



ARMS TRANSFERS, STATE COMPLICITY IN INTERNATIONAL CRIMES AND DUE DILIGENCE: LESSONS FROM THE ARMED CONFLICTS IN GAZA AND UKRAINE

This article examines the obligations of states in relation to arms transfers in armed conflicts, focusing on the situations in Gaza and Ukraine. It does so by analysing some of the primary norms of IHL and IHRL, as well as arms control instruments, that are relevant to the prevention of, and the determination of, state complicity in international crimes (war crimes, crimes against humanity and genocide) committed by other states (and non-state actors) because of an arms transfer. It also considers norms that impose due diligence obligations on states to minimise the risks of serious misuse associated with the supply of arms, including their diversion. Given the growing importance of the issue of international responsibility of states following arms transfers, as evidenced by some recent ongoing cases before the ICJ concerning Gaza, this study also provides some insights into the distinction between state responsibility in the case of a breach of a due diligence obligation and international responsibility of states for complicity (aid and assistance) under secondary international law norms (ARSIWA) and their implications in the field of arms transfers. The aim of this research is to demonstrate that the legal frameworks examined, if properly implemented, provide sound legal parameters both for assessing the compliance of arms transfers in armed conflicts with international law, and possibly for establishing responsibility at the international level in the case of irresponsible transfers, as well as effective measures to prevent arms diversion in the medium and long term.