International Obligations of Transit States in Combating Transnational Organized Crime in the Context of Road Transit Consignments

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Abstract

The continuing expansion of international trade and the development of road transport infrastructure have played a pivotal and indispensable role in countries' economic growth. At the same time, however, these developments have raised fundamental questions in the field of international law: how can States strike a balance between two important yet apparently competing objectives, namely, "facilitating free trade" and "effectively preventing and combating transnational organized crime"? Simplified customs procedures within road transit systems have contributed to the expansion of international trade by significantly reducing transaction costs; nevertheless, they have also created favorable conditions for exploitation by transnational organized criminal groups. Trafficking in narcotic drugs, arms, human beings, counterfeit goods, and rare plant and animal species constitutes only some examples of the misuse of transit consignments by such criminal groups. This situation has compelled States to redefine their international obligations in relation to road transit consignments. These obligations are rooted in binding international instruments, and their successful implementation requires greater cooperation and coordination among countries of origin, transit, and destination. The present study employs a descriptive-analytical method and is based on documentary and library research to examine the international obligations of States in combating transnational organized crime in relation to road transit consignments. The findings indicate that States are required, in accordance with their available resources and capacities, to adopt the necessary measures, including legislative measures, and to establish the conditions required for their effective implementation. Moreover, even under emergency conditions and severe economic constraints, States must adopt appropriate minimum measures to combat transnational organized crime while simultaneously facilitating trade. Both proactive and reactive preventive measures are among the minimum obligations incumbent upon States for ensuring effective action in this field and promoting the development of free trade.

Keywords: international obligations of transit States; road transit consignments; transnational organized crime; TIR Convention; Palermo Convention.

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1. Introduction

The globalization of the economy, the growing interdependence of countries, the development of international transportation, and the transformation of the world into a "global village" have caused organized crime to acquire transnational dimensions and extend its scope into the international arena (Neumann & Elsenbroich, 2017). For a considerable period, combating transnational organized crime remained predominantly within the exclusive jurisdiction of States, subject only to limited exceptions, including obligations established under trade treaties or rules of humanitarian law. Today, however, globalization, advances in communication technologies, the expansion of commercial exchanges, and the facilitation of international transportation, particularly road transit, have fundamentally transformed this situation. These interconnected developments have substantially increased the risk that organized criminal groups will exploit transit systems. In this context, it must be acknowledged that the relevant actors are numerous and include States, the private sector, and international organizations. An act or omission by any of these actors may inflict irreparable harm on the security and economic stability of States.

The expansion of such crimes reflects gaps and inefficiencies within the international legal system in responding to a complex and transnational threat. Although no single comprehensive source exists for managing this crisis, applicable legal frameworks may be derived from the general principles governing the international responsibility of States. In this regard, the norms embodied in the Palermo Convention (2000) and the TIR Convention (1975), together with rules concerning preventive obligations and international cooperation, are of particular significance.

Within this context, the principles governing the international responsibility of States, particularly obligations of conduct and the principle of due diligence, which apply to all States within the international community, assume a central role. The customary obligation of "preventing harm to other States" has likewise evolved into a rule with extraterritorial dimensions. The key criterion for implementing this obligation is the degree of control exercised by a State over criminal activities occurring within its jurisdiction. Where States are aware of a risk, they are required to employ all reasonable and necessary measures to prevent it; such conduct itself constitutes a manifestation of "good governance."

The transit State occupies a dual and sensitive position within this legal framework. On the one hand, it is required to facilitate the passage of transit consignments pursuant to the TIR Convention; on the other hand, under the requirements of the Palermo Convention and other international instruments, it bears responsibility for preventing, detecting, and combating transnational organized crime. Simultaneously achieving these two objectives requires the establishment of an intelligent balance between trade facilitation and security. Such a balance should structure customs and border controls around risk management, information exchange, international cooperation, and modern technologies without unduly impairing free trade.

2. The Principle of State Obligations to Facilitate the Passage of Road Transit Consignments

Ensuring the safe, easy, and uninterrupted passage of road transit consignments is no longer merely an economic matter; it has become an important issue in contemporary international law. The expansion of global trade, the development of international supply chains, and the increasing economic interdependence of States have made the effective functioning of the international transit system essential to maintaining economic stability and international security. At the same time, these developments have created conditions in which transnational organized criminal groups can exploit transportation and transit routes to commit offenses such as smuggling goods, narcotic drugs, weapons, cultural property, and human beings [trafficking in human beings or persons], among others. Accordingly, disruption of the transit system is not merely a challenge to international trade; it may also threaten the national security of States and international public order.

Under such circumstances, State obligations in the field of road transit are not limited to facilitating the movement of goods. In addition to guaranteeing the principle of freedom of transit, States are required to adopt the necessary legislative, administrative, and executive measures to prevent and combat the criminal exploitation of transit routes (Van den Bossche &

Zdouc, 2022). In other words, international law establishes a complementary relationship between two fundamental objectives: "facilitating the free process of international trade" and "protecting public security and combating transnational organized crime" (Alizadeh, 2019).

The legal foundations of these obligations may first be identified in the formal sources of international law. The Customs Convention on the International Transport of Goods under Cover of TIR Carnets was adopted to facilitate the movement of goods across international borders and reduce customs formalities. The Convention on the Contract for the International Carriage of Goods by Road likewise establishes a legal framework governing responsibilities associated with international road transport (Van den Bossche & Zdouc, 2022). Alongside these instruments, Article V of the General Agreement on Tariffs and Trade recognizes freedom of transit as a fundamental principle of the international trading system and prohibits States from imposing discriminatory or unnecessary restrictions on transit (Van den Bossche & Zdouc, 2022).

Nevertheless, State obligations are not confined to treaty rules. Where international obligations are silent on a particular matter, customary international law and the general principles of international law may provide a basis for determining the scope of State responsibility (Crawford, 2019). One of the most important of these principles is the obligation of "due diligence," under which States are required to adopt all appropriate measures to prevent the use of territory or infrastructure under their jurisdiction for the commission of internationally wrongful conduct (Pisillo-Mazzeschi, 1992). In the field of combating transnational organized crime, this principle likewise requires States to prevent the criminal exploitation of transit consignments through effective border controls, information exchange, and strengthened international cooperation.

In addition to the traditional sources of international law, some legal scholars have emphasized the role of the fundamental values of the international community in the formation of legal obligations. Antonio Cassese argues that, in areas concerning the essential interests of the international community, the emergence of binding rules of international law does not depend solely on State practice; principles such as humanity, public conscience, and the need to protect the common interests of the international community also play an influential role in this process (Cassese, 2006). This approach is particularly important in combating transnational organized crime because such crimes are transboundary in nature and cannot be effectively addressed without continuous cooperation among States (Williams, 2001).

In this regard, the United Nations Convention against Transnational Organized Crime (Palermo Convention) requires States to adopt legislative, judicial, and executive measures for the prevention and suppression of organized criminal activities (Shelley, 2014). The Convention also emphasizes international cooperation, information exchange, mutual legal assistance, and the strengthening of border-control mechanisms (Williams, 2001). Accordingly, States cannot invoke the absence of explicit provisions in international transport instruments as a justification for failing to discharge their responsibilities to combat the criminal exploitation of transit networks.

On this basis, the silence of certain transport treaties regarding specific manifestations of transnational organized crime does not confer unlimited discretion upon States. States must ensure that their conduct is consistent with the principles of good faith, proportionality, non-discrimination, and the international responsibility of States (Crawford, 2013). The Draft Articles on Responsibility of States for Internationally Wrongful Acts, prepared by the International Law Commission, likewise emphasize that a breach of an international obligation may entail State responsibility (Crawford, 2013). Therefore, under particular circumstances, a State's failure to adopt the necessary measures to prevent the criminal exploitation of transit routes may provide a basis for invoking its international responsibility.

States are therefore not only obliged to guarantee easy transit and facilitate transit consignments but are also required, through appropriate legislative, executive, and supervisory measures and the development of cross-border cooperation, to prevent transit routes from becoming platforms for the activities of organized criminal groups.

3. Exceptions to the Safe Passage of Transit Consignments through the Territorial Jurisdiction of States

In external transit, consignments entering a transit country are allowed to cross that country under concluded agreements and treaties. The transit State makes its territorial jurisdiction available, in a specified and limited manner and for a defined period, to the country of origin of the transit goods so that the goods may pass through and reach the destination country.

Moreover, where the relevant countries are parties to the TIR Carnet Convention, the transit country is generally not authorized to inspect and examine the transit consignment. However, it is self-evident that where there are grounds to fear that a transit consignment may harm the security, public health, or environment of the transit country, the transit State is permitted to inspect the consignment and, if the concern is substantiated, prevent its passage.

The obligation of States to preserve public order, national security, public health, and the environment within their territorial jurisdiction against the risks posed by transnational organized crime constitutes one of the fundamental rules governing sovereign conduct in the performance of international obligations. Although the development of international transportation and the expansion of road transit consignments have played an indispensable role in facilitating global trade and strengthening economic relations among States, these same capacities have simultaneously provided favorable conditions for organized criminal groups (Shelley, 2014). By exploiting cross-border transportation structures, such groups extend their activities beyond national frontiers and organize criminal operations internationally, thereby increasingly threatening national security, regional security, public order, public health, and environmental protection. Consequently, transnational organized crime can no longer be regarded merely as a criminal-law issue within domestic legal systems; rather, it has become one of the most significant security and legal challenges in international law (Shelley, 2014).

One of the clearest manifestations of such criminality is the misuse of road transit consignments for transporting illegal goods. These goods are commonly concealed in trucks, containers, or other transit vehicles and transported through the territorial jurisdiction of multiple States. Such conduct not only jeopardizes border security and public order in transit States but also facilitates the commission of broader transnational offenses affecting public health and environmental protection. Under such circumstances, the transit State is required to employ the necessary legal and supervisory mechanisms to prevent its territory from becoming a conduit for criminal activities (Williams, 2001).

Indeed, the obligation of States to expedite and facilitate international transit should not be regarded as absolute or without exception. Although freedom of transit is a fundamental principle governing international trade and transportation law, it must not be implemented in a manner that seriously endangers the security of the transit State. For this reason, international law recognizes that, in exceptional circumstances and in response to genuine and substantiated threats, States may temporarily and proportionately restrict the implementation of certain transit obligations, provided that such measures comply with the requirements of necessity, proportionality, non-discrimination, and good faith so as to prevent arbitrary or unlawful restrictions on free trade (Alizadeh, 2019).

Accordingly, achieving a balance between the principle of freedom of transit and the need to protect public health, the environment, security, and public order must be regarded as one of the principal challenges facing the legal regime governing international transportation. Achieving this balance requires States, while complying with their international obligations, to use instruments such as risk management, information exchange, security and judicial cooperation, modern inspection technologies, and strengthened international cooperation. Such an approach, while safeguarding free trade, also enables the effective identification and interception of illegal consignments. A threat to the security of the transit State may therefore constitute one of the most important legal grounds for temporarily and proportionately restricting transit obligations. The purpose of such restrictions is not to constrain international trade, but rather to establish a balance between the smooth passage of transit consignments and the protection of national, regional, and international security, public health, and the environment against threats arising from transnational organized crime.

4. State Obligations and State Practice in Preventing, Seizing, and Detaining Transit Consignments Associated with Transnational Organized Crime

The principle of "due diligence," as one of the fundamental rules governing State conduct in the performance of international obligations, has acquired particular prominence in responding to transnational threats, including organized crime. The substance of this principle, as a standard of conduct designed to protect the rights of "others"—including States, human communities, and individuals—is not a new concept; however, the specific characteristics of transnational organized crime and the context of international transit require particular attention to the manner in which it is implemented.

The obligation of prevention is articulated through the principle of "due diligence": when a State is aware, or ought to be aware, of the existence of a risk, it is required to employ all reasonable means proportionate to its capacities in order to prevent

the occurrence or expansion of that risk. This principle has been described as a prerequisite of "good governance" (Larraín, 2001). The obligation of States to exercise due diligence does not impose an absolute obligation to prevent organized crime in every instance. Rather, a State must adopt those reasonable, proportionate, and foreseeable measures expected of a responsible and effective government for the purposes of prevention, detection, suppression, and international cooperation in combating such crimes. Nevertheless, the due-diligence standard places State obligations within the category of "obligations of conduct" rather than "obligations of result." More precisely, the obligation does not require the complete eradication of organized crime; rather, it imposes legal requirements to undertake precautionary and preventive measures, including risk assessment, effective control, timely information exchange with other States, and the adoption of intelligent and targeted measures.

The "no-harm principle," which has evolved in international law particularly in the fields of environmental protection and international responsibility, constitutes one of the most important consequences of the due-diligence principle and provides a key framework for regulating the conduct of transit States in relation to transnational organized crime. States are required to prevent, halt, or, where necessary, remedy transboundary risks originating from territory or facilities under their jurisdiction. In this context, careful attention to international rules governing the fight against organized crime, particularly the 2000 United Nations Convention against Transnational Organized Crime (Palermo Convention) and its supplementary protocols, is essential.

In practice, States perform these obligations through the exercise of due diligence. These duties primarily encompass the no-harm principle, according to which no State may permit its territory or border crossings under its jurisdiction to become an instrument for causing harm to other States or their citizens. The obligation to exercise due diligence does not, of course, require States to undertake measures that are impossible to implement. States nevertheless enjoy a significant margin of appreciation in their actions and may select appropriate solutions in light of specific circumstances. In making such assessments, other interests—including the facilitation of free trade, economic stability, social welfare, and the fundamental rights of individuals—must also be taken into account. Accordingly, consideration must be given to the effects of control measures on the ordinary flow of transit and on the economy. In this regard, due diligence, as one of the fundamental principles of public international law governing the implementation of State obligations, may serve as a guide for regulating the conduct of transit States. Owing to its flexible and adaptable structure, the principle enables States, on the one hand, to select the best available option consistent with their resources for fulfilling their international obligations and, on the other hand, to safeguard the rights of individuals and human communities. International law recognizes the priority of preventive approaches over reactive measures, and States, relying on this principle, should cooperate to the greatest extent possible in confronting threats such as transnational organized crime.

From a general perspective, States face three principal obligations under the due-diligence principle in relation to transnational organized crime: "prevention," "appropriate response," and "cooperation." At each stage, these three obligations must be pursued in light of the no-harm principle, the rules of international law governing ordinary relations among States, and specialized instruments such as the Palermo Convention. Their implementation depends less on logistical capacity than on the "firm commitment" of contemporary States, and the absence of such commitment should be considered a criterion for determining a State's failure to comply with its obligations in this field.

The term "due diligence" is a well-established concept in many legal systems. In legal doctrine, it generally refers to the degree of "care and attention reasonably required" of a person in discharging an obligation. The concept is closely connected with what the international community may reasonably expect from a State under particular circumstances. It also has a long history in international law and has been considered in international jurisprudence, including the Alabama Claims arbitration (Crawford, 2013) and the Trail Smelter Arbitration ("United Nations Reports of International Arbitral Awards," 1941), as well as in the International Law Commission's draft texts concerning the prevention of transboundary harm.

More specifically, the principle of due diligence is flexible, and the scope of its implementation varies according to the financial, human, and technical capacities of different States. The greater the risk and the potential harm, the greater the effort States are expected to undertake. Nevertheless, lack of resources cannot be regarded as an absolute excuse, because States are fundamentally required to deploy at least their minimum supervisory and governmental infrastructure to prevent the expansion of a risk that threatens other States and their citizens.

Within the framework of due diligence, transit States are required to adopt preventive measures, including risk assessment, the establishment of intelligent supervisory mechanisms, the collection and exchange of information, the criminalization of relevant conduct under domestic law, the protection of victims—particularly victims of human trafficking—and the strengthening of judicial and intelligence cooperation. Such measures should prevent transit routes from becoming major corridors for organized crime while preserving the principle of facilitating free transit. This approach not only strengthens national and international security but also contributes substantially to preserving human dignity, fundamental rights, and the collective welfare of societies.

State obligations in the field of transit are therefore not confined to guaranteeing freedom of movement of goods but also include the duty to prevent and combat transnational organized crime. Compliance with the due-diligence principle in this context creates a responsible and human-centered balance between facilitating global trade and protecting security, human rights, and the environment, and can be achieved only through collective commitment and sustained cooperation among States.

5. International Human Rights Obligations of Transit States Concerning Transit Consignments

The international legal regime governing transit consignments imposes international obligations upon transit States. By eliminating unnecessary formalities and customs barriers within their domestic territory and aligning domestic legislation with the proper implementation of relevant conventions—subject to environmental, security, religious, prohibited-goods, and hazardous-goods considerations—States can remove obstacles to the expedited and facilitated movement of transit goods. In practice, transit States play a fundamental role in developing strategies for transit consignments through the application of standardized criteria and compliance with the principles of trade liberalization, pacta sunt servanda, and the no-harm principle. In some Persian-language legal texts, this principle has been referred to as the principle of *la zarar*; however, the established concept of *la zarar* in Islamic jurisprudence and private law differs to some extent in its practical and operational dimensions from the no-harm principle in international law.

Under concluded agreements and treaties, a transit country makes its territorial jurisdiction available in a specific and limited manner, for a defined period, to the country of origin of transit goods so that the goods may pass through and reach the destination State. Ordinarily, the transit State is not authorized to inspect the transit consignment; however, where there is a reasonable concern that the consignment may threaten the security, public health, or environment of the transit State, the State may inspect the transit consignment and, if the concern is substantiated, prevent its passage. This matter is expressly addressed in the TIR Carnet Convention.

The expansion of global trade, the development of international road-transport corridors, and the substantial increase in the movement of transit consignments, while producing undeniable positive economic effects, have simultaneously created favorable conditions for the infiltration and activities of transnational criminal groups. Road transit routes have, in many instances, become concealed corridors for human trafficking, the exploitation of women and children, trafficking in human organs, cultural property, narcotic drugs, weapons, and other forms of organized crime. Under such circumstances, States are not merely responsible for guaranteeing freedom of transit and facilitating the movement of transit consignments; they are also required, through legislative, executive, and judicial measures and transnational cooperation, to prevent criminal groups from exploiting international transportation infrastructure and to establish a reasonable and proportionate balance among security requirements, the principle of free transit, and the protection of fundamental human rights. The international community and the United Nations have responded through numerous international instruments, including resolutions and conventions, by encouraging and requiring States to legislate, criminalize relevant conduct, prevent such criminality, and participate in the global fight against organized criminal groups (Shelley, 2014).

Indeed, where reasonable evidence or indications demonstrate a threat to national security, public health, the environment, or the likelihood of criminal exploitation of consignments, States are not merely permitted but are required, within the limits of necessity and in accordance with the principle of proportionality, to inspect, control, or temporarily suspend high-risk consignments. Accordingly, freedom of transit under international law is not an unconditional principle and must always be interpreted and applied in light of State obligations to protect public security and human rights.

Within the concept of minimum State obligations, foreign transit consignments must be permitted to pass harmlessly within the prescribed period. Accordingly, minimum core obligations for the proper and full implementation of the TIR Carnet

Convention include facilitating transit formalities for transit consignments, complying with internationally recognized norms contained in relevant international instruments, adopting supplementary legislative and proportionate executive measures, formulating comprehensive programs to facilitate the smooth passage of road transit consignments, and refraining from obstacles, discrimination, or negligence in facilitating transportation. Maximum State obligations, by contrast, refer to achieving the highest possible level of performance commensurate with the maximum resources available to the State and making the fullest possible use of existing capacities in relation to foreign transit consignments. State obligations concerning the realization of smooth passage and the facilitation and streamlining of formalities for foreign transit consignments must advance the standards and objectives envisaged by the TIR Carnet Convention. States are the primary duty bearers within the international human rights system. In this context, three categories of obligations may be identified with respect to the transportation of transit consignments and the facilitation of international trade: the obligation to respect, the obligation to protect, and the obligation to fulfill. The obligation to respect requires States to refrain from interventionist conduct and discriminatory practices and entails ensuring equal and non-discriminatory access to transit arrangements. Any prolonged interruption of transit consignments at national borders may economically impede access to efficient transit. The obligation to protect, in turn, requires the adoption of necessary legislative measures to establish and regulate protective frameworks and obliges States to prevent interference by other States parties to the relevant convention with the enjoyment of this right. The obligation to fulfill generally requires the adoption of proportionate legislative, executive, and judicial measures. In practice, the obligation to fulfill constitutes the complementary dimension of the obligation to protect.

The principal issue arises where States, by failing to comply with their obligations under specialized international regimes such as international transportation conventions, disregard the requirements associated with the rapid movement of road transit consignments and adopt measures inconsistent with those requirements. Pursuant to Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, each State Party undertakes to take steps, individually and through international assistance and cooperation, particularly economic and technical assistance, to the maximum of its available resources, with a view to progressively achieving the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures. This provision may be regarded as a central pillar of the Covenant on Economic, Social and Cultural Rights because it defines the nature of State obligations concerning the realization of the rights recognized therein (Tobin, 2012). Taking into account that the Committee has divided the obligation to fulfill into three subsidiary duties—facilitation, promotion, and provision—the extraterritorial dimension of the obligation to fulfill is frequently framed as an obligation of wealthier States to provide assistance to poorer countries. More specifically, with respect to the obligation to fulfill, it may be stated that the State is required to implement this right through judicial and legislative measures (facilitation). The State must also adopt enforceable measures to ensure appropriate education and methods aimed at minimizing transnational organized crime conducted through road transit consignments (promotion).

Effective implementation of these obligations is impossible without systematic international cooperation. The Palermo Protocol and other relevant instruments require States to exchange information, engage in customs, law-enforcement, and judicial cooperation, extradite offenders, provide mutual legal assistance, conduct joint investigations, and adopt coordinated policies. Such cooperation is not merely security-oriented; because of its direct role in protecting human dignity and preventing exploitation, it also possesses a human-rights dimension.

6. Conclusion

The international obligations of States in combating transnational organized crime in the field of road transit consignments have become one of the principal foundations of good governance in international transport security, the facilitation of international trade, and the preservation of global public order.

As transnational threats become increasingly complex and organized criminal groups expand their activities, States can no longer rely exclusively on territorial control; rather, they must move toward intelligent risk management, transnational cooperation, and due diligence. Put more simply, States must not only comply with their treaty obligations but must also undertake effective, continuous, and intelligent measures to prevent, identify, combat, and eradicate such crimes. A comparative examination of international instruments, particularly the Palermo Convention and the TIR Convention, demonstrates that two fundamental obligations—"timely and transparent exchange of information" and "effective preventive

and reactive measures"—constitute the principal pillars of this legal framework. These obligations are result-oriented. The more effectively States comply with them in practice, the safer transit corridors become, the more reliable supply chains are, the more transparent customs procedures become, and the fewer opportunities remain for exploitation by organized criminal groups. Developed countries have achieved better results through the use of intelligent technologies, big-data analysis, risk management, and close cooperation between police and customs authorities. Many developing countries, however, continue to face difficulties in fully implementing these obligations because of infrastructural, legal, and financial limitations and shortages of specialized personnel. Traditional supervisory methods are no longer sufficient to address contemporary threats. Accordingly, the establishment of effective risk-management systems, strengthening of cross-border cooperation, rapid information exchange, coordination among law-enforcement, customs, and judicial authorities, use of advanced technologies, continuous compliance with international obligations, transfer of knowledge and technology, and educational support for such countries should be regarded as a shared global responsibility. The principal objectives of the Palermo Convention and the TIR Convention—namely, establishing an intelligent balance between facilitating international trade and securing the transport supply chain—can be achieved simultaneously only where States act in good faith, harmonize their domestic laws with international standards, eliminate unnecessary formalities, enhance transparency, and seriously pursue intelligence and judicial cooperation. From the perspective of their legal foundations, the obligations of transit States are not confined to treaty rules. Where transport instruments are silent regarding emerging forms of organized crime, the due-diligence principle and the customary no-harm rule fill this gap and provide a legal basis for requiring States to exercise effective control over territory and infrastructure under their jurisdiction. Differences and challenges among legal systems, weak institutional coordination, resource limitations, political considerations, lack of transparency, and continued reliance on outdated practices have not only increased the costs of trade processes but have also endangered trust among States and the stability of the global trading system.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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