

Summary

What are the existing responsibilities of states under relevant international law with which their export authorizations must be consistent? Below is an initial list of the possible situations in which small arms and light weapons (SALW) transfers authorized by a state would constitute a breach of its international obligations.

International Legal Prohibitions on Weapons Transfers: State Responsibility

Breach of Express Prohibitions under international law:

1. Transfers by states parties to the Ottawa Mines Convention of anti-personnel mines to anyone, directly or indirectly; (express treaty prohibition on all transfers of this proscribed conventional weapon);
2. Transfers by states of SALW contrary to UN Security Council-mandated arms embargoes; (express prohibition on designated military goods and destinations/recipients in relevant UN Security Council resolutions);

Breach of other international law obligations: primary state responsibility

3. Transfers of SALW by states to terrorists within the meaning of anti-terrorist conventions to which they are party and/or to groups or individuals designated as terrorists on the list maintained by the UN Security Council pursuant to resolution 1373 (2001) and/or within the meaning of the general customary international law prohibition on state support for terrorist activities;
4. Transfers of SALW to a state or group engaging in genocidal acts where the transferring state has both knowledge that genocidal acts are being perpetrated – or are intended - by the recipient state or group and where the transferring state also has, through the transfer of the said arms, the specific intention to assist in the destruction in whole or in part of the group (national, ethnic, racial or religious) against which the genocide is directed.
5. Transfers by states to rebel movements - unless the very narrow exception of assistance to a people seeking self-determination against foreign or colonial domination can be demonstrated. (While there is argument that a norm of humanitarian intervention is developing that might allow for indirect support of rebel movements as part of the intervention, as in the case of Kosovo, at this stage such action without express UN authorization would still appear to be unsanctioned in international law.)

Aid or Assistance in the commission of an internationally wrongful act (secondary state responsibility)

6. Transfers of SALW by a state to another state engaged in unlawful aggression, where the transfer was made in full knowledge of its intended use, with a view to facilitating the aggression and provided also that the wrongful act in fact takes place.
7. Transfers of SALW authorized by states with knowledge that the recipient state is using them to perpetrate human rights abuses, war crimes, crimes against humanity or other grave breaches of international humanitarian law.

International Legal Prohibitions on Weapons Transfers: Individual Criminal Responsibility

While states remain “the principle subjects of international law”, nevertheless, the conduct of individuals may be regulated by international law.” In particular, international criminal law, or domestic analogies, may provide an effective mechanism for addressing problematic arms transfers in certain circumstances. Complicity is a recognized ground establishing individual criminal responsibility at international law. It is directly established in the Rome Statute of the International Criminal Court. Like state responsibility, individual responsibility requires knowledge of the circumstances surrounding the commission of an international crime in the recipient state, and generally the accused also requires the