

Amnesty International Submission to the Office of the United Nations High Commissioner for Human Rights on the Impact of Arms Transfers on Human Rights

Amnesty International (AI) welcomes the important initiative taken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the impact of arms transfers on the enjoyment of human rights, in accordance with Human Rights Council resolution 32/12.¹

Following the circulation by OHCHR of questions to aid the preparation of the report, AI is pleased to submit feedback and recommendations for the consideration of OHCHR, with a focus on questions 1 and 3. The organization welcomes and appreciates the opportunity presented to it to provide this submission.

1. Please identify the ways that arms transfers impact on the enjoyment of human rights. Are there any rights particularly affected? Are there groups of rights-holders which are particularly affected?

The transfer of conventional arms, including less lethal weapons and other law enforcement equipment, can have a serious impact on the enjoyment of the full spectrum of human rights. These include in particular the right to life,² the right to liberty and security of the person,³ the right to freedom of expression, association and peaceful assembly⁴, protection against enforced disappearance,⁵ freedom from torture or cruel, inhuman or degrading treatment or punishment,⁶ and excessive or unnecessary use of force⁷ in violation of human rights.

Economic, Social and Cultural rights can also be profoundly impacted by the transfer of conventional weapons. Arms transfers to conflict zones can lead to the destruction of civilian infrastructure and the breakdown of basic services, including health and education. Millions of IDPs and refugees fleeing conflict currently live without adequate access to health, education, medical facilities and sanitation. Conventional weapons have also been used to directly target civilian infrastructure, such as hospitals and schools. Heavy handed police and military operations in residential areas can also lead to the prolonged closure of essential services.

AI has documented an extensive body of cases in which serious human rights violations have been committed and/or facilitated using conventional weapons transferred by exporting states. What follows is a small sample of AI's work in this area.

Egypt

In recent years, the Egyptian authorities have presided over a crackdown under the guise of restoring stability in the country after the armed forces ousted President Mohammed Morsi in July 2013.⁸

¹ Resolution A/HRC/32/L.14, Impact of arms transfers on human rights: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/133/12/PDF/G1613312.pdf?OpenElement>

² Universal Declaration on Human Rights (UDHR), Article 3; International Covenant on Civil and Political Rights (ICCPR), Article 6(1).

³ ICCPR, Article 9. As regards the right to security of person, the Human Rights Committee recently explained, it “protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury.”

⁴ UDHR, Article 20(1); ICCPR, Articles 21 and 22.

⁵ International Convention for the Protection of All Persons from Enforced Disappearance (2006).

⁶ ICCPR Article 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

⁷ UN Basic Principles on the Use of Force and Firearms (1990). The Human Rights Committee General Comment no 35 on liberty and security of person noted that states “should [also] prevent and redress unjustifiable use of force in law enforcement, and protect their populations against abuses by private security forces, and against the risks posed by excessive availability of firearms.” UN Doc CCPR/C/GC/35 (2014), paragraph 9.

⁸ For more information see Amnesty International, ‘EU: Halt arms transfers to Egypt to stop fuelling killings and torture’,

Heavy-handed measures including the use of arbitrary and excessive force with firearms, armoured vehicles and other equipment have resulted in the unlawful killing of hundreds of protesters. Thousands more people have been arrested and faced mass trials which are grossly unfair. Detainees have routinely reported torture and other ill-treatment.

Egyptian security forces are routinely armed with pistols and rifles. It is usually the Central Security Forces, the riot police operating under the Ministry Interior, that often use batons, shotguns, baton rounds, water cannon and tear gas, supported by various types of armoured vehicles, to disperse protests and other politically charged public gatherings. On 14 August 2013, the security forces used excessive force, including lethal fire, to clear the sit-ins that members of the Muslim Brotherhood and other supporters of Mohamed Morsi had established in the Rabaa al-Adawiya and al-Nahda squares in Cairo; the security forces killed more than 900 protesters and wounded thousands more.

The 2013 Protest Law allows security forces to respond “proportionately” to the use of firearms by protesters in order to protect lives, money and property. The law incorporates the police law provisions which allow security forces to use shotguns to disperse peaceful protesters, in flagrant violation of international standards which only permit security forces to use lethal force in response to an imminent threat to life or serious injury.

Since the law came into force, security forces have frequently used excessive force to ruthlessly dismantle protests, often with lethal results. In January 2015 at least 27 people died in protest-related violence, many at the hands of armed security forces.

Armed security forces have also conducted mass arrests of the government’s critics and political opponents. Almost 12,000 people were arrested on suspicion of “terrorism” in the first 10 months of 2015 alone, according to an Interior Ministry official quoted in the Egyptian press. In January 2016 more than 5,000 residences in central Cairo were raided by armed security forces in a security sweep ahead of the fifth anniversary of the 2011 uprising, with a number of activists detained.

A wave of enforced disappearances has seen hundreds of people abducted by armed security forces over the past two years. They are held incommunicado for extended periods without access to their families or lawyers, and many are tortured by state security forces into “confessing” to terrorism-related offences.

There has been almost no accountability for serious human rights violations committed during and since the 2011 uprising. So far, the Egyptian authorities have failed to conduct effective, independent and impartial investigations into the hundreds of cases of enforced disappearances, torture and unlawful killings documented by human rights groups.

The US has long been Egypt’s main supplier of military equipment, dispersing \$1.3 billion in military funds annually; the US government has supplied small arms, ammunition, military helicopters, armoured vehicles and a wide array of heavier conventional arms; US commercial companies have also shipped large quantities of tear gas to Egypt. Despite the EU foreign ministers’ decision in August 2013 to suspend export licenses to Egypt of any equipment which might be used for internal repression, 12 out of 28 EU member states have recently supplied Egypt with small arms and policing equipment. These countries are: Bulgaria, Cyprus, Czech Republic, France, Germany, Hungary, Italy, Poland, Romania, Slovakia, Spain and the UK.

Bahrain

In Bahrain the authorities continue to maintain restrictions on the right to peaceful assembly, including by maintaining an unlawful ban on all public demonstrations in the capital Manama, in force since August 2013. Protests continue to take place outside of Manama and are often met by excessive use of force by the police.⁹ Equipment used for internal repression, including tear gas,

25 May 2016: <https://www.amnesty.org/en/latest/news/2016/05/eu-halt-arms-transfers-to-egypt-to-stop-fuelling-killings-and-torture/>

⁹ See Amnesty International’s written statement to the 33rd session of the UN Human Rights Council (13 – 30

shotguns and armoured vehicles transferred to Bahrain have been used extensively against protesters in acts of excessive and arbitrary force, leading to unlawful killings and injuries during the policing of protests.

People have been killed and others injured as a result of the use of firearms by police or other security forces dispersing protests. In some cases, those who died or sustained injuries were shot at close range, apparently as they sought to evade arrest. Police also continue to face accusations that they use tear gas against demonstrators in enclosed areas, such as narrow alleyways and houses, leading to a danger of asphyxiation, and have caused serious injuries by firing tear gas canisters at protesters at close range.¹⁰

In 2011, AI documented the use of live ammunition, tear gas, batons, rubber bullets and shotguns, including at close range, by riot police to disperse protesters during protests demanding widespread reform. Tanks and armoured vehicles were used to block access to the Pearl Roundabout and on 15 March and around 1,000 troops of Saudi Arabia's Peninsula Shield Force, mostly in tanks and armoured personnel carriers (APCs), crossed into Bahrain to help end the protests.¹¹ More recent crackdowns on protests have seen the use of tear gas, shotguns and armoured vehicles in acts of arbitrary and excessive use of force.

Many states have recently supplied small arms and ammunition to Bahrain, including Brazil, Cyprus, Czech Republic, Germany, Hungary, Italy, Spain, Switzerland, Turkey, the UK and the US.¹² In January 2014, South Korea suspended supplies of tear gas to Bahrain, citing pressure from human rights groups. France and Spain have also suspended supplies of tear gas to Bahrain.¹³

Turkey

The Turkish police and security forces have a well-documented record of serious human rights violations including the excessive use of force against largely peaceful demonstrators.¹⁴ During large scale demonstrations in 2013, known as the Gezi Park protests, Amnesty International and other organisations reported widespread misuse of toxic chemical irritants ('tear gas') and rubber bullets.

On 1 May 2014, riot police sealed off the whole of central Istanbul near Taksim Square to ensure that no protesters made it to a peaceful demonstration planned there to mark May Day. A reported 39,000 police officers and 50 water cannon trucks were drafted in as the authorities refused to allow demonstrations to take place. With limited warning, police used tear gas and water cannon against a crowd of several thousand people peacefully assembled close to the DİSK union confederation building in the Şişli district.

In October 2014, 19 people were killed and many injured in the predominantly Kurdish south-east of Turkey during protests prompted by the advances of the armed group that calls itself the Islamic State towards Syria's border with Turkey.

In 2015-16 Turkish security forces using heavy weaponry and sniper fire imposed severely restrictive curfews across seven provinces of east and south-east Turkey in the context of operations by police and the military against members of the armed YDG-H, the youth wing of the armed PKK. In some areas, the curfews were in place for over a month, leaving residents without access to emergency

September 2016): <https://www.amnesty.org/download/Documents/MDE1147412016ENGLISH.pdf>

¹⁰ See Amnesty International's report *Behind the Rhetoric: Human Rights Abuses in Bahrain Continue Unabated*: <https://www.amnesty.org/en/documents/mde11/1396/2015/en/>

¹¹ See Amnesty International's report *Arms Transfers to the Middle East and North Africa: Lessons for an Effective Arms Trade Treaty*: <https://www.amnesty.org/en/documents/act30/117/2011/en/>

¹² According to 2015 data from the Norwegian Initiative on Small Arms Transfers database, <http://nisat.prio.org/Trade-Database/Researchers-Database/>

¹³ See Amnesty International, 'South Korea suspends tear gas supplies to Bahrain': <https://www.amnesty.org/en/press-releases/2014/01/south-korea-suspends-tear-gas-supplies-bahrain/>

¹⁴ See Amnesty International, 'Turkey: Riot police in reprehensible crackdown on peaceful May Day protest': <https://www.amnesty.org/en/latest/news/2014/05/turkey-reprehensible-riot-police-crackdown-peaceful-may-day-protest/>

healthcare, food, water and electricity for extended periods.¹⁵

In March 2016, security forces used tear gas and plastic bullets against LGBTI activists and journalists who were simply standing around in the streets during the Istanbul Pride March. At the end of the day 29 activists and supporters were detained. Some were released after a brief period of detention, others later in the evening after being taken into custody and identity checks. One activist was referred for a criminal investigation, but was released without charge. People who were detained were either simply standing around, taking photographs, attempting to read a press statement or merely walking on the street.

Brazil, India, South Korea and the USA, have in recent years supplied Turkey with riot control equipment.¹⁶ Italy, the US, South Korea, the Czech Republic, Brazil, Germany and the UK have registered recent significant transfers of convention arms to Turkey with the UN Comtrade Database.¹⁷

Philippines

Since President Duterte took office in the Philippines on 30 June 2016, his administration's "war on drugs"¹⁸ has borne that out to a devastating degree. Statistics from the Philippine National Police indicate that police officers and unknown armed persons¹⁹ collectively carried out 7,025 drug-related killings between 1 July 2016 and 21 January 2017, roughly an average of 34 per day.

Acting on instructions from the very top of government, the Philippines police have killed and paid others to kill thousands of alleged drug offenders in a wave of extrajudicial executions that may amount to crimes against humanity. An Amnesty International report published on 31 January 2017, "*If you are poor you are killed*": *Extrajudicial Executions in the Philippines' "War on Drugs"*²⁰ details how the police have systematically targeted mostly poor and defenceless people across the country while planting "evidence", recruiting paid killers, stealing from the people they kill and fabricating official incident reports.

Amnesty International investigated 33 incidents of drug-related killings in 20 different cities and towns, spread primarily across the National Capital Region as well as the provinces of Cebu and Cotabato. In the 33 incidents, of which 20 involved police operations and 13 involved unknown armed persons, 59 total people were killed. Based on corroborating witness statements and other credible information, the vast majority of these killings appear to have been extrajudicial executions—that is, unlawful and deliberate killings carried out by government order or with its complicity or acquiescence.

Deliberate killings have been carried out using small arms, whereby alleged drug offenders have been shot dead. Amnesty International is deeply concerned that the deliberate and widespread killings of alleged drug offenders, which appear to be systematic, planned and organised by the authorities, may constitute crimes against humanity.

The US has long been the leading supplier of small arms and ammunition to the Philippines. However, in 2016, the US State Department halted the planned sale of 26,000 assault rifles to the Philippines' national police over concerns about serious human rights violations.²¹ Many other states

¹⁵ See Amnesty International, Turkey: End abusive operations under indefinite curfews: <https://www.amnesty.org/en/documents/eur44/3230/2016/en/>

¹⁶ See Amnesty International's 'Turkey: Fresh protests spark fears over pending tear gas shipments': <https://www.amnesty.org/en/latest/news/2013/09/turkey-fresh-protest-death-under-scores-urgent-need-halt-tear-gas-shipments/>

¹⁷ See Comtrade data from 2015 under the categories of 93 (arms and ammunition) and 8710 (tanks and other armoured vehicles).

¹⁸ "War on drugs" is a term commonly used to describe the Duterte administration's policies and operations against alleged drug offenders. These operations do not fit the definition of an armed conflict under international law.

¹⁹ In the Philippines, the commonly used term is "unknown gunmen." Amnesty International uses a gender neutral term, as women are likewise perpetrators of drug-related killings.

²⁰ "*If you are poor you are killed*": *Extrajudicial Executions in the Philippines' "War on Drugs"*: <https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

²¹ 'Exclusive: U.S. stopped Philippines rifle sale that senator opposed', 1 November 2016: <http://www.reuters.com/article/us-philippines-usa-rifles-idUSKBN12V2AM>

supply small arms and ammunition to the Philippines, including Brazil, China, Israel, Italy, South Korean, Taiwan and Turkey.²²

Nigeria and Boko Haram

In the course of security operations against Boko Haram in north-east Nigeria, Nigerian military forces have extrajudicially executed more than 1,200 people; they have arbitrarily arrested at least 20,000 people, mostly young men and boys; and have committed countless acts of torture. Hundreds, if not thousands, of Nigerians have become victims of enforced disappearance; and at least 7,000 people have died in military detention. Amnesty International has concluded that these acts, committed in the context of a non-international armed conflict, constitute war crimes for which military commanders bear both individual and command responsibility, and may amount to crimes against humanity.²³

Since 2009, Boko Haram has killed thousands of civilians, abducted thousands more from their homes, and subjected women and girls to sexual violence. In Nigeria, Chad, Cameroon and Niger, the armed group has destroyed towns and villages, forcing more than two million people from their homes and denying them access to their livelihoods.

Over the past decade, Nigerian forces have received military equipment from the US, South Africa, Russia, Israel, Turkey, China and all major EU arms producers. A wide variety of states, including the UK, US, Germany and France have provided training or other military assistance for the Nigerian forces. The bulk of Boko Haram's arsenal appears to have come from battlefield capture, looting of military and police arsenals and illicit internal trade fuelled by widespread corruption.

Syria

Since Syria's internal armed conflict, which began after anti-government protests in 2011, government forces and non-state armed groups have committed grave human rights abuses and violations of international humanitarian law, including war crimes, with impunity. Government forces carried out indiscriminate attacks and direct attacks on civilians and civilian objects, including residential areas, hospitals, medical facilities, and humanitarian aid convoys with artillery, mortars, barrel bombs and, reportedly, chemical agents, unlawfully killing civilians. Government forces also enforced prolonged sieges of predominantly civilian areas depriving them of food, medical care and other necessities.

Security forces have arbitrarily arrested and detained thousands, including peaceful activists, human rights defenders, media and humanitarian workers, and children. Many continue to be subjected to enforced disappearance, prolonged detention or unfair trials. Security forces have systematically tortured and otherwise ill-treated detainees resulting in the death in custody of thousands of detainees since 2011.

Non-state armed groups that controlled some areas and contested others have indiscriminately shelled and besieged predominantly civilian areas and abducted, tortured and summarily killed civilians and captives. The armed group calling itself Islamic State (IS) besieged civilians in government-controlled areas, carried out direct attacks on civilians and indiscriminate attacks including suicide bombings, alleged chemical attacks and other bombardment of civilian areas, and perpetrated numerous unlawful killings, including of captives.

US-led forces carried out air strikes on IS and other targets, in which scores of civilians were killed. Russia has also carried out air strikes and sea-launched cruise missile attacks on areas controlled by armed opposition groups and on IS targets, in which hundreds of civilians were killed. By the end of 2016, the UN estimated that the conflict had caused the deaths of 250,000 people, displaced 6.5

²² According to 2015 data of transfers totalling more than US\$1 million from the Norwegian Initiative on Small Arms Transfers database, <http://nisat.prio.org/Trade-Database/Researchers-Database/>

²³ See Amnesty International's report *Stars on their Shoulders: Blood on their Hands: War Crimes Committed by the Nigerian Military*: <https://www.amnesty.org/en/documents/AFR44/1657/2015/en/>

million people within Syria and forced 4.8 million people to seek refuge abroad.

Before 2011, Russia was reportedly Syria's biggest arms supplier, accounting for 10 per cent of all Russian arms exports, continuing the role filled two decades earlier by the Soviet Union. The Syrian army has used a range of aircraft in aerial attacks and air bombardments during the conflict, and analysis of online footage by military experts indicates that these include Mig-21, Mig-23 and Su-24 fighter jets; Mi-8/17 transport helicopters and Mi-24 and Mi-25 helicopter gunships. Unexploded ordnance and remnants of weapons found at the scene of strikes have included: air delivered Soviet-era unguided OFAB-100-120 high explosive fragmentation bombs; RBK-250 cluster bombs containing ZAB-2.5 incendiary submunitions; S5 rockets; and 122mm artillery shells and 120mm mortars. The deployment of such imprecise battlefield weapons and munitions against residential areas has dramatically increased the number of civilian casualties and forced massive civilian displacement.²⁴

Non-state armed groups have deployed a vast arsenal of weapons manufactured and designed in many countries, including Russia, China the USA, EU and Eastern European states. These arms have been largely acquired through battlefield capture, looting and diversion. Several countries, including the USA, Turkey and Saudi Arabia, have also supplied a variety of arms and ammunition to armed opposition groups operating in Syria.

Yemen

In Yemen all parties to the conflict, which began in March 2015, have committed serious violations of international human rights law - which applies during times of armed conflict²⁵ - as well as international humanitarian law, which could amount to war crimes.

Since the Saudi Arabia-led military coalition launched airstrikes against Huthi armed group targets and military installations in Yemen, at least 4,125 civilians have been killed and 7,207 wounded. The majority of civilian deaths have resulted from airstrikes by the Saudi Arabia-led coalition. Amnesty International has documented 30 airstrikes since the start of the conflict that appear to have been unlawful – in that they deliberately targeted civilian objects, disproportionately harmed civilians and civilian objects in relation to the expected military gain from the strike, or failed to distinguish between these and military objectives, resulting in 366 civilian deaths and 272 civilians injured. These airstrikes have targeted civilian objects such as hospitals, schools, markets and mosques, attacks that may amount to war crimes.

In Sana'a and other areas they controlled, the Huthis and their allies arbitrarily arrested and detained critics and opponents as well as journalists, human rights defenders and members of the Baha'i community, subjecting scores to enforced disappearance. Some detainees were subjected to torture or other ill-treatment.

Anti-Huthi forces summarily killed captured Huthi fighters and civilians suspected of supporting the Huthis. They posted videos on the internet publicizing some of these killings in Aden and Ta'iz of those they alleged were "spies" or "Huthi supporters".

According to data produced by the Stockholm International Peace Research Institute (SIPRI), the US and the UK exported over 75% of all major conventional arms to Saudi Arabia from 2014-15; France and Spain were also significant exporters.²⁶ This included general purpose and guided bombs, missiles, rockets, combat aircraft and multipurpose helicopters. A briefing by Control Arms found that between 30 May 2015 and 30 May 2016 19 Arms Trade Treaty (ATT) States Parties and three

²⁴ For more information, see Amnesty International's report *Major Powers Fuelling Atrocities: Why the World Needs a Robust Arms Trade Treaty*, March 2013: <https://www.amnesty.org/en/documents/act30/001/2013/en/>

²⁵ UN CCPR Human Rights Committee, General Comment 31 on The Nature of the General Legal Obligation on the States Parties to the International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 11.

²⁶ SIPRI Arms Transfers Database, information generated on 1 February 2017.

Signatories either agreed or delivered arms transfers to Saudi Arabia.²⁷

According to the January 2016 UN panel of experts' report on Yemen, arms smuggling networks persist, including using dhows carrying refugees in the Red Sea and the Gulf of Aden to carry arms. The report cites the case of Iranian attempts to smuggle Russian-made 9M113 Konkurs and 9M133 Kornet missiles by boat to Huthi fighters; continuing wholesale looting of government stocks by Huthi fighters; as well as coalition forces targeting of Huthi-controlled stockpiles.²⁸

Iraq

Proliferation of arms and ammunition to armed groups and militias across Iraq has had devastating impacts on civilians. It has contributed to a catalogue of gross and systematic human rights abuses and violations of international humanitarian law, and dragged the country into a spiral of insecurity and instability. Diversion of arms from Iraqi military stocks has been a key source of supply for armed groups operating in the country for both the armed group calling itself Islamic State (IS), and the predominantly Shi'a paramilitary militias operating under the umbrella of the Popular Mobilization Units (PMU). These groups continue to use a wide range of arms and ammunition to commit or facilitate serious human rights violations/abuses and violations of international humanitarian law, including war crimes, with impunity.

A substantial proportion of IS's current military arsenal, which includes weapons and equipment designed or manufactured in more than 25 countries, has been looted, captured or illicitly traded from poorly secured Iraqi military stocks. IS has also gained access to weapons from other sources – notably capture or sale of Syrian military stocks and arms supplied to armed opposition groups in Syria by countries including Turkey, the Gulf States, and the USA. Amnesty International has found that the supply to and mismanagement of arms by the armed forces of Iraq is the origin of the majority of IS's arms.²⁹

Diversion of arms and ammunition has allowed IS capture territory, and abduct, summarily kill, torture and rape people across Iraqi and Syrian territory. Their military campaign has relentlessly targeted civilians with small arms, artillery, huge numbers of improvised explosive devices (IEDs), and possibly with chemical weapons.

In the context of the fight against IS, the predominantly Shi'a groups operating under the PMU have enjoyed access to a wide variety of small arms, light and heavy weaponry. Their inventories, drawn in the wake of the 2003 US-led invasion, occupation and its aftermath through diversion from Iraqi military stocks and battle field capture, and in recent years by direct supply by the Iraqi authorities, include arms and ammunition manufactured in at least 16 countries, including Chinese, European, Iraqi, Iranian, Russian and US small-arms and light weapons, rockets, artillery systems and armoured vehicles. Amnesty International has found that the PMU militias have used their arsenal to commit or facilitate serious human rights violations across central and northern Iraq.³⁰

Since June 2014, PMU militias have extrajudicially executed or otherwise unlawfully killed, tortured and abducted thousands of men and boys. Victims were picked up from their homes, workplaces, camps for internally displaced persons, checkpoints or other public places. Some were later found shot dead. Thousands more are still missing, weeks, months and years after they were abducted.

²⁷ See Control Arms briefing *Dealing in Double Standards: How Arms Sales to Saudi Arabia are Causing Human Suffering in Yemen*, August 2016: <http://armstreatymonitor.org/en/wp-content/uploads/2016/09/ATT-Monitor-Case-Study-2-Update-120916.pdf>

²⁸ UN Security Council, Letter dated 22 January 2016 from the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014) addressed to the President of the Security Council, S/2016/73, paras. 75-85, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/73

²⁹ For more information see Amnesty International report *Taking Stock: The Arming of Islamic State*, December 2015: <https://www.amnesty.org/en/documents/mde14/2812/2015/en/>

³⁰ For more information, see recently published Amnesty International *Report Iraq: Turning a Blind Eye: The Arming of the Popular Mobilization Units*, January 2017: <https://www.amnesty.org/en/documents/mde14/5386/2017/en/>

As of 2015, Iraq was the sixth largest arms importer of heavy weapons in the world. According to the Stockholm International Peace Research Institute (SIPRI), which tracks deliveries of major conventional weapons, arms exports to Iraq increased by 83% between 2006–10 and 2011–15.³¹ Despite the fragility of the Iraqi armed forces and the known risk of diversion to armed groups including IS and other militia groups, more than 20 countries have supplied Iraq with arms and ammunition over the last five years, led by the USA, followed by Russia.³²

3. What considerations should be taken into account by governments when assessing the impact an arms transfer may have on human rights, including national procedures and/or laws and international obligations and standards? On what information and/or sources of information should such assessments be based?

The Arms Trade Treaty, which came into force in 2014, represents a significant paradigm shift in the world of arms control, in particular through its prohibitions on certain arms transfers and the establishment of a detailed export assessment mechanism (Article 7). For the first time in history international human rights customary and treaty law as well as international humanitarian customary and treaty law must form benchmarks for assessing the authorisation of an export of a wide range of conventional arms and related ammunition/munitions and parts and components.

Amnesty International has developed a three-step methodology for assessing the risk of a proposed export being used to commit or facilitate serious violations of international human rights law which sets out a number of elements to consider when forming a judgment as to when there is an overriding risk that such violations could occur.³³ This methodology is summarised below.

Step 1: An “objective and non-discriminatory” Assessment of the Risks

In order to be objective and non-discriminatory, each State Party to every potential export of arms and/or related items must apply consistently assessments of the risks, as set out in Article 7. The risk assessment must be applied to a potential export to any country, without distinction, using verifiable and detailed information from credible and reliable sources on:

- the arms and/or related items;
- the intended recipients;
- the likely uses;
- the route; and
- all those stakeholders involved in the export (e.g. licencing officials, transport officials, brokers, etc.).

Credible and reliable sources include documentation from the UN human rights bodies; the International Committee of the Red Cross (ICRC) and other international and regional bodies, diplomatic missions in the recipient State; human rights reports by States, including domestic human rights commissions' reports; and reports from credible international human rights NGOs.³⁴

³¹ SIPRI, 'Trends in international arms transfers', 2015, p. 8, available at <http://books.sipri.org/files/FS/SIPRIFS1602.pdf> SIPRI data excludes small arms and light weapons; SIPRI TIV of arms imports to the top 50 largest importers, available at http://armstrade.sipri.org/armstrade/html/export_toplist.php Data drawn from SIPRI Trade Indicator Value database <http://armstrade.sipri.org/armstrade/page/values.php> and the NISAT Database <http://nisat.prio.org/Trade-Database/Researchers-Database/> States include Austria, Bulgaria, Canada, China, Croatia, Czech Republic, Estonia, France, Germany, Iran, Poland, Romania, Russia, Serbia, Slovakia, South Africa, South Korea, Sweden, Ukraine, United Kingdom and United States.

³² Data drawn from SIPRI Trade Indicator Value database <http://armstrade.sipri.org/armstrade/page/values.php> and the NISAT Database <http://nisat.prio.org/Trade-Database/Researchers-Database/> States include Austria, Bulgaria, Canada, China, Croatia, Czech Republic, Estonia, France, Germany, Iran, Poland, Romania, Russia, Serbia, Slovakia, South Africa, South Korea, Sweden, Ukraine, United Kingdom and United States.

³³ For more information, see Amnesty International's *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, February 2015:

<https://www.amnesty.org/en/documents/document/?indexNumber=act30%2F0003%2F2015&language=en>

³⁴ More sources can be found in *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, pp.8-9.

Up-to-date information on international human rights and international humanitarian law standards and on the incidence and nature of relevant violations should be used to ensure that proper assessments are made. Complete and accurate documentation should be a regular component of all assessment processes.

Potential for contributing to or undermining international peace and security

Article 7 acknowledges that arms exports have the potential to either contribute to or undermine international peace and security. If conventional arms and related items are used to violate relevant international law referred to in the principles set out in the Preamble of the treaty and international legal obligations reflected in Article 6, then clearly they cannot be seen to be contributing to peace and security.

However, certain types of conventional arms and related items can be legitimately acquired by States to exercise the lawful use of force consistent with international standards on law enforcement,³⁵ in order to protect and safeguard all persons and institutions under its jurisdiction. UN Member States, in their international relations, also have an inherent right to collective or individual self-defence under the UN Charter.³⁶ Therefore, the ability to legitimately acquire certain conventional arms and related items is key in exercising that right as long as the arms are not used for acts that would otherwise violate the UN Charter regarding the use of force, and the prohibition on acts of aggression.³⁷ It should also be noted that national security considerations are not mentioned in the treaty, thus only international peace and security concerns form the basis for assessment.

To make this assessment States should consider various factors, including:

- whether the recipient State is involved in an international or non-international conflict;
- whether it is under preliminary examination by the Office of the Prosecutor of the International Criminal Court; and
- whether the proposed export is compatible with the technical and economic capacity of the recipient country and its military, security and police forces.

A “serious violation” of international human rights or humanitarian law

According to the International Committee of the Red Cross (ICRC), “serious violations of international humanitarian law” are “war crimes” and the two terms are interchangeable. War crimes are perpetrated in situations of armed conflict and can include conduct that endangers protected persons (e.g. civilians, prisoners of war, the wounded and sick) or objects (e.g. civilian buildings such as hospitals or infrastructure). The majority of war crimes involve death, injury, destruction or unlawful taking of property.³⁸

Although there is no formal definition of what constitutes a *serious* violation of international human rights law, for the purpose of the ATT, such violations should be assessed against the nature of the right violated and harm suffered, and the scale or pervasiveness of the violation.

This means that States Parties should be required to consider a possible serious violation of any human right (be it civil, cultural, economic, political or social), as well as the severity of the impact of

³⁵ See: United Nations Office of the High Commissioner for Human Rights (OHCHR), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Havana, Cuba: OHCHR, 27 August to 7 September 1990), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>; United Nations Office of the High Commissioner for Human Rights (OHCHR), Code of Conduct for Law Enforcement Officials (Geneva: OHCHR, December 17, 1979), <http://www.ohchr.org/Documents/ProfessionalInterest/codeofconduct.pdf>; and the United Nations, Standard Minimum Rules for the Treatment of Prisoners (Geneva: UN, 1955), https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

³⁶ United Nations, *Charter of the United Nations* (New York, 1945), Article 51.

³⁷ United Nations, *Charter of the United Nations* (New York, 1945), Article 2.

³⁸ International Committee of the Red Cross (ICRC), *What are ‘serious violations of international humanitarian law’?* Explanatory Note, <https://www.icrc.org/eng/assets/files/2012/att-what-are-serious-violations-of-ihl-icrc.pdf>.

the violation(s) on the affected individual(s). In addition to this, States Parties should consider both the severity and gravity of a singular violation of human rights using conventional arms or munitions, as well as recurring and foreseeable patterns of violations, or in the institutional nature of violations that are condoned by the authorities. In this case, States Parties should examine whether the violations in question occur on a widespread or systematic basis.³⁹

Assessing the risk of a serious violation of international human rights or humanitarian law

The starting point for assessing if a serious violation of such law could occur is to examine the recipient State's respect for international human rights law. The exporting State assessment must include:

- whether the recipient State is a State Party to the key human rights instruments (e.g. ICCPR, ICESCR, UNCAT, etc.) and international humanitarian law treaties (e.g. not only the Geneva Conventions but also their Additional Protocols, the ICC Statute and other instruments);
- whether there is an ordinary civilian, independent, impartial and functioning judicial system in the recipient country, capable of investigating and prosecuting serious human rights violations; and
- whether the recipient State educates and trains key sectors such as its security forces and police officers in the content and application of international human rights and humanitarian law.

It should also be borne in mind that "serious acts of gender-based violence" and "serious acts of violence against women and children" are serious violations of international human rights law when committed by State agents or by persons acting with the authorisation, support or acquiescence of the State or when the State fails to act with due diligence to prevent violence by non-state actors and/or fails to effectively investigate and prosecute cases and provide reparations to victims.

States then must determine whether there have been previous serious violations or abuses of human rights or international humanitarian law using arms or related items and the risk that such violations are likely to be facilitated or committed by the particular export of conventional arms or related items under review. This requires an assessment of the end-users, in particular, their propensity for abuse and violations of international human rights law or humanitarian law and/or their capacity to use arms lawfully, as well as to what extent they effectively control their arms and munitions (e.g. stockpile management capacity and security procedures).

A crucial question is whether there exists a state of impunity with regard to those suspected of criminal responsibility for violations of international human rights or humanitarian law. For example, the following questions could be asked:

- Does the recipient state have an established mechanism for independent monitoring and investigations into alleged serious international humanitarian law and serious violations of human rights and abuses?
- Are crimes under international law properly defined in national legislation?
- Is there an effective, independent and impartial complaint mechanism capable of investigating and prosecuting cases of allegations against law enforcement officials?

Step 2: Mitigation Measures

Under Article 7(2), the States Parties must consider whether there are measures that could be undertaken to mitigate the risk of any serious violations of international human rights or humanitarian law (as well as of offences under treaties on terrorism and transnational organised crime). Confidence-building measures or jointly developed and agreed programmes by the exporting and importing States are suggested as possible measures.

Some mitigation measures could include requiring specific assurances on the use and re-transfer of the arms or other items; requiring a valid import licence as part of the arms export license application; applying a "new for old" principle that as a condition of sale requires that the end-user destroys small

³⁹ If these violations involve widespread or systematic attacks that target a particular population they would constitute crimes against humanity and thereby fall under the prohibition provision of the ATT in Article 6.

arms that are to be replaced by the new consignment; and requiring a delivery verification certificate to confirm the arrival of arms at the customs territory of the recipient State or a specific location in that State.

To assist in the accountability of the use of conventional arms and related items, exporting States could enhance the effectiveness of the systems in place for the use, storage and registration of weapons and ammunition by law enforcement officers, security forces and other security personnel and ensure that all small arms and light weapons are uniquely marked in compliance with the UN Firearms Protocol (2001) and the International Tracing Instrument (2005).

An assessment of to what extent the relevant international human rights and international humanitarian law (IHL) standards have been effectively integrated in doctrines, policy, manuals, instructions and training is also crucial in increasing the levels of compliance with international human rights law and IHL.

Step 3: Making a Decision on Overriding Risk

At the end of the July 2012 United Nations Arms Trade Treaty Negotiating Conference, the draft treaty text introduced the concept of “overriding risk” to define the threshold whereby a State Party would be bound to refuse an export authorisation for arms and related items. The concept of “overriding risk” is not well defined under international law.

States Parties have an obligation to implement the treaty in good faith, in line with its object and purpose. According to Article 7, the analysis of “overriding risk” should be carried out by competent national authorities based on an objective and non-discriminatory consideration of all available evidence of the past and present circumstances in the recipient country regarding the proposed end-use and end-user. It should include an assessment of the levels of existing peace and security across various contexts, for example, post-conflict situations or those where military, security and police forces operate under the rule of law.

It has been suggested, for example, that “if a potential export ‘would’ undermine peace and security, then that would be an overriding risk. If, in a given circumstance, there is a risk that one or more of the five negative consequences in Article 7(1) ‘could’ occur despite consideration of available mitigating measures, then this real danger must take precedence over any potential contribution to peace and security. If the assessment concludes there is a reasonable and credible risk that the export of items under consideration could be used for or facilitate any of the negative consequences set out in Article 7(1), thereby also undermining peace and security, then the authorisation must be refused. It is also possible in some circumstances that the exporting State knows at the time that the potential exports will be used specifically for one or more of the negative consequences, in which case the authorisation of the export must be refused. Equally, if the contribution to peace and security clearly outweighs the risk of negative consequences, and none of the risks are reasonable and credible, then the export should be approved.”⁴⁰

The likelihood of overriding risk becomes greater where there is evidence of a pattern of serious violations, or where the recipient has not taken appropriate steps to end systematic violations, ensure accountability for those violations and prevent their recurrence.

⁴⁰ Clare da Silva and Brian Wood, ‘Article 7: Export and Export Assessment’, in *Weapons and International Law: The Arms Trade Treaty*, ed. Clare da Silva and Brian Wood (Ghent: Larcier Group, August 2015), 131.