

ASCOMARE STATEMENT ON THE HAGUE GROUP EMERGENCY MEETING OF 4 MARCH 2026

The Associazione di Consulenza in Diritto del Mare (ASCOMARE) welcomes the decision of the Hague Group to convene an emergency meeting on 4 March 2026 concerning accountability and the enforcement of international law, and strongly supports the attention devoted to the maritime dimension and legal implications of the ongoing occupation of the Palestinian territories by Israel, as reflected in the commitments set out in the Inaugural Statement (31 January 2025) and in the Bogotá Joint Statement (16 July 2025).

ASCOMARE further takes note of the need to “prevent the transfer, transit, or carriage of arms, munitions, military fuel, and dual-use items to Israel – including through export restrictions, port controls, and flag-state responsibilities – in full compliance with international law”,¹ as highlighted by H.E. Alvin Botes, Deputy Minister of International Relations and Cooperation of the Republic of South Africa, and H.E. Mauricio Jaramillo, Vice Minister of Multilateral Affairs of the Republic of Colombia, in their Co-Chairs’ Statement issued on the margins of the 4 March 2026 meeting.

In that respect, ASCOMARE recalls that on 11 March 2025 the BDS National Committee published a legal opinion, coordinated by ASCOMARE and prepared by eight experts in the law of the sea.²

The opinion focused on two core legal issues of immediate relevance to States:

- ❖ The applicable legal regime governing passage through the territorial sea of vessels transporting arms and dual-use materials where such transfers are inconsistent with the 2014 UN Arms Trade Treaty, the 1948 Genocide Convention, the 1973 Apartheid Convention, and peremptory norms (jus cogens) of international law binding upon their flag States.
- ❖ The international responsibility of flag States for failure to exercise effective jurisdiction and control over such vessels, in violation of the 1982 UN Convention on the Law of the Sea (UNCLOS) and customary international law.

In a detailed 49-page opinion letter, the expert group concluded that:

¹ Available at <https://dirco.gov.za/co-chairs-statement-the-hague-group-meeting-on-accountability-and-the-enforcement-of-international-law-in-palestine-the-hague-4-march-2026/>.

² Available at <https://ascomare.com/wp-content/uploads/2025/03/ascomare-legal-opinion--innocent-passage-and-due-diligence.pdf>.

- ❖ The transport of arms and dual-use materials used for the commission of serious international law violations directly affects the “innocent” character of passage through the territorial sea. Under Article 19 of UNCLOS and customary international law, coastal States not only possess the right, but also the duty, to prevent non-innocent passage in their territorial sea. This duty is reinforced where the underlying conduct contributes to violations of peremptory norms (jus cogens), including genocide, apartheid, and the acquisition of territory by force.³
- ❖ Flag States are required, under Article 94 of UNCLOS and customary international law, to “effectively exercise” jurisdiction and control over vessels flying their flag, including when operating in the waters of another State. This duty entails a due diligence obligation grounded in the “genuine link” between a flag State and its vessels, requiring the former to deploy adequate means, exercise its best efforts, and take all necessary measures to ensure that vessels under its registry do not contribute to genocide, apartheid, or other serious breaches of peremptory norms (jus cogens) of international law.⁴ As clarified by the International Tribunal for the Law of the Sea, this requires establishing and enforcing a national system, comprising legislation, administrative procedures, and enforcement mechanisms, and exercising adequate vigilance to ensure its effective operation.⁵

Building on these findings and upon request from the BDS National Committee, in November 2025 ASCOMARE and Law for Palestine developed a set of *Guidelines* and accompanying *Templates*,⁶ translating the opinion’s conclusions into operational checklists designed to assist States (whether acting as port, coastal, or flag States) in effectively fulfilling their obligations under international law.

These obligations give effect to the requirement that States exercise due diligence under international law, including by:

- ❖ Assessing the risk of non-compliance by vessels flying their flag, operating in their waters, or docking in their ports with international law binding upon them;
- ❖ Establishing, implementing, and enforcing an adequate legal and administrative framework to monitor and ensure compliance;
- ❖ Taking appropriate action where there are reasonable grounds to believe that a risk of non-compliance exists; and
- ❖ Adopting a precautionary approach where the potential consequences of non-compliance could result in irreparable harm or disproportionate damage to the protected legal interest.

Where a State is, or should be, aware that maritime activities under its jurisdiction or control present a clear or high risk of contributing to violations of international law, that State is under an obligation to take all measures reasonably available to it to prevent such contribution. In circumstances where a high risk of contribution to serious breaches of international law is

³ Ibid., paras 84-89.

⁴ Ibid., paras 110-115 and 149-151.

⁵ *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, ITLOS report 2024, para 235.

⁶ Available at <https://ascomare.com/legal-opinions/>.

identified, the obligations of prevention and precaution entail, as appropriate, the denial of port entry and access to port services to the vessels concerned, as well as the adoption of other measures necessary to ensure that such activities do not facilitate the commission or continuation of those breaches.⁷

In that respect, a central component of the supporting documents developed by ASCOMARE and Law for Palestine is the establishment of a structured due diligence framework for port State control. Such a framework enables authorities to pre-identify vessels according to risk categories (low, standard, high) prior to port entry and to adopt appropriate measures to ensure compliance with international law, including denial of entry, inspection, or seizure of cargo where warranted. Comparable risk-based systems are already widely and effectively used by States in other domains, including fisheries control, environmental protection, and maritime safety, in a manner consistent with international trade law and with the full territorial sovereignty of States within their ports.

In light of the foregoing, ASCOMARE submits the following recommendations for consideration by the Group and other States:

Recommendation 1

Institutionalise mandatory risk-based due diligence

It is recommended to endorse, establish and operationalise structured, mandatory risk-assessment procedures within national legal and administrative systems to ensure the timely identification, prevention, and mitigation of risks of non-compliance with international law.

Such procedures should, at a minimum:

- ❖ Require prior notification of relevant information from vessels seeking port entry;
- ❖ Enable competent authorities to classify vessels according to risk levels (low, standard, high) prior to arrival;
- ❖ Provide for predefined enforcement responses corresponding to each risk category.

In designing and implementing these systems, States are encouraged to draw upon the operational indicators and risk-assessment methodologies set out in the supporting documents, particularly the *Templates*, developed by ASCOMARE and Law for Palestine.

⁷ In a *Statement* issued on 22 December 2025, ASCOMARE further recalled that activities such as bunkering, transshipment, and other forms of logistical support carried out in anchorage areas may constitute a form of material assistance. Where such activities are undertaken to support vessels involved in the facilitation of genocide, apartheid, or other serious breaches of peremptory norms of jus cogens, both the vessels providing such support and the vessels benefiting therefrom must be regarded as presenting a clear risk of contributing to internationally wrongful acts. The Statement is available at the following link: https://ascomare.com/wp-content/uploads/2025/12/22122025_ascomare-statement-on-anchorage-areas.pdf.

Embedding these mechanisms within the domestic framework, such as marine notices, port regulations, administrative measures, or legislative acts, is essential to ensure predictability, effectiveness, and transparency.

Recommendation 2

Ensure immediate notification, precaution, and enforcement action

Where a risk of non-compliance with international law is identified, it is recommended to:

- ❖ Inform the relevant flag State without delay;
- ❖ Formally request prompt and effective corrective action, consistent with Article 94 of UNCLOS and customary international law concerning the duty to effectively exercise jurisdiction and control over vessels flying its flag.

Where reasonable grounds exist to suspect non-compliance, it is recommended to take appropriate, proportionate, and lawful measures, including:

- ❖ Inspection of vessels and cargo;
- ❖ Denial of port entry;
- ❖ Seizure or restriction of cargo, where legally justified;
- ❖ Other enforcement measures consistent with international law.

A precautionary approach should guide decision-making where credible risks exist that vessel activities may contribute to genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, attacks against civilians or civilian objects, or other serious violations of international law, particularly where irreparable harm or disproportionate damage to protected legal interests may result.

Recommendation 3

Establish coordinated regional or international frameworks

It is recommended that concrete steps be taken toward establishing a regional or international framework to enhance port State control and structured information-sharing.

Such a framework should aim to:

- ❖ Harmonise inspection and risk-assessment procedures;
- ❖ Facilitate real-time exchange of information;
- ❖ Coordinate enforcement responses;
- ❖ Prevent forum-shopping (port State of convenience) by high-risk vessels.

This framework may build upon existing models developed under the auspices of the International Maritime Organization, including the mechanisms established through the Paris, Viña del Mar, Riyadh, and Tokyo Memoranda of Understanding on Port State Control.

ASCOMARE and its partner institutions stand ready to provide technical support in this regard.

Recommendation 4

Develop a shared vessel monitoring mechanism

It is recommended to cooperate in establishing a shared vessel monitoring list, categorising:

- ❖ Confirmed high-risk vessels;
- ❖ Suspected standard-risk vessels.

The list should include vessels reasonably believed, on the basis of sufficient and credible evidence, to be transporting arms or dual-use items destined to facilitate genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, attacks against civilians or civilian objects, or other war crimes.

This mechanism may draw upon reliable sources, including documentation produced by UN bodies and civil society institutions, subject to clear evidentiary standards and procedural safeguards.

Comparable listing systems already operate effectively in other domains, including the fight against illegal, unreported and unregulated (IUU) fishing.

ASCOMARE and its partner institutions stand ready to provide technical support in this regard.

Recommendation 5

Develop a coordinated dual-use control framework

It is recommended to cooperate in the development of a comprehensive and dynamic list of dual-use items relevant to the maritime transport context.

Such a list may draw inspiration from existing regulatory frameworks, including Annex I of Regulation (EU) 2021/821, but should not be limited to them. It should reflect emerging technologies, evolving conflict dynamics, and the need to prevent indirect facilitation of serious violations of international law.

ASCOMARE and its partner institutions stand ready to provide technical support in this regard.

Recommendation 6

Diplomatic communication clarifying legal duties and consequences

It is recommended that a (joint) Note Verbale be transmitted to the UN Secretary-General, requesting its publication in the *Law of the Sea Bulletin* and its circulation to all UN Member States at the next session of the UN General Assembly, in accordance with established practice.

The Note Verbale should recall and reaffirm the obligation of flag States to effectively exercise jurisdiction and control over vessels flying their flag, particularly where such vessels transport arms or dual-use items that may contribute to serious breaches of peremptory norms of international law.

It should further clarify that persistent State inaction in the face of clear and serious risks may engage international responsibility and expose the State concerned to proceedings before competent international courts and tribunals, including the International Tribunal for the Law of the Sea.

Proactive diplomatic engagement and structured exchanges with States that permit, or do not take adequate measures to prevent, vessels flying their flag from transporting such arms and dual-use items are also recommended.

Lecce, 5 March 2026



ASCOMARE