

DEVELOPMENTS IN THE FIELD

## The Arms Industry and International Criminal Liability: Challenging the Status Quo?

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### Abstract

There is increased public attention directed to the topic of weapons trade and this is a positive development because enhanced scrutiny holds a promise of bringing more accountability to the field that has long been obscure. This article reviews the possibility of criminal prosecutions of corporate officials for supplying weapons to Gaza, Yemen and Ukraine at the International Criminal Court (ICC) or a similar forum. The Nuremberg Trials planted seeds for such an endeavour by holding several industrialists criminally liable. Yet, modern international criminal law has so far largely stayed away from defining the scope of individual criminal responsibility for corporate officials. The case studies in this paper reveal that the moment is not ripe for commencing actual investigations at the ICC. Nonetheless, a future consensus is slowly building through (often failed) attempts to use legal or policy avenues to define the standards of conduct in the weapons trade.

**Keywords:** arms trade; individual criminal responsibility; legal entities; Yemen; Gaza; Ukraine

*“The principal use of a weapon is to destroy  
The principle use of a tool is to build”  
William Kelly, Can Art Stop a Bullet*

### 1. Introduction

The wars in Ukraine, Gaza and Yemen have brought to the surface many inherent tensions of international law, highlighting the limitations of the system based on persuasion and lacking enforcement. Individual states rely heavily on military strength to promote their agendas while international institutions lack the same capability to enforce the set of values enshrined in major international treaties through military power. In the case of Ukraine, the United Nations (UN) Security Council—the body most empowered to take collective action on behalf of the international community—failed to adopt a resolution on 25 February 2022 aimed at ending the crisis at its early stage.<sup>1</sup> The war in Gaza was marked by several

<sup>1</sup> Article 24 Charter of the United Nations, 24 October 1945, 1 UNTS XVI (‘UN Charter’); UN Security Council 8979th Meeting, SC/14808, 25 February 2022.

unsuccessful attempts by the UN Security Council to pass a resolution calling for an immediate ceasefire.<sup>2</sup> The ceasefire proposal—to be implemented in phases—was eventually adopted on 10 June 2024 but its destiny will be determined by the degree of cooperation of the warring parties.<sup>3</sup>

At the same time, these conflict situations attracted considerable legal and media attention to the issue of arms trade. For instance, the United States (US) Congress delayed the multibillion military aid package to Israel, Ukraine and Taiwan for many months in large part due to mounting concerns that these deliveries may be used to commit international crimes.<sup>4</sup> President Joe Biden eventually signed this package into law on 9 April 2024 but declared shortly after that weapon deliveries would be halted if Israel launched a full-scale invasion of Rafah.<sup>5</sup>

These developments are building momentum towards enhanced corporate criminal accountability. This article adopts a narrow view of accountability by referring to the possibility of criminal prosecutions in international and domestic forums. Such restricted interpretation is, however, interrelated with the broader discourses around corporate due diligence obligations stemming from human rights law,<sup>6</sup> corporate social responsibility and regulatory actions taken by the state to induce human rights compliance.<sup>7</sup> Corporations are not (strictly speaking) subjects of international law and thus escape regulation via traditional international law route—treaties, customs and general principles of law. These formal sources are binding only on states and international organizations.<sup>8</sup>

From the perspective of weapons manufacturers, growing military spending is beneficial for business purposes. Yet, increased spending also sparks community interest in transparency around military assistance and the enforcement of companies' due diligence obligations. Furthermore, discussions of arms supplies provoke vocal allegations of potential state complicity in core international crimes. As a result, two main trends can be identified. First, legal attention to the topic generates much-needed interpretative guidance for the relatively recent legislation pertaining to the arms trade.<sup>9</sup> Second, public scrutiny catalyses the creation of solid standards specifically designed for holding corporate managers responsible for international offences, such as war crimes, crimes against humanity and genocide.

This article assesses the recent developments in the field of international law and weapons trade and ponders the future possibility of individual prosecutions of corporate managers at the ICC and via the route of domestic prosecutions. International criminal justice is known to generate consensus around the crimes worthy of attention (domestically

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<sup>2</sup> 'World Slams US Ceasefire Veto at UN Security Council on Israel's Gaza War,' *Al Jazeera* (21 February 2024), accessed 6 February 2025: <https://www.aljazeera.com/news/2024/2/21/world-condemns-uss-latest-un-security-council-veto-on-gaza-ceasefire>

<sup>3</sup> UN SC Resolution 2735 (2024), 10 June 2024, S/RES/2735 (2024).

<sup>4</sup> 'Biden Signs Law Securing Billions in US Aid for Ukraine, Israel,' *Al Jazeera* (24 April 2024), accessed 6 February 2025: <https://www.aljazeera.com/news/2024/4/24/biden-signs-law-securing-billions-in-us-aid-for-ukraine-israel>

<sup>5</sup> Ivana Kottasová and Eugenia Yosef, 'Biden's Threat to Halt Weapons Deliveries Sparks Anger and Infighting Among Israeli Officials,' CNN (9 May 2024), accessed 6 February 2025: <https://edition.cnn.com/2024/05/09/middleeast/biden-weapons-deliveries-israel-reaction-intl/index.html>

<sup>6</sup> Office of the High Commissioner of Human Rights, 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide' (2012) HR/PUB/12/02, accessed 6 February 2025: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>7</sup> For an extended discussion of the notion of 'due diligence' in the arms sector, please see Machiko Kanetake and Cedric Ryngaert, 'Due Diligence and Corporate Liability of the Defence Industry: Arms Exports, End Use and Corporate Responsibility,' Flemish Peace Institute (10 May 2023), accessed 6 February 2025: <https://vlaamsvredesinstituut.eu/wp-content/uploads/2023/05/VVI-Rapport-Due-Diligence-WEB-new.pdf>

<sup>8</sup> Article 38(1) *Statute of the International Court of Justice*, 18 April 1946.

<sup>9</sup> See Arms Trade Treaty, New York, 24 December 2014, United Nations Treaty Series, vol. 3013, No. 52373; EU Council Common Position 2008/944/CFSP of 8 December 2008; Council Decision (CFSP) 2023/2539 of 13 November 2023 supporting a project on the promotion of effective arms export controls. Council Decision (CFSP) 2023/2539.

and internationally).<sup>10</sup> This feature is significant because the level of acceptance generated by the field of international criminal justice assists in building political and judicial will for future prosecutions.

## II. The International Criminal Law Paradigm and Corporate Accountability

International criminal law deals with individual criminal responsibility. The Rome Statute of the ICC does not include the option of holding legal entities criminally liable (unlike many domestic law jurisdictions).<sup>11</sup> Nonetheless, the Statute contains two elaborate articles on modes of liability (Articles 25 and 28) that provide for legal tools to attach responsibility to individuals, including those acting on behalf of corporations.<sup>12</sup> An extensive discussion on corporate criminal responsibility resurfaced at the time of the drafting of the Rome Statute of the ICC when the French delegation proposed (unsuccessfully) to include legal persons in the article dealing with individual criminal responsibility.<sup>13</sup> Article 25 of the Rome Statute currently refers to natural persons only, but it expressly allows for the potential liability of corporate managers.

Complicity is arguably the most suitable way to hold corporate managers to account as this mode of liability is specifically designed to attribute criminal responsibility to certain individuals who do not physically perpetrate the crime.<sup>14</sup> ‘Complicity’ is an umbrella term, which includes instigation, aiding and abetting, organizing, counselling and so on. Corporations seldom perpetrate international crimes *directly* since the motive for multinational companies contributing to human rights abuses is usually that of either financial gain or minimization of losses in the context of existing partnerships.<sup>15</sup> The goal is often not to directly engage militarily or support one of the warring parties but rather to conduct successful business operations with the possible side effect of facilitating violations of human rights and international humanitarian law.

Post-World War II jurisprudence contained the seeds of the test for aiding and abetting applicable to corporate officials implicated in war crimes and crimes against humanity during the war. The *Krupp* and *IG Farben* trials by the US Military Tribunal at Nuremberg and the case of *Zyklon B* by the British Military Courts were among the first attempts to hold individual industrialists accountable for complicity in crimes committed during World War II.<sup>16</sup> Despite these early precedents, later efforts to hold corporate officials responsible in the context of international criminal law were stunted. The ad hoc tribunals focused on military and political leaders with very little attention paid to corporate involvement.<sup>17</sup>

<sup>10</sup> Mirjan Damaska ‘What is the Point of International Criminal Justice?’ 83 (2008) *Chicago-Kent Law Review* 329.

<sup>11</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), UN General Assembly, 17 July 1998.

<sup>12</sup> Article 28(2) of the Rome Statute of the ICC specifically mentions responsibility of superiors who are not military commanders but who exercise effective authority and control over the subordinates. This can apply to senior corporate executives.

<sup>13</sup> Kirsten Bowman, Commentary on Article 25(1) of the Rome Statute of the ICC, Case Matrix Network (last updated 30 June 2016), accessed 6 February 2025: <http://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-riccc/commentary-rome-statute/commentary-rome-statute-part-3>

<sup>14</sup> Marina Aksenova, *Complicity in International Criminal Law* (Hart, 2016) 1.

<sup>15</sup> Brandon Prosansky, ‘Mining Gold in a Conflict Zone: The Context, Ramifications and Lessons of AngloGold Ashanti’s Activities in the Democratic Republic of the Congo’ (2007) 5 *Northwestern Journal of International Human Rights* 236.

<sup>16</sup> *US v Alfred Krupp et al*, 10 LRTWC 69 (US Military Tribunal, 1948); *US v Carl Krauch et al* 8 LRTWC 1169, (US Military Tribunal, 1948); *UK v Tesch et al* (‘Zyklon B Case’) (1947) 1 LRTWC 93 (British Military Court) 93–101.

<sup>17</sup> One notable exception is the case tried by the International Criminal Tribunal for Rwanda concerning complicity in international crimes of a tea plantation owner. See *The Prosecutor v Michel Bagaragaza* (Sentencing Judgment), ICTR-2005-86-S, International Criminal Tribunal for Rwanda (ICTR), 17 November 2009.

The ICC has not yet indicted or prosecuted corporate managers for war crimes, crimes against humanity or genocide. Article 25(3)(c) of the Rome Statute of the ICC, which criminalizes aiding and abetting international crimes, is the most fitting standard for future prosecutions. It requires that aiding, abetting or otherwise assisting is done *for the purpose* of facilitating the commission of crime (emphasis added). The area of weapons trade presents several unique challenges when establishing criminal assistance. It is difficult to prove the existence of *actus reus* (criminal conduct) in light of export licenses granted by the state, which permits this activity.<sup>18</sup> The *mens rea* (purpose) standard presents its own complications given the manager's potential lack of desire to contribute to international crimes. Knowledge of the crimes committed with the supplied weapons may not be sufficient to meet the criteria of Article 25(3)(c) of the Rome Statute and the financial incentive does not automatically translate into purpose to assist. Searching for profits and avoiding losses is a form of motivation, which may or may not be relevant evidentially for establishing culpability, or *mens rea*.

### III. Conflict situations in Yemen, Ukraine and Gaza

The war in Yemen started in 2014 with the overthrow by the Houthi insurgents of the government of the Saudi-backed leader, President Abd Rabbu Mansour Hadi and the establishment of Houthi rule in a large part of Yemen. This takeover prompted a coalition of Gulf states led by Saudi Arabia to launch an aerial military campaign in Yemen with logistical and intelligence support from major world powers including the United States, Spain, Italy, the United Kingdom, Germany and the UK.<sup>19</sup> The war catalyzed important strategic litigation developments, such as the 2019 submission by the European Centre for Constitutional and Human Rights (ECCHR) and its partners to the ICC. This communication invited the Office of the Prosecutor to open preliminary examinations into the conduct of several European companies supplying arms to the Saudi/United Arab Emirates (UAE)-led coalition in the context of the war in Yemen.<sup>20</sup> This initiative was widely discussed in legal circles and is still awaiting resolution at the ICC.<sup>21</sup> Significantly, no decision was taken at the ICC over the course of several years, which signals the remaining lack of willingness to conduct actual prosecutions in the area of weapons trade.

The ECCHR communication alleged that fighter jets and other military equipment furnished by European companies were used in indiscriminate attacks against civilian objects in Yemen since March 2015. The actions of arms exporters therefore potentially fall under the definition of several specific war crimes enshrined in the Rome Statute of the ICC, including violence to life and person and directing attacks against the civilian population.<sup>22</sup> One of the core challenges of this submission was to demonstrate that arms supplies were made with the purpose to facilitate crimes in Yemen and therefore meet the

<sup>18</sup> Cf Kai Ambos, 'Corporate Complicity in International Crimes through Arms Supplies despite National Authorisations?', (2021) 21 *International Criminal Law Review* 181.

<sup>19</sup> Marina Aksenova, 'Arms Trade and Weapons Export Control' in Mark Gibney et al, *The Routledge Handbook on Extraterritorial Human Rights Obligations* (Routledge, 2021) 379.

<sup>20</sup> ECCHR, Case Report: Made in Europe, Bombed in Yemen: How the ICC Could Tackle the Responsibility of Arms Exporters and Government Officials (last updated February 2020), accessed 6 February 2025: [https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport\\_ECCHR\\_Mwatana\\_Amnesty\\_CAAT\\_Delas\\_Rete.pdf](https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_ECCHR_Mwatana_Amnesty_CAAT_Delas_Rete.pdf)

<sup>21</sup> Linde Bryk and Miriam Saage-Maaß, 'Individual Criminal Liability for Arms Exports Under the ICC Statute: A Case Study of Arms Exports from Europe to Saudi-led Coalition Members Used in the War in Yemen' (2019) 17 *Journal of International Criminal Justice* 1117; Ambos, note 18; ECCHR, 'Europe's Involvement in War Crimes in Yemen A Renewed Call for Justice and Accountability' (23 March 2024), accessed 6 February 2025: <https://www.ecchr.eu/en/press-release/europes-involvement-in-war-crimes-in-yemen/>

<sup>22</sup> Articles 8(2)(c)(i), 8(2)(e)(i), (ii), (iii) and (iv) of the Rome Statute of the ICC.

enhanced threshold for complicity enshrined in the Rome Statute of the ICC.<sup>23</sup> This was done by demonstrating that the actions of relevant corporate officials followed a pattern (continuous supplies over years) and were done to seek financial gain. The conduct requirement of complicity ('assistance') was satisfied in part by providing evidence of the supplied munition found on the ground around crime sites. It was also shown that, even in the absence of complete data on supply chains, assistance may take the form of encouragement demonstrated by the *continued* nature of deliveries of weapons despite available public information about the crimes committed in Yemen.<sup>24</sup>

The transfers of weapons to Ukraine following the 2022 invasion by Russia received a lot of publicity in media outlets. The discussion, however, centred primarily on policy objectives. This conflict has seen militarization of the general discourse in the media with very little attention paid to the due diligence requirements stemming from the relevant legislative framework at an international and domestic level. The EU official announcements of weapons transfers to Ukraine also failed to clearly articulate the legal standards set out in the EU Council Common Position<sup>25</sup> or the Arms Trade Treaty (ATT) as these supplies followed the fast-track process.<sup>26</sup> Such exceptionalism in the way arms exports were authorized may be explained—in part—by the proximity of Ukraine to Europe. The Western public could easily identify with the victims in Ukraine due to cultural and ethnic proximity and the media coverage contributed to the political pressure for immediate action.<sup>27</sup>

While Article 51 of the UN Charter provides the overall legal basis for the supplies under the right to collective self-defence, there are also specific legal constraints stipulated in the EU Council Common Position, the ATT and other implementing legislation. These include post-delivery controls to avoid the diversion of weapons, proportionality assessment to prevent destabilizing the situation further and due diligence obligations of the exporter.<sup>28</sup> It is essential to highlight that state due diligence obligations under international law do not serve as an independent basis for generating rights and obligations but rather it is a standard of care to assess compliance of certain actions (e.g., granting export licenses) with specific duties under international humanitarian or human rights law.<sup>29</sup> The ATT and the EU Council Common Position make express references to such obligations, and they must be read in conjunction with the applicable body of humanitarian and human rights law. Such a multilayered system of legal interpretation in the area of arms trade enables a wide margin of appreciation in assessing the state and corporate conduct. In terms of evidence, it is helpful that this conflict is well-documented.

The ICC is likely to refer to these tests and legislative regimes in establishing the scope of individual criminal responsibility of arms suppliers if there is a prospect of future prosecutions. Article 21(1)(b) of the Rome Statute of the ICC regards relevant treaties and principles of international law as applicable law before the Court.

One concerning detail is that the legal tests contained in the ATT and the EU Council Common Position possess a high degree of elasticity and can thus be used by states to evade

<sup>23</sup> See section II.

<sup>24</sup> Marina Aksenova, 'Nestlé & Cargill v Doe Series: Toward a Harmonized Test for Complicity of Corporate Officials?', *Just Security* (30 November 2023), accessed 6 February 2025: <https://www.justsecurity.org/73608/nestle-cargill-v-doe-series-toward-a-harmonized-test-for-complicity-of-corporate-officials/>

<sup>25</sup> See note 9.

<sup>26</sup> Tom Hamilton, 'Articulating Arms Control Law in the EU's Lethal Military Assistance to Ukraine,' *Just Security* (30 March 2022), accessed 6 February 2025: <https://www.justsecurity.org/80862/articulating-arms-control-law-in-the-eus-lethal-military-assistance-to-ukraine/>

<sup>27</sup> Stephen McCloskey, 'The War in Ukraine Has Revealed a Hierarchy of Victims' (2022) 34 *Policy and Practice: A Development Education Review* 138.

<sup>28</sup> Article 7(7) and Article 11 Arms Trade Treaty, note 9; Criteria 3 and 7 EU Council Common Position, note 9.

<sup>29</sup> Kanetake and Ryngaert, note 7, 12.

specific measures aimed at halting supplies clearly contributing to civilian casualties. For instance, ‘clear risk’ that military equipment might be used to commit humanitarian law violations<sup>30</sup> is a highly evaluative criterion, which can be subordinated to the state licensing regime or other policy-related arguments. The process of national implementation of the ATT and the EU Council Common Position reveals such an elastic quality of the legal tests contained therein. For example, arms export control in Germany is based on the German War Weapons Control Act, which is to be read in conjunction with non-binding political principles.<sup>31</sup> The German legal framework on the manufacturing, marketing and export of weapons and other military equipment involves a complex inter-agency process with consideration by at least two ministries.<sup>32</sup> There is therefore a wide margin of interpretation based on political realities embedded in the law, which *generally* prohibits granting licenses when there is the risk that the arms will be used for activities endangering international peace or compromising Germany’s existing public international law obligations.<sup>33</sup> It remains to be seen how rigidly the tests mentioned in the ATT and the EU Council Common Position will be interpreted by courts when determining individual criminal responsibility.

In contrast with the situation in Ukraine, the war in Gaza, commencing with the attack perpetrated by Hamas on 7 October 2023 and continuing with Israel’s extensive military offensive in Gaza, heightened attention around potential abuses related to military aid. As early as mid-October 2023, US civil society examined the US potential complicity in genocide in Gaza resulting from the US supplies of weaponry to Israel.<sup>34</sup> From the UN side, experts issued a communication and press release calling on states to comply with their obligations under the ATT and on the arms companies contributing to the production and transfer of weapons to Israel to ‘bear their own responsibility to respect human rights, international humanitarian law and international criminal law.’<sup>35</sup> The same UN press release praised the February 2024 decision by the Dutch appeals court ordering the Netherlands to halt the export of F-35 fighter jet parts to Israel.<sup>36</sup> The Dutch court expressly referred to Articles 6 and 7 of the ATT in holding that there exists a ‘clear risk’ that the parts would be used to commit or facilitate serious violations of international humanitarian law.<sup>37</sup> This decision was partially overruled on 12 July 2024 by the court in the Hague, interpreting the prohibition to export more narrowly and thus limiting the ATT prohibitions to direct supplies only. This means that the deliveries of spare parts directed via the United States will not be stopped.<sup>38</sup>

<sup>30</sup> Criterion 2(c) EU Council Common Position, *note* 9.

<sup>31</sup> Christian Schliemann and Linde Bryk, ‘Arms Trade and Corporate Responsibility: Liability, Litigation and Legislative Reform’ (2019) *Friedrich-Ebert Stiftung Study*, accessed 6 February 2025: <https://library.fes.de/pdf-files/iez/15850.pdf>, 5.

<sup>32</sup> ICJ, *Nicaragua v Germany*, Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory, Order, 30 April 2024, para 17.

<sup>33</sup> §6(3) *Kriegswaffenkontrollgesetz* (KrWaffKontrG).

<sup>34</sup> Emergency Briefing Legal Paper, *Israel’s Unfolding Crime of Genocide of the Palestinian People and U.S. Failure to Prevent and Complicity in Genocide*, the Center for Constitutional Rights (18 October 2023), accessed 6 February 2025: [https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime\\_ww.pdf](https://ccrjustice.org/sites/default/files/attach/2023/10/Israels-Unfolding-Crime_ww.pdf), 11.

<sup>35</sup> OHCHR Press Release, ‘Arms Exports to Israel Must Stop Immediately: UN Experts’ (23 February 2024), accessed 6 February 2025: <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>

<sup>36</sup> *Gerechtshof Den Haag*, 12-02-2024, NJF 2024/117 AB 2024/132 met annotatie van L.M. Nijenhuis, K. de Goede, accessed 6 February 2025: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2024:191>

<sup>37</sup> *Ibid.* See also Marten Zwanenburg and Robert Stendel, (Taking the Road Less Travelled: The ICJ’s Pragmatic Approach to Provisional Measures in *Nicaragua v Germany*), *EJILTalk* (3 May 2024), accessed 6 February 2025: <https://www.ejiltalk.org/taking-the-road-less-travelled-the-icjs-pragmatic-approach-to-provisional-measures-in-nicaragua-v-germany/>

<sup>38</sup> ‘Dutch F-35 Parts are Still Going to Israel via US,’ *PAX* (12 July 2024), accessed 6 February 2025: <https://paxforpeace.nl/news/dutch-f-35-parts-are-still-going-to-israel-via-us/#:~:text=The%20Court%20of%20Appeal%20in,now%20via%20the%20United%20States>

Finally, the recent ruling by the International Court of Justice (ICJ) in *Nicaragua v. Germany* added more nuance to interpreting the obligations stemming from the ATT and the EU Council Common Position.<sup>39</sup> In this case, Nicaragua requested the Court to order provisional measures, asserting that by supplying weapons to Israel, Germany failed to comply with its obligations under the Genocide Convention and international humanitarian law, including the Geneva Conventions.<sup>40</sup> Germany responded that the obligation to respect the Geneva Conventions does not preclude all arms exports, but rather it imposes the duty to conduct proper risk assessment as to whether these weapons will be used to violate international law.<sup>41</sup>

The ICJ agreed with Germany, rejecting Nicaragua's request and further noting that Germany demonstrated a significant decrease since November 2023 in the value of material for which the licences were granted, from approximately €200 million in October 2023 to approximately €1 million in March 2024.<sup>42</sup> It is true that this case did not result in any further action by the ICJ. It is nonetheless a significant stepping stone for advancing substantive and evidentiary standards in the area of weapons trade.

This development is also relevant for creating a basis for individual prosecutions in the future by virtue of clarifying the margin of permissibility of state action, including licensing. The Court expressly engaged with Germany's obligations arising under the ATT and offered its general guidance to all states to comply with international obligations relating to the transfer of arms to parties to an armed conflict.<sup>43</sup> Such scrutiny by the ICJ should have the effect of directing states to tighten their oversight of arms manufacturers.

#### IV. Conclusion: A Path to Corporate Accountability Within the ICL Paradigm?

Despite the lack of actual prosecutions of corporate officials at the ICC and some backtracking in domestic accountability efforts, current developments prompted by the wars in Yemen, Ukraine and Gaza reveal an increased focus on the standards of conduct in the area of weapons trade. It is true that the legal framework alone will not—by itself—alter weak political will to facilitate prosecutions. Furthermore, the militarization of discourse is both the cause and the result of the increase in the number of weapons being produced and poured into ongoing conflict situations. Nonetheless, the developments discussed in this article are significant for paving the way towards more transparency in the field that has long been obscure. Even failed legal attempts to hold states or individuals to account for knowingly or purposefully contributing to mass atrocities by supplying weapons to a conflict zone matter. These efforts create more acceptance of the direct applicability of the legal framework to the industry that is otherwise shielded from scrutiny.

**Competing interest.** The author does not have any competing interests in relation to the contents of this article.

<sup>39</sup> ICJ, *Nicaragua v Germany*, Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory, Order (30 April 2024).

<sup>40</sup> *Ibid*, para 14.

<sup>41</sup> *Ibid*, para 15.

<sup>42</sup> *Ibid*, paras 17–20.

<sup>43</sup> *Ibid*, para 24.

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