GROUPE DE RECHERCHE
ET D'INFORMATION
SUR LA PAIX ET LA SÉCURITÉ

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Office of the United Nations

High Commissioner for Human rights

Palais des Nations

CH 1211

Geneva 10

Switzerland

Brussels, the 1st of February 2017

Concerns: Report to the Human Rights Council on the impact of arms transfers on human rights.

Dear Madam or Sir,

Following your letter dated 22nd of December 2016, the Group for Research and Information on Peace and Security (GRIP) has the honour to send you this answer to the questions listed the afore-mentioned document.

Yours faithfully,

Denis Jacqmin

SALW control researcher

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

   By authorizing weapons exports to authoritative regimes, national (or regional) governments have a substantial impact on human rights in the country of destination. Those weapons can be used to silence dissent and fuel internal repression. The fundamental rights that are mostly affected by those weapons deliveries include are the right to life, freedom of assembly and freedom of expression. In the last five years, most of the mass shootings and violent internal repression episodes executed by governments throughout the world that involved the illegal use of weapons against civilians outside of an armed conflict took place during protests and gatherings. The most affected groups are political opposition members and ethnic/cultural minorities.

2. **Are you aware of assessments by governments of the impact that arms transfers may have on the enjoyment of human rights. If possible, please specify what considerations are taken into account when making these assessments, including national procedures and/or laws and international obligations and standards? On what information and/or sources of information are these assessments by governments based?**

   In 2008, the European Union (EU) adopted a Common Position[1] defining the rules governing control of exports of military technology and equipment. This common position presents a set of rules (8 criteria) designed to promote convergence between the EU member states arms control policies. The position specifically entails human rights considerations that should be considered as basic standards. Member states are therefore free to develop more restrictive policies regarding arms exports (see art. 3 Common position 2008/944/CFSP). The human rights criterion reads as follows :

   « *Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.*

   — Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:

   (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;

   (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe; For these purposes, technology or equipment which might be used for internal repression will include, inter alia, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or

[1] COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, 13 December 2008

equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

— Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall: (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law. »

In order to avoid an undercut policy, where a member state would commercially benefit from the refusal of another member state to export to a specific country, a principle of "no-undercut" has been adopted. In practice, if an EU member state refuses an export licence based on one of the 8 criteria, it notifies this refusal to the other EU member states. If later, another EU member state wants to export a similar product to the same country it has to consult the member state which issued a denial in the first place and enquire about the reasons behind this denial. This system ensures there is no race to the bottom in terms of respect for human rights and arms exports. Each EU member state keeps its own system of human rights situation evaluation in the country of destination. Sources of information range from Ministries of foreign affairs, the media, human rights organisations, EU Council conclusions, reports from international organization such as the UN, the EU or the OSCE, research centres, etc. A specific working group of the EU Council (COARM[2]) has been created to discuss problematic cases in weapons export and attempt to bring closer EU member states policies on arms export.

Assessment criteria on the impact of weapons exports can be found in the User's Guide to Council Common Position 2008/944/CFSP[3]. As a general principle, the User's Guide indicates:

«*Member States should consider the current and past record of the proposed end user with regard to respect for human rights and that of the recipient country in general. The latter includes the policy line of recipient country's government; recent significant developments, including inter alia impact of "fight against terrorism"; effective protection of human rights in constitution; human rights training among key actors (e.g. law enforcement agencies); impunity for human rights violations; independent*

[2] The Working Party on Conventional Arms Exports (COARM) handles work concerning export controls for conventional arms. It also works as a forum, where the member states communicate and share information on their export policies to non-EU countries, and on national denials of applications for export licenses to non-EU countries. (source: EU Council)

[3] User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 20 July 2015.

monitoring bodies and national institutions for promotion or protection of human rights.»

Regarding specific human rights criteria, the User's Guide suggests to examine inter alia: «

- *The commitment of the recipient country´s Government to respect and improve human rights and to bring human rights violators to justice;*
- *The implementation record of relevant international and regional human rights instruments through national policy and practice;*
- *The ratification record of the country in question with regard to relevant international and regional human rights instruments;*
- *The degree of cooperation with international and regional human rights mechanisms (e.g. UN treaty bodies and special procedures);*
- *The political will to discuss domestic human rights issues in a transparent manner, for instance in the form of bilateral or multilateral dialogues, with the EU or with other partners including civil society.* »

In their assessment to grant a weapons export licence or not, EU member states also have to take into account the nature of the equipment that will be exported and the risk that it might be used to commit human rights violations or contribute to internal repression. The assessment must also be dynamic by taking into account the evolutions regarding respect for human rights in the destination country.

Despite the legally binding character of the EU Common position, the lack of independent enforcement mechanism other than consultations between member states led to questionable decision regarding arms exports in the last three years (the most striking example being Egypt and Saudi Arabia).

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 assessment be based?**

   The sources of information regarding human rights assessments in the country of destination are well covered by the User's Guide to Council Common Position 2008/944/CFSP. Although the information sources on human rights are widely available, time and staff constraints can make it difficult for licencing officers to have all the information analysed and directly useable about a specific country in a very short timeframe (human rights being only one of the eight criterion in the Common Position). Therefore, the issue lies more with the compiling and analysis of the information rather than its availability.

4. **Are you aware of a refusal or refusals by governments to authorise a proposed arms transfer or arms transfers on the basis that the arms transfer would impact on the enjoyment of human rights? If possible, please specify the factors that were taken**

into consideration in making this decision, and the nature of the human rights that would have been impacted by such the proposed transfer.

Regarding the refusal of EU member states to grant an export licence for weapons based on a potential impact on human rights, the EU member states denial database is confidential. Nevertheless, according to the latest COARM report[4] about licences issued in 2014, it is possible to determine that a total of 72 export licences were denied in 2014 due to a possible impact on human rights, internal repression or violation of international humanitarian law in the country of destination. The destination countries were Angola, Bahrain, Bangladesh, the Popular Republic of China, Colombia, Egypt, Israel, Kazakhstan, Kyrgyzstan, Libya, Macao, Malaysia, Nepal, Nigeria, Pakistan, Russia, Saudi Arabia, Sri Lanka, the Republic of China (Taiwan), Thailand, Turkey, Turkmenistan and the United Arab Emirates. The COARM report is drafted in such a way that it is not possible to link a specific refusal with the EU member state that notified it. The report does not specify which specific information or which (potential) human rights infringements led to these refusals by member states.

5. **Are you aware of a refusal or refusals by a government to authorise a proposed arms transfer on the grounds of the risk of diversion of the arms?**

Regarding the refusal of EU member states to grant an export licence for weapons on the basis of a diversion risk, the EU member states denial database is confidential. Nevertheless, according to the latest COARM report about licences issued in 2014, it is possible to determine that a total of 117 export licences were denied in 2014 due to a risk of diversion (criterion 7). The destination countries were Bangladesh, Egypt, Jordan, India, Indonesia, Israel, Kosovo, Lebanon, Libya, Macao, Malaysia, Mali, Namibia, Nigeria, Pakistan, South Sudan, Russia, Saudi Arabia, Serbia, South Africa, Thailand, Turkey, Turkmenistan, Ukraine and Venezuela. Again, the COARM report is drafted in such a way that it is not possible to link a specific refusal with the EU member state that notified it.

[4] Seventeenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.