

International Legal Prohibition 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.⁴² 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 actual intent to further the commission of some type of criminal activity through his actions. In the event that these requirements are established, arms traders (up to and including high government and military officials engaged in the authorization of arms transfers) could be subject to individual criminal sanction. Unlike other legal areas discussed above, this would not require the establishment of state responsibility for the acts of the individual in question.

⁴² See, e.g., paragraphs 25(3)(c) and (d). The jurisdiction of the ICC is complementary to the national criminal jurisdiction of states parties and, except where a case is referred by the UN Security Council, is limited to crimes committed on the territory, or by a national, of a state party. However, many states parties to the Rome Treaty have established “universal jurisdiction” to ensure the effective prosecution of the most serious international crimes. Belgium, for example, enacted a law in 1999 that gives its courts the authority to prosecute individuals accused of war crimes and other atrocities regardless of the crimes’ connection to Belgium or the presence of the accused on Belgian soil.