

all violations of IHL for which there is individual criminal responsibility. The most recent codification of such violations, collectively referred to as “war crimes”, is to be found in the Statute of the International Criminal Court adopted in 1998.³⁹

If a state transfers weapons to another state⁴⁰ in circumstances where it has knowledge that the receiving state is using these weapons to engaged in serious violations of international humanitarian law, then the transferring state may be responsible for aiding an international wrong. (See also the discussion *infra* on the individual criminal responsibility that may attach to officials involved in assisting war crimes and crimes against humanity).

3.3. Restrictions on the Use of Conventional Arms arising from Human Rights Law: Assisting in the Breach of Human Rights Law

If a state transfers weapons to another state in circumstances where it has knowledge that the receiving state is using them to commit serious violations of international human rights law, then it may be guilty of aiding the internationally wrongful conduct. As the ILC Commentaries note:

*The obligation not to provide aid or assistance to facilitate the commission of an internationally wrongful act by another State is not limited to the prohibition on the use of force. For instance, a State may incur responsibility if it assists another State to circumvent sanctions imposed by the United Nations Security Council or provides material aid to a State that uses the aid to commit human rights violations. In this respect, the United Nations General Assembly has called on Member States in a number of cases to refrain from supplying arms and other military assistance to countries found to be committing serious human rights violations. Where the allegation is that the assistance of a State has facilitated human rights abuses by another State, the particular circumstances of each case must be carefully examined to determine whether the aiding State by its aid was aware of and intended to facilitate the commission of the internationally wrongful conduct.*⁴¹

As was earlier argued in relation to aiding aggression, the transfer of arms over time, and in full knowledge of their actual use in the perpetration of human rights abuses, would provide compelling evidence of the requisite knowledge and intention to support state responsibility for assisting the internationally wrongful conduct.

With the legal content of international human rights law principles open to significant debate, a further threshold question will be ‘what constitutes a serious human rights violation?’ At a minimum, however, the set of core human rights from which no derogation is possible, not even in times of emergency, would clearly qualify. These are listed in Article 4(2) of the *International Covenant on Civil and Political Rights* and include the right to life, freedom from torture or degrading treatment, freedom from slavery, the right to recognition as a person before the law and the right to freedom of thought, conscience and religion. In addition, withdrawal of other rights cannot occur if doing so discriminates solely on the ground of race, colour, sex, language, religion or social origin.

³⁹ Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1988, Article 8, UN Doc. PCNICC/1999/INF/3.

⁴⁰ As noted in footnote 9, the doctrine of secondary responsibility cannot be invoked if the state in question is transferring arms to a non-state actor engaged in grave breaches. However, as discussed earlier, such transfers would in all likelihood involve a breach by the transferring state of the prohibition on the use of force and against intervention in the domestic affairs of states.

⁴¹ ILC Commentaries, pp. 158-9.