



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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REFERENCE:

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

The Office of the United Nations High Commissioner for Human Rights (OHCHR) presents its compliments to relevant United Nations bodies, human rights mechanisms, specialized agencies, civil society, particularly international and regional non-governmental organizations and academic institutions, funds and programmes and national human rights institutions, and has the honour to refer to the Human Rights Council resolution 32/12 on "Impact of Arms Transfers on Human Rights".

The resolution requests the OHCHR "to prepare a report, in consultation with States, United Nations agencies and other relevant stakeholders, on the impact of arms transfers on the enjoyment of human rights, and to present it to the Human Rights Council at its thirty-fifth session, in order to provide States and other relevant stakeholders with elements to assess the relationship between arms transfers and human rights law that may guide them to strengthen efforts to effectively protect human rights".

Accordingly, the Office of the High Commissioner for Human Rights would be grateful for information in response to the questions outlined in the attached questionnaire for the preparation of the report. Submissions may be limited to seven [7] pages and sent to the Office of the United Nations High Commissioner for Human Rights (United Nations Office at Geneva, CH 1211 Geneva 10; Fax. +41 22 917 90 08; Email: registry@ohchr.org) by **3 February 2017**.

Please note that, unless requested otherwise, the information provided may be made available on the OHCHR website. Any enquiries may be made to Rachel Opie at ropie@ohchr.org, telephone: + 41 22 917 9389.

The Office of the High Commissioner for Human Rights avails itself of this opportunity to renew to relevant United Nations bodies, human rights mechanisms, specialized agencies, civil society, particularly international and regional non-governmental organizations and academic institutions, funds and programmes and national human rights institutions the assurances of its highest consideration.

UNITED NATIONS - OFFICE OF THE
HIGH COMMISSIONER FOR HUMAN RIGHTS

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Questionnaire for OHCHR Report

The following questionnaire is aimed at assisting United Nations bodies, human rights mechanisms, specialized agencies, civil society, particularly international and regional non-governmental organizations and academic institutions, funds and programmes and national human rights institutions in providing information and inputs for the above mentioned report.

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?
2. Are you aware of assessments by governments of the impact that arms transfers may have on the enjoyment of human rights. If possible, please specify what considerations are taken into account when making these assessments, including national procedures and/or laws and international obligations and standards. On what information and/or sources of information are these assessments by governments based?
3. What considerations should be taken into account by governments when assessing the impact an arms transfer may have on human rights, including national procedures and/or laws and international obligations and standards? On what information and/or sources of information should such assessments be based?
4. Are you aware of a refusal or refusals by government 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.
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?

Answers to the Questionnaire on the impact of arms transfers on human rights

1) International transfers of conventional arms is a highly topical issue, so more so that the last decade has seen a growing and disquieting trend. Even though almost all weapons are originally manufactured by state-controlled industries and authorized by governments, following the first sell-buy transaction or even during delivery the risk arises that, once in the hands of intermediate agents, arms transfers might enter the parallel market of illicit trade. And so, massive quantities of weapons, accompanied by formally legal documents, change their destination in ultimately and come in the possession of unauthorized end-users.

Uncontrolled proliferation of firearms that become the object of international transfers fuels armed conflicts of greater or lesser intensity which involve rebel groups, paramilitary formations, most often targeting the civil population, which accounts for 90% of the victims.¹

Unauthorized arms transfers willingly or unconsciously ignoring a possible illegal use of those arms seriously affect not only several general principles but also seriously violate the United Nations Charter, the international humanitarian law and the fundamental human rights, entailing abominable crimes and acts of violence against persons in general and also against certain ethnic, racial, religious, etc. groups; they lead to genocidal policies, the destabilization and devastation of entire zones, and also spreading and consolidation of terrorism. Women, old persons, children are the favourite victims in areas of endemic armed conflicts. And so are the various disadvantaged categories of population.

2) There are numerous evaluations made by the international bodies and by States themselves according to which arms trade oscillates somewhere between 50 to 80 billion dollars. However, the exact value of the effective transactions is difficult to assess. The studies conducted by the Stockholm International Peace Research Institute (SIPRI) for the year 2011 for instance show that there is a connection between arms trade and national security issues which favour corruption and also influence the transactional mechanisms and accountability. The volume of the trade with conventional weapons at international level increased by 17% in 2008-2012 as compared to 2003-2007. The main countries producing and exporting arms are the USA, Russia, Germany, France, China, and Great Britain, which account for almost 80% the volume of exports. As can undoubtedly be noticed, these countries, with the exception of Germany, are members of the United Nations Security Council!

The influxes of arms transferred to various parts of the world are not strictly monitored and neither are they controllable because of the lack of binding international regulations. At national and regional levels, there are various procedures and systems to control arms transfers, but these normative prescriptions ought to be updated in terms of the dynamics of those influxes. Nevertheless, they remain fragmentary, lacunary and hard to synchronize and translate into practice.²

The member States of the European Union, including Romania, adopted a common position in terms of arms intermediation control, which binds them to

¹ See SIPRI (Stockholm International Peace Research Institute) Yearbook 2011, Oxford University Press, 2011, p. 3 et seq.

² See LUISS – Dipartimento di Scienze Politiche. Cattedra Diritto Internazionale, “Il commercio internazionale di armi e L’Arms Trade Treaty” - www.academia.edu/5030239/Il_commercio_internazionale_di_armi_e_Arms_Trade_Treaty

harmonize their national policies in this respect. These States have to issue an authorization for transferring arms to a third country, while also establish sanctions for those intermediate agents who elude controls or violate the national legislation. It is also necessary to adopt several non-compulsory measures, including the control exercised by the State upon arms transfer intermediate agents, the control of the nationality of the agents who are residents on the territory of the respective State but operate outside that territory.

3) In Romania, arms transfer intermediate agents have to obtain, on their request, a prior registration for their activity. Only registered intermediate agents can be issued an individual license. Registration allow national authorities to examine the persons and the companies involved with intermediation prior to authorize them engage in arms trading. Registrations should be renewed periodically. Intermediate agents who violated the national regulations are denied registration, as the case may be.

Citizens of the respective States and the residents operating from outside the country shall obtain a prior license from their government in order to be allowed to organize a transfer between foreign countries. These requirements are implemented in Romania and in other European countries as well (The Czech Republic, Estonia, Finland, Hungary Lithuania, Poland).

Requests for obtaining a license for extraterritorial intermediation include the prohibition of arms transfers to a destination subject to embargo, even if the intermediate agent operates from outside the country's territory.

It is imperatively necessary to corroborate the monitoring of human rights violations in the various zones of armed conflicts with the information the State's authorities or the international bodies have about arms transfers and their effective final destinations in order to be in a position to stop the lethal influxes of arms which still elude the severe regulations imposed by the international criminal law.³

4) In order to evaluate the impact arms transfers might have upon human rights in light of the national procedures and/or the legislation and the assumed commitments, States have the duty not only to monitor the actual activities of buying-selling arms but also the activities correlated with the intermediation of arms transfers, which most often is outside the object of controls or, at the best, is not the main constitutive element of the fight against the illicit traffic. This is about businessmen and the companies which supply materials, financial means and documentation; it is about brokers who intermediate operations which do not imply transiting the territory of the country where the agent intermediated the selling-buying activity (transfer to a third country). Another imperative is to strengthen the extraterritorial controls upon intermediation activities.

States can and must cooperate both bilaterally and multilaterally by means of exchanges of information and common actions meant to identify and put an end to illicit influxes of arms whose actual final destinations armed conflict areas characterized by frequent and massive violations of human rights.

In this respect, I would like to emphasize the active role played by the Romanian State, in cooperation with the intelligence services of several other countries including the USA, in tracing and eventually stopping illegal transports of

³ Also see Rossana Palladino, *Il controllo sulle esportazioni di armi in zobe di conflitto: Regole e responsabilità dell'Unione Europea*, in *rev. Ordine internazionale e diritti umani* (2015), pp. 1170-1187; http://www.rivistaoidu.net/sites/default/files/17_Palladino_2.pdf.

arms to various regions in the world.⁴

5) There undoubtedly were situations when the governments of several countries refused to authorize arms transfers to countries in armed conflict areas that could have had an adverse impact on the civil population and the physical integrity of persons and groups of persons and the fundamental human rights. At the time, embargos were instituted, as was the case with the wars in former Yugoslavia, in Libya, in several areas in the Middle East, and with all of them Romania did fully comply.⁵

⁴ See *Risoluzione del Parlamento europeo sulla quinta relazione annuale del Consiglio ai sensi della misura operativa n. 8 del codice di condotta dell'Unione europea per le esportazioni di armi* at <http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX:52004IP0058>; also see *Raport al Comisiei către Parlamentul European și Consiliu privind transpunerea Directivei 2009/43/CE de simplificare a clauzelor și condițiilor de transfer al produselor din domeniul apărării în interiorul UE* at <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52012DC0359>

⁵ Also see Holger Anders, *Intervenție în cadrul GRIP (Groupe de Recherche et d'Information sur la paix et la Sécurité)* at <http://www.disarmo.org/oa/a/26015.html>