

## 'Small Arms Exports, Leadership and Accountability: A Human Rights Perspective'

### Florence FOSTER's (QUNO) speech at the Council on Christian Approaches to Defence and Disarmament (CCADD) lunch event - Tuesday, 22nd March 2022

When I was first approached to speak at this event, the world was a different place – or at least Europe was. As the spectre of war over Ukraine continues to loom, and we see an increasing number of arms transfers to the region & military spending hiking up more generally in Europe – this conversation seems as important as ever. Perhaps let me start with a few words about [Quaker UN Office](#) (QUNO) – and then on our vision on militarism and then move on to the policy world we operate in. I'd also like to give as much time as possible for a discussion, as I'm sure there is much expertise in the room.

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At QUNO in Geneva and in New York we work with people in the UN, multilateral organisations, government delegations, and non-governmental organisations, to achieve changes in international standards and practice – so we operate very much at the policy level. Also worth noting is that we work thematically, rather than through country specific foci, this enables us to drive change for the long term, and address actors in these spaces even-handedly. It finds its root in the belief that there is that of God in all, and that we must value each individual and seek to reach that spark of good, vision, or willingness to risk, that resides in each person. This can be found in the diverse ways in which we approach and shape our 'quiet diplomacy' activities behind the scenes, building trust, reduce conflict and advance the reconciling of difference by bringing together people from a range of backgrounds.

Importantly, for this conversation, we understand peace as more than the absence of war and violence, recognizing the need to look for what seeds of war there may be in all our social, political, and economic relationships. And perhaps worth also noting is that as a pacifist organization – a quietly subversive one, we do continue to resist all war and preparations for war and believe that the deliberate killing of others denies their humanity. And while keeping that radicalism close to our hearts, our work sometimes does call us to navigate creatively and at times subversively the realities of UN multilateralism and geopolitics – first and foremost to prevent the *worst* harm, by addressing and curbing the impact of weapons on human rights beyond the right to life and engaging with a wide range of actors including the economic drivers of these exports, namely the businesses behind the bullets. The hope is of course to enhance leadership to think the world otherwise.

And while inferred above, for the purpose of this conversation, the "small arms exports sector" refers to the full value chain of actors producing or being directly linked to the research, development, design, production, delivery, and maintenance of small arms. Therefore, if arms manufacturers and States constitute the top layer of this chain, there are many other entities that play important down and upstream roles.

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What with the implementation of many arms control and disarmament frameworks, agreements and treaties being undermined by politicization and commercial interests as well as the lacking human rights dimension in arms control decision making, some actors have looked elsewhere, seeking 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. We have found that leveraging the UN human rights mechanisms to advocate for stricter arms control both reflects the harsh reality that arms transfers and their acquisition by civilians can negatively impact human rights; but also complements and offers prospects of energising many disarmament and arms control frameworks.

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.

Importantly, we also need to look at disarmament and demilitarization holistically, by collaborating across perceived silos, which 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 [Arms Trade Treaty](#) (henceforth 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](#) (henceforth CEDAW), the International Covenant on Civil and Political Rights (henceforth 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 the [Universal Periodic Reviews](#) (henceforth UPR) 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.

There are several examples of how the human rights world is addressing this issue today, for instance there are joint Human Rights Council resolutions presented by Ecuador and Peru since 2013, on the Impact of Arms Transfers on Human Rights (latest iteration of the resolution: [HRC/Res/47/17](#)) 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 (this is a mirror image of another set of resolutions on civilian acquisitions – latest iteration of the resolution: [HRC/Res/45/13](#)). 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 pursuant 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 imperative is the result or impact of the work carried out by the human rights bodies.

While many of us in this room may feel that for a human rights body to address the impacts of weapons on the lived experience of people as being natural, there continues to be political push back on having arms control discussed at the Human Rights Council – so having these resolutions in the first place was and remains significant, and protecting them today is critical; another topic that is noteworthy is that the extent to which the private sector can be held accountable, through voluntary and legal means (for instance through a Business and Human Rights Treaty currently under negotiation) is also a grey zone.

Another example is work being done by several organizations including the [Women's International League for Peace and Freedom](#) (WILPF) to leverage the UPRs of countries 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.

For instance, in their CEDAW reports WILPF 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.<sup>2</sup>

Similarly, WILPF submitted concerns to the [Committee on Economic, Social and Cultural Rights](#) (henceforth CESCR) reviews of Germany, the UK and Cameroon and also advocated for the inclusion of the issue of arms and human rights in the Universal Periodic Reviews of Germany, Colombia or the DRC, including by advocating for the ratification of the ATT and effective controls of small arms and light weapons.

Another 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 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.

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But moving beyond State responsibility, it is also important to look at the human rights responsibilities of the *defence sector* behind arms transfers<sup>3</sup> - which have been recognized in global standards on business and human rights such the UN Guiding Principles on Business and Human Rights, 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 we do not refute the States’ responsibility as licensers of arms transfers, we would 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. 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 (HRDD) 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 risk, but legal risk of complicity in serious IHL violations.

A [pertinent example comes from Yemen](#) where 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 UN Guiding Principles – 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. France is a positive example of a State that has taken steps towards introducing legislation mandating big companies to carry out HRDD and report on this publicly. But

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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 the recipient”.

<sup>2</sup> An example of weak or ineffective arms control laws; symbiotic relationships between defence companies and States; a lack of HRDD conducted by defence companies and a failure by States to require them to do so; and gaps in the regulatory framework that lead to inconsistent regulation of defence sector products across the world: Myanmar’s armed forces have allegedly engaged in indiscriminate airstrikes and shelling of civilians for years, and UN experts and CSOs believe the military’s conduct in the wake of the February 2021 coup in which it seized power may amount to war crimes and crimes against humanity. The UN’s Independent International Fact-Finding Mission on Myanmar notes that companies have exported weaponry to Myanmar’s military for years (A/HRC/42/CRP.3). While the EU and other States have now adopted arms embargoes on Myanmar and the UN General Assembly has adopted a non-binding resolution, China and Russia (both arms exporters to Myanmar), abstained from the UNGA resolution and Russia has continued arms exports. There is no evidence of HRDD conducted by companies that continue to supply arms to Myanmar, and no sign that they are considering suspending sales either.

<sup>3</sup> see recent report on [‘Outsourcing responsibility – Human Rights Policies in the Defence Sector’](#)

efforts have been deemed inadequate, highlighting a need for a more meaningful implementation of the current law.

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This last example bring my inputs into this conversation slowly to a close...I hope that while rather technical, the human rights based approach or lens I've taken today, has shown you that it is as much a technical and legal field, as a people centered approach that strives to tell the story of the diverse lived experience of those who are affected by arms in their societies – and that the few examples help highlight 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.

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 for 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.

I would like to end on the topic of radicalism and anti-militarism, something that I've not addressed front and central here today, but may want to be put on the table for our discussion. This is from Ray Acheson from the Women's International League for Peace and Freedom. And while she speaks of this current war in the Ukraine, I believe it's applicable to all sorts of situations of violence, crisis or destructive conflict.

‘Many will say that doing anything other than sending more weapons or bolstering global militarism is “unrealistic” as a response to [this] crisis. But it is the credibility of the militarists that must be put in question in this moment, not those working to build the structures and culture for peace, cooperation, and well-being. Everyone who has ever tried to do anything progressive throughout all of history has been accused of being unrealistic. The only reason change has ever occurred in the world is because people ignored those criticisms and kept working. Change is not bestowed upon us by benevolent leaders. Change is compelled, by people. Being “unrealistic” means being on the front line of change. It means helping to alter what people conceive of as unrealistic, who they see as credible to speak or act on an issue. And ultimately, it means helping to dismantle the systems of harm and oppression and building something better.’<sup>4</sup>

Many thanks.

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<sup>4</sup> [End war, build peace - WILPF](#)