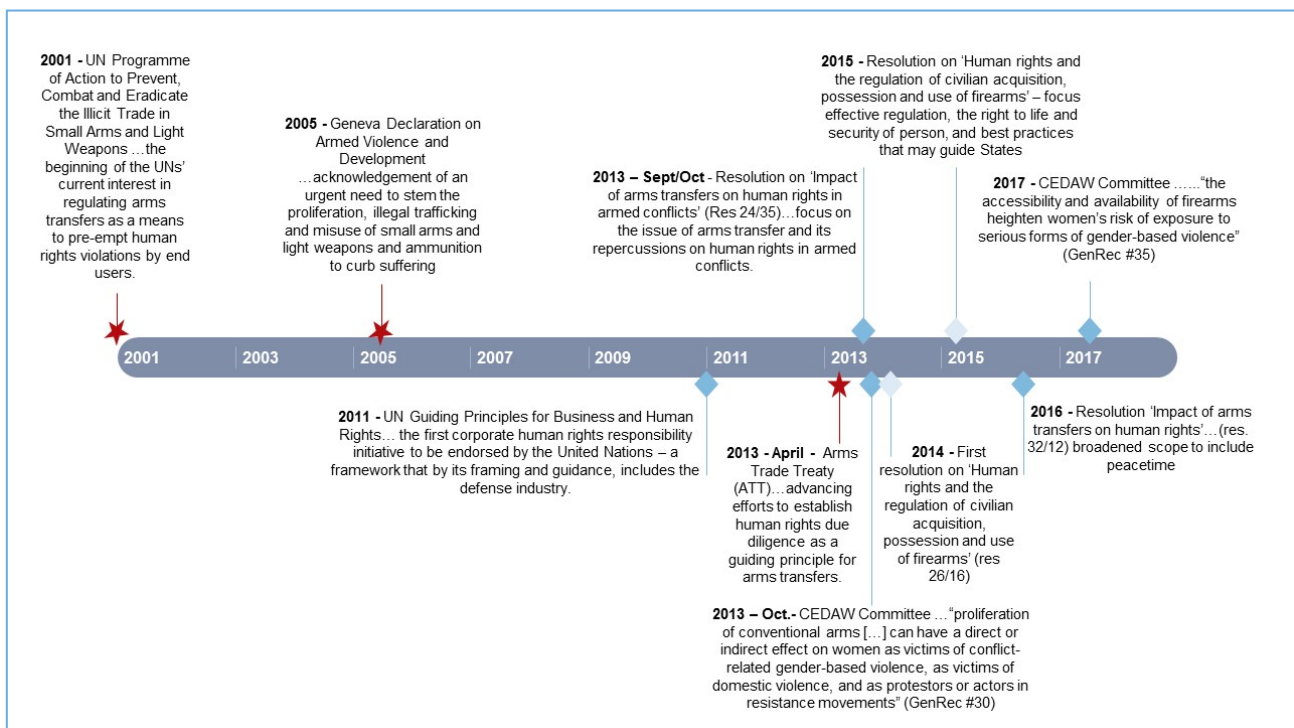


## How the human rights pillar is contributing to arms control

part of the *New Shapes: Weapons Governance* conference  
(co-organised by the Challenges Foundation and Geneva Disarmament Platform)

While the implementation of many arms control and disarmament frameworks, agreements and treaties is being undermined by politicization and commercial interests, as well as the lacking human rights dimension in arms control decision making has led some actors to leverage the UN human rights bodies to explore their role in highlighting the violations from arms transfers and in reminding governments of their human rights obligations in relation to them, in view of curbing those violations.

The event jointly organised by the Quaker United Nations Office (QUNO), the Women's international League for Peace and Freedom (WILPF), Amnesty International (AI), the Office of the High Commissioner for Human Rights (OHCHR) and the Permanent Mission of Peru explored the various roles human rights initiatives have had over the years – their added value in terms of impact.



To open the discussion, the delegation of Peru reminded us of that the subject of arms control is highly relevant to the principles and rights recognized in international human rights law and international humanitarian law – as well as the right to life, right to liberty, and right to security which are all recognized in the UN Charter, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, among other instruments. Furthermore, as the Human Rights Council is a forum for dialogue on thematic issues on all human rights, it is

also a place to discuss the suffering of millions of people around the world affected by systematic human rights violations and abuses, resulting directly or indirectly, from unregulated arms transfers and from the acquisition, possession and misuse of firearms by civilians.

WILPF also highlighted that the need to look at disarmament and demilitarization holistically, by collaborating across perceived silos, ensures a comprehensive and inter-connected approach:

ultimately ensuring greater implementation of both human rights, and arms control and disarmament instruments. This also enables states to be held accountable for their obligations in various complementary fora – for instance reminding states of their responsibilities irrespective of whether they ratified the ATT or not, as many human rights commitments under the ATT align with commitments that states parties already hold through human rights instruments that they are a party to such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and others.

Furthermore, human rights mechanisms' recommendations provide a roadmap for implementation because they are often quite detailed – and the recommendations and concluding observations by treaty bodies or coming from UPRs can also be used for national advocacy by civil society, for instance for court judgements, or a better entry point for parliamentarians to put pressure on their government.

The discussion started with the delegation from Peru outlining their own example – a joint **resolution** presented by Ecuador and Peru since 2013, **on the Impact of Arms Transfers on Human Rights** (24/35; 31/12; res 2019) that remind States of their human rights obligations when it comes to the arms trade as well as stopping the further proliferation of arms into illicit circulation. It was indicated that first two resolutions were approved by a vote, while the last one from July 2019 was approved by consensus, which is a proof of the ability of the Human Rights Council to deliberate transparently and adopt resolutions that contribute to respect, promote and protect human rights. The resolutions have consistently urged States to 'refrain from transferring arms when they assess, in accordance with applicable national procedures and international obligations and standards, that there is a clear risk that such arms might be used in the commission or facilitation of serious violations or abuses of international human rights law or serious violations of international humanitarian law'. This call – albeit non-binding - reminds States of their obligation to exercise due diligence by taking necessary measures to prevent human rights violations and abuses in the context of international arms transfers. The resolutions and the recommendations contained in reports by the Office of the High Commissioner contain very valuable information and suggestions on how to better implement article 7.1 from the ATT, in which exporting states shall assess, prior to the export, the potential that the conventional arms or items could be used, for example, to commit or facilitate a serious violation of international humanitarian law or international human

rights law. This, certainly, is a real impact of the work carried out by the human rights bodies.

WILPF's example stemmed from their work on leveraging the **Universal Periodic Reviews (UPRs)** as well as the human rights treaty bodies, including the **CEDAW reviews** of exporting countries such as Germany, France, the United-Kingdom or Sweden and those who suffer from the influx such as Colombia, Nigeria and the Democratic Republic of Congo (DRC) - to raise their concerns about the impact of arms on human rights.

In their CEDAW reports they particularly highlighted Article 7(4) of the ATT that requires for export license officials to analyze the risk of the weapons to be exported to commit or facilitate gender-based violence (GBV). WILPF showed how many of the importing countries experience high levels of gender-based and armed violence, and that there is a high risk that those weapons are used in acts of GBV. Following their report for the CEDAW review of Germany the Committee recommended to Germany to ensure "that, before export licenses are granted, comprehensive and transparent assessments be conducted of the impact that the misuse of small arms and light weapons has on women, including those living in conflict zones."<sup>1</sup> CEDAW Committee has urged 12 states parties to implement tighter control of arms regulation in light of their devastating impact on women's rights.

Similarly, WILPF submitted concerns to the **CESCR reviews** of Germany, the UK or Cameroon and also advocated for the inclusion of the issue of arms and human rights in the Universal Periodic Review (UPR) of Germany, Colombia or the DRC, including by advocating for the ratification of the ATT and effective controls of small arms and light weapons.

A most recent example of how this has had an impact, comes from Switzerland in 2016, when the CEDAW Committee recommended for Switzerland to conduct an independent study to "analyze the link between the uncontrolled possession of arms by men in the State party and the impact on gender-based violence against women and girls" as well as to "monitor the impact of the misuse and illicit trade of small arms and light weapons on women, including those living in conflict zones, and ensure that arms-producing corporations monitor and report on the use of their arms in violence against women".

Subsequently, two parliamentarians from different parties have submitted two motions - one requests the

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<sup>1</sup> WILPF urged Germany to "develop and include specific criteria for analyzing whether any arms transfers being assessed (...) will facilitate or contribute to gender-based violence or violence against women by

government to commission the study on the relationship between private gun ownership and GBV; the other, referring to the ATT and the CEDAW Concluding Observations, requests the Swiss federal council to explain how it ensures compliance with Article 7(4) on the GBV risk assessment, which evidence Switzerland uses for conducting GBV risk assessments, how it ensures that it is objective in such risk assessments, and how it ensures that granted licenses for exporting SALW do not threaten women's security.

Amnesty International's example comes from a focus *beyond* the State responsibilities to those of the human rights responsibilities of the *defence sector* behind arms transfers<sup>2</sup> - which has been recognized in global standards on business and human rights such **UN Guiding Principles and the OECD Guidelines for Multinational Enterprises**, since 2011. Additionally, in situations of armed conflict, companies must also respect international humanitarian law.

The defence industry has been slow to acknowledge their own human rights responsibilities and argues that this is discharged by their compliance with state licencing systems. While AI does not refute the States' responsibility as licensors of arms transfers, they also argue that the defence sector plays a pivotal role in the manufacture and export of weapons systems across the world. Furthermore, the industry is large and parts of it are high risk in terms of potential for human rights harm.

AI argued that there are circumstances therefore where, companies need to go beyond what is legally required in the relevant jurisdiction or refrain from engaging in business that would otherwise be permitted under that jurisdiction.

A step in the right direction would be to apply these principles through human rights due diligence policies and processes that are preventive (aimed at preventing human rights harms) as opposed to purely defensive corporate due diligence (aimed at protecting the company itself). Failure to truly address the human rights risks entailed their business models could entail not just reputational, but legal risk of complicity in serious IHL violations.

A [pertinent example from Yemen](#) was shared by Amnesty, recounting the use of a Raytheon (US-manufactured) bomb in a Saudi and Emirati-led airstrike on a residential home in Yemen which killed six civilians (three of them children) in June 2019 -

amounting to serious violations of international humanitarian law. But who is responsible? The Saudi and Emirati States? Raytheon? The US government? In application of the UNGPs - all share responsibility, and the licensing process of the US government cannot absolve Raytheon from having to take its responsibilities to respect human rights seriously.

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The brief views from the panel were followed by an intense Q&A session with a diverse range of participants from the private sector, disarmament diplomacy and human rights NGOs.

There was a particular interest in the State's leverage to ensure companies meet standards set out in UNGPs. Panellists suggested that States should mandate human rights due diligence, making it an obligatory requirement in the overall licencing process. France was mentioned as a positive example of a State that has taken steps towards introducing legislation mandating big companies to carry out Human Rights Due Diligence (HRDD) and report on this publicly. But efforts have been deemed inadequate, highlighting a need for a more meaningful implementation of the current law.

Another participant particularly appreciated the illustrations of how the diversity of human rights mechanisms are having a 'real world' impact. Indeed, the discussion included examples of how these mechanisms should, can and are being used to hold decision holders to account when transferring weapons. This highlights that human rights mechanisms are an empowering avenue for greater engagement with legislators and the general public as spaces to raise concerns about arms transfer practices and effect change.

The discussion also included an interest in the political push back on having arms control discussed at the Human Rights Council and the extent to which the private sector can be held accountable through the Business and Human Rights Treaty currently under negotiation.

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With major questions over the responsibilities and potential legal liabilities of major arms companies and States making it into the limelight in the recent past and an increasing empowerment not only of the legal system but also of the general public request accountability - the conversation needs to continue, concerns need to be addressed and comprehensive solutions found by collaborating across perceived silos to ultimately ensure greater implementation of both human rights, and arms control and disarmament instruments.

To be continued...

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<sup>2</sup> see recent report on '[Outsourcing responsibility - Human Rights Policies in the Defence Sector](#)'