

Subject: Request to remove the Portuguese flag from the vessel Kathrin IMO 9570620, which is carrying explosives destined to Israel, in compliance with the erga omnes obligations to prevent the crime of Genocide

For the attention of:

The Ministry of Justice of the Portuguese Republic

The Ministry of Foreign Affairs of the Portuguese Republic

The DGRM - Directorate-General for Natural Resources, Safety and Maritime Services

The International Shipping Register of Madeira - MAR

The European Legal Support Center ([ELSC](http://www.elsc.support)) is an NGO of European lawyers mandated to provide legal support to the Palestine solidarity movement. I write regarding the vessel Kathrin IMO 9570620, which is carrying **one consignment of Hexogen/RDX explosives** to be unloaded in Koper, Slovenia, for further transportation to Israel.

On the 24 August 2024, the [Ministry of Interior of the Republic of Namibia refused to grant the MV Kathrin a dock](#), acting in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the interim order issued by the International Court of Justice (ICJ) on the 24th of January 2024 in the case between South Africa and Israel.

We understand that the MV Kathrin is currently flying a Portuguese flag issued by Madeira International Shipping Register ('MAR'). There is a **clear risk that the explosives will be used in the commission of war crimes and crimes against humanity**. Omitting to act against this transfer is a blatant breach of the *erga omnes* obligations to prevent the crime of genocide stemming from the Genocide convention. We request that MAR and the competent Portuguese authorities immediately **remove the Portuguese flag from the MV Kathrin** in compliance with its *erga omnes* obligations and in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).

1. **Jus cogens** norms, also known as **peremptory norms** of public international law, are fundamental principles that are universally recognized as overriding and binding on all states, regardless of consent. These norms are considered [hierarchically superior](#) to other rules of international law and cannot be violated or overridden by any state or treaty. The concept of jus cogens is grounded in the idea that certain values are so essential to the international community that they must be upheld under all circumstances. Obligations arising from jus cogens norms are owed to the international community as a whole. All states

have an interest in ensuring these norms are upheld and may take collective or individual action against violations.

2. **The International Court of Justice (ICJ) has long recognised that norms such as the prohibition of genocide have *jus cogens* nature** (see *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 2006*, p. 32, para. 64 and p. 52, para. 125; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Judgment*, *I.C.J. Reports 2007 (I)*, p. 111, para. 161; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Judgment*, *I.C.J. Reports 2015 (I)*, p. 47, para. 87).
3. On 26 January 2024, the ICJ issued an [interim order](#) in response to South Africa's application instituting proceedings against Israel alleging violations of the Genocide Convention for its actions in the Gaza Strip since 7 October 2023. The ICJ found that, in light of the evidence presented by South Africa, and citing numerous Special Rapporteur reports and statements by various UN officials and agencies, **it was plausible that Israel was committing acts that constitute genocide** and other prohibited acts under the Convention (para. 54), and that there existed a real and imminent risk of irreparable harm to the rights protected under the Convention (para. 74). The Court ordered six provisional measures as a result.
4. The Genocide Convention, independent of the interim order, creates obligations upon the state parties. As the ICJ clarified in its interim order: “ ... **all the States parties to the Convention have a common interest to ensure the prevention, suppression and punishment of genocide**, by committing themselves to fulfilling the obligations contained in the Convention. Such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; **they are obligations erga omnes partes**, in the sense that each State party has an interest in compliance with them in any given case “ (para. 33).
5. In this regard, the 2007 ICJ Judgement between [Bosnia and Herzegovina v. Serbia and Montenegro](#) is illuminating in terms of its explication of state responsibility regarding the prevention of and complicity in the commission of genocide. First, the ICJ specified that states have the responsibility “**to employ all means reasonably available to them**, so as to prevent genocide so far as possible,” (Bosnia v Serbia, para. 430), particularly those states with “the capacity to influence effectively the action of persons likely to commit, or already committing, genocide,” (para. 431). Responsibility is incurred “if the State **manifestly failed to take all measures to prevent genocide** which were within its power, and which might have contributed to preventing the genocide,” (para. 430). Second, in

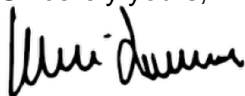
addition to employing all means available to prevent the genocide, states must not be complicit in the commission of the genocide itself. Complicity as defined by the ICJ “*includes the provision of means to enable or facilitate the commission of the crime,*” (para. 419). [It must include a positive action.](#)

6. In [Nicaragua v. Germany](#) (2024), the ICJ affirmed that the Genocide Convention “**requires** State parties that are aware, or that should normally have been aware, of the serious risk that acts of genocide would have been committed, **to employ all means reasonably available** to them to prevent genocide so far as possible,” (para. 23). It also considered “it particularly important to remind all States of their **international obligations relating to the transfer of arms to parties to an armed conflict**, in order to **avoid the risk** that such arms might be used to violate the above-mentioned Conventions.” (para. 24)
7. On 24 August 2024, the Namibian Ministry of Home Affairs, Immigration, and Safety Security, following an official request from the Namibian Ministry of Justice, revoked the permission previously granted for the vessel MV Kathrin to enter and dock at Namibia’s harbour of Walvis Bay. Namibian authorities withdrew the permit **after reviewing the import license issued by the Israel Ministry of Economy to the MV Kathrin**, which proves that the vessel is carrying **one consignment of Hexogen/RDX explosives, imported by IMI Systems** (See Annex I).
8. In this regard, It is important to stress that: **a)** RDX is a key component in Israel’s aircraft bombs and missiles that have massacred at least 40.000 in Gaza according to the Gaza Health Ministry; **b)** Israel’s leading military company, Elbit Systems, is an important consumer of [RDX](#) and that industry insiders [warned](#) that the scarcity of the necessary RDX ingredient on the global market would limit Israel’s mass production of military ammunition.
9. In light of the obligations stemming from the ICJ interim ruling and the Genocide convention that the [Namibian Ministry of Justice stated that](#): “*. Namibia must ensure that it does not, under any circumstances, become complicit in the perpetuation of genocide... **Allowing the MV Kathin, which may be carrying military cargo intended for use in acts of genocide, to dock at any Namibian harbour could render...Namibia, complicit in these atrocities.***”
10. Portugal, as a flag state, is entrusted with the responsibility to exercise effective jurisdiction and control over vessels flying its flag. This relationship is governed by international law, primarily by Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS), which triggers a clear set of rights and duties for the flag state, namely: **Regulatory Control**: The flag state has the right to inspect, detain, and regulate ships flying its flag to ensure compliance with national and international regulations. **Ensure Compliance with International Laws**: The flag state is responsible for ensuring that its ships comply with

international conventions. **Exercise Effective Control:** The flag state has a duty to exercise effective control over its ships to prevent ships from engaging in unlawful acts.

11. Article 8 para. 1 of the Portuguese Constitution reads that: “*The norms and principles of public international law form an integral part of Portuguese law*”. Given that Portugal is also a signatory state of the Genocide Convention, as well as the 1949 Geneva Conventions, the 2013 Arms Trade Treaty, and is further bound by the European Council Common Position 2008/944/CFSP, its obligations extend beyond mere compliance with UNCLOS.
12. Accordingly, MAR must critically assess its role in granting flag registries to vessels involved in the transport of weapons that will be used in the genocide in Gaza. There is a clear risk that such weapons will be used in the commission of war crimes and crimes against humanity. Omitting to act against this transfer is a blatant breach of the *erga omnes* obligations stemming from the Genocide convention.
13. In line with its obligations under the Genocide Convention, the Portuguese Government must ensure that its registry does not facilitate, whether intentionally or inadvertently, actions that contribute to the perpetration of war crimes and crimes against humanity. Doing so would constitute a grave violation of *jus cogens norms*, binding on all states without exception. In the case at hand, the Republic of Namibia has already proven that the MV Kathrin is transporting a cargo of military supplies to Israel. Therefore, Portugal is not only authorised but is duty-bound to revoke the ship’s flag to prevent its complicity in the commission of war crimes.

Sincerely yours,



Giovanni Fassina, ELSC Executive Director

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