



Submission to the United Nations Office of the High Commissioner for Human Rights (OHCHR) to inform the High Commissioner's report to the Human Rights Council pursuant to resolution 53/15

31 October 2024

The Women's International League for Peace and Freedom (WILPF) welcomes the opportunity to contribute to the OHCHR report on “gaps and future steps on the role of States and the private sector in preventing, addressing, and mitigating the negative human rights impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers” requested by Human Rights Council (HRC) resolution 53/15 to be presented to the Council at its fifty-eighth session.¹

This submission is based on WILPF's presentation to the inter-sessional workshop organised by OHCHR from 7 to 9 October 2024.² It addresses all four questions of the OHCHR's call for inputs, highlighting gaps and suggesting future steps to address the role of both States and the private sector in preventing, addressing, and mitigating the negative human rights impact of arms transfers.

Through WILPF's country-focused advocacy and research on the arms trade, as well as policy advocacy both in UN human rights and disarmament spaces, we have identified

¹ Impact of arms transfers on human rights, A/HRC/RES/53/15, adopted on 13 July 2023

² “Intersessional workshop to hold stocktaking discussions on the role of States and the private sector in preventing, addressing and mitigating the negative human rights impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers”, requested by HRC resolution 53/15. Information available at: <https://www.ohchr.org/en/events/events/2024/intersessional-workshop-hold-stocktaking-discussions-role-states-and-private>

the following recurring gaps relevant to strengthening the respect, protection and fulfillment of human rights by States and businesses involved in the arms trade.

1. Restrictions to access to information prevent democratic oversight of the arms trade

We refer the OHCHR to the WILPF's submission on this topic made in January 2024,³ which underlines in detail WILPF's key concerns about the issue of the right of access to information in relation to the arms trade. The issue has already been partly covered in the OHCHR's report on the "Impact of arms transfers on human rights" (A/HRC/56/42), which recognises that "concerns remain that the sum of information made available by States is often not sufficient to effectively prevent and ensure accountability for the negative human rights impacts associated with arms transfers."⁴ However, as recommended in the above-mentioned WILPF's submission, this topic should be explored further, in particular the role of parliaments and courts in the oversight of government compliance with international human rights law when it comes to decisions on the arms trade.

2. The role of civil society and human rights defenders in oversight of arms transfers

Secondly, as WILPF emphasised in its presentation to the above-mentioned inter-sessional workshop, civil society plays a crucial role in investigating, illuminating, and sharing critical information about the arms trade, as well as regarding human rights violations resulting from the use of weapons. WILPF is deeply concerned about the repression and criminalisation in some countries of members of civil society who work on the arms trade, including on overly broad grounds of national security. We are also

³ Submission to OHCHR on the Role of Access to Information Regarding Human Rights Impacts of Arms Transfers, 29 January 2024, available at: <https://www.wilpf.org/advocacy_documents/submission-to-ohchr-on-the-role-of-access-to-information-regarding-human-rights-impacts-of-arms-transfers/>

⁴ Human Rights Council, 'Impact of arms transfers on human rights, Report of the Office of the United Nations High Commissioner for Human Rights' (18 April 2024) UN Doc A/HRC/56/42, paragraph 40

concerned that civil society actors often face undue restrictions on access to information critical for preventing and ensuring accountability for violations caused by arms transfers, including in litigation.

It is imperative to protect the rights of freedom of expression and peaceful assembly of civil society, including journalists, students, activists, lawyers, whistle-blowers, workers and trade unions, and of all those who expose how weapons fuel conflicts and serious human rights violations and abuses. The specific challenges faced by them, including those working in armed conflict settings, should be addressed further by the HRC and its mechanisms. We thus encourage OHCHR to explore this topic in its report to the HRC.

3. Addressing impunity: access to justice and the arms trade

Historically, there has been little to no accountability for States or arms companies regarding human rights violations and abuses and violations of international humanitarian law (IHL) related to the arms trade.⁵ In recent years, NGOs and victims have initiated several legal challenges in Europe concerning arms transfers from third-party States to countries involved in the Saudi-led coalition involved in the armed conflict in Yemen. These legal cases have set important precedents strengthening jurisprudence on States' and corporations' obligations under IHL, international human rights law, and disarmament law. However, they have also illustrated major structural obstacles in seeking judicial review of arms transfer decisions.⁶

Such impunity continues including due to restrictions to access to information as highlighted in the OHCHR report (A/HRC/56/42). Recent legal cases in the context of arms transfers to Israel similarly illustrate structural barriers in access to justice.⁷ Thus,

⁵ European Center for Constitutional and Human Rights, "Arms trade and corporate responsibility", page 28, available at: <<https://www.ecchr.eu/en/publication/arms-trade-and-corporate-responsibility/>>

⁶ European Center for Constitutional and Human Rights, "Arms trade and corporate responsibility", pages 10-11, available at: <<https://www.ecchr.eu/en/publication/arms-trade-and-corporate-responsibility/>>

⁷ PRIF Blog, 'A hands off approach to International law: The Frankfurt Administrative Court's stance on arms exports to Israel', 30 September 2024, available at: <<https://blog.prif.org/2024/09/30/a-hands-off->>

WILPF believes barriers to access to remedy for human rights violations related to transfers and use of arms should be further researched by OHCHR. This includes examining issues pertaining to the legal standing of victims and their representatives. It also involves looking at barriers to courts' jurisdiction in examining governmental decisions on arms transfers. In many countries, such decisions fall outside of judicial oversight due to State doctrine on foreign relations, acts of government, or national security grounds.

Moreover, evidentiary standards, which can be particularly difficult to meet in the context of cases concerning arms transfers (e.g. situations of armed conflict), should be also analysed to improve access to remedy. In fact, all components of the right to a remedy should be analysed in this context, including the right to truth and reparation with a victim-centered approach. It is also important that OHCHR looks at how more broadly transitional justice mechanisms can contribute to filling the accountability gap regarding human rights violations linked to the arms trade. The needs and perspectives of victims of arms transfers and use should be central to the analysis of barriers to access to justice. Additionally, supporting their participation in debates within the HRC and other UN human rights mechanisms on the issue of arms and human rights.

4. The role of States, but also of the arms industry and other business actors involved in the arms trade must continue to be scrutinised

The UN Working Group on Business and Human Rights in its 2022 Information note on the arms industry,⁸ as well as in multiple statements concerning arms transfers to Israel in 2024 has made clear that the UN Guiding Principles on Business and Human Rights

approach-to-international-law-the-frankfurt-administrative-courts-stance-on-arms-exports-to-israel/>>; Campaign Against the Arms Trade, Media release: 'Arms to Israel court case reveals a 'hiatus' in legal assessments and a delay in important decisions', 23 April 2024, available at: <<https://caat.org.uk/news/media-release-arms-to-israel-court-case-reveals-a-hiatus-in-legal-assessments-and-a-delay-in-important-decisions/>>, PAX, 'Going to court again over F-35 parts

' , 27 May 2024, available at:<<https://paxforpeace.nl/news/going-to-court-again-over-f-35-parts/>>

⁸ Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights - Information Note by the UN Working Group on Business and Human Rights, available at: <<https://www.ohchr.org/en/documents/tools-and-resources/responsible-business-conduct-arms-sector-ensuring-business-practice>>

(UNGPs) fully apply to the arms sector and other business actors involved in the arms trade.⁹ In this regard, we encourage the HRC to further address the role of States and companies involved in the arms trade, in particular challenges posed by the close, often symbiotic relationship, between the State and arms companies, which creates additional challenges for transparency.¹⁰

The issue of the arms sector's corporate capture of policy-making space, including through undue influence over parliamentarians, revolving doors between industry and government functions, funding of political campaigns and other opaque lobbying practices of the arms industry is also a significant barrier to the effective and independent oversight of the arms trade.

Arms companies and other business actors in the arms trade have for too long hidden behind States' licensing process and used it to justify that obtaining a license meant that due diligence was exercised. WILPF reiterates that arms companies and other businesses that support the arms trade, including financially and logistically, hold separate responsibility over how the arms they sell, or finance, are used by third parties, which cannot be simply absolved by the state licensing process. Furthermore, the HRC and its mechanisms should also examine the role of enablers of the arms trade, such as investors and transporters of arms, who may be more responsive to pressure than arms companies themselves.

5. Loopholes in international and national regulations on arms controls

WILPF is very concerned about multiple practices of States and arms companies that circumvent international and national regulations on arms controls, including the obligation to assess human rights impacts of arms exports. In various country contexts,

⁹ See for example, 'States and companies must end arms transfers to Israel immediately or risk responsibility for human rights violations: UN experts', 20 June 2024, available at: <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>

¹⁰ See, for example, HRC57: Statement on the OHCHR Report on Arms Transfers, available at: https://www.wilpf.org/advocacy_documents/hrc57-statement-on-the-ohchr-report-on-arms-transfers/

we have noted loopholes in the national control of arms exports due to exemptions applicable to joint ventures, certain intergovernmental agreements, use of general arms export licenses and for exports of components/parts of arms.¹¹

The supply chain for many military items is often highly globalised, with several countries and companies that collaborate to design, produce and deliver various parts and components. While the Arms Trade Treaty offers a global framework with common legal standards for international transfers of arms for States parties, including their parts and components, the landscape remains uneven. The varying locations and the dual-use nature of many parts and components mean that certain items bypass a risk assessment — either because they are being produced in countries without national export laws or that are not parties to the ATT, or because the items themselves are not scrutinised. Certain bilateral agreements between countries exacerbate this problem, such as that between Canada and the US.¹² There is arguably even more opacity in arms transfers between countries not parties to the ATT.

In addition, under the UNGPs, States have the obligation to protect against human rights abuse within their territory and/or jurisdiction by business enterprises and should clearly set out the expectation that enterprises respect human rights throughout their operations.¹³ In this regard, the UN Working Group on Business and Human Rights has made clear that the UNGPs apply to the arms trade and its entire supply chain. The HRC and the UN Working Group on Business and Human Rights should further analyse challenges posed by the arms sector's global supply chains. The UN human rights system has a crucial role in reminding both States and the private sector that

¹¹ See for example, WILPF, AI-Haq, and the International Service for Human Rights (ISHR), Joint Submission to the UN Human Rights Committee for the Review of the UK, 13 February 2024, available at: <https://www.wilpf.org/advocacy_documents/joint-submission-to-the-un-human-rights-committee-for-the-review-of-the-uk/>, WILPF, ECCHR, 8 January 2018, Joint Submission to CESCR on the Review of Germany available at: <https://www.wilpf.org/advocacy_documents/joint-submission-to-cescr-on-the-review-of-germany/> and WILPF Submission to the CRC Pre-session on Canada, 26 June 2020, available at: <https://www.wilpf.org/advocacy_documents/submission-to-the-crc-pre-session-on-canada/>

¹² See, for example, WILPF's Submission to the CRC Pre-session on Canada, available at: https://www.wilpf.org/advocacy_documents/submission-to-the-crc-pre-session-on-canada/

¹³ See Guiding Principles 1 and 2, available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

international human rights law applies, regardless of the countries through which weapons were transported, assembled or used, to close accountability gaps.

6. Continuing analysis of the various human rights direct and indirect impacts of arms, including on the environment

Whereas IHL focuses on legal assessments at the level of individual attacks, international human rights law recognises human rights as interdependent and indivisible and considers the interconnected and longer-term impacts of arms. Thus, human rights law analysis is essential to fully grasp the structural aspects of harm linked to weapons, which extend beyond direct death and injury. This analysis must consider the intersectional dimensions of violations, the full range of rights impacted, and various types of harm such as psychological, intergenerational, and environmental harms. These aspects are crucial in developing a victim-centered approach to prevention and remediation.

In this regard, past thematic OHCHR reports have been important to unpack and raise awareness of the impacts of arms on the rights of individuals belonging to various groups, including children and youth, as well as regarding the gendered impacts of weapons. As already highlighted in WILPF's January 2024 submission to the OHCHR on the right of access to information and in previous submissions,¹⁴ WILPF believes that future work of the HRC and the OHCHR should also analyse the impacts of arms transfers on the right to a clean, healthy and sustainable environment.

¹⁴ Submission to OHCHR on the Role of Access to Information Regarding Human Rights Impacts of Arms Transfers, 29 January 2024, available at: <https://www.wilpf.org/advocacy_documents/submission-to-ohchr-on-the-role-of-access-to-information-regarding-human-rights-impacts-of-arms-transfers/>; and WILPF's Submission to the OHCHR on the Impact of Arms Transfers on Human Rights (31 May 2022). This submission is to the report requested by requested HRC resolution 47/17 on "good practices, lessons learned and challenges faced by states in preventing, mitigating and addressing the diversion of arms and unregulated or illicit arms transfers that have a particular impact on the enjoyment of human rights by children and youth, and the role of national control systems as effective mechanisms in that regard." Available at: <https://www.wilpf.org/advocacy_documents/submission-to-the-ohchr-report-on-the-impact-of-arms-transfers-on-human-rights/>

7. Re-stating States' relevant international law obligations regarding human rights and arms transfers

The first OHCHR report on arms transfers and human rights (A/HRC/35/8), submitted to the HRC in 2017, suggested “elements that may be used by States and other stakeholders to assess the relationship between arms transfers and human rights, including in the context of the human rights risk assessments that should be carried out pursuant to article 7 of the Arms Trade Treaty and regional arms transfer instruments.”¹⁵

That report briefly set out some of the legal framework relevant to arms transfers and human rights law, including the principles of due diligence and the responsibility for aiding or assisting in the commission of an internationally wrongful act in international human rights law and public international law, respectively, the international and regional arms transfer regimes and guidance from international human rights mechanisms.

Other important international, regional and national legal and policy developments have emerged since 2017. Thus, WILPF encourages the OHCHR to consolidate such developments in a dedicated publication or fact sheet to provide updated and more comprehensive guidance on applicable obligations to States, industry and other stakeholders on the issue of arms transfers and international human rights law.

Some of the following analyses and developments could inform such a publication:

- Relevant findings of UN HRC-mandated investigative mechanisms including, but not limited to the following:
 - The report of the Fact-Finding Mission on Myanmar on “The economic interests of the Myanmar military” (in particular its section on the applicable legal framework);¹⁶

¹⁵ A/HRC/35/8

¹⁶ Full report: the economic interests of the Myanmar military - A/HRC/42/CRP.3, 16 September 2019, available at: <<https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>>

- Relevant findings and recommendations of the Group of Eminent Experts on Yemen provided in the reports to the HRC.
- Findings of UN Special Procedures and in particular:
 - The 2022 UN Working Group on Business and Human Rights' Information note on the arms sector;¹⁷
 - Joint statements of UN Special Procedures mandate-holders related to arms transfers.
- References to relevant UPR and Treaty Bodies' recommendations and general comments;
- Relevant investigations and decisions of international courts including the International Court of Justice and the International Criminal Court raising arms transfers' related issues and compliance with international law;
- Decisions of national courts relevant to arms transfers and international human rights law;
- Relevant regulatory developments at international, regional and national levels including revisions of arms export control regimes (e.g. EU Common Position on arms exports upcoming 2024 revision, new regulations on corporate human rights due diligence including at EU level, etc.).

Finally, WILPF recommends more comprehensive and updated guidance from the OHCHR on the interpretation of the ATT's provisions related to international human rights law and international humanitarian law. This is particularly important as discussions about compliance with human rights provisions start to emerge in the ATT Conference of State Parties. WILPF has noted that the above-mentioned 2017 OHCHR report on arms transfers referred to Articles 6 and 7 of the ATT, to Article 6.3 and 7.4 in particular. However, the report did not mention Article 6.2 which prohibits an arms transfer from a State to another if it "would violate relevant international obligations

¹⁷ Responsible business conduct in the arms sector:

Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights Information Note by the UN Working Group on Business and Human Rights, available at: <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>

under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms".

We recall that at the time of the adoption of the ATT, 98 states signed a joint statement led by Mexico underlining that:

"This Treaty prohibits conventional arms transfers when they would violate relevant international treaty obligations, including those contained in human rights treaties. The Treaty also prohibits all transfers of arms that would be used in the commission of genocide, crimes against humanity or war crimes in all types of armed conflict."

The joint statement also emphasised that:

"the Treaty enables us to make it stronger, and through its implementation, to adapt it to future developments."¹⁸

It is important to build on existing guidance of Articles 6 and 7 of the ATT, as well as on recent legal developments and to clarify guidance to strengthen States' parties' understanding of how their international human rights obligations should be construed and applied.

¹⁸ Adoption of the ATT by the General Assembly Political Declaration delivered by Mexico on behalf of 98 States New York, 2 April 2013, available at: < <https://controlarms.org/wp-content/uploads/2018/04/Mexico.pdf> >