

The Business and Human Rights Responsibilities of the Arms Industry:

Project Partner: Amnesty International (AI)

Background:

While private military security companies now have industry-wide business and human rights standards, the arms control industry has been largely ignored within the field of business and human rights. Instead, the ongoing debate over the impact of the arms trade on business and human rights sits with extreme positions, with some arguing that the arms trade can never be compatible with human rights and others arguing that the arms trade is bound only by international or national sanctions regimes. Both of these positions have significant weaknesses that undermine human rights protections that would be afforded by a business and human rights-based approach to the arms industry.

From a legal perspective, both the UN Charter and international humanitarian law, recognize that states can, at times, utilize the military and the arms industry. The position that the arms trade is always a threat to human rights and should be outlawed requires stretching very limited *dicta* in the ICJ's *Nuclear Weapons* advisory opinion. It is, legally, a weak position no matter the moral, philosophical or sociological strength of the argument.

On the other hand, allowing the arms industry to rely only on the sanctions regime to determine their human rights risks is problematic. National and international sanctions in the area of arms tend to focus on only extreme cases of violence and are often politically motivated. As such, neither Yemen nor Saudi Arabia are currently subjected to arms embargos by the UN, the OSCE, or the UK government, despite ample evidence of ongoing war crimes and allegations of crimes against humanity, although the EU parliament has called for arms embargoes, whilst UN Security Council Resolution 2216 imposes an arms embargo against specific individuals and entities. Relying on the sanctions list is an inherently political act, and is likely to produce inconsistent standards.

Proposed Output:

This project would consider a third approach: applying the UN Guiding Principles on Business and Human Rights ('UNGPR'), the most authoritative framework for business and human rights, to arms companies. Focusing on the case study of arms deals affecting the conflict in Yemen, this project will consider how the "home states" of arms companies should regulate the human rights impacts of the arms industry, and what due diligence would look like for the arms industry.

The resulting report will:

- (a) consider how states should respond to the arms industry in three legal frameworks: (1) regulatory and administrative standards; (2) criminal responsibility for complicity in war crimes and crimes against humanity; and (3) civil liability for the arms industry for impacts on human rights; and
- (b) outline what good due diligence would look like for the arms industry.

Timeframes:

November-December 2018:

- The team will meet with AI team members to discuss what is required.
- The team will write a literature review relevant to the topic, draft a research methodology, and produce an essay plan for their final project report. This will be reviewed by AI over the Christmas holidays
- The team will submit an ethical consent application, the approval of which will be necessary for any interviews they may wish to carry out later in the project and with the approval of the partner, as part of the research process

January-March 2019

- The team will conduct research, identify the key actors in the arms industry and trade, develop legal arguments, and produce an annotated outline for AI's review. Research will be primarily desk based, but the team may also conduct interviews with experts and other key stakeholders, subject to prior discussion and agreement with AI
- After discussing their preliminary conclusions and ideas with AI team members, the Clinic team will develop the draft report.

April-June 2019:

- Edit and finalise report, with one further review by AI, and submit the report to AI by the end of term.