered into force, but those authorities had acted correctly, and this claim was likewise rejected. Article 13 of the Commission's Draft Articles provides: "The conduct of a State does not constitute a breach of an international obligation unless the State is bound by that obligation at the time when the conduct occurs." The principle is clear, but its application can raise difficulties, particularly in relation to changes in customary international law. It is not always clear when an older customary rule is replaced by a new customary rule. For example, slavery has not always been unlawful under international law; nevertheless, claims for compensation have sometimes been brought on behalf of individuals or groups affected by slavery or the slave trade.

A further issue in applying Article 13 is the precise determination of when unlawful conduct occurs or over what period it continues. Unlawful acts may persist over a period of time. Examples include the continued hostage-taking of diplomatic and consular personnel in the *Tehran Hostages* case and the enforced disappearance of an individual in violation of international legal norms. In other cases, an unlawful act occurs instantaneously, although its effects may continue after the breach has taken place. An unlawful killing or the expropriation of property, for example, has its operative effect at a

particular point in time. The breach occurs at the time of the killing or the transfer of the property, even though the consequences of that breach may continue thereafter. In general, such consequences, irrespective of whether a breach occurred in the first place, concern the issue of reparation (Crawford, 2002, p.140). The distinction between completed and continuing acts may therefore be regarded as relative. An act does not become a continuing act merely because its effects or consequences persist over time; rather, the conduct itself must constitute a continuing breach and continue in that capacity. In many cases, the consequences of international wrongs may be prolonged. The concept of a continuing breach exists in many national legal systems and has repeatedly been invoked in international agreements and before bodies such as the International Court of Justice and other arbitral tribunals. For example, in the Case Concerning United States Diplomatic and Consular Staff in Tehran, the Court referred to Iran's repeated and continuing breaches of its obligations toward the United States under the 1961 and 1963 Vienna Conventions.

These distinctions become particularly important when questions of jurisdiction arise in proceedings concerning State responsibility. For example, under the European Convention on Human Rights, claims may be brought against a State only in respect of violations of obligations occurring after the Convention entered into force for that State. Prior to this, such claims could be brought only where the State concerned had accepted the right of individual petition⁸. However, depending on how the conduct is characterized, a breach committed by a State before its accession to the Convention or its acceptance of the right of individual petition may continue thereafter, extending into the period in which the relevant temporal jurisdiction of the Court applies.

Breach of international law and the concept of cooperation and assistance:

The concept of cooperation in the commission of a wrongful act is commonly associated, by habitual reasoning, with the concept of a crime. This association, however, is not merely a matter of habit. In relation to the effects of contracts, the general principle is that the effects of an obligation are imposed only upon the parties to that obligation and, ultimately, their legal successors. The effect of a contract upon a third party is therefore an exceptional matter. This principle is recognized in the domestic law of all States, and its exceptions are generally limited to obligations for the benefit of a third party and obligations to the detriment of a third party. The principle referred to above, commonly known as the principle of the relative effect of

contracts, has a broad scope and is not limited to the positive effects of a contract. This means that where one of the parties breaches an obligation with the cooperation or assistance of a third party, the third party cannot be held responsible merely on that basis, since that third party has no obligation toward the beneficiary. This lack of responsibility on the part of the assisting third party has not received sufficient attention in the work of the International Law Commission and has remained a matter of dispute in certain legal cases (Zamani, 2005, p.28).

In fact, in light of the principle of the relative effect of contracts, there is no basis for considering assistance or cooperation in the breach of contractual obligations. The same applies to both exceptions to this principle. An obligation for the benefit of a third party may arise in two forms, which are considered below. First, the obligation for the benefit of a third party may constitute the principal effect of the contract. For example, a life insurance contract concluded between an individual and an insurance company, under which the policyholder undertakes to pay the insurer a specified amount throughout his or her lifetime. If, as a result of the inducement, promotion, or advice of others, the policyholder refuses to perform this obligation and fails to pay the insurance premium, those individuals cannot be held liable as accomplices or assistants in the breach of the contractual obligation. Second, the obligation for the benefit of a third party may constitute an ancillary effect of the contract. In such obligations, the third party's interest is generally secured by incorporating a contractual condition into the principal agreement. For example, a sales contract between two persons may stipulate that a third party has the right to use the benefits of the property for life. In this case as well, if one of the parties fails to perform the contractual obligation as a result of the conduct of others, no person can be regarded as an accomplice in the breach of that obligation (Katouzian, 2006, p.184).

Within the framework of international law, the principle that a breach of a legal rule gives rise to an obligation to make reparation for the resulting damage is well established. In 2001, the International Law Commission presented its Draft Articles on the Responsibility of States for Internationally Wrongful Acts. The Draft Articles did not address the responsibility of international organizations. For this reason, in 2003, the United Nations General Assembly requested that the Commission examine the issue of the responsibility of international organizations. The attention given by the General Assembly and the International Law Commission to the responsibility of international organizations was based on the fact that, given their numerous members, functions, and powers, international organizations possess considerable

capacity and ability to commit internationally wrongful acts. Examining the responsibility of international organizations and, in a sense, clarifying the less developed dimensions of responsibility in this field may help identify the actual party responsible for an internationally wrongful act, since the circumstances surrounding the conduct of international organizations are sometimes unclear. For example, members of an organization may invoke the organization's separate legal personality and, on that basis, conclude that responsibility for the organization's acts is attributable solely to the organization itself. The members concerned may thereby refuse to accept responsibility for their own conduct, even though, in practice, the States concerned have disregarded the organization's separate legal personality through their repeated interventions in its functions and powers (Hatami, 2012, p.128).

Accordingly, in international law, cooperation and assistance by States in the commission of an internationally wrongful act may be understood as any knowing act or omission undertaken with the intention of providing assistance toward the commission of an internationally wrongful act or international crime, such as war, by one or more States that directly participate in the wrongful conduct and facilitate the violation of an obligation by another State or States. In general, the obligation to cooperate in responding to internationally wrongful acts results from the interaction between two fundamental principles: the "sovereignty of States" and "justice and international law." The former, referred to as the "sovereignty principle," is based on the exclusive authority of States to decide whether to enter into or refrain from international interactions. Under this principle, other States are prohibited from interfering within the sovereign sphere of States (Momtaz & Ranjbaran, 2011, p.59). (International Law Commission, 2001, art.16; Jørgensen, 2014; Moynihan, 2018)

International responsibility of States according to State practice:

State practice concerning responsibility arising from violations of international law is examined in two main areas:

- ✓ State practice concerning the provision of territory.
- ✓ State practice concerning financial, arms, and military assistance.

A: State Practice Concerning the Provision of Territory to Another State

One of the clearest instances of cooperation in the commission of an internationally wrongful act, for which there is substantial state practice, concerns the

provision of territory by one State to another as a means of facilitating a violation of international law. The following examples illustrate this practice.

- ✓ In 1955 and 1956, the Soviet Union protested to the Federal Republic of Germany in connection with the launching, by United States military forces stationed in Germany, of observation balloons equipped with automatic cameras and radio transmitters. Two of these balloons had been intercepted in Soviet airspace⁹. The Soviet Union also claimed that the other balloons that had been launched were carrying propaganda materials. In these protests, the Soviet Union accused Germany of allowing United States forces to use its territory for the purpose of violating Soviet airspace¹⁰. In 2022, a Chinese surveillance balloon was likewise detected in U.S. airspace. China denied that the balloon was being used for such purposes, and the United States ultimately destroyed it.
- ✓ In 1956, the Soviet Union protested to the Turkish Government concerning the launching of United States surveillance balloons from Turkish territory. Turkey was accused of allowing United States forces to use its territory to violate Soviet airspace. In response, Turkey stated that the balloons were being used for meteorological purposes and were operating at high altitudes. This justification was intended to establish that the launching of the balloons was lawful and that Turkey had not assisted in an unlawful act. Turkey's response was based on the premise that, had the conduct of the United States been unlawful, Turkey could have been regarded as an accomplice in that unlawful conduct¹¹.
- ✓ On 26 July 1958, the Soviet Union protested to the Federal Government of Germany over the use by United States forces of Frankfurt Airport and an air base located in German territory for the transfer of troops for intervention in Lebanon. The Soviet Union accused Germany of participating in an act of aggression by permitting the use of the airport and air base located on its territory. On 15 August of the same year, the German Government responded to the Soviet protest. Germany argued that the actions of the United States and the United Kingdom in the Near East did not constitute intervention against another State; rather, they constituted

assistance to States whose independence was seriously threatened and which had requested such assistance. Accordingly, Germany maintained that, because its allies had not committed an act of aggression, the Soviet Union's allegation that Germany had supported aggression by the United States and the United Kingdom was unfounded. Germany concluded by assuring the Soviet Union that its territory had never been used, and would never be used, for the commission of aggression¹². This response was based on the premise that, had the actions of the United States and the United Kingdom in Lebanon been unlawful, Germany's assistance could have been regarded as cooperation in the commission of those unlawful acts¹³.

- ✓ In the Declaration on the Definition of Aggression, which was adopted by consensus by the United Nations General Assembly, making territory available to another State for the commission of aggression is identified as an act possessing the character of aggression. Article 3 of the Declaration provides: "Article 3: Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:" (United Nations General Assembly, 1974, art. 3(f))

F)- The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State..."¹⁴

Although the Declaration on the Definition of Aggression characterizes the provision of territory for the commission of aggression as an act possessing the character of aggression, it has been accepted that what the General Assembly actually contemplated was its treatment as an independent act.

B: State Practice Concerning the Provision of Financial, Arms, and Military Assistance to Another State

Another instance of cooperation in the violation of international law is the provision of financial, arms, military, or, more generally, material assistance to a State that uses such assistance to violate its international obligations toward a third State. Such cooperation may take various forms, including the provision of weapons, the training of military personnel, or the facilitation of the transfer of financial resources to particular groups or States. In this way, a State providing such assistance may become indirectly involved in activities and conduct

that may result in violations of human rights, increased tensions, and ultimately the escalation of regional crises (Franck, 2003, p.52). (International Law Commission, 2001, art. 16; Jørgensen, 2014) Related operational research examines how procurement and military support are organized, without addressing the legal conditions of state responsibility. Marjani et al. (2026) examine supplier selection under multiple risk levels. Abolghasemian et al. (2024) model the location and routing of priority support items for ground forces in wartime, whereas Shamami et al. (2026) assess military-unit deployment for humanitarian missions. Such forms of cooperation may also contribute to the weakening of international law and the institutions responsible for its implementation. For example, by providing such assistance, States may directly facilitate violations and crimes against humanity, which may in turn weaken the international order and international cooperation. Consequently, such political and military conduct, rather than promoting stability and security, may lead to greater instability and further conflict. The accountability of States for this type of assistance and its effects on international law is therefore another issue that requires consideration. International institutions should undertake the necessary monitoring and follow-up to prevent such violations and require States to comply with the principles and rules governing international law. A substantial body of state practice concerning responsibility for aiding and assisting violations of international law relates to this type of assistance. Supply-chain research also considers the information needed to analyse complex transactions. Haghshenas Nasrabadi and Ghasemy Yaghin (2025) investigate data quality and visibility in downstream supply-chain risk management, and Arghiani et al. (2026) review process-mining applications in supply chains. These studies concern operational information, not the legal determination of whether arms assistance is internationally wrongful. Some examples are discussed below:

- ✓ Paragraph 5 of Article 2 of the Charter of the United Nations requires Members to refrain from assisting a State against which the United Nations is taking preventive or enforcement action. This paragraph indicates that the States that adopted the Charter considered the facilitation of governmental measures against which the United Nations has taken preventive or enforcement action, on account of aggression or a breach of international peace and security, to be contrary to the purposes of the Charter and international law generally, and therefore to be avoided. This view is based on the same rationale

underlying the rule of responsibility for cooperation in the violation of international law. (Charter of the United Nations, 1945, art. 2(5))

- ✓ In 1958, the British Parliament requested an explanation from the British Government concerning the provision of arms and military equipment by certain States to Yemen, which subsequently used them in an attack against Aden. The British Colonial Office, with the agreement of the Foreign Office, stated: "The policy of the Government has always been to insist on preventing the delivery of arms to the Middle East; nevertheless, the delivery of arms in itself does not constitute grounds for objection. The Government has, of course, reported Yemen's acts of aggression on the borders to the United Nations and has protested to the Government of Yemen." ¹⁵
- ✓ States providing assistance have recognized the illegitimacy of supplying assistance for aggressive purposes by expressly informing recipient States that the resources provided must not be used for aggression and by terminating assistance that is used contrary to such conditions. For example, the United States stipulates in its agreements with recipient States that the facilities provided may be used only for internal security, legitimate self-defence, enabling the recipient State to participate in regional organizations or collective measures consistent with the Charter of the United Nations, or enabling it to participate in collective measures requested by the United Nations for the maintenance or restoration of international peace and security. (Arms Trade Treaty, 2013, arts. 6-7; U.S. Government Accountability Office, 2001) Research on supply-chain digitalization and smart-contract capability in financial services addresses another operational dimension of transaction coordination (Bahadori Jahromi, 2026). Its findings cannot, by themselves, determine the lawfulness of a transfer of military equipment.

It is noteworthy that some of the contracts and agreements concerning military and arms assistance to Israel (1952) contain provisions requiring Israel not to use American weapons in war. The question, therefore, is on what legal basis not only Israel but also the United States refrains from preventing the transfer of weapons to a State that has repeatedly been involved in wars with the Muslim countries surrounding it. The answer is clear. In their arms-

purchase agreements, Israel and the United States have invoked self-defence not only to support the practice of the Israeli occupying State in its ongoing wars, but the United States has also never withdrawn from supplying weapons to Israel's military and arms stockpiles over these years. (U.S. Government Accountability Office, 2001)

Israel and the United States, in their arms procurement agreements, have invoked self-defence to justify and support the practices of the Israeli occupying state in its ongoing wars. Over the years, the United States has continued to supply weapons to Israel's military and weapons arsenals without withdrawing such support. This continued support, particularly amid escalating regional conflicts and international tensions, has in turn contributed to the institutionalization of a cycle of violence and instability in the Middle East. Moreover, these weapons have affected the course of conflicts and have also reinforced Israel's projection of military power vis-à-vis its neighbours. Despite repeated criticism concerning human rights violations and Israel's unlawful conduct, the United States and other Western supporters have maintained their position and continued to provide financial and military assistance to the Israeli regime. Undoubtedly, one of the most significant challenges facing the United States in the twenty-first century is the absence of powerful allies in the world willing to provide unconditional support for this approach to arms transfers, as well as for the failure to ensure accountability and accept responsibility for their consequences. For example, when the United States asked Britain to attack Iraq on the pretext of Saddam's nuclear arsenal, Britain did not hesitate. When it subsequently became clear that Iraq had no nuclear arsenal and that the United States had constructed this scenario to justify its attack on Iraq, it became increasingly isolated in the international community (Williamson, 2003, p.76). (U.S. Department of State, 2025; Sharp, 2025)

Nevertheless, the United States' position toward Israel is not defined by any international legal framework. Wars in the Middle East are, in essence, a driving force behind the United States' arms-based economy. This situation benefits the U.S. defense industry and also creates strategic and military dependencies in the Middle East. Middle Eastern countries, including Israel (in the role of America's "bad boy"), depend on the United States and its military equipment to address their security concerns arising from self-created threats and continuing tensions with resistance groups in the region. This dependence, in turn, influences U.S. foreign policy and leads Washington to maintain its support for Israel, even when such support may intensify tensions and unrest in the region. Indeed, during the year following the outbreak of the war in

Gaza, the pressure and activity surrounding arms sales to Israel did not subside; rather, they increased in recent months. This U.S. policy reflects two objectives: supporting strategic allies such as Israel and maintaining deterrence against its regional adversaries (Niyakouei & Amani, 2024, p.35). (Sharp, 2025)

The sale of arms to Israel following the outbreak of crises and conflicts is undoubtedly a contentious issue. In particular, following the outbreak of hostilities in Lebanon and Palestine, the Biden administration, alongside the ceasefire agreement, proceeded with arms-sale packages, prompting criticism from international officials and institutions. These actions have directly affected human casualties and the condition of civilians in these areas, raising concerns at the international level. Arms sales to Israel are also not subject to any rules or ideological considerations that would lead to a reduction in U.S. commitments to Israel following a change in the presidency. During the Trump administration, for example, substantial arms agreements were concluded with Israel (Mossalanejad, 2018). (Sharp, 2025)

In addition, American media and public opinion polls have at times portrayed Israel as a democratic partner and, ostensibly, the only democracy in the Middle East. This misleading portrayal overlooks more complex realities, including human rights violations, the adverse effects of these policies on the daily lives of Palestinians, and the continued killing of people in Gaza. As a result, dominant narratives tend to favour Israel's supporters and raise serious questions concerning accountability and ethics in U.S. foreign policy. Accordingly, the United States, through a self-interested approach, becomes an instrument for the expansion of Israel's war while, without resistance, disregarding international agreements and the broader international legal framework governing states' responsibilities concerning arms transfers.

Ultimately, the relationship between the United States and Israel, irrespective of legal and ethical considerations, appears to depend more heavily on political and economic calculations. The United States clearly seeks to preserve its influence in the region and secure the continued flow of arms exports to allied countries. This cycle of strategic cooperation continually affects regional stability and security. Although such interactions may appear normal when repeated over time, they in fact contribute to greater tensions and instability. Many analysts believe that these military and economic

dependencies play a significant role in shaping U.S. political and military doctrines in the Middle East and, rather than producing peace and stability, often contribute to further disputes and instability (Roskin, 2016, p.83)

Global criticism of Israeli policies and its conduct toward Palestinians have consistently been met with strong reactions from the United States. This system of support reflects, to some extent, the U.S. commitment to its strategic objectives in the Middle East and its disregard for issues that may result in the region's long-term vulnerability. In practice, U.S. policy toward Israel has focused more on strengthening Israel's position in the international arena and in confronting common threats than on considering the human and social consequences of these policies, which are painful and intolerable for many people in the region. This approach has prompted other Middle Eastern states to criticize U.S. policies and has created a hostile and tense environment in which rational diplomacy and positive change have become more difficult to achieve. Consequently, this vicious cycle raises the need to redefine international relations and reconsider existing strategies in order to pursue a fairer and more humane approach to resolving the crises of the Middle East.

Such a policy clearly indicates that double standards and political considerations lie behind military decisions. While many other countries around the world face pressure over similar violations, Israel appears to have placed itself in a position of almost complete immunity despite its retaliatory actions. This situation has restricted diplomatic opportunities for resolving conflicts and has weakened public confidence in international mediation in Middle Eastern affairs. Under these circumstances, the establishment of a new security system and regional cooperation appears to be the only sustainable solution for ending the continuing cycle of violence and confrontation in the region. This, however, requires a change in existing approaches and a more comprehensive understanding of the actual needs of societies and nations.

Figure 1 integrates the main concepts developed in the preceding sections. It treats arms-transfer responsibility as a cumulative and evidence-based assessment that begins with the supplying state's own conduct, applies the relevant primary and secondary rules, and ends with a decision that remains subject to reassessment when new end-use or legal information becomes available.

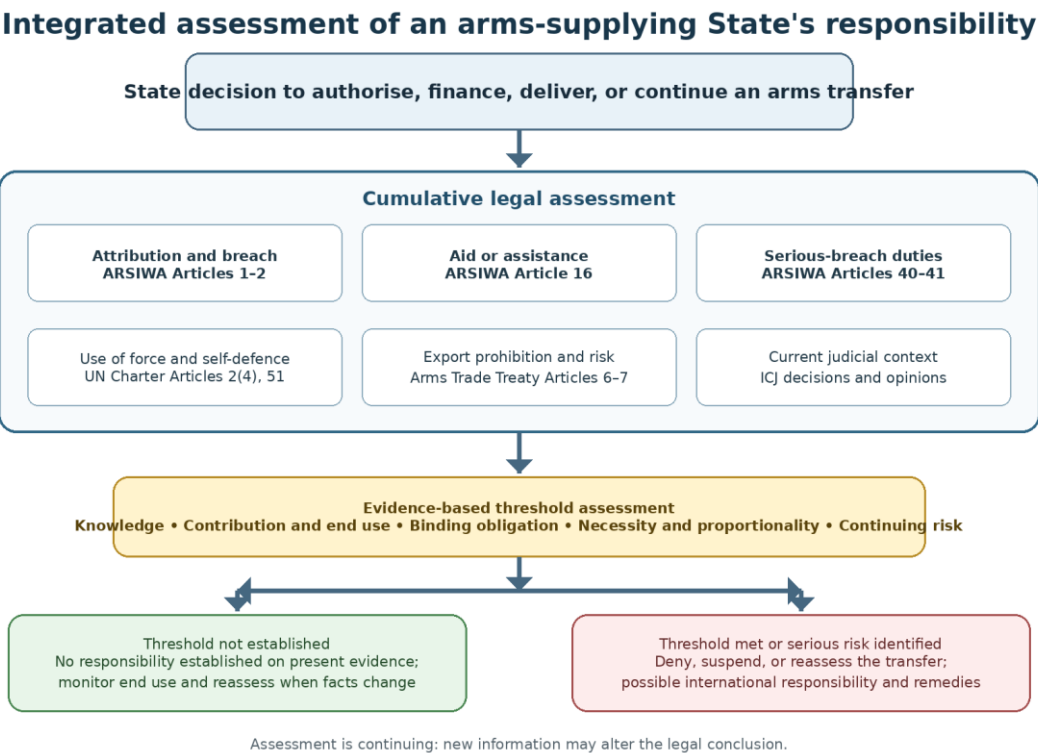


Figure 1. Integrated legal framework for assessing the international responsibility of an arms-supplying state

The preceding analysis consolidated into a structured legal test. Table 1 identifies the principal legal bases, their operative thresholds, their relevance to arms transfers, and the evidence required to assess the responsibility of a supplying state. The rules are complementary: a transfer must

be examined under the applicable primary obligation as well as the secondary rules of state responsibility (International Law Commission,2001; Charter of the United Nations,1945; Arms Trade Treaty,2013; International Court of Justice,2024a,2024b,2024c).

Table 1. Legal framework for assessing state responsibility for arms transfers

Legal basis	Operative threshold	Relevance to arms transfers	Evidence required
ARSIWA Articles 1-2	State-attributable conduct must breach an international obligation binding on that state.	Authorising, financing, delivering, or continuing a transfer is assessed as conduct of the supplying state.	Export approvals, official decisions, applicable obligations, and timing.
ARSIWA Article 16	The supplier assists another state, knows the circumstances of its wrongful act, and is bound by the relevant obligation.	A transfer may engage responsibility when it contributes significantly to the recipient’s identified wrongful conduct.	Official knowledge, warnings, weapon type, end-use information, delivery timing, and causal connection.
ARSIWA Articles 40-41	A serious breach of a peremptory obligation triggers duties of cooperation, non-recognition, and non-assistance.	Military assistance must be reconsidered if it may maintain a situation created by such a breach.	Authoritative findings on the breach, its seriousness and continuity, and the supplier’s response.
UN Charter Articles 2(4) and 51	Force is prohibited unless Security Council-authorized or justified by individual or collective self-defence.	Invoking self-defence does not alone establish the legality of the recipient’s operations or the supplier’s assistance.	Armed attack, any request for collective defence, necessity, proportionality, and Security Council reporting.

Arms Trade Treaty Articles 6–7	For a state bound by the Treaty, specified transfers are prohibited; other exports require risk assessment and available mitigation.	Export authorization is linked to the risk of conventional arms being used for serious violations or international crimes.	Treaty status, knowledge, documented risk assessment, mitigation, reassessment, and end-use information.
ICJ proceedings and advisory opinions (2024)	Orders and opinions must be read according to their status; provisional measures are not final merits findings.	They inform assessment of knowledge, prevention, non-assistance, and continuing transfers.	Terms of the decision, date of notice, later developments, and the supplying state’s response.

Conclusion

The arming of states under international law is a complex issue that concerns the quantity and quality of military equipment and the transfer of weapons between states. This issue falls within the scope of international legal rules governing state responsibility, internationally wrongful acts, and the right of self-defense. Disarmament processes and restrictions on the use of particular types of weapons also form part of this legal framework. Although these efforts have sought to reduce the risks of war and preserve international stability, examples such as the United States’ provision of weapons and equipping of the Israeli military with weapons of mass destruction, justified on the basis of self-defense and the exercise of raw power, in practice call international law into question. At the same time, the transfer of weapons and military equipment in the contemporary world closely connected to the political and economic relations between states. States commonly use military support for their allies as an instrument of diplomacy, invoking their national and strategic interests. This becomes particularly significant when humanitarian and security crises emerge in different parts of the world. Such support, however, can have serious consequences. For example, the supply of weapons to areas of conflict can intensify violence and prolong wars. A clear example is the supply of weapons to Israel during the one-year Gaza war (2024), which has still not ended. For years, the United States has, by disregarding most international agreements, continued to fuel the wars in the Middle East. Even in the face of Israel’s clear violations of the provisions of its military agreements, the United States has continued to pursue its political and economic interests in the region. (Arms Trade Treaty,2013, arts. 6-7; International Law Commission,2001, art. 16; Dannenbaum & Dill,2024)

For this reason, the concept of responsibility under international law in the context of arming states has become a contentious issue, and the question remains whether states, when confronted with the unlawful conduct of other states, will remain committed to maintaining international peace and security. The United States, invoking provisions such as self-defense, has supported Israel’s

belligerent and racist approach toward the people of Gaza and Lebanon, and this support has often been exercised through the use of raw force. Although this issue has not been addressed in the present study, under contemporary international law, the raw force exercised by dominant states such as the United States has not only been accepted by states around the world in regional and international affairs, but the United States’ disregard for the provisions of international agreements has effectively transformed this raw power into a form of unaccountable wrongful conduct in the contemporary world.

Disclosure Statement

No potential conflict of interest reported by the authors.

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Authors' Contributions

All authors contributed to data analysis, drafting, and revising of the paper and agreed to be responsible for all the aspects of this work.

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