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**Human Rights Council**

**Fifty-first session**

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Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

 Impact of arms transfers on human rights

 Report of the Office of the United Nations High Commissioner for Human Rights[[1]](#footnote-2)\*

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|  *Summary* |
|  The present report outlines the impact of the diversion of arms and unregulated or illicit arms[[2]](#footnote-3) transfers on the enjoyment of human rights by children and youth.[[3]](#footnote-4) It identifies good practices, lessons learned and challenges faced by States in preventing, mitigating and addressing the diversion of arms and unregulated or illicit arms transfers that have a particular impact on the enjoyment of human rights by children and youth. It outlines existing due diligence obligations of States in this area and illustrates the role that national control systems can play in ensuring that such obligations are implemented by States. |
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 I. Introduction

1. In its resolution 47/17, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare an analytical report on good practices, lessons learned and challenges faced by States in preventing, mitigating and addressing the diversion of arms and unregulated or illicit arms transfers that had a particular impact on the enjoyment of human rights by children and youth, and the role of national control systems as effective mechanisms in that regard, and to present the report to the Council at its fifty-first session.

2. To prepare the report, OHCHR sought input from States, United Nations entities and other relevant stakeholders. The Office received 24 contributions[[4]](#footnote-5) and conducted research using a broad range of sources, including international instruments, the practice of United Nations human rights mechanisms, reports by civil society organizations and the work of scholars and practitioners.

3. While focusing on children and youth, the present report builds on prior reports to the Human Rights Council on the impact of arms transfers on the enjoyment of human rights, which were focused on the relationship between arms transfers and human rights law and on the impact of the diversion of arms and unregulated or illicit transfers on the human rights of women and girls.[[5]](#footnote-6)

4. In the report, diversion is defined as the movement – physical, administrative or otherwise – of weapons and ammunition from the legal to the illicit realm, in defiance of national and/or international law, to an unauthorized end user or for unlawful end use.[[6]](#footnote-7) With regard to unregulated or illicit arms transfers, the Disarmament Commission’s guidelines for international arms transfers in the context of General Assembly resolution 46/36 H provide a broad definition of “illicit arms trafficking”, which includes international trade in conventional arms outlawed by international law and relevant national laws.[[7]](#footnote-8)

 II. Impact of unregulated or illicit arms transfers and the diversion of arms on the human rights of children and youth

5. The adverse impacts that the diversion of arms and unregulated or illicit arms transfers have on the human rights of children and youth are varied and far-reaching, both in times of armed conflict and in times of peace. Children and youth are among the primary victims of armed violence, including as a result of sexual and gender-based violence, exploitation and abuse.[[8]](#footnote-9) The Committee on the Rights of the Child has expressed deep concern over the availability of arms and their impact on a wide range of children’s rights, including the right to life, survival and development, as well as the right to education and to health.[[9]](#footnote-10)

 A. Outside armed conflict settings

6. The diversion and unregulated and illicit transfers of arms, which result in an increased availability of arms, in particular small arms and light weapons, pose a significant threat to the safety of children outside of armed conflicts. Armed violence in the community disrupts social harmony and peace, generating a cumulatively negative effect on the lives of children. The Special Representative of the Secretary-General on Violence against Children has called attention to the issue of armed violence, highlighting the gendered impact of armed violence and the different risks faced by girls and boys. Teenage boys and young men are the group most at risk of being killed, while girls and women are more at risk of being sexually assaulted.[[10]](#footnote-11) Where organized crime, gang criminality and terrorism are present and involve firearms, the illicit acquisition of, trafficking in and use of firearms reinforce an environment of fear and violence.[[11]](#footnote-12) When used in both the domestic sphere and public spaces, firearms aggravate levels of interpersonal and domestic violence, including lethal violence against children.[[12]](#footnote-13) In a report on the impact of the civilian acquisition, possession and use of firearms by children and youth, the United Nations High Commissioner for Human Rights outlined the direct and immediate impact that the use of firearms can have on the right to life and security of the person, as well as on economic, social and cultural rights.[[13]](#footnote-14)

7. The enjoyment of human rights by children and young people can also be adversely affected by the use of arms by State actors, in particular law enforcement and military actors. This can occur when the arms are diverted to a different end use than that initially agreed upon with the exporting State, without the latter’s prior approval. Violations of the rights of children and youth resulting from the use of arms by State actors can also occur following an illicit transfer of arms, for instance, for the purpose of aiding or assisting a State in committing torture or when exporting States fail to properly address the risk of gender-based violence and violence against women and children as required by article 7 (4) of the Arms Trade Treaty.

8. OHCHR has documented the unnecessary and disproportionate use of firearms resulting in the death or injury of children and youth, in violation of international law, in the context of policing assemblies involving significant numbers of children and youth in a number of countries.[[14]](#footnote-15) The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran reported the killing of children following the use of live ammunition in the policing of protests.[[15]](#footnote-16) The Special Rapporteur on the situation of human rights in Myanmar expressed concern at the use of firearms by security forces to repress the participation of children in peaceful protests.[[16]](#footnote-17) In its resolution 46/21, on the situation of human rights in Myanmar, the Human Rights Council expressed deep concern at the fact that diversion and unregulated or illicit arms transfers could seriously undermine human rights, especially those of children.

9. The above-mentioned use of firearms, including those obtained through diversion and illicit or unregulated transfers, in the context of protests, clearly hinders the enjoyment of human rights by children and youth, including by generating a chilling effect that discourages them from exercising their right to peaceful assembly.

 B. Situations of armed conflict

10. As armed conflict proliferates around the world, increasing numbers of children and youth are exposed to the effects of hostilities. The continued availability of arms in situations of armed conflict as a result of diversion and unregulated or illicit arms transfers, including the circumvention of arms embargos and diversion from legal stockpiles, can perpetuate and exacerbate armed conflicts.[[17]](#footnote-18) Youth account for many of the civilians adversely affected by armed conflict. Children have suffered immeasurable damage and disruption to their lives and development due to conflict.[[18]](#footnote-19) As reported by the Special Representative of the Secretary-General for Children and Armed Conflict, in 2021, armed confrontations, intercommunal conflict, military operations and insecurity had a heavy impact on children’s lives. That resulted in the continued recording of the six grave violations against children in times of war highlighted by the Security Council, namely killing or maiming of children, recruiting or using children, attacks against schools and hospitals, rape or other grave sexual violence against children, abduction of children and denial of humanitarian access for children.[[19]](#footnote-20) The uncontrolled availability of and trafficking in weapons pose a threat to children, destabilize communities and exacerbate situations of insecurity. This facilitates the commission of serious violations of international humanitarian law and gross violations of international human rights law, including against children and youth.[[20]](#footnote-21)

11. The use of explosive weapons in populated areas in situations of armed conflict directly and severely affects the enjoyment of civil and political rights by children and youth, in particular the right to life, the right of children to be protected from all forms of violence and the right to freedom of movement.[[21]](#footnote-22) The killing and maiming of children, including by explosive weapons and remnants of war, remained the most recurrent verified violation in the context of the work of the Special Representative of the Secretary-General for Children and Armed Conflict in 2021.[[22]](#footnote-23) Air strikes, mortar and artillery shelling, rockets and improvised explosive devices have been highlighted as causes of the killing and maiming of children.[[23]](#footnote-24) The Human Rights Council’s mandated investigation bodies have documented numerous incidents of killing and maiming of children and youth following indiscriminate attacks in populated areas.[[24]](#footnote-25)

12. Children account for roughly half of the casualties from explosive ordnance around the world.[[25]](#footnote-26) The use of explosive weapons often results in explosive remnants of war that can remain in an area long after hostilities have ended, causing long-lasting harmful impacts on the lives and livelihoods of children and their families. Explosive hazards such as landmines, booby traps and unexploded remnants of war pose an immediate threat to children’s lives.[[26]](#footnote-27)

13. Children and young people are also killed or maimed by gunshots or in crossfire between parties to a conflict.[[27]](#footnote-28) Firearms pose an intrinsic threat and, in a context of proliferation and availability through diversion and unregulated and illicit transfers, they may be used to commit violations or abuses at gunpoint, including torture of and sexual violence against children and youth, and the recruitment and use of children.[[28]](#footnote-29) For example, in the context of the conflict in South Sudan, which is characterized by the proliferation of small arms and military-grade weapons, girls face various forms of oppression, including targeted killings, rape, sexual violence, slavery, forced marriage, forced procreation and forced labour.[[29]](#footnote-30)

14. The Secretary-General has highlighted that the recruitment and use of children in armed conflict was the second most recurrent violation among the six grave violations against children in times of war listed in paragraph 10 above and verified by the United Nations in 2021.[[30]](#footnote-31) The rampant recruitment of children in the context of conflicts, including their use as combatants, human shields, domestic workers and sex slaves, has been documented by OHCHR and the Commission on Human Rights in South Sudan and deplored by the Human Rights Council.[[31]](#footnote-32) The diversion of arms and the unregulated and illicit transfer of arms contribute to the exacerbation of these disastrous effects on children and youth.

15. Indirect effects of the availability of weapons, including as a result of diversion and unregulated or illicit transfers, have a significant impact on the enjoyment of economic, social and cultural rights by children and youth.[[32]](#footnote-33) The rising number of attacks on schools, including attacks on students and on educational personnel, as well as the military use of schools, negatively affects the right to education.[[33]](#footnote-34) Children are abducted, killed or maimed, and suffer sexual violence, in or on the way to school. Girls’ education has been undermined by targeted attacks on girls’ schools and the denial of schooling.[[34]](#footnote-35) The Secretary-General noted that the number of attacks against both schools and hospitals increased by 5 per cent in 2021.[[35]](#footnote-36) The damaging of health-care infrastructure through the use of explosive weapons in populated areas severely affects the enjoyment of the right to health by children and youth, in terms of both their immediate survival and their long-term well-being.[[36]](#footnote-37) The availability of weapons also affects the right of children to a safe, clean, healthy and sustainable environment, with damage to the environment generated and exacerbated by weapons-related contamination that has immediate and long-term risks to children’s health.[[37]](#footnote-38)

 III. Operationalizing due diligence

16. Building on previous OHCHR reports on arms transfers,[[38]](#footnote-39) the present section contains an outline of due diligence principles under international human rights law that relate to the diversion of arms and unregulated or illicit arms transfers, including those with a particular impact on the human rights of children and youth. It also contains guidance on the measures that States can take to operationalize the principle of due diligence and fulfil their obligations under international law in this context.

 A. Human rights framework for due diligence

17. The general principle of due diligence in international human rights law and the principle of responsibility for aiding or assisting in the commission of an internationally wrongful act under public international law is set out in the report of OHCHR on the impact of arms transfers on the enjoyment of human rights.[[39]](#footnote-40) A State that transfers arms with knowledge that the arms will aid or assist another State in committing a serious violation of international human rights law may be held responsible for failing to exercise due diligence by taking the necessary preventive measures.[[40]](#footnote-41)

18. Under international human rights law, a State may be held responsible for its failure to take reasonable steps to prevent, investigate, punish and ensure reparations for human rights violations and abuses committed by private persons or entities, including companies and non-State armed groups.[[41]](#footnote-42) The Human Rights Committee has indicated that States parties to the International Covenant on Civil and Political Rights have a due diligence obligation to undertake reasonable positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State.[[42]](#footnote-43) Therefore, States parties should take reasonable positive measures to reduce domestic diversion of arms and unregulated or illicit arms imports.[[43]](#footnote-44) States parties must also take appropriate measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction that have a direct and foreseeable impact on the right to life of individuals outside their territory are consistent with the right to life.[[44]](#footnote-45) Consequently, States parties to the Covenant have a binding due diligence obligation to take appropriate measures to prevent diversion of arms that has a direct and foreseeable impact on the right to life of individuals outside their territory.[[45]](#footnote-46)

19. The Committee on Economic Social and Cultural Rights has indicated that States parties to the International Covenant on Economic, Social and Cultural Rights are required to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control.[[46]](#footnote-47) In that context, the Committee has recommended that States conduct thorough risk assessments prior to granting licences for arms exports and refuse or suspend such licences when there is a risk that arms could be used to violate human rights, including economic, social and cultural rights.[[47]](#footnote-48)

20. The Committee on the Elimination of Discrimination against Women has underlined that States parties to the Convention on the Elimination of All Forms of Discrimination against Women also have a binding obligation to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women and girls. This includes actions taken by corporations operating extraterritorially.[[48]](#footnote-49) Therefore, States parties to the Convention have a binding obligation to take all appropriate measures to prevent diversion of arms and unregulated or illicit arms transfers where there is a risk that they may result in gender-based violence against women and girls.[[49]](#footnote-50)

21. The Committee on the Rights of the Child has stressed that addressing and eliminating violence against children is an obligation of States parties under the Convention on the Rights of the Child. The Convention imposes due diligence obligations on States parties and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress for human rights violations.[[50]](#footnote-51) The Committee has underlined that, to address child protection issues that cut across national borders, cross-border cooperation is critical and may require specific legislation, policies, programmes and partnerships.[[51]](#footnote-52)

22. The due diligence obligations of States parties to the Convention on the Rights of the Child also imply a requirement to take all appropriate measures to prevent diversion of arms and unregulated or illicit arms transfers that would result in violence against children.

23. The Committee on the Rights of the Child has recommended that States ratify the Convention on Cluster Munitions, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and the Arms Trade Treaty.[[52]](#footnote-53)

24. Under its article 11, the Arms Trade Treaty imposes obligations on States parties to take measures to prevent the diversion of conventional arms.[[53]](#footnote-54) It also imposes due diligence obligations on States parties with regard to the possible impact of arms exports on human rights, including the rights of children and youth. Article 6 (3) of the Treaty provides that a State party shall not authorize any transfer of conventional arms when the State party has knowledge, at the time of authorization, that the arms would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 12 August 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. When a proposed export is not prohibited under article 6, article 7 (1) requires the exporting State to still assess, in an objective and non-discriminatory manner, the potential that the weapons could contribute to, or undermine, peace and security, and that they could be used to commit or facilitate a serious violation of international human rights law[[54]](#footnote-55) or international humanitarian law or offences under international conventions related to terrorism and transnational organized crime. Article 7 (4) states that the exporting State must take into account the risk of the potential export items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

 B. Human rights-based approach to arms transfer governance

25. As illustrated above, international law imposes due diligence obligations on States in relation to possible human rights violations and abuses arising from the transfer of arms, including obligations to take all appropriate measures to prevent diversion of arms and unregulated or illicit arms transfers. In this context, a human rights-based approach to arms transfer governance offers a toolbox to assist States in implementing their due diligence obligations. This approach requires respect for the fundamental principles of participation, accountability, the rule of law, and equality and non-discrimination.

 1. Participation

26. People have a right to meaningful participation in the conduct of public affairs.[[55]](#footnote-56) This includes policy formulation and implementation in relation to arms transfers, including with regard to preventing, mitigating and addressing diversion and unregulated and illicit transfers. This is in line with target 16.7 of the Sustainable Development Goals, on responsive, inclusive, participatory and representative decision-making at all levels. In this context, the right of access to information held by public bodies is paramount.[[56]](#footnote-57) In accordance with the principle of maximum disclosure,[[57]](#footnote-58) the public should be able to access adequate, accessible and necessary information on arms transfers and measures taken by States to prevent, mitigate and address diversion. This is critical to ensure transparency and combat corruption.[[58]](#footnote-59)

27. The right of access to information may only be restricted in exceptional circumstances. In accordance with international human rights law, any restrictions must be provided for by law and be necessary, proportionate and non-discriminatory.[[59]](#footnote-60) Information regarding alleged violations of human rights or violations of international humanitarian law in the destination State is subject to an overriding public interest in disclosure and cannot be withheld on grounds of national security.[[60]](#footnote-61)

28. Children and youth also have a right to participate in decision-making on issues that affect them.[[61]](#footnote-62) Their active and meaningful participation in efforts to control small arms and light weapons, for example, has been identified as important to foster sustainability and bring much-needed creativity and energy to bear on the issue.[[62]](#footnote-63) In Securing Our Common Future: An Agenda for Disarmament, the power of young people is underlined. In its resolution 2250 (2015), the Security Council urged Member States to consider ways to increase the participation of youth in decision-making on peace and security. The views of children and youth should be sought and considered in decision-making related to arms governance.

 2. Accountability and rule of law

29. States should take all legislative and other appropriate measures in order to fulfil the due diligence obligations outlined above.[[63]](#footnote-64) Legislative measures and policies regulating arms transfers, including those aimed at preventing, mitigating and addressing diversion, should be publicly promulgated, equally enforced and independently adjudicated. In line with the principle of the rule of law, all persons, institutions and entities, public and private, including the State itself, should be accountable under such laws and policies.[[64]](#footnote-65) States should also ensure procedural and legal transparency in the governance of all arms transfers.[[65]](#footnote-66) This is in line with the development of effective, accountable and transparent institutions at all levels (target 16.6 of the Sustainable Development Goals).

30. The obligation to respect, ensure respect for and implement international human rights law includes the duty to take appropriate legislative and administrative and other appropriate measures to prevent violations. It also includes the duty to investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible, in accordance with domestic and international law.[[66]](#footnote-67) As illustrated above, States have a due diligence obligation to adopt and implement measures to ensure the prevention of human rights. Where States fail to do so, aggrieved rights holders have the right to a remedy, including reparations.[[67]](#footnote-68)

 3. Equality and non-discrimination

31. All human beings are entitled to all the rights set out in the Universal Declaration of Human Rights without discrimination of any kind, such as on the basis of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status. The right to equality and non-discrimination is enshrined in both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, as well as other international human rights treaties in which it is provided that States parties should respect and ensure the rights set forth in those instruments without discrimination of any kind. States parties to the Arms Trade Treaty have an obligation to implement the provisions of the Treaty in a non-discriminatory manner.[[68]](#footnote-69)

32. In this context, the due diligence obligations of States, outlined above, should be discharged in full respect of the principle of equality and non-discrimination. This imposes a negative obligation on States, namely not to act in a discriminatory manner. It also imposes a positive obligation, namely to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination.[[69]](#footnote-70) To this end, the availability of disaggregated and comparative statistical data is critical to assess gaps in the enjoyment of the right to equality and non-discrimination.[[70]](#footnote-71)

33. Consideration of disaggregated data is particularly important in the context of assessments of the risk of diversion, including human rights assessments. Efforts should be made to collect disaggregated data on the impact of diversion and unregulated and illicit arms transfers on the enjoyment of human rights. Understanding the different risks and vulnerabilities faced by different groups, including girls and boys and young men and women, can inform prevention and protection strategies, including in relation to arms transfers.

 C. Practical measures for States: the role of national control systems

34. States should take legislative, judicial, administrative, educative, budgetary and other appropriate measures in order to fulfil their legal obligation to promote and protect human rights, including due diligence obligations.[[71]](#footnote-72) In this context, States are required to establish the institutional capacity needed to be able to fulfil the requirements of due diligence.[[72]](#footnote-73) The Arms Trade Treaty also requires States parties to develop institutional capacity to implement the provisions of the Treaty, by establishing and maintaining an effective and transparent national control system, including a national control list.[[73]](#footnote-74) The present section will illustrate the systems and measures that States could establish and implement to ensure compliance with their due diligence obligations related to the rights of children and youth.

 1. National legal and regulatory framework

35. The adoption of legislative measures is required in order for States to fulfil their due diligence obligations as outlined above.[[74]](#footnote-75) For example, the Committee on the Rights of the Child has recommended that States parties enact legislation criminalizing the export and/or transit of arms, especially small arms and light weapons, to countries where children may be involved in armed conflict.[[75]](#footnote-76) The Committee has underlined that States parties should adopt legislation to prevent the sale or smuggling, export and transfer of arms, including small arms and light weapons, and the provision of other forms of military assistance to countries where children are known to be, or may potentially be, unlawfully recruited or used in armed conflicts or hostilities.[[76]](#footnote-77)

36. While article 5 of the Arms Trade Treaty does not explicitly require legislation in order to create a national control regime, article 14 requires States parties to take appropriate measures to enforce national laws and regulations to implement the provisions of the Treaty. This implies that national legislation will be an element in the national implementation of the treaty.[[77]](#footnote-78) National legal and regulatory frameworks have also proven important systemic measures for national control systems to prevent, mitigate and address the diversion of arms.[[78]](#footnote-79)

37. Contributions to the present report indicate that a number of States have adopted legislation aimed at establishing a national control system to fulfil their due diligence obligations.[[79]](#footnote-80) Moreover, Bosnia and Herzegovina has adopted the 2021–2024 strategy for small arms and light weapons control, which is aimed at continuing the alignment of national legislation with international standards and improving control of the domestic and foreign arms trade.

38. The European Union regulations on control and exports of military technology and equipment require States to refuse to grant an export licence if there is a clear risk that the military technology or equipment may be used in the commission of serious violations of international humanitarian law or for internal repression.[[80]](#footnote-81) In this context, States should consider whether there is reason to believe that the technology or equipment will be diverted from its stated end use or end user and used for internal repression.

39. In Switzerland, the arms exports regulatory framework requires authorizations for arms transfers to be refused if the country of destination is implicated in an internal or international armed conflict or violates, systematically and gravely, human rights. Arms transfers must also be refused if there is a high risk that the country of destination will use the arms to be exported against the civilian population or if there is a strong risk that, in the country of destination, the arms be transmitted to an undesirable end user.[[81]](#footnote-82) The framework also requires export authorizations to be granted only after the recipient of the transfer has provided a non-re-export declaration (end-use certificate).[[82]](#footnote-83) Should there be a high risk that the arms may be transferred to an undesirable end user, the competent Swiss authorities can exercise the right to verify in loco whether the end-use certificate has been respected.[[83]](#footnote-84) In South Africa, national legislation indicates that the National Conventional Arms Control Committee must not approve arms transfers where, inter alia, the arms in question would be sent to a Government that systematically violates or supresses human rights and fundamental freedoms or that has violated an end-user certificate undertaking by diverting weapons to other parties without the agreement of the seller.[[84]](#footnote-85)

40. While adopting legislative and regulatory frameworks is an important measure, deficiencies in their effective implementation at the national level were highlighted in some of the contributions.[[85]](#footnote-86) In the light of the principle of accountability and rule of law, States should ensure that national legislative and regulatory frameworks are implemented in a manner that ensures procedural and legal transparency, as well as access to justice for those who claim that their rights have been violated.

 2. Competent national authorities

41. Institutional capacity to fulfil the requirements of due diligence requires competent national authorities able to effectively implement national legal and regulatory frameworks. With regard to the protection of children from all forms of violence, the Committee on the Rights of the Child has indicated that authorities must be provided with sufficient material, technical and human resources and capacities to identify, prevent and react to violence against children. Appropriate measures to prevent violence against children must be integrated, cohesive and interdisciplinary and require a coordinated system.[[86]](#footnote-87) Such requirements would apply to State entities, including national control systems or similar, tasked with implementing a State’s due diligence obligations to prevent violence against children and prevent the diversion of arms and unregulated or illicit arms transfers.

42. Similarly, the Arms Trade Treaty requires the designation of competent national authorities to oversee and/or manage the national control systems.[[87]](#footnote-88) States parties have significant latitude regarding the form and structure of the control regime. Some States have established ad hoc structures, such as the National Authority on Armament Export of Italy and the National Conventional Arms Control Committee of South Africa.[[88]](#footnote-89) Others have integrated such competencies into existing structures, such as the Ministry of Defence of Mexico.[[89]](#footnote-90) While under the Arms Trade Treaty there is no obligation to make the regime an interministerial entity, it is likely that coordination will be necessary between a number of government ministries and other public entities.[[90]](#footnote-91)

43. Whatever the form of the national control system, it should have adequate material, technical and human resources and capacities to fulfil its role, including with regard to preventing the diversion of arms and unregulated or illicit arms transfers that may have an impact on the enjoyment of human rights, including by children and youth. It was indicated in some contributions that public officials operating in that context might not have the adequate technical capacities needed to fulfil the State’s due diligence obligations as mentioned above.[[91]](#footnote-92) Efforts to strengthen the administrative capacity of all competent bodies are therefore critical.[[92]](#footnote-93) In this context, States should ensure adequate training in human rights,[[93]](#footnote-94) including the rights of children and youth, and, where appropriate, in international humanitarian law and international criminal law for State officials, civil servants, judges, law enforcement officials and military personnel operating in the context of national control systems. States should ensure that public officials are provided with initial and in-service general and role-specific training on a children’s rights approach to the prevention of all violence against children.[[94]](#footnote-95)

44. As mentioned above, national control systems require coordinated, integrated, interdisciplinary and cohesive action, often at the interministerial level. For example, coordination between a State’s national export agency and the departments of the Ministry for Foreign Affairs in charge of assessing respect for human rights, including the rights of women and children, disarmament and non-proliferation, may result in better capacity to conduct risk assessments.[[95]](#footnote-96) This can also contribute to greater consistency in a State’s action, avoiding inconsistencies between the outcome of a country’s human rights assessments and its arms exports.[[96]](#footnote-97)

 3. Risk assessments

45. In order to implement due diligence obligations as outlined above, risk assessments are required. In this context, many States perform diversion risk assessments under strict national regulatory frameworks and other multilateral export control regimes to which they are a party.[[97]](#footnote-98) Assessing the human rights record of the receiving country is an important part of this process.[[98]](#footnote-99) When considering the criteria for the approval of export licences illustrated above, some States also conduct specific human rights impact assessments.

46. While there is no internationally agreed definition of diversion, several multilateral export risk assessment guidelines include diversion risk indicators. Building on those multilateral efforts, the United Nations Institute for Disarmament Research has proposed a series of diversion risk indicators and questions that States could incorporate into their diversion risk assessments. To contribute to ensuring that human rights considerations are consistently taken into account in the context of arms transfers authorizations, OHCHR has previously recommended the development of a set of indicators to identify and measure the impact of arms transfers on the enjoyment of human rights.[[99]](#footnote-100)

47. In addition to indicators, risk assessments require reliable sources of information, which often include governmental sources, as well as open-source information, including that produced by the United Nations, other international organizations and reputable non-governmental organizations.[[100]](#footnote-101) Studies have highlighted that export licensing officers face time and budgetary constraints when conducting risk assessments and do not always have the capacity to review multiple sources of information, including United Nations documents, to assess the risk of exported conventional arms being used, for example, to commit or facilitate gender-based violence, including against children.[[101]](#footnote-102) In this context, licensing authorities should be provided with appropriate resources to conduct thorough risk assessments. As part of their cooperation with international organizations and civil society, licensing authorities should also consider engagement to clarify the type of information on human rights and the form of such information that would be most helpful for risk assessments.

 4. Cooperation with civil society

48. National authorities involved in arms transfers should ensure participatory decision-making at all levels. This includes facilitating the participation of civil society in decision-making before, during and after a decision on arms transfers is made. In accordance with the principle of maximum disclosure (see paras. 25–33 above), authorities should make available adequate, accessible and necessary information on applications for arms transfers under consideration as soon as such information is known, to allow civil society to prepare to participate effectively, including in the risk-assessment process.[[102]](#footnote-103) Authorities should consider establishing mechanisms through which civil society can be consulted in the context of assessments on the risk of diversion of an arms transfer, including on human rights impacts, to inform considerations on whether a licence should be cancelled or denied for follow-up deliveries.[[103]](#footnote-104)

49. In some contributions, the importance of ensuring transparency and cooperation with civil society was recognized. The European Union produces a yearly report providing data on arms export licences granted and denied.[[104]](#footnote-105) Italy also deems it essential to share as much information as possible with partners and seek cooperation from civil society.[[105]](#footnote-106) Switzerland has committed to a “whole-of-Switzerland” approach to arms control and disarmament, involving many stakeholders, including civil society.[[106]](#footnote-107) In South Africa, the National Conventional Arms Control Committee is required to report regularly to Parliament. The submission of such reports should be timely in order to ensure transparency and allow civil society to be involved in monitoring arms transfers processes.[[107]](#footnote-108)

 5. International cooperation

50. The efficiency of national control systems requires international cooperation at different levels. The Committee on the Rights of the Child has highlighted the critical role of cross-border cooperation in addressing child protection issues that cut across national borders.[[108]](#footnote-109) With regard to due diligence obligations to prevent crimes against humanity,[[109]](#footnote-110) including where victims are children and youth, States are also required to cooperate with other States, relevant intergovernmental organizations and, as appropriate, other organizations.[[110]](#footnote-111) Bilateral cooperation and information exchanges in relation to a particular transfer have been identified as an effective measure to prevent and address diversion.[[111]](#footnote-112)

51. Article 8 of the Arms Trade Treaty imposes on importing States parties the obligation to take measures necessary to ensure that appropriate and relevant information is provided, upon request, pursuant to their national laws, to the exporting State party to assist the latter in conducting its national export assessments under article 7 of the Treaty. Appropriate and relevant information may include end-use or end-user information, which can assist in assessing the risk of arms being used to commit or facilitate gross violations of international human rights law or acts of violence against women or children. In this context, an exporting State party may request information on the importing State party’s human rights policy, evidence of constitutional protection of human rights, human rights training for key actors, such as law enforcement agencies, and information on whether human rights violations are prosecuted in the country and on independent monitoring bodies aimed at promoting and protecting human rights.[[112]](#footnote-113)

52. Article 11 of the Arms Trade Treaty also requires exporting and importing States parties to cooperate and exchange information, pursuant to national laws, where appropriate and feasible, in order to mitigate the risk of diversion.[[113]](#footnote-114) An increasing number of exporting States are also including provisions in their end-use and end-user documentation to the effect that importing States and end users must be willing to grant the right to States to conduct on-site inspections of transferred conventional weapons to ensure that such items have not been diverted or re-exported without the prior authorization of the original exporting State.[[114]](#footnote-115) Exporting States may also include commitments and assurances in end-use and end-user documentation on the end use or prohibited use of conventional arms. States could include, for example, assurances that the recipients’ use of imported items is in accordance with international humanitarian and human rights law, including provisions protecting the rights of children and youth.

 IV. Business and human rights and the arms sector

53. The conduct of businesses plays a significant role in preventing, mitigating and addressing diversion that has an impact on the enjoyment of the rights of children and youth. The Convention on the Rights of the Child and its Optional Protocols, including the Optional Protocol on the involvement of children in armed conflict, give rise to obligations for States regarding the impact of business activities. The International Covenant on Civil and Political Rights also imposes obligations on States in relation to activities taken by corporate entities based in their territory or subject to their jurisdiction in the context of the protection of the right to life.[[115]](#footnote-116)

54. Considering the heightened risk of violations of the rights of the child, including the use of child soldiers, during emergencies and conflict situations, the Committee on the Rights of the Child has established that States should require business enterprises operating in such contexts to undertake stringent child-rights due diligence tailored to their size and activities. This requires periodic child-rights impact assessments and consultations. Home States should also develop and implement laws and regulations that address specific foreseeable risks to children’s rights from business enterprises that are operating transnationally. This can include a requirement to publish actions taken to ensure that companies’ operations do not contribute to serious violations of children’s rights, and a prohibition on the sale or transfer of arms and other forms of military assistance when the final destination is a country in which children are known to be, or may potentially be, recruited or used in hostilities.[[116]](#footnote-117)

55. The Working Group on the issue of human rights and transnational corporations and other business enterprises has highlighted the need for a more explicit application of the Guiding Principles on Business and Human Rights by States and businesses in the arms sector.[[117]](#footnote-118) In this context, as the Guiding Principles apply to all businesses, States should make it clear that they apply to companies in the arms sector and that they include the requirement for companies to conduct human rights due diligence, as a separate and company-led process outside of the export licensing decisions and obligations assumed by States. The Working Group has recommended that States that introduce mandatory human rights due diligence obligations include all sectors, including the arms sector, in those obligations, regardless of export licence decisions by States. It has also recommended that States ensure that political engagement and lobbying activities are consistent with the Guiding Principles and do not contribute to negative human rights impacts and that States commit to establishing effective judicial and non-judicial grievance mechanisms as a means of providing accountability for wrongdoing and remedies for victims of human rights abuses.

 V. Conclusions and recommendations

56. **The** **diversion of arms and unregulated and illicit arms transfers are conducive factors for the commission of acts of violence against children and youth and have a severe impact on their enjoyment of all human rights. The present report highlights how diversion to unauthorized end users or for unlawful end use, as well as unregulated and illicit arms transfers, can result in a broad range of violations and abuses of the rights of children and youth in situations of both peacetime and armed conflict. In this context, the report highlights the need for data disaggregated on the basis of age and gender to understand the vulnerabilities faced by girls and boys, as well as by young women and men.**

57. **States have due diligence obligations to prevent and protect children and youth from human rights violations and abuses under international human rights law and under the Arms Trade Treaty. Those obligations imply the need to take appropriate measures to prevent the diversion of arms and unregulated and illicit arms transfers that have a direct and foreseeable impact on the rights of individuals outside their territory, including the right to life of young persons and the right of children to freedom from all forms of violence.**

58. **The following recommendations should be considered in conjunction with those contained in previous OHCHR reports on this issue**[[118]](#footnote-119) **and in Securing Our Common Future: An Agenda for Disarmament. Building upon such recommendations, States should:**

(a) **Adopt a human rights-based approach to arms transfer governance. In this context, States should act in accordance with the principles of participation, accountability and the rule of law, and equality and non-discrimination;**

(b) **Promote the participation of youth and children capable of forming their own views in all arms control and disarmament process forums, including global disarmament meetings;**

(c) **Consider acceding to and/or ratifying the Arms Trade Treaty and regional instruments regulating arms transfers, the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict, and other relevant international human rights treaties. States parties should give due consideration to the recommendations relating to arms governance made by the United Nations human rights treaty bodies;**

(d) **Establish or strengthen national control systems to ensure that they equip authorities with the necessary institutional capacity to implement their due diligence obligations, including by:**

(i) **Adopting national legal and regulatory frameworks for arms transfer governance in line with international law governing arms transfers. States should ensure that national legislative and regulatory frameworks are implemented in a manner that ensures procedural and legal transparency and affords effective access to justice to those who claim that their rights have been violated;**

(ii) **Ensuring all institutions involved are provided with sufficient material, technical and human resources and capacities, including by providing training on international human rights law, international humanitarian law and international criminal law to relevant public officials. States should also ensure effective coordination among the ministries and other public authorities involved to ensure policy coherence, including on human rights assessments;**

(iii) **Taking into account the human rights situation in the receiving country when conducting diversion risk assessments. In this context, States should draw from documentation from the United Nations, including its human rights bodies and mechanisms, other international organizations and reputable non-governmental organizations;**

(iv) **Systematically collecting and sharing data, disaggregated by relevant factors based on the way in which different categories of arms cause or facilitate human rights violations or abuses against children and youth and the correlation between proliferation of arms and violence against children;**

(v) **Ensuring that decision-making on arms governance is responsive, inclusive, participatory and representative, including by ensuring the participation of civil society in risk-assessment processes. The right to participate in public affairs should be guaranteed, including by ensuring that all institutions involved act transparently and guarantee the right to access to information in line with international human rights law;**

(vi) **Cooperating bilaterally and multilaterally towards preventing and addressing diversion, including by requesting and sharing information on end use and end users;**

 (e) **Ensure the implementation of the Guiding Principles on Business and Human Rights in the context of arms transfer governance, including by requiring businesses to undertake human rights due diligence and conduct human rights impact assessments.**

59. **Business enterprises should take steps to meet their responsibility to respect all human rights, including through the full operationalization of the Guiding Principles on Business and Human Rights, which implies conducting effective human rights due diligence across their operations and in relation to all human rights, including the right to life and the right of children to freedom from all forms of violence, and taking appropriate action to prevent, mitigate and address actual and potential impacts.**

60. **Arms transfer governance should include the meaningful participation of civil society, particularly in risk-assessment processes, including through its efforts to develop methodologies, monitor, gather, analyse and make available information on arms transfers and their impact of human rights.**[[119]](#footnote-120)

1. \* The present report was submitted after the deadline so as to include the most recent information. [↑](#footnote-ref-2)
2. The references to arms and weapons in the present report include those that fall under the seven categories of conventional weapons in the Register of Conventional Arms (battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft and unmanned combat aerial vehicles, attack helicopters, warships, and missiles and missile launchers), together with small arms and light weapons (additional category included in article 2 (1) of the Arms Trade Treaty). When reference is made to the above-mentioned categories of arms, the weapons, ammunition, parts and components are considered together. [↑](#footnote-ref-3)
3. For the purposes of the present report, the term “children” is used in accordance with the definition given in article 1 of the Convention on the Rights of the Child. The term “youth” is used in accordance with the definition provided by the Security Council in its resolution 2250 (2015), namely persons aged between 18 and 29. [↑](#footnote-ref-4)
4. All contributions will be available at www.ohchr.org/en/calls-for-input/2022/call-input-report-impact-arms-transfers-human-rights. [↑](#footnote-ref-5)
5. [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8) and [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29). [↑](#footnote-ref-6)
6. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), para. 7. [↑](#footnote-ref-7)
7. [A/51/42](http://undocs.org/en/A/51/42), annex I, para. 7. [↑](#footnote-ref-8)
8. See United Nations, Modular Small-arms-control Implementation Compendium, “Children, adolescents, youth and small arms and light weapons”. [↑](#footnote-ref-9)
9. [CRC/C/SDN/CO/3-4](http://undocs.org/en/CRC/C/SDN/CO/3-4), para. 74; [CRC/C/SLV/CO/5-6](http://undocs.org/en/CRC/C/SLV/CO/5-6), para. 15; and [CRC/C/SYR/CO/5](http://undocs.org/en/CRC/C/SYR/CO/5), para. 43. [↑](#footnote-ref-10)
10. *Protecting Children Affected by Armed Violence in the Community* (United Nations publication, 2016), pp. 17–18. [↑](#footnote-ref-11)
11. Contribution of UNODC. See also the contribution of the National Human Rights Commission of Mexico. [↑](#footnote-ref-12)
12. Contribution of UNODC. [↑](#footnote-ref-13)
13. [A/HRC/49/41](http://undocs.org/en/A/HRC/49/41). [↑](#footnote-ref-14)
14. [A/HRC/50/22](http://undocs.org/en/A/HRC/50/22), paras. 21–22; United Nations Assistance Mission for Iraq, “Human rights violations and abuses in the context of demonstrations in Iraq October 2019 to April 2020” (Baghdad, 2020); and OHCHR, “Informe sobre la misión a Chile 30 de octubre–22 de noviembre de 2019”. Available at www.ohchr.org/sites/default/files/Documents/Countries/CL/Report\_Chile\_2019\_SP.pdf. [↑](#footnote-ref-15)
15. [A/HRC/49/75](http://undocs.org/en/A/HRC/49/75), para. 10. [↑](#footnote-ref-16)
16. See the conference room paper of the Special Rapporteur on the situation of human rights in Myanmar entitled “Losing a generation: how the military junta is devastating Myanmar’s children and undermining Myanmar’s future”, available on the web page of the Special Rapporteur (www.ohchr.org/en/documents/thematic-reports/ahrc50crp1-conference-room-paper-special-rapporteur-losing-generation), paras. 76 and 83. [↑](#footnote-ref-17)
17. [S/2019/1011](http://undocs.org/en/S/2019/1011), para. 53; Stimson Center, “Diversion and the Arms Trade Treaty: identifying good practice and opportunities for progress” (2021), p. 1; and Simon Yazgi and Erica Mumford, *The* *Arms-Related Risk Analysis Toolkit*: *Practical Guidance for Integrating Conventional Arms-Related Risks into Conflict Analysis and Prevention* (Geneva, United Nations Institute for Disarmament Research (UNIDIR), 2021), p. 40. [↑](#footnote-ref-18)
18. *The Sustainable Development Goals Report 2022* (United Nations publication, 2022), p. 58. [↑](#footnote-ref-19)
19. [A/76/231](http://undocs.org/en/A/76/231), para. 10. See also [A/59/695-S/2005/72](http://undocs.org/en/A/59/695-S/2005/72), para. 68. [↑](#footnote-ref-20)
20. Contribution of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict. [↑](#footnote-ref-21)
21. Contributions of Qatar, Switzerland, UNIDIR and Maat for Peace, Development and Human Rights. [↑](#footnote-ref-22)
22. [A/HRC/49/58](http://undocs.org/en/A/HRC/49/58), para. 2. [↑](#footnote-ref-23)
23. See [A/75/873-S/2021/437](http://undocs.org/en/A/75/873-S/2021/437). [↑](#footnote-ref-24)
24. [A/HRC/49/77](http://undocs.org/en/A/HRC/49/77), paras. 26 and 56–57; [A/HRC/48/20](http://undocs.org/en/A/HRC/48/20), paras. 21 and 30; and [A/HRC/50/63](http://undocs.org/en/A/HRC/50/63), para. 58. [↑](#footnote-ref-25)
25. United Nations Children’s Fund (UNICEF), “Protecting children from explosive weapons”. Available at www.unicef.org/protection/protecting-children-from-explosive-weapons#more. [↑](#footnote-ref-26)
26. Contribution of UNIDIR. See also European Country of Origin Information Network, “Impact of explosive ordnance on children in Syria”. Available at www.ecoi.net/en/file/local/2043691/impact\_of\_explosive\_ordnance\_on\_children\_in\_syria.pdf. [↑](#footnote-ref-27)
27. [A/75/873-S/2021/437](http://undocs.org/en/A/75/873-S/2021/437). [↑](#footnote-ref-28)
28. Contribution of UNODC. [↑](#footnote-ref-29)
29. Conference room paper of the Commission on Human Rights in South Sudan on conflict-related sexual violence against women and girls in South Sudan, para. 3. Available on the webpage of the forty-ninth session of the Human Rights Council (www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session49/list-reports). [↑](#footnote-ref-30)
30. [A/76/871-S/2022/493](http://undocs.org/en/A/76/871-S/2022/493), para. 4. [↑](#footnote-ref-31)
31. [A/HRC/49/78](http://undocs.org/en/A/HRC/49/78), para. 70; Council resolution 36/27, para. 4; and Council resolution 48/19, paras. 8 and 13. See also OHCHR and United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic, “Rapport public sur les violation des droits de l’homme et du droit international humanitaire en République Centrafricaine Durant la periode électorale: juillet 2020–juin 2021” (available at www.ohchr.org/sites/default/files/Documents/Countries/CF/report\_abuses\_violations\_HR\_InternationalHumanitarianLaw\_Elections\_CAR.pdf). [↑](#footnote-ref-32)
32. [CRC/C/SYR/CO/5](http://undocs.org/en/CRC/C/SYR/CO/5), para. 19. See also the contributions of Switzerland, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and the Asia Justice Coalition. [↑](#footnote-ref-33)
33. Contribution of UNIDIR. [↑](#footnote-ref-34)
34. [A/76/871-S/2022/493](http://undocs.org/en/A/76/871-S/2022/493), para. 10. [↑](#footnote-ref-35)
35. Ibid., para. 7. [↑](#footnote-ref-36)
36. Contribution of UNIDIR. [↑](#footnote-ref-37)
37. [CRC/C/SYR/CO/5](http://undocs.org/en/CRC/C/SYR/CO/5), para. 41. [↑](#footnote-ref-38)
38. [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8) and [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29). [↑](#footnote-ref-39)
39. [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8). [↑](#footnote-ref-40)
40. Ibid., paras. 20–21. [↑](#footnote-ref-41)
41. Ibid., para. 20. [↑](#footnote-ref-42)
42. General comment No. 36 (2018), para. 21. [↑](#footnote-ref-43)
43. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), para. 27. [↑](#footnote-ref-44)
44. Human Rights Committee, general comment No. 36 (2018), para. 22. [↑](#footnote-ref-45)
45. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), para. 29. [↑](#footnote-ref-46)
46. General comment No. 24 (2017), para. 30. [↑](#footnote-ref-47)
47. [E/C.12/GBR/CO/6](http://undocs.org/en/E/C.12/GBR/CO/6), para. 12 (c). [↑](#footnote-ref-48)
48. General comment No. 35 (2017), para. 24 (b). [↑](#footnote-ref-49)
49. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), para. 30. [↑](#footnote-ref-50)
50. Art. 19 (2); and Committee on the Rights of the Child, general comment No. 13 (2011), para. 5. [↑](#footnote-ref-51)
51. General comment No. 13 (2011), para. 76. [↑](#footnote-ref-52)
52. For example, [CRC/C/OPAC/BRA/CO/1](http://undocs.org/en/CRC/C/OPAC/BRA/CO/1), para. 34. [↑](#footnote-ref-53)
53. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), para. 31. [↑](#footnote-ref-54)
54. [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8), para. 27. [↑](#footnote-ref-55)
55. Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25; and Human Rights Committee, general comment No. 25 (1996). [↑](#footnote-ref-56)
56. International Covenant on Civil and Political Rights, art. 19 (2); and Human Rights Committee, general comment No. 34 (2011), para. 18. See also [A/HRC/49/38](http://undocs.org/en/A/HRC/49/38). [↑](#footnote-ref-57)
57. [A/HRC/49/38](http://undocs.org/en/A/HRC/49/38), para. 20. [↑](#footnote-ref-58)
58. Andrew Clapham and others, *The Arms Trade Treaty: A Commentary*, Oxford Commentaries on International Law (Oxford, Oxford University Press, 2016), p. 200. [↑](#footnote-ref-59)
59. International Covenant on Civil and Political Rights, art. 19 (2)–(3). [↑](#footnote-ref-60)
60. *Toktakunov v. Kyrgyzstan* ([CCPR/C/101/D/1470/2006](http://undocs.org/en/CCPR/C/101/D/1470/2006) and [CCPR/C/101/D/1470/2006/Corr.1](http://undocs.org/en/CCPR/C/101/D/1470/2006/Corr.1)), para. 7.7; and Global Principles on National Security and the Right to Information, principle 10.A. [↑](#footnote-ref-61)
61. Committee on the Rights of the Child, general comment No. 20 (2016), paras. 23–25. [↑](#footnote-ref-62)
62. United Nations, Modular Small-arms-control Implementation Compendium, “Children, adolescents, youth and small arms and light weapons”. [↑](#footnote-ref-63)
63. Human Rights Committee, general comment No. 31 (2004), para. 7. [↑](#footnote-ref-64)
64. See the guidance note of the Secretary-General on the United Nations approach to rule of law assistance. [↑](#footnote-ref-65)
65. In line with the principle of the rule of law (Arms Trade Treaty, art. 5). [↑](#footnote-ref-66)
66. International Covenant on Civil and Political Rights, art. 2; and International Covenant on Economic, Social and Cultural Rights, art. 2. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. [↑](#footnote-ref-67)
67. Human Rights Committee, general comment No. 31 (2004), para. 16. [↑](#footnote-ref-68)
68. Art. 5 (1). [↑](#footnote-ref-69)
69. Human Rights Committee, general comment No. 18 (1989), para. 10. [↑](#footnote-ref-70)
70. [CCPR/C/FIN/CO/7](http://undocs.org/en/CCPR/C/FIN/CO/7), para. 7; and [E/C.12/2008/2](http://undocs.org/en/E/C.12/2008/2), annex, para. 10. [↑](#footnote-ref-71)
71. Human Rights Committee, general comment No. 18 (1989). [↑](#footnote-ref-72)
72. See, mutatis mutandis, Timo Koivurova, “Due diligence”, in *Max Planck Encylopedia of International Law* (Oxford, Oxford University Press, 2010), para. 21; the draft articles on prevention of transboundary harm from hazardous activities, with commentaries (*Yearbook of the International Law Commission, 2001*, vol. II, Part Two (United Nations publication, E.04.V.17, and corrigendum (Part 2)) chap. V, sect. E); and the draft articles on prevention and punishment of crimes against humanity (*Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10* ([A/74/10](http://undocs.org/en/A/74/10))), art. 4, “Obligation of prevention”. [↑](#footnote-ref-73)
73. Arms Trade Treaty, art. 5. [↑](#footnote-ref-74)
74. Human Rights Committee, general comment No. 31 (2004), para. 7. [↑](#footnote-ref-75)
75. [CRC/C/OPAC/VEN/CO/1](http://undocs.org/en/CRC/C/OPAC/VEN/CO/1), para. 38. [↑](#footnote-ref-76)
76. [CRC/C/OPAC/BEN/CO/1](http://undocs.org/en/CRC/C/OPAC/BEN/CO/1), para. 29; and [CRC/C/OPAC/SAU/CO/1](http://undocs.org/en/CRC/C/OPAC/SAU/CO/1), para. 44. [↑](#footnote-ref-77)
77. See Clapham and others, *The Arms Trade Treaty: A Commentary*; and Sarah Parker, ed., *The Arms Trade Treaty: A Practical Guide to National Implementation* (Geneva, Small Arms Surveys, 2016). [↑](#footnote-ref-78)
78. Contribution of UNIDIR. See also Brian Wood and Paul Holtom, “The Arms Trade Treaty: measures to prevent, detect, address and eradicate the diversion of conventional arms”, Issue Brief, No. 2 (Geneva, UNIDIR 2020). [↑](#footnote-ref-79)
79. Contributions of Italy, Lebanon, Mauritius, Mexico and Portugal. [↑](#footnote-ref-80)
80. See the contribution of the European Union for a full definition of internal repression in the cited text. [↑](#footnote-ref-81)
81. Switzerland, Federal Act on War Materiel, art. 22 (a). [↑](#footnote-ref-82)
82. Ibid., art. 18. [↑](#footnote-ref-83)
83. Switzerland, Ordinance on War Material, art. 5 (a). [↑](#footnote-ref-84)
84. Contribution of Open Secrets. [↑](#footnote-ref-85)
85. Contributions of Open Secrets and Southern Africa Litigation Centre. See also Women’s International League for Peace and Freedom, “Submission to the UN Working Group on business and human rights’ project on business, human rights and conflict-affected contexts” (available at www.wilpf.org/wp-content/uploads/2021/01/WILPF-submission-UNWG-project-on-BHR-and-conflict.pdf). [↑](#footnote-ref-86)
86. General comment No. 13 (2011), paras. 32 and 39. [↑](#footnote-ref-87)
87. Art. 5 (5). See also Clapham and others, *The Arms Trade Treaty: A Commentary*, p. 172. [↑](#footnote-ref-88)
88. Contributions of Italy and Open Secrets. [↑](#footnote-ref-89)
89. Contribution of Mexico. [↑](#footnote-ref-90)
90. Clapham and others, *The Arms Trade Treaty: A Commentary*, p. 170. [↑](#footnote-ref-91)
91. Contribution of the Women’s International League for Peace and Freedom. See also Anne-Séverine Fabre and others, “At whose risk? Understanding States parties’ implementation of Arms Trade Treaty gender-based violence provisions”, Briefing Paper (Geneva, Small Arms Survey, 2022). [↑](#footnote-ref-92)
92. Contributions of Bosnia and Herzegovina and El Salvador. [↑](#footnote-ref-93)
93. United Nations Declaration on Human Rights Education and Training, art. 4. [↑](#footnote-ref-94)
94. Committee on the Rights of the Child, general comment No. 13 (2011), para. 44 (d) (i). [↑](#footnote-ref-95)
95. Fabre and others, “At whose risk?”, p. 11. [↑](#footnote-ref-96)
96. Contribution of the Women’s International League for Peace and Freedom. [↑](#footnote-ref-97)
97. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), para. 35. [↑](#footnote-ref-98)
98. Contributions of Switzerland and the European Union. [↑](#footnote-ref-99)
99. [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8), para. 48. [↑](#footnote-ref-100)
100. Contribution of UNIDIR. [↑](#footnote-ref-101)
101. Fabre and others, “At whose risk?”, p. 7. [↑](#footnote-ref-102)
102. [A/HRC/39/28](http://undocs.org/en/A/HRC/39/28), para. 68. [↑](#footnote-ref-103)
103. Contribution of the Women’s International League for Peace and Freedom. [↑](#footnote-ref-104)
104. Contribution of the European Union. [↑](#footnote-ref-105)
105. Contribution of Italy. [↑](#footnote-ref-106)
106. Switzerland, Arms Control and Disarmament Strategy 2022–2025. [↑](#footnote-ref-107)
107. Contributions of Open Secrets and the Southern Africa Litigation Centre. [↑](#footnote-ref-108)
108. General comment No. 13 (2011), para. 76. [↑](#footnote-ref-109)
109. Rome Statute of the International Criminal Court, art. 7. [↑](#footnote-ref-110)
110. Draft articles on prevention and punishment of crimes against humanity (*Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10* ([A/74/10](http://undocs.org/en/A/74/10)), art. 4 (b)). [↑](#footnote-ref-111)
111. Contribution of UNIDIR. [↑](#footnote-ref-112)
112. Clapham and others, *The Arms Trade Treaty: A Commentary*, pp. 293–294. [↑](#footnote-ref-113)
113. [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29), paras. 31–34. [↑](#footnote-ref-114)
114. Contributions of UNIDIR and Open Secrets. [↑](#footnote-ref-115)
115. Human Rights Committee, general comment No. 36 (2018), para. 22. See also the Guiding Principles on Business and Human Rights, principle 2. [↑](#footnote-ref-116)
116. General comment No. 16 (2013), para. 50. [↑](#footnote-ref-117)
117. See the information note by that Working Group on responsible business conduct in the arms sector, available at www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf. [↑](#footnote-ref-118)
118. [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8) and [A/HRC/44/29](http://undocs.org/en/A/HRC/44/29). [↑](#footnote-ref-119)
119. To be read in conjunction with [A/HRC/35/8](http://undocs.org/en/A/HRC/35/8), para. 45. [↑](#footnote-ref-120)