

# TRANSCRIPT [resumed]

## Addressing Compliance Gaps in Arms Transfers - is the Arms Trade above International Law?

20 May 2025, 18:30-20:00 - Villa Moynier

### Welcome and Opening Remarks

#### **Florence Foster (Geneva Academy)**

Senior Project Manager at the Geneva Academy. Welcomed attendees and introduced the event, co-convened by the Geneva Academy, WILPF, QUNO, and ECCHR. Noted that she would return at the end for closing remarks. She provided logistical information and emphasized that the panel would be recorded, though the Q&A would not, to encourage candid input.

### Moderator Introduction

#### **Tessa Cerisier, Women's International League for Peace and Freedom (WILPF), and Yvette Issar, Quaker United Nations Office (QUNO)**

The co-hosts opened by highlighting the growing number of legal cases challenging arms transfers on the basis of violations of international humanitarian and human rights law. Mentioned recent litigation in the UK over F-35 jet components.

They pointed to the complexity of globalized weapon supply chains and how they complicate efforts to regulate arms flows and ensure compliance. Raised key questions about state and corporate legal responsibilities and whether political and security interests can/do/should override international legal prohibitions.

#### **Core issues raised:**

- Complexity of weapons supply chains
- Legal obligations under IHL and human rights law
- Political/security interests vs. legal compliance
- Real-world impacts on civilians and environments
- Escalating global militarization and authoritarianism
- Purpose of the event: to explore state/corporate roles, justice obstacles, and OHCHR findings

## First Round of Questions to the Panel - Challenges

### **Daniel Mogster (OHCHR)**

*Human Rights Officer, Rule of Law and Democracy Section at OHCHR*

Presented key findings from OHCHR's March report on arms transfers and human rights.

#### **Four categories of concern:**

##### **1. Inadequate Safeguards against prohibited arms transfers:**

- Some states exempt specific transfers from licensing and risk assessments.
- Open export licenses often lack mandatory periodic reassessment.
- Political considerations (especially involving allies) override human rights and international humanitarian law risks.

##### **2. Corporate Due Diligence Failures:**

- Some large arms companies have human rights statements or policies, but few reference IHL or conduct downstream due diligence.
- Many rely solely on domestic law as their standard of operations, of particular concern given the practice of "strategic offshoring" to jurisdictions with lax regulation raises concern.

##### **3. State Failures to Prevent Third-Party Violations:**

- Few states impose due diligence requirements on private actors.
- Little willingness to investigate, prosecute and punish unlawful arms transfers if previously state-authorized.

##### **4. The role of courts and access to Justice Barriers:**

- Limited transparency on export licenses and risk assessments.
- Standing requirements (e.g., "victim status") difficult to prove for victims, prevent preemptive or public interest litigation.
- Courts have interpreted political question doctrines broadly and are deferential to executive decision-making.

### **Dr. Hélène Tigroudja**

*Professor at Aix-Marseille University; Visiting Professor of Public International Law at the Centre for International Law at the National University of Singapore; Vice-Chair of the UN Human Rights Committee*

Explored the relevance of the ICCPR to arms transfers.

#### **Key Points:**

- Though the ICCPR doesn't explicitly mention arms transfers, Article 6 (right to life) is directly relevant.
- States have **extraterritorial responsibilities** when activities on their territory (e.g., arms exports by private companies) cause or contribute to rights violations abroad.
- The Human Rights Committee has recognized **State jurisdiction over private actors**, particularly where their actions are reasonably foreseeable to cause harm.

## Relevant Legal Instruments:

- **General Comment 36** (on the right to life): Highlights states' duty to protect life from private actors and foreseeability of harm.
- Other applicable ICCPR rights:
  - Freedom from ill-treatment
  - Access to information
  - Freedom of expression
  - Non-discrimination (noting disproportionate harm from arms)

## Procedural obligations:

- Access to justice and effective remedy are often denied in arms cases.
- National courts often consider arms licensing decisions as political and non-justiciable (e.g., France's "acte de gouvernement" doctrine).

## Dr. Tara Van Ho

*Senior Lecturer, University of Essex (Law and Human Rights); Co-director of the Essex Business and Human Rights Project*

Discussed the relevance of the **UN Guiding Principles on Business and Human Rights (UNGPs)** to the arms trade.

## Key Points:

- UNGPs sit within human rights law. They require companies to **respect human rights**, avoid harm, and **provide remedy** if they cause or contribute to abuses.
- "Cause" and "contribute" in the business context differ from complicity in criminal law—they have a broader reach.

## Human rights due diligence requires:

- Risk assessment (based on past conduct)
- Mitigation (e.g., contractual safeguards that are enforceable)
- Effective internal enforcement and accountability mechanisms

## Critique:

- Arms companies often argue the arms trade is "too complex" to apply UNGPs. Van Ho rejected this, pointing to industries like:
  - Pharmaceuticals
  - Oil/gas/mining
  - Private security

## Key message:

The arms industry is **not exempt** from the due diligence and accountability standards applied elsewhere. The ATT reaffirms the integration of human rights and humanitarian law.

## Chloe Bailey (ECCHR)

*Senior Legal Advisor, ECCHR's Business and Human Rights Team*

Focus: Legal strategies to hold European states and arms companies accountable for exports to the Saudi-led coalition in Yemen.

### Key Challenges Identified:

#### 1. Secrecy & Lack of Transparency:

- Export data is overly aggregated.
- No information on end-users or specific weapons.
- Very difficult to build legal cases without knowing what was exported, when, and by whom.

#### 2. Evidence Collection in Conflict Zones:

- Only one case yielded physical evidence of a weapon component tied to a European firm (RWM Italia).
- Relies on field partners like Mwatana for documentation.

#### 3. Legal Obstacles in National Courts:

- Arms license information is often withheld for reasons like:
  - National security
  - Foreign policy
  - Trade secrets
- Courts defer heavily to executive secrecy—particularly in France.
- Challenges are dismissed as too vague or filed too late, even though applicants lack information to be more specific.

### Conclusion:

Arms exports are effectively placed beyond **judicial review**, despite high public interest. There is **judicial and political unwillingness** to tackle the issue.

## Second Round of Questions to the Panel - Recommendations for the Way Forward

### Daniel Mogster (OHCHR)

- The Human Rights Council asked OHCHR to identify **gaps** and suggest **next steps**. Report recommendations should be read as advice to the Council's upcoming resolution.
- Arms governance must integrate multiple areas of international law.
- Human rights invites emphasis on **victim-centered approaches**, access to justice, information, remedies, and state/corporate accountability.

### Dr. Hélène Tigroudja

- Arms transfers are only recently addressed in human rights monitoring.
- Need for:
  1. **Interdisciplinary collaboration**
  2. **Civil society submissions** to human rights bodies

3. Strategic litigation before treaty bodies (suggested cases on transparency, expression, or access to information as entry points)
- Acknowledged challenges with exhausting domestic remedies but encouraged using human rights mechanisms to frame arms issues.

## Dr. Tara Van Ho

- Message to ATT States Parties: **Do not try to lead** on developing business responsibility standards. Defer to OHCHR and existing human rights frameworks for the requisite technical expertise
- The arms trade is not a unique case—there are established models in other sectors for integrating business and human rights.
- Instead, focus on:
  - Best practice sharing
  - Peer review
  - State-to-state accountability

## Chloe Bailey (ECCHR)

- **Human rights due diligence laws** (e.g., CSDDD) often **exclude arms trade** or lack enforcement teeth.
- Legal accountability may instead lie in **criminal law**:
  - Potential for **corporate complicity** in war crimes (based on the Lafarge precedent).
  - ECCHR has filed cases in multiple jurisdictions.
- Encouraged exploring:
  - Criminal complaints against shipping/logistics companies
  - Holding **financial actors** (e.g., banks, insurers, export credit agencies) accountable—especially as they begin investing in arms under ESG frameworks

**\*\* end of recorded segment \*\***

*The Q&A session delved into legal, regulatory, and strategic challenges surrounding arms transfers. Participants discussed the limited relevance of neutrality law to corporate actors, emphasizing instead the importance of applying Business and Human Rights (BHR) standards to arms companies. There was strong support for integrating human rights expertise into international arms control platforms like the ATT Conference of States Parties.*

*Civil society's role in pushing for transparency and accountability was highlighted, with litigation described as both a legal and advocacy tool. Symbolic cases can have significant reputational impacts, particularly on investors.*

*The conversation also addressed the practice of offshoring arms production to bypass export controls. Participants noted that other sectors have successfully curbed similar strategies through regulation and public procurement laws—tools that could be adapted to the arms industry.*

*The close relationship between states and arms manufacturers, often involving corruption or conflicts of interest, was seen as a key barrier to accountability. Still, targeting transparency and corruption may provide more effective legal openings than direct state responsibility claims.*

*Questions on corporate liability and arms export licenses clarified that such licenses do not exempt companies from legal responsibility for human rights harms. Financial sector accountability was also raised, with suggestions to litigate against investors and pressure asset managers who classify arms as “sustainable.”*

*Lastly, Switzerland’s potential role under universal jurisdiction and neutrality laws was discussed, with calls for greater pressure on Swiss authorities to align with EU due diligence efforts.*

## **Closing Remarks**

### **Florence Foster (Geneva Academy)**

This evening underscored the urgent need to address the legal, political, and ethical failures that enable the global arms trade to fuel suffering and violations of international law. It is not merely a regulatory or diplomatic issue — it is about protecting lives, communities, and the integrity of international legal frameworks.

Speakers highlighted critical gaps in state oversight, corporate accountability, and transparency, but also outlined concrete pathways forward. These include:

- Strengthening state-level risk assessments and enforcing mandatory human rights due diligence for companies involved in arms transfers.
- Expanding legal accountability through public disclosure of licensing decisions and safeguarding the work of civil society, journalists, and whistleblowers.
- Ensuring alignment with international frameworks — particularly the Arms Trade Treaty, IHL, and IHRL.
- Fostering deeper collaboration between the human rights and arms control communities for more unified and principled action.

The ATT must enhance compliance efforts, including through its working groups, while the UN human rights system — from treaty bodies to OHCHR — must continue pushing for practical safeguards and potentially sector-specific guidance.

The evening ends not in alarm, but in resolve — to act on these findings, support those calling for accountability, and champion systems that uphold human rights over political or commercial interests.

**\*\*\* End of the event \*\*\***