

The impact of arms transfers on human rights

Please note that we have focused our responses on questions 1, 4 and 5. Further responses from specific Control Arms members (e.g. Amnesty International) may address in more detail.

Question 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?

1. The international trade in conventional arms affects a wide range of human rights protected under international agreements and customary international law. These include, but are not limited to: the rights to life; freedom from torture and other forms of cruel, inhuman or degrading treatment; liberty and security of person; freedom from slavery; freedom of thought, conscience and religion; freedom of assembly and of expression, as well as the rights to health, education, food and housing.¹
2. The impact of arms transfers on human rights is explicitly linked and addressed by the Arms Trade Treaty (ATT), which entered into force in December 2014. States Parties to the ATT are now legally obligated to deny arms transfers that could enable human rights abuses. Article 6 (Prohibitions) covers some of the gravest possible human rights violations, and requires 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 If Article 6 does not apply, States Parties are obligated to assess if 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. Article 7 (Export and Export Assessment) makes it illegal for arms to be transferred where there is an overriding risk that they will be used to commit or facilitate serious violations of human rights (Article 7.1bij).
3. The ongoing crisis in Yemen is an example of how arms transfers may fuel serious violations of human rights. Since a coalition of countries led by Saudi Arabia launched a military intervention in Yemen in March 2015 at the request of the government, thousands of civilians have been deprived of their right to life. All parties to the conflict have killed civilians with weapons largely supplied by/originating from external parties. Aerial bombing by the Saudi-led coalition has been responsible for 60 per cent of civilian deaths in the conflict.³ Yemen has

¹ Control Arms Secretariat, “ATT Monitor Report 2015,” <http://armstreatymonitor.org/en/the-2015-report/> pp. 26-43.

² Arms Trade Treaty, Article 6 (3) (adopted 2 April 2013, entered into force 24 December 2014) _UNTS (ATT) Art 6(3).

³ See Report of the United Nations High Commissioner for Human Rights, “Situation of human rights in Yemen,” 4 August 2016, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/38; and UNOCHA and AOA, “State of Crisis: explosive weapons in Yemen,” 25 September 2015, <http://www.unocha.org/top-stories/all-stories/almost-9-10-deaths-and-injuries-explosive-weapons-yemen-are-civilian>.

ratified the International Covenant on Civil and Political Rights, which protects the right to life in Article 6.

4. The International Covenant on Economic, Social and Cultural Rights protects the right to housing (Article 11), to health (Article 12), and to education (Article 13) among others. These are all further examples of human rights that can be affected by the supply of arms and ammunition. In Yemen, there is widespread credible documentation of armed attacks on residential areas, medical personnel and facilities, and educational establishments by all parties to the conflict that may constitute a violation of these rights. In January 2016 for example, a UN Panel of Experts documented 41 individual air attacks on residential areas and villages, as well as eight air attacks on schools, that may relate to violations of IHL.⁴ UN OHCHR has reported on nine incidents in which medical units in Yemen were damaged or destroyed by coalition air strikes or artillery shelling in attacks that the report says may amount to war crimes.⁵
5. The supply of arms has also enabled the Saudi-led coalition to enforce a naval blockade of Yemeni ports, at various levels of intensity during the near-two years of the conflict. The blockade of commercial goods has contributed to a nationwide shortage of vital supplies, including food, water and fuel.⁶ Yemen has ratified the International Covenant on Economic, Social and Cultural Rights, Article 11 of which specifies the right to food. The violation of this right may also be linked to the right to life in situations of famine or near famine.⁷ The United Nations has described Yemen as “*one step away from famine*,” with more than seven million people severely food insecure and at least 370,000 children who are severely malnourished.⁸
6. While all parties to the conflict in Yemen have committed serious violations of IHL and IHRL, arms transfers by Saudi Arabia and other members of the international coalition have directly impacted on the provision of these basic human rights to civilians in Yemen.⁹ Control Arms, through the ATT Monitor project, has documented the continuing supply of arms and ammunition to Saudi Arabia, as the leading member of the military intervention.¹⁰ At least 19 States Parties and Signatories either authorized or delivered arms transfers to Saudi Arabia during 2015.

⁴ United Nations Security Council, “Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014),” 22 January 2016, Annex 47.

⁵ Report of the United Nations High Commissioner for Human Rights, “Situation of human rights in Yemen,” 4 August 2016, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/38

⁶ See for example Human Rights Watch, “Yemen: Coalition Blocking Desperately Needed Fuel,” 10 May 2015, <https://www.hrw.org/news/2015/05/10/yemen-coalition-blocking-desperately-needed-fuel>

⁷ Matrix Chambers, “Legal Opinion: The lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen,” 11 December 2015, <http://controlarms.org/en/wp-content/uploads/sites/2/2015/12/Legal-Opinion-on-Arms-Exports-to-Saudi-Arabia.pdf>.

⁸ UN Office for the Coordination of Humanitarian Affairs, “Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O’Brien Statement to the Security Council on Yemen,” 31 October 2016, <http://reliefweb.int/report/yemen/under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-10>

⁹ Houthi forces and their allies in Yemen are subject to arms embargoes imposed by the UN Security Council and the European Union. As such any transfer of arms would be in violation of Article 6 of the ATT.

¹⁰ For more information see Control Arms Secretariat, “Dealing in Double Standards: How arms sales to Saudi Arabia are causing human suffering in Yemen,” ATT Monitor, February 2016, and “Update to ATT Monitor Case Study,” August 2016, both available for download at <http://armstreatymonitor.org/en/dealing-double-standards-arms-sales-saudi-arabia-causing-human-suffering-yemen/>.

7. Several States Parties and Signatories, including France, Italy, Spain, the UK and the US, have provided arms and ammunition of the types being used to commit human rights abuses in Yemen (see Table 1). Some of the 19 States Parties have since restricted their export policies as a result of the human rights abuses in Yemen (see response to question 4 below for more details).

Table 1: Arms transfers to Saudi Arabia in 2015 (selected States Parties and Signatories)

Exporting Country	ATT Status	Licenses/Exports to Saudi Arabia in 2015	Value if reported
France	States Party	<p>Licenses: France has received 219 license applications in 2015. It is not known how many have been approved.</p> <p>Export: 115 Aravis armoured personnel carriers (APCs) and 745 precision rifles.</p>	France delivered military equipment worth \$960m (€899m).
Italy	States Party	<p>Export: Four attack helicopters, 245 missile and missile launchers as well as small arms and light weapons.</p>	Not reported. UN Comtrade shows sales in 2015 from Italy to Saudi Arabia worth US\$41.69m, mostly for ammunition and projectiles.
Spain	States Party	<p>Licenses: In the first half of 2015, Spain agreed eight licenses for bombs, torpedoes, rockets and missiles, fire control systems, and aircraft.</p> <p>Exports: Two air-to-air refuelling aircraft, spare parts for fighter jets, ammunition and small arms.</p>	<p>US\$28.9m (€27m).</p> <p>US\$478m (€477m).</p>
UK	States Party	<p>Licenses: 165 standard military licenses were issued in 2015.</p> <p>Export: 12 combat aircraft, 173 missile and missile launchers, 60 light machine guns and 4 revolvers and self-loading pistols.</p>	<p>US\$4.17 billion (£2.8 billion), including \$2.5 billion for aircraft and component parts, and \$1.6 billion for bombs, torpedoes, rockets and missiles.</p> <p>Not reported. UN Comtrade reported sales of arms, ammunition, parts and components from the UK to Saudi Arabia worth US\$1.46billion.</p>
US	Signatory	<p>Licenses: Issued for over eight million items, the vast majority ammunition and ordnance.</p> <p>Export: Small arms, light weapons and ammunition, mostly bombs and missiles.</p>	<p>US\$5.9 billion.</p> <p>US\$303m.</p>

8. The provision of arms and ammunition to human rights abusers puts all rights holders at risk. However, the particular impact of arms transfers on women and children has been recognised by the inclusion of gender-based violence (GBV) in the risk assessment criteria of the Arms Trade Treaty. Under the ATT it is illegal to transfer arms if there is a risk that they will be used to commit or facilitate GBV or serious acts of violence against women and children (Article 7.4). UN OCHA has warned that conflict and resulting high displacement has increased the risks of gender-based violence (GBV), which is itself a serious violation of human rights. There are 70 per cent more incidents of violence against women and girls in Yemen reported today than before the conflict began in March 2015.¹¹ Arms transfers have indirectly fuelled this increasing violence by enabling the conflict to continue to this point.

Question 4: Are you aware of a refusal or refusals by government[s] 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.

1. As part of a comprehensive risk assessment, States Parties to the ATT are obligated under Article 7 to deny arms export applications if there is an overriding risk that they could be used to commit or facilitate serious violations of IHRL. Although the first reports on annual imports and exports of arms have been submitted to the ATT Secretariat by 49 States at the time of this submission, the reporting template does not include an obligation to report on transfer denials.
2. European Union (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. In 2014, the year in which the ATT entered into force and the most recent year for which data has been made available through the EU, a total of 72 licenses were rejected under Criterion 2 (Respect for human rights in the final destination as well as respect by that country of international humanitarian law).
3. Eight arms exporters in the EU denied licenses on the basis of human rights concerns in 2014: Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Sweden, and the UK (see Table 2). Almost a third of EU countries that reported on their arms exports in 2014 denied a license application on human rights grounds (31 per cent).

Table 2: License denials on human rights ground by EU arms exporters (2014)

Country	Denials involving human rights concerns in 2014	Military List Categories
Austria	1	ML1
Bulgaria	4	ML1, 2, 3
Czech Republic	2	ML1
Denmark	1	ML1
Finland	3	ML1, 13

¹¹ UN OCHA, "Humanitarian Bulletin: Yemen," Issue 18, 14 December 2016, http://reliefweb.int/sites/reliefweb.int/files/resources/november_hb- issue_18.pdf

Germany	35	ML1, 3, 5, 6, 10, 11, 13, 15, 18
Sweden	3	ML1, 5
UK	23	ML1, 2, 3, 6, 10, 13, 14, 15, 17, 22

4. Concerns with the possible impact of an arms transfer on human rights constituted 21 per cent of the 346 total license denials by EU countries in 2014. It was most common in 2014 for EU exporters to issue denials on human rights grounds for small arms and their components (ML1).¹² However, as can be seen in Table 2, license denials on the basis of human rights concerns in 2014 covered 14 of the EU's 22 Military List categories.
5. Human rights concerns influenced license denials for a total of 23 destinations in 2014 (see Table 3). Governments do not report to the EU on the specific factors that affect their decisions to deny licenses.
6. In relation to the current crisis in Yemen, the government of the Netherlands tightened its export policy towards Saudi Arabia in July 2015 following a press statement issued by the UN High Commissioner for Human Rights that highlighted serious violations of human rights and international humanitarian law. In written answers to Parliamentary questions, Ministers stated that: *“Applications for army units that are very likely [to be] involved in violations of international humanitarian law are systematically rejected, if the goods could contribute to such violations. For example, the Cabinet recently rejected license applications for aircraft parts [for] countries participating in the bombing, and pattern switching tires that can be used in the ground operation in Yemen. The government also has rejected components for non-armed Unmanned Aerial Vehicles (UAVs) because of the possible supportive role that such systems fulfil in [the] intervention in Yemen [...] Only when [it is] indisputably established that goods can not be used in the fight in Yemen or human rights violations will continue to be issued a license [sic].”*¹³

Table 3: Destinations with license denials under EU Criterion 2

Country	Military List categories
Angola	ML5
Bahrain	ML5, 6, 10
Bangladesh	ML1
China	M7, 10, 11, 15
Egypt	ML1, 3, 13, 14, 15
Guatemala	ML1
Israel	ML1, 3
Kazakhstan	ML5, 13

¹² 21 of the 72 denials were for ML1 items, defined as: “Smooth-bore weapons with a caliber of less than 20mm, other arms and automatic weapons with a caliber of 12.7mm (caliber 0.50 inches) or less and accessories, as follows, and specially designed components [...]” See: Official Journal of the European Union, “Common Military List of the European Union,” 2015/C 120/01, Volume 58, 21 April 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:129:FULL&from=EN>

¹³ Translated from original Dutch using Google Translate: Responses from Mr Koenders (BZ) and Minister Ploumen (Foreign Trade and Development) to questions from MPs Van Bommel and Van Dijk (both SP) on exports of military equipment to Saudi Arabia, 9 February 2016, <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/09/beantwoording-kamervragen-over-export-van-militair-materieel-aan-saoedi-arabie>

Kenya	ML1
Kuwait	ML3, 5, 13
Kyrgyzstan	ML13
Libya	ML6, 13
Malaysia	ML1, 3
Moldova	ML1
Pakistan	ML2
Russia	ML5, 11, 13
Saudi Arabia	ML1
Sri Lanka	ML3
Taiwan	ML13
Thailand	ML3,13
Turkey	ML13
Turkmenistan	ML1, 5, 10
United Arab Emirates	ML1

Question 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?

1. Article 11 of 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.*” The ATT establishes that all States have a shared responsibility to prevent diversion, and contains obligations for countries involved throughout the transfer supply chain.¹⁴ 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. During any assessment of diversion risks, exporting State Parties should question if the proposed export is consistent with the types of weapons already in the possession of the intended recipient, or consistent with the size and nature of its security forces. If there is a significant possibility of diversion, States also have the option to deny or cancel the transfer.¹⁵ The ATT also calls on States Parties to report on measures that have proven effective in addressing diversion. This reporting mechanism has not yet been developed.
2. EU Member States also report on denials if there is 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 2014, the EU reports a total of 117 license denials on diversion grounds, although data disaggregated by country suggest there were 126 total Criterion 7 denials (see Table 3 below). It is likely that some of these refusals are on the grounds that the items once diverted risk being used in serious violations of human rights. Countries do not elaborate on the reasons for diversion denials but should do so in order that other exporting countries may be better informed in their own export decision-making.

¹⁴ Although the provisions across Article 11 explicitly refer just to conventional arms laid out in Article 2.1 States Parties and Signatories should take a broader interpretation and apply these obligations to items covered by Article 3 (Ammunition) and Article 4 (Parts and Components), particularly as these Articles cover items commonly at high risk of diversion.

¹⁵ Arms Trade Treaty, Article 11.2 (adopted 2 April 2013, entered into force 24 December 2014)_UNTS (ATT) Art 11.2.

3. Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Lithuania, Malta, Netherlands, Portugal, Sweden, and the UK all denied license applications under Criterion Seven (see Table 3).
4. Control Arms' partners, Group for Research and Information on Peace and Security (GRIP), have produced a relevant analysis of measures taken by States to address diversion, including through denial of export applications.¹⁶

Table 4: License denials on diversion grounds (Criterion 7) by EU arms exporters (2014)

Country	License denials under Criterion 7 (2014)	Military List Categories
Austria	1	ML1
Belgium	2	ML1
Bulgaria	1	ML1
Czech Republic	21	ML1, 6
Estonia	1	ML1
Finland	1	ML1
France	3	ML15
Germany	68	ML1, 3, 5, 6, 12, 13, 15, 16, 18, 22
Greece	5	ML1, 3
Lithuania	1	ML3
Malta	1	ML3
Netherlands	1	ML1
Portugal	1	ML3
Sweden	3	ML5, 18
UK	16	ML1, 3, 11, 13

¹⁶ Vranckx, A. "Containing Diversion: Arms end-use and post-delivery controls," GRIP Reports 2016/4.