

**Control Arms Coalition Submission to
the Office of the United Nations High Commissioner for Human Rights
on the Impact of Diversion of Arms and Unregulated or Illicit Arms Transfers on
Human Rights**

The Control Arms Coalition welcomes the initiative taken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the impact of diversion of arms and unregulated or illicit arms transfers on human rights.

Control Arms is pleased to contribute to these discussions, and through this submission, wishes to provide recommendations and examples of good practice that governments can implement to limit the impact of diversion of arms and unregulated or illicit arms transfers on the enjoyment of human rights by women and girls.

Questions 1 and 2.

- (1) Please identify the ways that diversion of arms and unregulated or illicit arms transfers impact on the enjoyment of human rights by women and girls. Please elaborate on the nature and extent of such impact. Are there rights that are particularly affected? (e.g. right to life, education, freedom of movement, health, etc.)**
- (2) How do unregulated or illicit arms transfers and the diversion of arms contribute to the increase of gender-based violence against women and girls? Please identify the forms of gender-based violence against women and girls that increase as a result of unregulated or illicit arms transfers and the diversion of arms (e.g., sexual violence, domestic violence, etc.)**

The illicit and unregulated proliferation of arms has serious consequences for the safety and rights of women and girls. Research indicates that diversion of arms and unregulated or illicit arms transfers - particularly when coupled with instability, high levels of violence and gender and power inequalities - can negatively affect a wide spectrum of human rights of women and girls that are typically protected under international agreements and customary international law. These include but are not limited to: the right to life; the right to liberty and security of the person, freedom from torture and other forms of cruel, inhuman or degrading treatment; sexual violence, freedom from slavery; protection against enforced disappearance, freedom of thought, as well as the rights to health, education, food and housing, and denial of humanitarian access.¹

Illicit arms transfers include those that breach legal commitments made by states on the national, regional or international level. The Arms Trade Treaty (ATT), in particular, prohibits

¹ Control Arms (2015). "ATT Monitor Report 2015".
<https://attmonitor.org/en/wp-content/uploads/2015/08/Full-Annual-Report.pdf> p. 31

States Parties from authorizing arms transfers that would be used to commit or facilitate most breaches of international humanitarian law and requires national governments to implement stringent protocols to regulate arms transfers that could be used to commit or facilitate serious human rights violations, specifically those concerning gender-based violence and those committed against women and children.² Therefore, an arms transfer authorized by any of the 105 State Parties to the ATT that is in breach of the Treaty's provisions is, by definition, illicit.

There is growing public recognition at the international level that arms proliferation, particularly of small arms and light weapons (SALW), has a profound impact on the enjoyment of human rights by women and girls. The two main bodies of the United Nations acknowledge this link through UN Security Council Resolution 1325 on Women, Peace and Security,³ and the UN General Assembly biennial resolution on 'Women, disarmament, non-proliferation and arms control'.⁴ Additionally, International instruments in both the human rights and disarmament fields recognize this connection in the Committee on the Elimination of Discrimination against Women⁵ (the CEDAW Committee), the Arms Trade Treaty (ATT), and the UN Programme of Action on SALW.⁶ Other major UN frameworks that also address this link include the UN Guiding Principles on Business and Human Rights,⁷ the Agenda 2030 for Sustainable Development Goals, particularly Goal 5.2 and 16.4,⁸ and the Secretary General's Agenda for Disarmament.⁹ Regional frameworks like the European Union (EU) Council Users Guide to Council's Common

² The ATT, which entered into force in December 2014, is the first legally binding global instrument to recognize the connection between arms transfers and gender based violence (GBV). The ATT seeks to protect the human rights of women and girls by prohibiting the transfer of arms that would be used in the commission of grave breaches of IHL and IHRL by 1) requiring exporting States not to authorize a transfer "*if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a party*"; 2) requiring exporting States to assess whether the transfer may have a negative impact on human rights as part of the legally binding, comprehensive risk assessment that all States Parties must undertake; 3) requiring exporting States to take into account whether the arms transferred may be "*used to commit or facilitate gender-based violence or serious acts of violence against women and children*"

³ United Nations Security Council (UNSC) (2000). "Security Council resolution 1325 [on women and peace and security]". UNSC. 31 October 2000. <https://www.refworld.org/docid/3b00f4672e.html>

⁴ United Nations Secretary General, et. al (2018). "Women, disarmament, non-proliferation and arms control: Report of the Secretary-General". <https://digitallibrary.un.org/record/1637560?ln=en>

⁵ Office of the United Nations High Commissioner for Human Right (OHCHR) (2012). "Statement of the Committee on the Elimination of Discrimination against Women on the Need for a Gender Perspective in the Text of the Arms Trade Treaty". 24 July 2012.

<https://www.ohchr.org/documents/HRBodies/CEDAW/Statements/StatementGenderPerspective.pdf>

⁶ United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspect <http://www.poa-iss.org/PoA/poahtml.aspx>

⁷ OHCHR (2011). "Guiding Principles on Business and Human Rights". 16 June 2011. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁸ UN General Assembly, (2015) Transforming our world : the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1 <https://www.refworld.org/docid/57b6e3e44.html>

⁹ "UN Office for Disarmament Affairs (2018). 'Securing Our Common Future. An Agenda for Disarmament.' UNODA: New York. <https://www.un.org/disarmament/sg-agenda/en/> p.39

Position 2008/944 CFSP provide additional guidance on the negative impact of arms transfers on human rights.¹⁰

Despite broad international recognition of the link between illicit, unregulated and diverted arms transfers and human rights violations against women and girls, stark examples of the link can be found in all regions of the world. Through the distinct perspectives of the conflicts in Yemen and Syria, and the threats posed by Boko Haram in Africa and international criminal organizations in Latin America, this submission illustrates that more action is needed to regulate arms transfers in order to reduce these human rights violations and other forms of human suffering.

The Yemen Conflict

Since the escalation of the conflict in March 2015, diverted, illicit and unregulated arms transfers to all parties to the conflict in Yemen have exacerbated violations of International Human Rights Law (IHRL) and International Humanitarian Law (IHL), resulting in thousands of civilian casualties and “widespread displacement and human suffering on a massive scale.”¹¹ According to the Yemen Data Project, the direct effects of 20,739 air attacks conducted by the military coalition led by Saudi Arabia and the United Arab Emirates (UAE) (the “Coalition”) between March 2015 and March 2019 resulted in more than 18,000 civilian casualties, including women and children.¹² The UN Group of Eminent Experts on Yemen has strongly suggested that parties to the armed conflict have perpetrated, and continue to perpetrate, violations and crimes under international law. Its 2019 report documents the impact of Coalition air strikes on civilian infrastructure including residential areas, markets, funerals, weddings, detention facilities, water towers, banks and even medical facilities.¹³ The same report found that Houthi military forces are also responsible for a significant number of civilian casualties in Yemen, including repeated artillery and missile attacks and the use of anti-personnel and anti-vehicle landmines in populated areas.¹⁴ Available data indicates that while airstrikes and shelling resulted in the highest number of civilian casualties (fatalities and injuries), the use of landmines resulted in the highest number of fatalities alone.¹⁵

¹⁰ Council of the European Union. (2015) “User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment” 9241/09 <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf> p.53

¹¹ Control Arms (2019). “ATT Monitor Report 2019”. https://attmonitor.org/en/wp-content/uploads/2019/07/EN_ATT_Monitor-Report-2019_Online.pdf p.15

¹² Yemen Data Project (2015). “Yemen Data Project - Index”. <https://www.yemendataproject.org/index.html>

¹³ OHCHR (2019). Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen on “Situation of human rights in Yemen, including violations and abuses since September 2014” 3 September 2019, A/HRC/42/CRP.1 https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF p. 106

¹⁴ Ibid p. 20, 48-50

¹⁵ Civilian Impact Monitoring Project (2018). “An annual report on civilian impact from armed violence in Yemen” <https://civilianimpactmonitoring.org/onewebmedia/2018%20CIMP%20Annual%20Report.pdf> p. 1, 9.

Diversion of arms and illicit or unregulated arms transfers to the warring parties in the Yemen conflict has led to loss of life among civilians,¹⁶ the destruction of civilian infrastructure and the breakdown of basic services. This loss and destruction are to a large extent the result of the aerial campaign carried out by the Saudi and Emirati coalition and the “indiscriminate”¹⁷ use of anti-personnel and anti-vehicle landmines by Houthi forces.¹⁸ These actions have also had devastating indirect effects on the civilian population, particularly vulnerable groups such as women and girls, including an increased risk of gender-based violence (sexual violence, abduction, and forced and child marriage), as well as restricted access to food, water and other basic necessities including healthcare and education:

- Due to different social, cultural and religious norms, women and girls are more at risk of experiencing the negative impact of explosive weapons, than other categories of arms. Moreover, women and girls are also less likely to be rescued or receive medical treatment.¹⁹ Studies have also shown that female survivors of landmine explosions, who have suffered disfigurement or disability, are also more likely to suffer stigma than men.²⁰
- Both coalition airstrikes which affected medical facilities and the use of hospitals for military purposes by the Houthi forces²¹ resulted in a limited number of functioning healthcare facilities and severe shortages of medical supplies, equipment and staff. Accordingly, in 2019 the World Health Organization (WHO) projected 1,000 maternal deaths per 68,000 pregnant women at risk due to the lack of access to adequate medical care.²²

¹⁶ Ibid

¹⁷ The 2019 Report of the Group of Eminent Experts on Yemen to the United Nations High Commissioner for Human Rights stresses that use of anti-personnel mines is prohibited by the Anti-Personnel Mine Ban Convention and noted that the use and placement of antipersonnel and anti-vehicle landmines by Houthi forces “in unmarked locations frequented by civilians, with little or no warning given, which rendered their use indiscriminate” is in violation of international humanitarian law. See OHCHR (2019). Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen on “Situation of human rights in Yemen, including violations and abuses since September 2014” 3 September 2019, A/HRC/42/CRP.1

¹⁸ Ibid. See for example, the 2019 Report of the Group of Eminent Experts on Yemen to the United Nations High Commissioner for Human Rights (A/HRC/42/CRP.1) which documented the impact of landmines in Yemen, including an incident in February 201 in which a woman in the Ta’izz Governorate stepped on an anti-personnel landmine while collecting firewood, causing her to lose her leg and wounding another woman.

¹⁹ Datham, Jennifer. (2020) "Health, Gender And Explosive Violence: Access To Treatment After Incidents Of Explosive Violence". Action on Armed Violence [online] <https://aoav.org.uk/2020/health-gender-and-explosive-violence-access-to-treatment-after-incidents-of-explosive-violence/>.

²⁰ Martin Butcher (2019). “The Gendered Impact of Explosive Weapons Used in Populated Areas in Yemen”. Oxfam International. November 2019. <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620909/bp-yemen-gendered-impact-explosive-weapons-261119-en.pdf> p. 8

²¹ OHCHR (2019). Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen on “Situation of human rights in Yemen, including violations and abuses since September 2014” 3 September 2019, A/HRC/42/CRP.1 https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF p.9

²² USAID (2019) "Yemen: Health Fact Sheet - September 2019 - Yemen". Reliefweb, <https://reliefweb.int/report/yemen/yemen-health-fact-sheet-september-2019>.

- The multi-year de-facto blockade of the ports of Aden and al-Hudaydah imposed by the Saudi and Emirati-led coalition restricted food imports to only 47% of its previous quantities,²³ while Coalition airstrikes and the laying of landmines by Houthi rebels destroyed farms and factories, leaving millions without jobs. By October 2018, the blockade and its attendant disruptions and delays in the delivery of food and other supplies, as well as the devaluation of Yemeni currency caused food and petrol prices to rise 137% and 261% respectively.²⁴ This made it impossible for many families to meet their minimal food needs. As a result, Save the Children estimates that 85,000 children may have died from starvation between March 2018 and October 2019.²⁵ Similarly, by 2017, over 1.1 million pregnant and lactating women in Yemen suffered from Moderate Acute Malnutrition, thereby rendering lactation impossible for malnourished mothers and increasing the risk of infant mortality²⁶.
- Coalition airstrikes and shelling by warring parties on all sides has resulted in high levels of internal displacement of Yemenis,²⁷ 76 percent of which are women and girls.²⁸ Such widespread displacement brings with it a lack of adequate security that makes women in Yemen even more vulnerable to gender-based violence, discrimination and exploitation.
- While reliable data on gender-based violence in Yemen is limited, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that in 2018, responses by humanitarian actors to claims of gender-based violence, including rape and sexual assault, intimate partner violence, and early and forced marriage of girls increased by 70 percent, compared to previous years.²⁹ According to the Sana'a Centre for Strategic Studies, focus group participants reported “incidents of rapes of girls and boys, within families, in schools and by armed men from security forces and militias” and noted that “displaced women, poor women, female beggars and Muhamasheen women were the

²³ OCHA (2017). “Yemen Commodity Tracker for January 2019”. 7 January 2019.

https://reliefweb.int/sites/reliefweb.int/files/resources/20181231%20OCHA_Yemen_Commodity%20Tracker.pdf

²⁴ Ibid.

²⁵ Save the Children (2018). “Yemen: 85,000 Children May Have Died from Starvation Since Start of War”. 20 November 2018. [Online]

<https://www.savethechildren.org/us/about-us/media-and-news/2018-press-releases/yemen-85000-children-may-have-died-from-starvation>

²⁶ Martin Butcher (2019). “The Gendered Impact of Explosive Weapons Used in Populated Areas in Yemen”. Oxfam International. November 2019.

<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620909/bp-yemen-gendered-impact-explosive-weapons-261119-en.pdf> p.9

²⁷ Civilian Impact Monitoring Project (2018). “An annual report on civilian impact from armed violence in Yemen”. <https://civilianimpactmonitoring.org/onewebmedia/2018%20CIMP%20Annual%20Report.pdf> p. 8.

²⁸ Martin Butcher (2019). “The Gendered Impact of Explosive Weapons Used in Populated Areas in Yemen”. Oxfam International. November 2019.

<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620909/bp-yemen-gendered-impact-explosive-weapons-261119-en.pdf> p. 9

²⁹ OCHA (2019). “Being a girl in Yemen: Jehan and Hamamah’s story”. 09 May 2019. [Online]

<https://www.unocha.org/story/being-girl-yemen-jehan-and-hamamah%E2%80%99s-story>

most vulnerable to sexual exploitation.”³⁰ The UN Eminent Group of Experts also documented instances of gender-based violence committed by Coalition and government forces in Yemen, including sexual violence of persons, and the abduction of women and girls by Houthi forces as a means for extortion.³¹

- “War-related economic and security factors are magnifying the societal problem of early marriage” and withdrawal of children from schools, especially of girls.³² According to a 2017 OCHA report, child marriage increased since the conflict began, estimating that 72 percent of girls under the age of 18 are married – an increase of 22 percent since the conflict escalated.”³³ Studies show that girls who entered or were forced into child marriages are also at a higher risk of suffering gender-based violence, including physical and sexual violence, and are less likely to complete their education.³⁴

Given the number and scope of arms transfers to the Coalition forces, there is compelling evidence that a portion of the arms and munitions linked to these illicit arms transfers were used to commit human rights violations, including against women and girls. According to the Stockholm International Peace Research Institute (SIPRI), the US and the UK are responsible for over 86% of all major conventional arms supplied to Saudi Arabia from 2015-19, followed by France, Spain and Canada which provided another 7.5% of Saudi Arabia’s arsenal.³⁵ Of the 22 countries that have supplied arms to Saudi Arabia since the Yemen conflict began, 18 of them are States Parties to the ATT.³⁶ Similarly, the US (67%) and France (11%) were the major exporters of conventional arms to the UAE between 2015-19.³⁷

³⁰ Al-Ammar F, Patchett H, and Shamsan S (2019). “A Gendered Crisis: Understanding the Experiences of Yemen’s War”. Sana’a Centre for Strategic Studies. 15 December 2019.

https://sanaacenter.org/files/A_Gendered_Crisis_en.pdf p. 6, 58

³¹ OHCHR (2019). Report of the Group of Eminent International and Regional Experts as submitted to the United Nations High Commissioner for Human Rights on “Situation of human rights in Yemen, including violations and abuses since September 2014” 3 September 2019, A/HRC/42/17

<https://undocs.org/en/A/HRC/42/17> p.14

³² Al-Ammar F, Patchett H, and Shamsan S (2019). “A Gendered Crisis: Understanding the Experiences of Yemen’s War”. Sana’a Centre for Strategic Studies. 15 December 2019.

https://sanaacenter.org/files/A_Gendered_Crisis_en.pdf p. 6, 7

³³ United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (2017) Humanitarian Bulletin: Yemen” Issue 28. 29 October 2017.

https://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin_Issue%2028_September%202017_FINAL_ENG.pdf p.2

³⁴ UN Secretary General’s Envoy on Youth (2016). “New UN initiative aims to protect millions of girls from child marriage”. [online]

www.un.org/youthenvoy/2016/03/new-un-initiative-aims-to-protect-millions-of-girls-from-child-marriage/

³⁵ Stockholm International Peace Research Institute (SIPRI). “Arms Transfers Database”. [online]

www.sipri.org/databases/armstransfers

³⁶ As data of arms transfers to Saudi Arabia is for years 2015 to 2019, it is important to note that some of these countries became State Parties to the ATT during this time, such as Canada, which became a State Party on 26 December 2019. For a full list of ATT States Parties see ATT Secretariat “Treaty Status”

<https://thearmstradetreaty.org/treaty-status.html?templateId=209883>

³⁷ SIPRI. “Arms Transfers Database”. [online] www.sipri.org/databases/armstransfers

Despite overwhelming evidence of human rights violations in Yemen, major arms exporters including the US, UK, France and Italy continue to authorize arms transfers, in breach of their national and international obligations, including the ATT. The legality of several of these arms transfer decisions is currently under review at the international and national levels. For example, the Group of Eminent Experts on Yemen noted in their 2019 Report to the UN High Commissioner for Human Rights that “the legality of arms transfers by France, the United Kingdom, the United States and other States remains questionable, and is the subject of various domestic court proceedings.”³⁸ In the UK, the Court of Appeal concluded in 2019 that decisions to authorise arms transfers to Saudi Arabia for use in Yemen were “irrational, and therefore unlawful.”³⁹ In Italy,⁴⁰ Belgium,⁴¹ France, Spain and Canada, similar decisions have recently been under international⁴² and/or national judicial or parliamentary review. On a positive note, since 2016, a number of countries have announced the implementation of measures to restrict arms transfers to the Coalition forces for use in Yemen, including Austria, Ireland, Denmark, Finland, Germany, Belgium (Government of Flanders region), Greece, Netherlands, Norway, Sweden and Switzerland.

Houthi forces have also used arms to commit or facilitate human rights violations against women and girls in Yemen. While information regarding Houthi arms and munitions is limited, their extensive use of landmines⁴³ and improvised explosive devices (IEDs) are well-documented. In a report examining mines and IEDs employed by Houthi forces on Yemen’s west coast, Conflict Armament Research (CAR) found that improvised mines, IEDs, IED main

³⁸ The Group of Eminent Experts on Yemen noted in their 2019 report to the United Nations High Commissioner for Human Rights that “third States have a specific influence on the parties to the conflict in Yemen, or directly or indirectly support them, including by means of intelligence and logistic support, as well as arms transfers.” The report, which refers to the ATT, also notes that “[t]he Group of Experts observes that the continued supply of weapons to parties involved in the conflict in Yemen perpetuates the conflict and the suffering of the population.” (See OHCHR (2019). Report of the Group of Eminent International and Regional Experts as submitted to the United Nations High Commissioner for Human Rights on “Situation of human rights in Yemen, including violations and abuses since September 2014”, A/HRC/42/17 <https://undocs.org/en/A/HRC/42/17> p.16)

³⁹ Court of Appeals (2019). "The Queen (On The Application Of Campaign Against Arms Trade) -V- Secretary Of State For International Trade And Others". Para. 145, Judiciary. UK. 20 June 2019. <https://www.judiciary.uk/judgments/the-queen-on-the-application-of-campaign-against-arms-trade-v-secretary-of-state-for-international-trade-and-others/>.

⁴⁰ ECCHR (2018). "Coalition Of Ngos Files Criminal Complaint Against RWM Italia S.P.A. A Subsidiary Of German Arms Manufacturer Rheinmetall AG And Italian Arms Export Authority". 18 April 2018. https://www.ecchr.eu/fileadmin/Pressemitteilungen_englisch/PR_Yemen_Italy_Arms_ECCHR_Mwatana_ReteDisarmo_20180418.pdf.

⁴¹ Lalibre.Be (2019). "Bientôt La Fin Des Armes Wallonnes En Arabie Saoudite ?". 14 June 2019. [online] https://www.lalibre.be/belgique/bientot-la-fin-des-armes-wallonnes-en-arabie-saoudite-5d03a2d67b50a62b5bf2b1fd?fbclid=IwAR2Pqyv--IsYkliKPCi4_qh1V6t8fl6kMGacEwbfIHsSzsQ4BFsVgS4cQ6s.

⁴² Mwatana for Human Rights (2019). "Made in Europe, Bombed in Yemen (Case Report)". 12 December 2019. [Online] <https://mwatana.org/en/made-in-europe-bombed-in-yemen-case-report/>

⁴³ According to the Yemen Executive Mine Action Centre, between 2016 and 2018, the Yemeni army removed some 300,000 landmines that Houthi forces had laid throughout Yemen. (Cited in CAR (2018). "Mines and IEDs Employed by Houthi Forces on Yemen’s West Coast". September 2018. www.conflictarm.com/download-file/?report_id=2949&file_id=2954 p.4)

charges, and IED pressure plates are mass-produced by Houthi forces, the key parts and components of which originate from Iran. A smaller portion of Houthi weapons, particularly conventional landmines, were diverted from Yemeni national stockpiles following the collapse of the Yemeni government.⁴⁴ More recently, a report by the UN Panel of Experts on Yemen indicated that a shipment of SALW seized by Coalition forces on 10 December 2018 in Aden originated in China. The report also notes that rocket-propelled grenade launchers used by Houthi forces “have technical characteristics similar to RPG-7 launchers produced in the Islamic Republic of Iran.”⁴⁵

Despite overwhelming evidence of IHL and IHRL violations gathered by UN bodies and international governmental and non-governmental organizations, arms transfers to the warring parties in Yemen continue, prolonging the conflict and exacerbating its negative repercussions on civilians. While men and boys are the primary direct victims of the Yemen conflict, reports indicate that women and girls suffer gravely and disproportionately due to secondary effects of the conflict, including forced displacement, gender-based violence, trafficking, lack of access to food, water, sanitation, health care, education.

It is worth noting that human rights violations against women and girls are not unique to Yemen. Similar patterns and impacts on women and girls can be identified in other conflict situations. For example in Syria, air and ground attacks, shelling and relentless fighting so far have resulted in large numbers of civilian casualties,⁴⁶ left 6.6 million internally displaced and created more than 5.6 million refugees,⁴⁷ of which 44% are women and girls.⁴⁸ These actions have also had devastating indirect effects on the civilian population, particularly vulnerable groups such as women and girls, including

- Airstrikes and sieges, primarily carried out by the Syrian state, that destroy civilian infrastructure, including medical facilities and medical care, have had a disproportionate impact on women and girls both in terms of emergency care and access to sexual and reproductive health. For instance, a siege carried out by the Jaish al-Fatah formation in

⁴⁴CAR (2018). “Mines and IEDs Employed by Houthi Forces on Yemen’s West Coast”. September 2018. www.conflictarm.com/download-file/?report_id=2949&file_id=2954 p.5

⁴⁵Panel of Experts on Yemen (2019). “Final report of the Panel of Experts on Yemen”. S/2020/70 UN Security Council, 27 January 2020. <https://www.undocs.org/en/S/2020/70> p.25

⁴⁶ Between March 2011 and February 2020, numerous operations - both on the ground and in the air - resulted in 129,725 civilian battle-related deaths. Of these 82% (106,967) were caused by the Syrian Government and Associated Militias, 5% (6,794) by Russian forces, 3.5% (4,600) by ISIS, 2.3% (2,991) by the opposition armed groups, and 2.1% (2,728) by the International Coalition. See Violations Documentation Center in Syria (2020) “Monthly Statistical Report on Casualties in Syria”. February 2020. <https://vdc-sy.net/monthly-statistical-report-casualties-syria/> p.3

⁴⁷ Human Rights Watch (2019). “World Report 2019: Our annual review of human rights around the world” Chapter “Syria - Events of 2018”. [online] <https://www.hrw.org/world-report/2019/country-chapters/syria>

⁴⁸ UNHCR (2020). “Operation Portal - Refugee Stations: Total Persons of Concern by Country of Asylum” 5 August 2020. [Online] https://data2.unhcr.org/en/situations/syria#_ga=2.117654729.1129850430.1585623795-115212274.1585623795

March 2015 against the Shi'a towns of Fu'ah and Kafraya resulted in the death of several women in childbirth due to lack of medical supplies.⁴⁹

- Due to discriminatory gender norms, such as restrictions on freedom of movement, women and girls are more likely to remain inside the home, even after direct threats from weapons are identified.⁵⁰ According to Save the Children, while boys were more likely to be killed by small arms in armed clashes,⁵¹ 74% of girls' deaths in Syria were tied to the use of explosive weapons.⁵²
- Sexual and gender-based violence are also a devastating feature of this conflict. The Independent International Commission of Inquiry on the Syrian Arab Republic reported that all parties to the conflict carried out sexual and gender-based violence. Government forces engaged in sexual and gender-based violence at checkpoints and in detention centers, while the Islamic States and Jabhat Fatah al-Sham terrorist groups committed a wide range of violations including executions, restriction of freedom of movement, restrictions of dress, and subsequent corporal punishment against women and girls found in breach of discriminatory codes imposed by the terrorist groups.⁵³
- Similar to Yemen, the Syrian conflict also led to an increase in forced and/or child marriages. UNHCR estimates that while 13 percent of girls under the age of 18 were married in Syria prior to the conflict, the rate of child marriage increased four times since the conflict began.⁵⁴ The same study notes that girls who marry before the age of 18 are more likely to experience domestic violence, while girls who marry under the age of 15 are five times more likely to die in childbirth than adult women.

⁴⁹ Independent International Commission of Inquiry on the Syrian Arab Republic (2018). "Sieges as Weapons of War: Encircle, Starve, Surrender, Evacuate". 29 May 2018. https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/PolicyPaperSieges_29May2018.pdf p.6

⁵⁰ ATT Secretariat (2019). "Working Paper Presented by the President of the Fifth Conference of States Parties to the ATT; Gender and Gender Based Violence". 15 January 2019. <https://thearmstradetreaty.org/hyper-images/file/ATT%20First%20CSP5%20Inf%20Prep%20Meet%20-%20Presidents%20Paper%20on%20Gender%20and%20GBV/ATT%20First%20CSP5%20Inf%20Prep%20Meet%20-%20Presidents%20Paper%20on%20Gender%20and%20GBV.pdf> p.3

⁵¹ According to the Oxford Research Group (ORG), of the total number children killed in Syria, boys outnumbered girls by more than 2 to 1 overall, with the ratio of boys to girls close to 1:1 among infants and children under 8 but rising to more than 4 boys to every girl among 13- to 17-year-olds. When girls are killed, they are far more likely to have been killed by explosive weapons (which killed 2,728, or 74% of girls) than by small arms (which killed 627, or 17%). See Oxford Research Group (2013). "Stolen Futures: The hidden toll of child casualties in Syria". November 2013 www.everycasualty.org/downloads/reports/Stolen-Futures.pdf p 1, 5

⁵² Strømme, Alvild et al., (2020). "Stop The War On Children 2020: Gender Matters". Resource Centre. <https://resourcecentre.savethechildren.net/node/16784/pdf/ch1413553.pdf>. p.20

⁵³ Office of the United Nations High Commissioner for Human Right (OHCHR) (2018). "I Lost My Dignity: Sexual And Gender-Based Violence In The Syrian Arab Republic". <https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A-HRC-37-CRP-3.pdf>. P.1, 4-6, 17-18, 25

⁵⁴ Leitner Center for International Law and Justice (2018). "Gendered-Approach Inputs To UNHCR For The Global Compact On Refugees (2018): Lessons From Abuses Faced By Syrian Female Refugees In Lebanon, Turkey, And Jordan". UNHCR. 2018. <https://www.unhcr.org/en-us/events/conferences/5a3bb9b77/gendered-approach-inputs-unhcr-global-compact-refugees-2018-lessons-abuses.html?query=child%20marriage>. p.18

Similar to the conflict in Yemen, arms supplied to all warring parties continue despite mounting evidence of IHL and IHRL violations. According to SIPRI, Russia has been Syria's biggest arms supplier, accounting for 91 percent of all imports from 2011 to 2018.⁵⁵ During this time, Russia supplied different types of armaments to the Syrian government, ranging from complex air defence systems to second-hand armoured vehicles.⁵⁶ Most recently, the UN Human Rights Council provided evidence that in 2019, Russian aircraft engaged in the war crime of indiscriminate air attacks in civilian areas in Syria.⁵⁷ For opposition groups in Syria, including the Islamic State, evidence suggests that diversion is the primary source of arms and ammunition. CAR claims 97% of documented weapons deployed by IS forces are Warsaw Pact calibres that originated in China, Russia and Eastern European states. CAR reports these weapons were largely acquired through battlefield capture, looting and diversion from Syrian national stockpiles, or from armed opposition groups operating in Syria, some of which are supported by the US and Saudi Arabia.⁵⁸

Non-Conflict Situations

Diversion of arms and illicit or unregulated arms transfers in non-conflict situations can also result in high number of civilian casualties and exacerbate human rights violations. The illicit supply of arms enables terrorist groups and non-state armed actors to carry out attacks against vulnerable groups, with women and girls often bearing a substantial and differentiated burden as targets of GBV, along with displacement and other negative social, economic consequences.

Boko Haram, a terrorist organization that originated in Nigeria in 2002, is known for large-scale acts of violence in and around the Lake Chad Basin. Since 2011, Boko Haram is believed to be responsible for killing 37,500 people and the displacement of nearly 2.5 million individuals in the sub-region.⁵⁹ Boko Haram has also committed a significant number of human rights violations against women and girls, including gender based violence, abduction, and enlistment of child soldiers:

- Boko Haram abducts women and girls as a tactical strategy for use as suicide bombers in terrorist attacks or in slavery. According to Save the Children, Boko Haram abducted between 2,000 and 8,000 women and girls since 2013.⁶⁰ Between June 2014 and

⁵⁵ SIPRI. "Arms Transfers Database". [online] www.sipri.org/databases/armstransfers

⁵⁶ According to SIPRI, between 2009 and 2013 Russia supplied high-value air defence systems and anti-ship missiles to Syria, while in 2014–18 it supplied mainly low-value arms such as second-hand armoured vehicles. See SIPRI (2018). "Trends in International Arms Transfers" https://www.sipri.org/sites/default/files/2019-03/fs_1903_at_2018.pdf p. 12

⁵⁷ Human Rights Council (2020). "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic" A/HRC/43/57. 28 January 2020, p. 23, 17. https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_43_57_AEV.pdf p. 6, 23

⁵⁸ Conflict Armament Research (CAR), 2017. "Weapons of the Islamic State". December 2017. www.conflictarm.com/reports/weapons-of-the-islamic-state p.4-5, 31

⁵⁹ Council on Foreign Relations (2020). "Global Conflict Tracker" updated 6 April 2020, "Boko Haram in Nigeria". [online] <https://www.cfr.org/interactive/global-conflict-tracker/conflict/boko-haram-nigeria>.

⁶⁰ Strømme, Alvild et al., (2020). "Stop The War On Children 2020: Gender Matters". Resource Centre. 2020. <https://resourcecentre.savethechildren.net/node/16784/pdf/ch1413553.pdf>. P.26.

February 2018, approximately 468 women and girls were deployed or arrested in 240 suicide attacks, resulting in the deaths of roughly 1,200 individuals and injuring some 3,000.⁶¹ Boko Haram is also known for its enlistment of child soldiers, forcing them to partake in acts of armed violence. During the July 10 attack on Marte, Borno State in 2014, witnesses to the assault noted that there were girls as young as 14 years old among the terrorist assailants.⁶²

- Women and children fleeing Boko Haram in 2017 made up 70 percent of displaced persons in and around the Lake Chad Basin, and many reported experiences of sexual violence.⁶³ For instance, between 2016 and 2017, reports of rape, sexual slavery, forced marriages and other incidences of sexual violence in northeast Nigeria increased by 55 percent.⁶⁴
- Moreover, Save the Children reports that “girls associated with armed forces or armed groups, who may have been forced into sexual relationships, forced marriage or support roles, run the risk of never being officially released and reintegrated, suffering from stigma or being suspected of having become insurgents themselves by their communities.”⁶⁵

According to a 2016 case study produced by the ATT Monitor, post-delivery diversion of weapons - comprising theft from national stockpiles, loss, leakage, and battlefield capture - is a primary source of armaments for non-state armed groups such as Boko Haram.⁶⁶ Theft from or capture of government-owned materiel, particularly during attacks on army bases in Cameroon, Niger and Nigeria, allowed Boko Haram to acquire armoured vehicles, similar to those used by the Nigerian Army, including Austrian-made Saurer 4K 4FA armoured personnel carriers (APCs), a UK-built Vickers Mk III Main Battle Tank, and Turkish-made Otokar Cobra wheeled armoured vehicles. Boko Haram also captured from the Nigerian Army a range of primarily Soviet-pattern SALW, including AK-pattern assault rifles; 7.62 x 54R mm and 12.7x 108 mm machine guns; RPG-7-pattern grenade launchers; and associated ammunition.⁶⁷

⁶¹ Campbell, John (2020). “Women, Boko Haram, and Suicide Bombings”. Council on Foreign Relations (CFR). 25 March 2020. [online] <https://www.cfr.org/blog/women-boko-haram-and-suicide-bombings>

⁶² Human Rights Watch (2014). “Those Terrible Weeks in Their Camp: Boko Haram Violence against Women and Girls in Northeast Nigeria”. 27 October 2014. [online] <https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls>

⁶³ UN Women (2017). “Fleeing Boko Haram, women seek healing and economic resilience in Niger camps”. 20 October 2017. [online] <https://www.unwomen.org/en/news/stories/2017/10/feature-niger-fleeing-boko-haram>

⁶⁴ Campbell, John and Anonymous (2018). “Boko Haram’s Violence Against Women and Girls Demands Justice”. Council on Foreign Relations. 11 May 2018. [online] <https://www.cfr.org/blog/boko-harams-violence-against-women-and-girls-demands-justice>

⁶⁵ Strømme, Alvild et al., (2020). “Stop The War On Children 2020: Gender Matters”. Resource Centre. <https://resourcecentre.savethechildren.net/node/16784/pdf/ch1413553.pdf>. P. 24

⁶⁶ ATT Monitor (2016). “Tackling Terror: How The Arms Trade Treaty (ATT) Could Help Stop The Diversion Of Arms And Ammunition In West Africa”. <https://attmonitor.org/en/wp-content/uploads/2016/08/ATT-Monitor-Case-Study-3-Tackling-Terror.pdf>. P.2

⁶⁷ Ibid.

Corruption and inadequate stockpile management practices enable Boko Haram to increase its weapons cache. For example, Small Arms Survey found that corrupt senior and junior officers in Niger's security forces supplied conventional arms diverted from the national stockpile to Boko Haram.⁶⁸

Similarly, the links between the diversion and illicit or unregulated arms transfers and human rights violations of women and girls are evident in countries affected by high levels of armed violence and organized crime, such as in the Latin American region. The link between gender-based violence and the use or availability of SALW is particularly relevant in these areas:

- Regions with high femicide rates, which generally correspond to regions with high levels of lethal violence, also exhibit high levels of tolerance for violence against women as well as wide availability of firearms.⁶⁹ For instance, while firearms are used in one-third of all femicides globally,⁷⁰ in some Latin American and the Caribbean countries, including El Salvador, Brazil, Colombia, Guatemala and Honduras,⁷¹ firearms were used in more than 60% of all femicides.⁷² Studies also indicate that the presence of firearms in households, particularly in countries which exhibit high tolerance for violence against women, increases the risk of intimate partner femicide or serious injury.⁷³
- As in previous cases discussed above, diversion of arms and illicit arms transfers are also linked to high numbers of refugee and displaced women from areas permeated by international organized crime. A study conducted by UNHCR among refugees fleeing El Salvador, Honduras, Guatemala revealed that 85 percent of women interviewed lived in neighbourhoods controlled by criminal armed groups and spoke of pervasive and systematic levels of violence connected to the increasing territorial influence of criminal armed groups. These women emphasized the varied risks that these criminal armed groups posed to women and girls including forced recruitment, extortion, sexual exploitation and sexual violence.⁷⁴

⁶⁸ Small Arms Survey (2019). "Preventing Diversion - Comparing ATT and African Measures for Importing States," www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Preventing-Diversion.pdf p.5

⁶⁹ Small Arms Survey (2012). "Femicide: A Global Problem". February 2012. www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf p.2

⁷⁰ Ibid. p.4

⁷¹ According to the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) 14 of the 25 countries with the highest rates of femicide in the world are located in Latin America and the Caribbean. See UNLIREC (2015). "Violencia Armada, Violencia Por Motivos De Género Y Armas Pequeñas: Sistematación De Datos Disponible En América Latina Y El Caribe". January 2015. P. 15 http://unlirec.org/documents/ViolenciaArmadaViolencia_Motivos_Genero_ArmasPequennas.pdf

⁷² Geneva Declaration (2015). "Lethal Violence Against Women And Girls". Geneva Declaration on Armed Violence. 2015. www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf. P. 103

⁷³ Ibid. 102

⁷⁴ UNHCR (2015) "Women on the Run: First-hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico". October 2015. <https://www.unhcr.org/56fc31864.pdf> p. 4,

- In the Latin American region, violence fueled by an increase in the presence of arms contributes significantly to negative indicators of social well-being, impunity, perceived insecurity, and lower degrees of institutional capacity, particularly in Guatemala, Honduras, and El Salvador. This, in turn, lowers the effectiveness of justice initiatives and forces susceptible groups, such as women, children and the LGBTQIA community, to migrate and seek greater security elsewhere.⁷⁵

As opposed to other regions affected by conflict or armed insurgency where warring parties employ a wide range of weapons from SALW to armoured vehicles or large-calibre artillery systems, in Latin American countries, international criminal organizations seek out firearms, particularly pistols and handguns. The concealability, portability and availability of these firearms in police and military stockpiles also provide greater opportunities for diversion. This is evident in countries like Guatemala, where between 2008 and 2011, the government seized almost 5,000 firearms per year from criminal groups, 60 percent of which were pistols and only 4 percent were assault rifles. Similar trends exist in Honduras, where in 2011, 41 percent of seized firearms were pistols, 30 percent were revolvers, and only 4 percent were assault rifles.⁷⁶ In addition, the diversion of ammunition is also prevalent in the region and equally difficult to prevent, particularly because “bullets tend to be less well marked, registered, kept, monitored and regulated than firearms, making diversion and misuse easier to conduct and more difficult to trace”.⁷⁷

Illicit trafficking and diversion of arms and ammunition from the US, which accounts for 40-60 percent of illicit weapons seized in Central America and the Caribbean, also contributes to the growing number of arms available on the illicit market in Latin America.⁷⁸ For instance, “between 2009 and 2014, 70 percent of all illegal weapons seized in Mexico by national authorities were determined to have originated in the US – a total of 73,684 firearms”.⁷⁹

Recommendations

The Practical Guide for Risk Assessment developed by Control Arms offers indicators, guidelines and emerging principles to assist practitioners and state representatives in considering gender-based violence and violence against women and children as part of the comprehensive export assessment required under the ATT.⁸⁰

⁷⁵ Perez Arguello, Maria and Couch, Bryce (2018). “Violence against women driving migration from the Northern Triangle”. Atlantic Council. 8 November 2018. [online] <https://www.atlanticcouncil.org/blogs/new-atlanticist/violence-against-women-driving-migration-from-the-northern-triangle/>

⁷⁶ Cited in Control Arms (2018) “Taming the Devil Within: How to use the Arms Trade Treaty to Address Diversion in Latin America”. December 2018. <https://controlarms.org/wp-content/uploads/2019/02/ATTDiversion-Paper-FINAL.pdf>. p. 11

⁷⁷ Ibid

⁷⁸ Ibid p.2

⁷⁹ Control Arms Secretariat (2018). “ATT Monitor Report 2018”. 2018. https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf p.106

⁸⁰ Control Arms (2018). “How to use the Arms Trade Treaty to address Gender-Based Violence”. August 2018. https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf

The Practical Guide proposes a four-stage process to incorporate gender-based violence concerns into export assessments:

1. Exporting states first identify what types of gender-based violence are recognized as violations under Article 6.3 or Article 7.1 of the ATT;
2. Exporting states identify which of the violations listed in ‘Stage 1’ are prevalent in the recipient state; (2) the state’s capacity to prevent and punish acts of gender-based violence; and (3) whether the arms and items to be transferred, their end use and the end user, are legitimate under the ATT;
3. Exporting states then identify whether there is an overriding risk that the arms or items to be transferred would be used to commit or facilitate the relevant acts of gender-based violence identified in Stage 2;
4. Lastly, exporting states determine whether mitigating measures or other approaches satisfactorily and significantly reduce the relevant Article 7.1 risks identified in Stage 3.

The Practical Guide also provides a comprehensive list of sources and documents that can offer an overview of the importing state’s commitments and obligations to addressing arms-related gender-based violence including: membership in key IHL and human rights agreements; membership in key arms control instruments; and national laws and policies to tackle gender-based violence. Similarly, the Practical Guide provides criteria, indicators and sources that can assist exporting countries to assess the prevalence of gender-based violence in the recipient country and their capacity to address this challenge.

The Fifth Conference of States Parties (CSP5) to the ATT endorsed a set of recommendations⁸¹ encouraging States to increase their understanding of the gendered impact of armed violence in the context of the ATT. These recommendations include:

- The collection of gender disaggregated data within national crime and health statistics, including gender disaggregated data on victims of armed violence and conflict.
- Support research that helps increase understanding of the gendered impact of armed violence in the context of the ATT.
- Elaborate and explain gender terms, to assist States in applying and working with gender issues within the ATT context.

The CSP5 also agreed to work toward enhancing States Parties’ ability to implement ATT Articles 6 and 7, including to:

- provide information on the identification and implementation of national practices relating to “mitigating measures” in the context of Article 7(4).

⁸¹ Arms Trade Treaty Secretariat (ATT) (2019) “CSP5 Conference Documents”.
[https://thearmstradetreaty.org/hyper-images/file/CSP5%20Final%20Report%20\(ATT.CSP5.2019.SEC.536.Con.FinRep.Rev1\)%20-%2030%20August%202019%20\(final\)/CSP5%20Final%20Report%20\(ATT.CSP5.2019.SEC.536.Con.FinRep.Rev1\)%20-%2030%20August%202019%20\(final\).pdf](https://thearmstradetreaty.org/hyper-images/file/CSP5%20Final%20Report%20(ATT.CSP5.2019.SEC.536.Con.FinRep.Rev1)%20-%2030%20August%202019%20(final)/CSP5%20Final%20Report%20(ATT.CSP5.2019.SEC.536.Con.FinRep.Rev1)%20-%2030%20August%202019%20(final).pdf) p.5

- provide information on national practices concerning gender-based violence risk assessments in order to facilitate learning between States Parties.⁸²

As evident by the case studies discussed above, while men and boys are both the primary perpetrators and victims of direct violence, women suffer disproportionately from the secondary impacts of conflict and armed violence. To have a better understanding of the gendered impact of illicit and unregulated transfers and diverted weapons, data and information on the proportionality of harm to civilians, particularly women and girls, should include the direct and indirect impact of conflict and armed violence. To achieve this, States Parties should mainstream gender in their national and local, criminal and public health policies and enable the collection of sex-disaggregated data on the impacts of armed violence, gender-based violence and conflict.

Question 3 and 4.

- (3) If your Government undertakes arms transfers, has your Government in the past refused to authorise an arms transfer due to the risk that those arms would be diverted? What considerations did your government take into account for the risk assessment and refusal, including national procedure and/or laws and international obligations and standards? On what information and from what sources of information did you government base its assessments?**
- (4) If your government does not undertake arms transfers, what methods would you recommend for assessing the risk of diversion during an arms transfer? What considerations can be taken into account when making these assessments, including national procedures and/or laws and international obligations and standards? On what information and from what sources of information could a state base its assessments?**

As Control Arms is not a government but an international non-governmental organization, our contribution to question 3 and 4 is limited to information made public by governments, particularly EU Member States, as well as to recommendations and best practices developed by governments and civil society. Additionally, given that a number of measures and best practices that should be taken by governments who undertake arms transfers (exporting and importing state) also apply to governments who do not undertake arms transfers (transit and transshipment states), the response to the two questions has been combined.

EU Member States report on their license denials each year under EU Council Common Position 2008/944/CFSP, which establishes eight shared criteria for arms transfers (see Annex 1 below). EU Member States must report the number of licenses denied because of a risk that technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions (Criterion Seven of the EU Common Position). In 2018 data disaggregated by country, there were a total of 108 denials of the basis of Criterion 7 (risk of

⁸² Ibid.

diversion)⁸³ (see Table 1 below). According to the EU, Criterion 7 was invoked 117 times for denials in 2014, 149 times in 2015,⁸⁴ 139 times in 2016⁸⁵ and 163 times in 2017⁸⁶. Countries do not elaborate on the reasons for diversion denials but should do so in order that other exporting countries may be better informed when making their own export decisions. Belgium, Cyprus, Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Slovakia, Slovenia, Sweden, and the UK all denied license applications under Criterion 7 (see Table 1 below). It is also important to note two key limitations of reporting by EU member states on license denials:

- The EU template allows member states to report a denial on a single criterion, even though a decision to refuse a license may be made on the basis that the transfer would be problematic under two or more criteria. For example, while in the Consolidated EU report on 2018 arms transfers, the Netherlands is listed as having denied only one license request based on Criterion 7 (see Table 1 below), in the Netherlands 2018 national report,⁸⁷ Criterion 7 was listed under three license denials. In two of these cases, the license was denied on the basis of criterion 7 and criterion 2 (respect for human rights and international humanitarian law, including the risk of internal repression), but in the report to the EU, these were listed as denials only under criterion 2.
- While diversion is one of the most common bases for licence denials by EU member states, the information in the public domain gives no indication as to whether in their diversion (or other) assessments, governments are also taking into account the risks of gender-based violence and other human rights concerns.

⁸³ Official Journal of the European Union (2018). "Twenty-First Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment". European Union. 14 December. 2018.
https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1578060003872&uri=OJ:JOC_2019_437_R_0001 p. 437

⁸⁴ European Parliament (2017). "Report on arms export: implementation of Common Position". [online]
https://www.europarl.europa.eu/doceo/document/A-8-2017-0264_EN.html

⁸⁵ European Parliament (2018). "Report on arms export: implementation of Common Position". [online]
https://www.europarl.europa.eu/doceo/document/A-8-2018-0335_EN.html

⁸⁶ Official Journal of the European Union (2018). "Twentieth Annual Report According to Article 8(2) of Council Composition 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment". European Union. 14 December 2018.
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:453:FULL&from=EN> p.453

⁸⁷ Minister for Foreign Trade and Development Cooperation (FTDC) and the Minister of Foreign Affairs on the export of military goods (2019) "Dutch Arms Export Policy in 2018". January 2019.
<https://www.government.nl/binaries/government/documents/reports/2019/07/01/dutch-arms-export-policy-in-2018/BZ129065+EN.pdf> p. 35-36

Table 1: License denials on diversion grounds (Criterion 7) by EU arms exporters (2018)

Country	License denials under Criterion 7 (2018)	Military List Categories (see Annex 1 for descriptions)
Belgium	8	ML1, 3 ,5, 6, 13, 15
Cyprus	5	ML1
Czech Republic	2	ML1, 2
Finland	6	ML1, 5
France	1	ML7
Germany	63	ML1, 2, 3, 5, 6, 9, 10, 14, 15, 16, 18, 21, 22
Greece	7	ML1, 3, 8
Italy	1	ML1
Netherlands	1	ML1
Slovakia	3	ML 6, 10, 22
Slovenia	1	ML1
Sweden	1	ML8
UK	9	ML1, 2, 3, 7
Total	108	

The ATT requires that “Each State Party involved in the transfer of conventional arms covered under Article 2(1) shall take measures to prevent their diversion.”⁸⁸ The provisions of the ATT establish that all States have a shared responsibility to prevent diversion, and includes obligations for all states involved in the transfer supply chain. Exporting States Parties are required to assess the risk of diversion of an export, and consider mitigation measures that can be jointly implemented together with the importing State. States Parties are instructed to seek to prevent diversion, including by not authorizing proposed transfers where the risk of diversion was identified.

The ATT also requires that “Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms”.⁸⁹ This provision places the responsibility of regulating arms transfers that move through its territory upon the state, including at points where the arms might be vulnerable to diversion to

⁸⁸ Arms Trade Treaty, Article 11 (adopted 2 April 2013, entered into force 24 December 2014) https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253

⁸⁹ Arms Trade Treaty, Article 9 (adopted 2 April 2013, entered into force 24 December 2014) https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253

illicit arms markets or unauthorized end-users. Measures that transit and transshipment states could take include: requirement of a transit licence prior to shipment, stringent physical security requirements (e.g. use of vehicular alarm systems and container seals, physical inspection in transit and at the point of delivery); careful screening of shipping companies; scrutiny of arms shipments and documentation by customs agents; monitoring the location of shipments en route through physical accompaniment by armed guards.

The ATT also calls on States Parties to report on measures that have proven effective in addressing diversion. While this reporting mechanism has not yet been developed, the Fourth Conference of States Parties (CSP4) to the ATT endorsed a non-exhaustive, but detailed list of possible measures to prevent and address diversion.⁹⁰ This document, which provides a list of concrete measures that states can take to prevent diversion at all the stages of the transfer, offers concrete and practical measures to prevent diversion, including end-use(r) certificates (EUCs), delivery verification certificates, monitoring and protecting arms shipments, post delivery checks and physical security and stockpile management (PSSM). The ATT CSP4 has also endorsed a list of possible reference documents which states may consider in their efforts to prevent and address diversion, including resources from UNODA, the EU, International Small Arms Control Standards (ISACS), Organization for Security and Co-operation in Europe (OSCE), Regional Centre on Small Arms (RECISA) and the Wassenaar Arrangement.

Civil society organizations have also produced a number of resources and guides that aim to assist governments, particularly ATT States Parties, to develop appropriate legislation, structures and policies in order to prevent and address diversion, including the following:

- Saferworld produced a paper which examines the ATT's multifaceted response to the diversion of conventional arms and makes recommendations for effective implementation of measures to prevent, mitigate and tackle diversion⁹¹
- Group for Research and Information on Peace and Security (GRIP) produced a relevant analysis of measures taken by States to address diversion, including through denial of export applications⁹²
- Conflict Armament Research produced a statistical analysis of how weapons diversion occurs⁹³

⁹⁰ ATT Secretariat (2018). "ATT Working Groups on Effective Treaty Implementation :List of Possible Measures to Prevent and Address Diversion". 20 July 2018, p. 1-30.
https://www.thearmstradetreaty.org/hyperimages/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf

⁹¹ Saferworld (2015). "Key issues for ATT implementation: Preventing and combating diversion". February 2015.
<https://www.saferworld.org.uk/resources/publications/885-key-issues-for-att-implementation-preventing-and-combating-diversion>

⁹² Vranckx, A. (2016) "Containing Diversion: Arms end-use and post-delivery controls," GRIP Reports.
https://www.grip.org/sites/grip.org/files/RAPPORTS/2016/Rapport_2016-4_EN.pdf

⁹³ Conflict Armament Research (CAR) (2018). "Typology of Diversion: A statistical analysis of weapon diversion documented by Conflict Armament Research". August 2018.
<https://www.conflictarm.com/digests/diversion-digest-issue-1/>

- Small Arms Survey produced a list of possible measures to prevent and address diversion that maps out the four different transfer stages (before transfer, during transfer, delivery and post-delivery), the vulnerabilities and risks of diversion in each, and effective manners to preclude them.⁹⁴

General Recommendations:

1. Governments should ensure greater harmonization, transparency and consistency concerning reports on denials, including level of detail for reasons given
2. Governments should agree on common guidelines and procedures that provide greater clarity of expectations for governments who have detected diversion or instances of GBV
 - a. Governments should reassess existing permits when diversion or GBV is detected and go beyond mere encouragement to do so when new, relevant information emerges
3. Governments should ensure greater recognition of end-use diversion; scrutiny and attention to ATT diversion provisions seem diminished in cases when the end-user remains the same
4. Governments should work towards greater expansion of traditional sources of information to detect diversion from official embassy reports to social media sources
5. Governments should ensure that contractual obligations do not obstruct or outweigh government efforts to respond to diversion

⁹⁴ Small Arms Survey. "Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty"
http://www.smallarmssurvey.org/fileadmin/docs/Regulations_and_Controls/Levels_of_action/International/Diversion%20infographics.pdf 19 Cont

Annex 1

Brief descriptions of EU Common Military List categories

(See OJ C 66 of 17 March 2006 for the full EU Common Military List)

ML1 Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (0.5 inches) or less and accessories and specially designed components therefor.

ML2 Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (0.5 inches), projectors and accessories and specially designed components therefor.

ML3 Ammunition and fuse setting devices, and specially designed components therefor.

ML4 Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components therefor.

ML5 Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.

ML6 Ground vehicles and components.

ML7 Chemical or biological toxic agents, 'tear gases', radioactive materials, related equipment, components, materials and 'technology'.

ML8 'Energetic materials' and related substances.

ML9 Vessels of war, special naval equipment and accessories, and components therefor, specially designed for military use.

ML10 'Aircraft', unmanned airborne vehicles, aero-engines and 'aircraft' equipment, related equipment and components, specially designed or modified for military use.

ML11 Electronic equipment, not controlled elsewhere on the EU Common Military List, specially designed for military use and specially designed components therefor.

ML12 High velocity kinetic energy weapon systems and related equipment, and specially designed components therefor.

ML13 Armoured or protective equipment and constructions and components.

ML14 Specialised equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon controlled by ML1 or ML2, and specially designed components and accessories therefor.

ML15 Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.

ML16 Forgings, castings and other unfinished products the use of which in a controlled product is identifiable by material composition, geometry or function, and which are specially designed for any products controlled by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19.

ML17 Miscellaneous equipment, materials and libraries, and specially designed components therefor.

ML18 Equipment for the production of products referred to in the EU Common Military List.

ML19 Directed energy weapon systems (DEW), related or countermeasure equipment and test models, and specially designed components therefor.

ML20 Cryogenic and 'superconductive' equipment, and specially designed components and accessories therefor.

ML21 'Software' specially designed or modified for the 'development', 'production' or 'use' of equipment or materials controlled by the EU Common Military List.

ML22 'Technology' for the 'development', 'production' or 'use' of items controlled in the EU Common Military List, other than 'technology' controlled in ML7.