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CONFERENCE SPEECH

HUMAN RIGHTS CRITERIA IN ARMS EXPORTS

Exchange of Views

European Parliament Subcommittee on Human Rights¹

12th February 2014

By Mélanie De Groot

Ladies & Gentlemen,

It is a real honour, and a pleasure, to be here with you today.

Let me first introduce myself. My name is Mélanie De Groot and I am a jurist who is specialised in international law, more specifically human rights law and humanitarian law. I am currently working on arms transfers at GRIP, a Brussels-based think tank.

During the next 12 minutes I will focus my attention – and hopefully yours – on the human rights criteria, and the humanitarian law criteria, which EU Member States must take into account when they decide whether or not to grant export licences.

Doing research on the topic of arms transfers in view of human rights and humanitarian law standards is an extremely interesting and important activity. Especially today.

This is because over the last decade EU arms have been used either to commit human rights abuses or internal repression on several occasions. To illustrate, in the year 2008 the Belgian army supplied Bahrain with 50 armoured combat vehicles. In the context of the so-called Arab Spring, these vehicles were reportedly used against protesters.² This example shows the risks of supplying authoritarian regimes with arms and military equipment. In Libya, EU Member States sold massive amounts of arms to a repressive regime and an irrational dictator. I have an anecdote on this: years ago Gadhafi identified about 20 traditional “kings” in Africa, united them in Libya and made them nominate him as the “king of the kings”. Today, Libya is the quintessential example of an accumulation of arms, the amount is disproportionate to the size of the Libyan territory and the needs of the population. It is certainly so that lessons from supplying unstable regimes with arms have still not been learned.

CONFERENCE SPEECH – February 12th 2014

DE GROOT Mélanie, *Human Rights Criteria in Arms Exports*, GRIP Conference Speech, 12 February 2014, Brussels.

<http://www.grip.org/en/node/1221>



In the UK, for example, the Foreign and Commonwealth Office made a list of “Countries of Human Rights Concern”; nevertheless, the UK government has authorized exports to several of these countries. According to *Saferworld*, while not all of these licences are problematic, many of them are a real cause of concern in light of human rights standards (Libya, Pakistan, Saudi Arabia and Sri Lanka).

A second reason why this topic is so important and challenging is because there are several identified cases of massive arms transfers to States which take a lead in arming groups that violate international law on a systematic basis. The most obvious illustrations are the EU arms transfers to Saudi Arabia and other Gulf countries such as Qatar, which are actively arming the armed opposition groups involved in the Syrian conflict. While initially it was especially the Assad regime that was accused of mass atrocities, today there is conclusive evidence that the numerous anti-government armed groups are guilty of gross human rights violations and war crimes as well.

Saudi Arabia, for example, is the biggest recipient State of EU arms. For the year 2012, Saudi Arabia represented almost 9 % of the authorized EU export licences.³ Saudi Arabia is one of the principal providers of arms to the Syrian opposition, with a sharp increase in weapon supplies in 2013. While exporting States have argued that the clauses prohibiting re-exports in the arms contracts are a guarantee for EU arms not being brought into the Syrian territory, it is clear that Gulf States can only supply their old stocks to the Syrian rebels if new weapons come in. EU Member States must be well-aware of that fact.

As a human rights lawyer, let me now briefly explain why such arms transfers to States which are either directly or indirectly involved in gross violations are problematic under international law, and may bring about international responsibility.

The permissibility and legality of arms transfers is conditioned by EU Law, but also by international human rights law, international humanitarian law and international law governing the use of force.

Within the **EU context (1)**, several documents must be taken into account when a State considers exporting arms to third States. From a human rights and humanitarian law perspective, the 2008 Common Position on Exports of Military Technology and Equipment is of significant value. This *binding* document compels EU Member States to assess the export licence applications against eight criteria. Careful reading of the Common Position allows for the conclusion that an EU Member State is compelled *not to export* or to *deny* export licences for military technology and equipment to a State:

- 1 - if this would be inconsistent with its international obligations and Commitments; 342
- 2 - if there is a clear risk that this military technology and equipment might be used for internal repression; 343
- 3 - if there is a clear risk that this military technology and equipment might be used for serious violations of international humanitarian law; 344
- 4 - if this would provoke or prolong armed conflicts or aggravate existing Tensions or conflicts; 345
- 5 - if there is a clear risk that this would endanger regional peace, security and

Certainly, it is often argued that the language of the 2008 Common Position is not very precise and offers a large margin of interpretation and appreciation to States.

Yet, the correct application of the rules of interpretation of the European Court of Justice⁴ allows for the conclusion that it is simply *prohibited* to export arms if such transfers would activate these five risks, which the EU precisely wanted to avoid through the adoption of the 2008 Common Position.

Public International Law (2) confirms this conclusion, as I will briefly explain next.

In addition to EU Law, the legality of arms transfers is also conditioned by **international human rights law, international humanitarian law and international law governing the use of force**. As this session focuses on the rights of the individual human being, I will not further elaborate on the principles regulating the use of force in international relations.

If we now look at a State's obligations under **international humanitarian law**, we must distinguish between the obligation to respect and to ensure respect for the law governing armed conflicts. Firstly, international humanitarian law articulates obligations for the parties to a conflict. Thus, when a State becomes *directly involved* in an armed conflict, such as the one in Syria, it is by definition bound to respect applicable rules of international humanitarian law. But, and this is important for EU Member States as well, international humanitarian law also creates obligations for States which are *not a party sensu stricto* to the armed conflict. This obligation of non-State parties to the conflict is clearly articulated in Article 1 common to all four Geneva Conventions which provides that '(t)he High Contracting Parties undertake to *respect* and to *ensure respect* for the present Convention *in all circumstances*'. The words 'ensure respect' mean that a State must abstain from aiding and assisting in the commission of violations of international humanitarian law. In sum, all States that consider to provide, either directly or indirectly, military support to parties to an armed conflict (such as the ones in Syria) must make sure that these arms are not used for the commission of violations of the law of armed conflict, such as the indiscriminate killing of civilians, extrajudicial killings, acts of torture, and so on.

Similarly, most important **human rights treaties** oblige States to both respect *and ensure* respect of human rights. Albeit the extraterritorial application of human rights is a constantly evolving concept, it seems right to argue that it is prohibited for States to transfer arms if there is a clear risk that they may be used for the perpetration of gross human rights violations abroad.

Lastly, and I will stop my legal analyses with this legal instrument, Article 16 of the **ILC's Articles** on State responsibility rules that a State which aids or assists another State in the commission of an internationally wrongful act can be internationally responsible for doing so. Under certain circumstances, EU Member States can be held accountable if their arms are used for the commission of international crimes abroad. The doctrine of 'R2P' supports this conclusion.

The conclusion is that **under European and international law** it is prohibited for EU Member States to *facilitate, contribute to or support* abuses abroad, for example through the transfer of arms, and that they cannot just turn a blind eye on the risks of their arms transfers. EU Member States must apply a tighter human rights policy when issuing licences. In accordance with a proposal of *Saferworld*, I would argue that EU governments

should be more transparent when permitting arms exports to countries that pose a human rights concern (such as Saudi Arabia, Qatar, Libya, Sri Lanka, Egypt, United Emirates). Governments should, amongst others duties, inform their respective parliaments on the precise end-users, on what the goods are supposed to be used for, and on why the government is so confident that it is safe to export.⁵

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About the author

Mélanie De Groof joined the Group for Research and Information on Peace and Security (GRIP) in February 2013. As a legal scholar, her research focuses on the normative framework governing arms transfers, the use of unmanned aerial vehicles, and the threat or use of force in international relations.

Notes

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- 1 . The video of the presentation of Melanie de Groof in front of the European Parliament Subcommittee on Human Rights is available [here](#).
 2. Cédric Poitevin, « [Exportations d'armes de l'armée belge - Plus qu'une décision économique](#) », (Belgian Army Arms Exports – More than an Economic Decision), GRIP Analysis Note, Brussels, 12 November 2012.
 3. [15th COARM Report](#) published on 21 January 2014.
 4. For an extensive analysis of this point, see M. De Groof (2013), [Arms Transfers to the Syrian Arab Republic](#), GRIP Report 2013/9.43-45.
 5. “[UK arms exports - lessons still to be learned from the Arab Spring](#)”, SaferWorld, 31 July 2013.