

SCHOLARLY ARTICLE

At the Crossroads of Business, Human Rights and Security: Business and Human Rights in Arms Trade Governance

Hiruni Alwishewa 

Graduate Institute of International and Development Studies, Geneva, Switzerland
Email: hiruni.alwishewa@graduateinstitute.ch

Abstract

The global arms trade stands at the crossroads of security, business and human rights. While historically dominated by security narratives, increasing recognition of the arms industry's business functions has led to calls for greater corporate accountability for the adverse human rights impacts of arms production and transfers. Business and Human Rights (BHR) provides innovative approaches for addressing regulatory and conceptual gaps in arms trade governance, and, in particular, offers two key paths forward for bringing coherency to arms trade governance and recalibrating the balance between security and business interests and human rights protection. First, as a field of practice, BHR can be utilised to develop comprehensive and coordinated due diligence that bridges silos between human rights, corruption, diversion and lack of transparency, to overcome regulatory fragmentation. Second, as a discourse, BHR introduces a conceptual foundation for reframing the status of human rights in arms trade governance and impelling corporate leadership to elevate human rights protection.

1. Business, Human Rights and Security at Crossroads

The past decade in arms trade governance has been characterised both by efforts to establish regulatory harmony and a return to discord, with deepening humanitarian crises and resurging political and military conflicts reaching the highest level since World War II.¹ Arms transfers—ranging from sales to military aid—to ongoing armed conflicts such as in Myanmar, Palestine, Sudan and Yemen, despite the heightened risks to human rights and documented violations of international humanitarian law, have provided a massive financial boom for the arms industry.² The immense scale of violations reported in Gaza, in particular, has sparked widespread condemnation and protests against corporations involved in the continuing supply of weapons to Israel, including companies responsible for manufacturing, financing or transporting arms.³ Not only do arms transfers have direct

¹ Stockholm International Peace Research Institute, 'World's top arms producers see revenues rise on the back of wars and regional tensions' (2 December 2024), <https://www.sipri.org/media/press-release/2024/worlds-top-arms-producers-see-revenues-rise-back-wars-and-regional-tensions> (accessed 15 July 2025).

² *ibid*; UN Office of the High Commissioner for Human Rights, 'Impact of arms transfers on human rights' (9 January 2025) A/HRC/58/41, para 2.

³ UN Office of the High Commissioner for Human Rights, 'States and companies must end arms transfers to Israel immediately or risk responsibility for human rights violations: UN experts' (20 June 2024), <https://www.ohchr.org/>

impacts on human rights when used to commit or facilitate violent crimes and human rights abuses, but the increased spending by governments on (re)armament diverts critical resources from essential sectors such as health and education, which can have detrimental long-term effects for socio-economic development.⁴ Amid rising global rearmament, intensifying humanitarian catastrophes and escalating political tensions, there is a pressing need to confront the profound and far-reaching consequences of the arms trade, a key driver of current international crises that stands at the crossroads of security, business and human rights.⁵

The arms trade functions both as a business that is predicated on selling products intentionally designed to kill and cause injury, and as an extension of the state security apparatus, with domestic arms industries being regarded as critical components of national security.⁶ Due to the intimate links between weapons and national security and defence, the security angle has traditionally been the focal point of analyses, which has resulted in predominant focus on state responsibility.⁷ Coupled with the lack of transparency on its inner workings, specific attention to the human right impacts of the arms trade business has been comparatively lacking.⁸ In recent years, as Business and Human Rights (BHR) has broken new ground into the security sphere and expanded its analytical focus to areas previously viewed as strictly within the domain of states,⁹ there have been growing

[en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk](https://www.reuters.com/world/students-occupy-defence-firm-leonardos-turin-headquarters-protest-over-gaza-2024-11-13/) (accessed 15 July 2025); Reuters, 'Students occupy defence firm Leonardo's Turin headquarters to protest over Gaza' (Reuters, 13 November 2024), <https://www.reuters.com/world/students-occupy-defence-firm-leonardos-turin-headquarters-protest-over-gaza-2024-11-13/> (accessed 15 July 2025); Middle East Monitor, 'Protests in Morocco as ship suspected of carrying arms to Israel docks' (Middle East Monitor, 11 November 2024), <https://www.middleeastmonitor.com/20241111-protests-in-morocco-as-ship-suspected-of-carrying-arms-to-israel-docks/> (accessed 15 July 2025); Emma Grimshaw, 'Barclays branches across UK targeted by protesters' (BBC News, 10 June 2024), <https://www.bbc.com/news/articles/c1rrzp1qwp1o> (accessed 15 July 2025); Paul O'Gorman and Ewan Gawne, 'Gaza protesters block BAE Systems aerospace factory in Lancashire' (BBC News, 7 December 2023), <https://www.bbc.com/news/uk-england-lancashire-67650061> (accessed 15 July 2025).

⁴ Small Arms Survey, *Small Arms Survey 2003: Development Denied* (Oxford University Press 2003) ch 4. Or as Russett has stated succinctly: 'guns do come at the expense of butter': Bruce M Russett, 'Who Pays For Defense?' (1969) 63 *American Political Science Review* 412, 417.

⁵ UN Office of the High Commissioner for Human Rights, 'Impact of arms transfers on human rights' (19 June 2020) UN Doc A/HRC/44/29, para 20-24; UN Office of the High Commissioner for Human Rights, 'Role of mercenaries, mercenary-related actors and private military and security companies in the trafficking and proliferation of arms' (9 September 2024) UN Doc A/HRC/57/45, para 66-68; Nan Tian, Diego Lopes da Silva, Xiao Liang and Lorenzo Scarazzato, 'Trends in world military expenditure, 2023' (SIPRI 2024); Pieter D Wezeman, Katarina Djokic, Mathew George, Zain Hussain and Siemon T Wezeman, 'Trends in international arms transfers, 2023' (SIPRI 2024); Nan Tian, 'The Inter-Relation between Arms Trade, Military Expenditure and Armed Conflict' in Andrew TH Tan (ed), *Research Handbook on the Arms Trade* (Edward Elgar Publishing 2020) 66-79.

⁶ Emma Soubrier, 'Unpacking the Storytelling around French Arms Sales: Demystifying the "Strategic Autonomy" Argument' (2023) 14 *Global Policy* 112, 118-9; Paul Holden (ed), *Indefensible: Seven Myths That Sustain the Global Arms Trade* (1st Edition, Zed Books 2017) 83-116.

⁷ Jonathan A Grant, *Rulers, Guns, and Money: The Global Arms Trade in the Age of Imperialism* (Harvard University Press 2007) 3-6.

⁸ For recent scholarship related the arms industry, see: Kenneth Boutin, *The International Arms Trade: Reconfiguration of the Defence-Industrial Landscape* (University of Exeter Press 2025); Jonata Anicetti, *Defence Offsets and the Global Arms Trade: Explaining Cross-National Variations* (Taylor & Francis 2024); Daniel Schoeni and Tobias Vestner, *Ethical Dilemmas in the Global Defense Industry* (Oxford University Press 2023); Çağlar Kurç, Richard A Bitzinger and Stephanie G Neuman, *Defence Industries in the 21st Century: A Comparative Analysis* (Routledge 2021); Andrew TH Tan (ed), *Research Handbook on the Arms Trade* (Edward Elgar Publishing 2020) pt 3: 'The Arms Industry After the Cold War'; Keith Hartley and Jean Belin, *The Economics of the Global Defence Industry* (Taylor & Francis 2019).

⁹ See, for example: Heather Elms and Robert A Phillips, 'Private Security Companies and Institutional Legitimacy: Corporate and Stakeholder Responsibility' (2009) 19 *Business Ethics Quarterly* 403; Hin-Yan Liu, *Law's Impunity: Responsibility and the Modern Private Military Company* (Hart Publishing 2017).

attempts to interrogate corporate involvement in security-dominated sectors, including the arms trade.¹⁰ As a late entry into this field, BHR retains ample potential for reshaping arms trade governance, challenging the exceptionalism of the arms industry and scrutinizing the roles and responsibilities of corporate actors involved in the sale, production and transfer of arms—including manufacturers, investors and transport agents.¹¹ This paper explores two paths forward offered by BHR for the arms industry and arms trade governance. On a practical level, BHR as a field of practice delivers practical tools for bridging silos between the critical and interconnected issues of human rights impacts, diversion, corruption and transparency. On a conceptual level, BHR as a discourse provides a basis for elevating human rights considerations in arms trade governance through corporate leadership.

II. Bridging Silos

Since the end of the Cold War, international arms control for conventional weapons has substantially expanded, but efforts to address key issues emanating from arms transfers have been varied and piecemeal. Initially, in response to shifting global security challenges, the prevailing focus of multilateral instruments, such as the Wassenaar Arrangement and the United Nations Register of Conventional Arms, was on preventing the diversion of legal arms from an authorised recipient to an unauthorised destination or illicit market, and improving transparency to reduce stockpiling and counter proliferation.¹² Diversion is a multifaceted problem enabled by corruption, such as the bribery of government officials, forgery or falsification of end-user certificates and the use of illicit payments to bypass official control systems or to secure contracts.¹³ Diversion in the arms trade is highly problematic due to the close ties between governments and the arms industry.¹⁴ Lack of transparency, including the scarce availability of comprehensive data and operational insights, continues to plague the arms trade, heightening risks of corruption and diversion by limiting and circumventing scrutiny and accountability, while also facilitating the build-up of excessive weapons stocks in regions and hindering the effective monitoring of arms flows across state borders.¹⁵

¹⁰ See, for example, BHRJ's Special Issues on 'Business, Human Rights and Security' (volume 4 issue 1 of 2019) and 'Business and Human Rights and the arms industry: challenges, prospects and current dynamics' (forthcoming).

¹¹ This paper focuses on the 'arms industry' as a collective term for key corporate actors including manufacturers, investors, and transport agents. The broader term 'arms sector', employed by the UN Working Group on Business and Human Rights, refers to the 'the full value chain of actors producing or being directly linked to the research, development, design, production, delivery, maintenance, repair and overhaul of military weapons systems, subsystems, parts, components, and ancillary equipment', which includes states and corporate actors: UN Working Group on Business and Human Rights, 'Information Note - Responsible Business Conduct in the Arms Sector: Ensuring Business Practice in Line with the UN Guiding Principles on Business and Human Rights' (OHCHR 2022) 1, <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf> (accessed 15 July 2025).

¹² UN General Assembly, Resolution 46/36 (L), 'Transparency in Armaments' (6 December 1991) UN Doc A/RES/46/36L, Preamble and para 1–2; Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Founding Documents (19 December 1995), Initial Elements (12 July 1996, amended 7 December 2001) WA-DOC (17) PUB 001, Initial Elements Part I para 1–3, Part VI para 1.

¹³ Michael Picard and Colby Goodman, 'Under the Radar: Corruption's Role in Fuelling Arms Diversion' (Transparency International 2025), 8–9, <https://ti-defence.org/wp-content/uploads/2025/04/Under-the-Radar-Corruptions-Role-in-Fueling-Arms-Diversion.pdf> (accessed 15 July 2025).

¹⁴ UN Office of the High Commissioner for Human Rights, 'Impact of arms transfers on human rights' (18 April 2024) UN Doc A/HRC/56/42, para 12.

¹⁵ Owen Greene and Elizabeth Kirkham, 'Preventing Diversion of Small Arms and Light Weapons: Issues and Priorities for Strengthened Controls' (Saferworld and University of Bradford 2009) 9–13.

Furthermore, diversion, corruption and lack of transparency, collectively and individually, exacerbate the human rights risks of arms transfers.¹⁶ Diversion significantly increases the risk of human rights abuses, as diverted weapons are frequently acquired by problematic actors such as terrorist groups or criminal networks. This is illustrated by the conflict in Syria, where the terrorist group Islamic State exploited insufficient stockpile security to acquire substantial volumes of arms from the stockpiles of the Syrian and Iraqi governments and non-state armed groups in Syria.¹⁷ Though discussions of corruption in the arms trade are primarily linked to diversion, corruption is a significant factor in the facilitation, perpetuation and institutionalisation of human rights violations and can directly result in human rights risks being hidden or ignored.¹⁸ The pervasive lack of transparency compounds the difficulties in tracking weapons acquisition and monitoring their use, and heightens risks of human rights violations.¹⁹ However, human rights considerations have not historically been integrated into regulatory efforts to address these interconnected issues.

An important step towards bridging these silos occurred in 2013 with the adoption of the Arms Trade Treaty (ATT), the first and only global arms control instrument to include human rights considerations within its scope.²⁰ In particular, Article 7 of the treaty requires State Parties to perform a risk assessment to determine whether the potential transfer of conventional arms, ammunition or parts and components could be used to commit or facilitate a serious violation of international human rights law or international humanitarian law, among other factors. Article 11 obliges State Parties to assess risks of diversion; however, links to the Article 7 risk assessment are not elaborated. The standards of risk in these articles also diverge, with Article 7 requiring an ‘overriding risk’ that the transferred arms will be used, for instance, to commit or facilitate serious violations of human rights or international humanitarian law, while Article 11 merely requires State Parties to assess ‘the risk’ of the arms being diverted.²¹ The ATT Voluntary Guide recommends State Parties combine these two provisions into one risk assessment, with risks of diversion to be assessed following the risk assessment for human rights impacts,²² demonstrating a notable example of operational efforts to bridge silos between human rights and diversion risks.

On the other hand, determining the extent to which these efforts have been implemented in practice remains uncertain due to the limited or lack of disclosure by states. Articles 12, 13 and 15, the transparency provisions in the ATT, require State Parties to maintain national records of arms transfers, submit annual reports on exports and imports and

¹⁶ American Bar Association Center for Human Rights, ‘Defense Industry Human Rights Due Diligence Guidance’ (American Bar Association, July 2022), 14, <https://media.business-humanrights.org/media/documents/chr-due-diligence-guidance-2022.pdf> (accessed 15 July 2025).

¹⁷ UN General Assembly, ‘Report of the Panel of Governmental Experts on Small Arms’ (27 August 1997) UN Doc A/52/298; UN Office of the High Commissioner for Human Rights, ‘Impact of arms transfers on human rights’ (19 June 2020) UN Doc A/HRC/44/29, para 4; Conflict Armament Research, ‘Weapons of the Islamic State: A Three-Year Investigation in Iraq and Syria’ (2017), 146, <https://www.conflictarm.com/wp-content/uploads/2017/12/Weapons-of-the-Islamic-State.pdf> (accessed 15 July 2025).

¹⁸ UN Subcommittee for Prevention of Torture, ‘Seventh Annual Report, CAT/C/52/2’ (24 February 2014) UN Doc A/HRC/40/59, para 76. See also: Anne Peters, ‘Corruption as a Violation of International Human Rights’ (2018) 29 *European Journal of International Law* 1251, 1286.

¹⁹ Andrew Feinstein and Paul Holden, ‘The Failure of Regulation of the Global Arms Trade as a Consequence of High-Level Conflicts of Interest’ (2020) 27 *Brown Journal of World Affairs* 23, 24.

²⁰ Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014) 3013 UNTS 269.

²¹ Arms Trade Treaty, art 7(1)(a) and 11(2).

²² ATT Working Group on Effective Treaty Implementation, ‘Voluntary Guide to implementing Articles 6 & 7 of the Arms Trade Treaty’ (ATT 2024), <https://thearmstradetreaty.org/tools-and-guidelines.html> (accessed 15 July 2025).

engage in international cooperation to prevent illicit transfers—but do not include obligations to disclose risk assessment processes and outcomes.²³ In addition, the systemic integration of anti-corruption efforts is another essential component in addressing human rights impacts that should be considered alongside transparency issues relating to arms transfers.²⁴ However, the ATT also does not delve into the issue of corruption beyond its mention in Article 11, in relation to information sharing, nor does it establish specific anti-corruption mechanisms or elaborate on how anti-corruption instruments such as the UN Convention Against Corruption apply to arms transfers.²⁵

Improving transparency, combating corruption and preventing diversion and human rights risks are interlinked challenges, each demanding coordination and persistence to overcome. BHR as a field of practice offers a practical approach to bridging these silos in arms trade governance, which is a critical complement to effective responses to the adverse human rights impacts of arms transfers. The emphasis of BHR on comprehensive and coordinated due diligence processes by states and corporations can be applied to address interconnected issues. Specifically, the UN Guiding Principles on Business and Human Rights (UNGPs), which require corporations to identify, address and track human rights risks, establish a foundational basis for refocussing existing due diligence processes in the arms industry to centre human rights.²⁶ Although the UNGPs were adopted in 2011, three years before the ATT entered into force, the synergies between the ATT and the UNGPs were only formally recognised in 2022 by the UN Working Group on Business and Human Rights' Information Note on responsible business conduct in the arms sector.²⁷ The Working Group's note highlighted the need for stronger integration of corporate responsibilities into the regulatory framework and recommended that corporations conduct independent human rights due diligence (HRDD) in all cases, irrespective of licensing decisions taken by states, implement HRDD processes throughout all aspects of their business operations, and publicly communicate information about their HRDD processes for arms deals, among other recommendations.²⁸

Due diligence is not a new concept in arms trade governance; it has already been used as a tool for dealing with diversion risks because of the significant reputational risks and financial penalties that may result from arms being diverted, particularly if weapons are acquired by problematic actors or 'enemy' parties. Many major arms companies currently have extensive due diligence processes in place, often as part of their internal compliance programmes that are mandated by national regulations.²⁹ Some have suggested that they

²³ Arms Trade Treaty, art 12, 13 and 15.

²⁴ Picard and Goodman (n 13) 8–9.

²⁵ Arms Trade Treaty, art 11(5); UN Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

²⁶ UN, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) HR/PUB/11/04, Principles 17–20 (hereafter: 'UNGPs').

²⁷ UN Working Group on Business and Human Rights (n 11).

²⁸ *ibid* 8.

²⁹ Luigi Sammartino, 'Internal Compliance Programs, Arms Trade and Due Diligence: How to Possibly Improve Human Rights Obligations of the Defence Industries' (2025) 36 *European Business Law Review* 49. See also: ATT 9th Conference of State Parties, Draft Working Paper, The Role of Industry in Responsible International Transfers of Conventional Arms, 21 July 2023, ATT/CSP9/2023/PRES/766/Conf.WP.Ind, Annex A, https://thearmstradetreaty.org/hyper-images/file/ATT_CSP9_Pres_President%20Working%20Paper_Role%20of%20industry_EN/ATT_CSP9_Pres_President%20Working%20Paper_Role%20of%20industry_EN.pdf; Brian Wood, Elli Kytömäki, Himayu Shiotani and Sebastian Wilkin, 'Enhancing the Understanding of Roles and Responsibilities of Industry and States to Prevent Diversion' (UNIDIR 2019) 23–24. See, generally, on national export control regulations: Laurence Lustgarten, *Law and the Arms Trade: Weapons, Blood and Rules* (Bloomsbury Publishing 2020).

integrate assessments for human rights risks into their existing risk assessments for diversion,³⁰ similar to the approach recommended by the ATT Voluntary Guide. Major banks that finance arms sales also reference, in their corporate policies, the use of due diligence processes to evaluate diversion and corruption risks linked to arms deals.³¹ Overall, due to the scarcity of publicly available information, the extent to which corporate actors involved in the arms trade have recognised and integrated the UNGPs into their policies and practices remains difficult to ascertain. From the limited information available from companies, references to the UNGPs remain an exception rather than the norm, and the standards and processes applied for HRDD are unclear.³² In comparison to other high-risk industries, HRDD in the arms industry is underdeveloped, with the lack of legislative guidance being pointed to as a reason for this, by the industry itself and others.³³

By harnessing the flexibility and adaptability of due diligence obligations, the arms industry can build on existing due diligence processes to broadly consider the impacts of corruption, diversion and lack of transparency on human rights risks.³⁴ The adoption of hard laws on HRDD specific to the arms industry and/or the amendment of national export control regulations to reference the independent responsibilities of companies to conduct HRDD in accordance with the UNGPs would ideally provide the framework for comprehensive and coordinated processes that holistically consider human rights risks alongside diversion, corruption and transparency issues.³⁵ However, concrete advances on the implementation of HRDD by the arms industry have stalled since the Information Note and remain unlikely in the near future because of the significant lack of political will and entrenched security interests that continue to impede such developments. In the absence of such hard laws, BHR as a field of practice could be further mobilised to expand the sources of due diligence guidance beyond the UNGPs. In particular, developments and practices in other high-risk industries with more advanced HRDD regulations and soft law instruments provide immediate and pragmatic avenues for developing practical guidance for the arms industry that bridges silos in arms trade governance, extending HRDD to all business relationships, including potential arms purchasers as well as downstream suppliers. Precedents and lessons learned from other high-risk sectors, such as conflict minerals, sensitive technology and non-energy extractives sectors, whose business activities also

³⁰ ATT Working Group on Effective Treaty Implementation, 'Chair's Report to CSP11' (2 May 2025) ATT/CSP11.WGETI/2025/CHAIR/811/PM.DrConf.Rep, 5–6, https://thearmstradetreaty.org/hyper-images/file/ATT_CSP11_Informal%20Prep%20Meeting_WGETI_Chair_Draft%20Report%20to%20CSP11_EN/ATT_CSP11_Informal%20Prep%20Meeting_WGETI_Chair_Draft%20Report%20to%20CSP11_EN.pdf (accessed 15 July 2025).

³¹ For example, BNP Paribas states that it considers diversion, corruption human rights risks in its latest defence sector policy: BNP Paribas, 'Defence and Security Sector Policy' (2025) 5–6, https://cdn-group.bnpparibas.com/uploads/file/bnpparibas_sector_policy_defence_security.pdf (accessed 15 July 2025).

³² For example, Italian arms manufacturer, Leonardo, states that it publicly disseminates its human rights policy in accordance with the UNGPs, though does not reference how the UNGPs are integrated into this policy: Leonardo, 'Group Policy on Human Rights' (2019) 6, https://www.leonardo.com/documents/15646808/16737734/Group+Policy+Human+Rights_general+use_new.pdf (accessed 15 July 2025).

³³ Machiko Kanetake and Cedric Ryngaert, 'Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility' (Flemish Peace Institute 2023) 38, <https://vlaamsvredesinstituut.eu/en/report/due-diligence-and-corporate-liability-of-the-defence-industry-arms-exports-end-use-and-corporate-responsibility/> (accessed 15 July 2025).

³⁴ Surya Deva, 'The UN Guiding Principles' Orbit and Other Regulatory Regimes in the Business and Human Rights Universe: Managing the Interface' (2021) 6 *Business and Human Rights Journal* 336; Michael A Santoro, 'Business and Human Rights in Historical Perspective' (2015) 14 *Journal of Human Rights* 155, 155–156.

³⁵ UN Working Group on Business and Human Rights (n 11) 7. See also: Lana Baydas, 'Human Rights Due Diligence Within the Arms Industry: Challenges, Practices and Opportunities' [2025] *Business and Human Rights Journal* 1 (FirstView, doi:10.1017/bhj.2025.1); David Hess, 'Business, Corruption, and Human Rights: Towards a New Responsibility for Corporations to Combat Corruption' (2017) 2017 *Wisconsin Law Review* 641.

occur in conflict-affected regions and are operationally complex, would be highly pertinent for developing due diligence processes in the arms industry.³⁶

The arms industry can incorporate and adapt guidance from these symbiotic sectors to develop more consolidated and effective approaches to addressing human rights risks that integrate transparency, anti-corruption efforts and measures to prevent diversion into HRDD processes. As a starting point, the arms industry should focus on heightened HRDD processes that apply a high standard of conduct to reflect the severity of risks associated with weapons, especially when arms are transferred to conflict zones or to parties with a record of human rights violations, and to capture risks emanating from the interconnected issues.³⁷ A broad view of foreseeability of risks should correspondingly be adopted to ensure that recipients with a record of violations are excluded and that both past violations or issues with corruption and long-term consequences are considered.³⁸ Equally important is the implementation of strong risk management practices, including traceability systems that require post-shipment verification and marking of weapons and ammunition with identifiable serial numbers to establish more effective monitoring systems to identify and track human rights, diversion and corruption risks throughout the lifecycle of weapons.³⁹ Complementing these measures, transparency must be embedded into every stage of due diligence processes, including through regular and detailed reporting, public disclosure of risk assessment processes and outcomes, stakeholder engagement and third-party auditing.⁴⁰ Oversight measures should also allow external parties to challenge risk assessments to enhance transparency and accountability.⁴¹ Integrating these elements throughout the due diligence process will not only improve oversight and accountability but also better align the sector with international expectations and standards for responsible business conduct.

³⁶ Hiruni Alwishewa, 'Human Rights Due Diligence for Arms Companies: Lessons from Supply Chain Regulations' (2025) 16 *European Journal of Risk Regulation* 704; Boris Verbrugge, Didier Verbruggen and Hans Merket, 'Human rights due diligence in the global defence industry: Lessons from other sectors' (Flemish Peace Institute 2025), <https://vlaamsvredestinstituut.eu/wp-content/uploads/2025/01/4017947-VVI-rapport-Due-Diligence-WEB.pdf> (accessed 15 July 2025).

³⁷ UNGPs, Principle 14. See also: UN Development Programme, 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide' (2022), <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide> (accessed 15 July 2025).

³⁸ Anna Stavrianakis, 'Debunking the Myth of the "Robust Control Regime": UK Arms Export Controls during War and Armed Conflict' (2023) 14 *Global Policy* 121, 43; Björnstjern Baade, in Heike Krieger, Anne Peters and Leonhard Kreuzer (eds), 'Due Diligence and the Duty to Protect Human Rights', *Due Diligence in the International Legal Order* (Oxford University Press 2020) 52.

³⁹ Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (3 December 2021), No 221.433, AS 2021 847, art 6 and 7, 10 and 15 (hereafter: 'Swiss Ordinance on Due Diligence and Transparency'); Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas [2017] OJ L130/1, art 4; OECD, 'Due Diligence Guidance for Responsible Supply Chain of Minerals from Conflict-Affected and High-Risk Areas' (OECD, 3rd Edition, 2016) step 3 and Annex II 20–21, https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas_9789264252479-en.html (accessed 15 July 2025). See also: Andrea Edoardo Varisco, Kolja Brockmann and Lucile Robin, 'Post-shipment Control Measures: European Approaches to on-Site Inspections of Exported Military Materiel' (SIPRI 2020), https://www.sipri.org/sites/default/files/2020-12/bp_2012_post-shipment_controls.pdf (accessed 15 July 2025).

⁴⁰ UNGPs, Principle 21.

⁴¹ Swiss Ordinance on Due Diligence and Transparency, art 14.

III. Reframing Human Rights

With the requirements of human rights risk assessments established by instruments such as the ATT, growing momentum in elevating human rights considerations into the decision-making formula for arms transfers emerged, with a few significant indications that major arms-exporting states were heading in this direction. For example, Germany updated its Political Principles for the Export of War Weapons and Other Military Equipment (Political Principles) in 2019 to reflect the ATT and the EU Common Position, the regulatory framework of the EU for exporting arms.⁴² The updated Political Principles require the German government, for example, to take into account a potential recipient's past practices in respecting human rights and international humanitarian law, and to deny an export licence if there is 'sufficient suspicion' that the exported arms will be used for internal repression or for other ongoing systematic human rights violations.⁴³ Similarly, the United States' Conventional Arms Transfer Policy (CAT Policy), the policy framework for decision-making on arms transfers, was updated in early 2023 by the Biden-Harris administration to affirm that 'no arms transfer will be authorized where the United States assesses that it is more likely than not that the arms to be transferred will be used by the recipient to commit, facilitate or aggravate risks of serious violations of human rights and international humanitarian law'.⁴⁴ The CAT Policy was notable for establishing a new baseline presumption for arms transfers—'more likely than not'—and emphasising the protection of human rights globally as a means for bolstering national security.⁴⁵ These policy updates revealed a shift towards elevating human rights considerations in a due diligence-based approach by requiring human rights risks to be balanced against other political, strategic and commercial interests.

In the last few years there has been a stark retreat from these commitments, with a renewed emphasis on rearmament coinciding with the escalation of the wars in Ukraine and Palestine and changes in political leadership, particularly in the United States, where the current administration rescinded the Biden-Harris CAT Policy in March 2025.⁴⁶ The shifting political landscape and growth in international conflicts have instigated an exponential increase in arms production and transfers, reversing the previous downward trends that had been occurring since the end of the Cold War.⁴⁷ Human rights considerations continue to be routinely sidelined in decisions to produce and transfer arms, overridden by commercial, political and strategic interests, despite the demonstrated and clearly foreseeable adverse human rights impacts.⁴⁸ An especially worrying component of these practices has been the resurgence of arguments co-opting human rights rhetoric to justify practices that are having detrimental impacts on human rights in conflict-affected regions.

⁴² EU Council Common Position 2008/944/CFSP of 8 December 2008 (EU Common Position).

⁴³ Political Principles, Part I Principle 4. This principle applies to third state recipients, i.e., states that are not part of the European Union. Although legislation was proposed that would incorporate the Political Principles into export control regulations and was expected to be introduced to parliament in 2022, it continues to be delayed.

⁴⁴ The White House, 'Memorandum on United States Conventional Arms Transfer Policy' (23 February 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/> (accessed 15 July 2025).

⁴⁵ *Ibid.*

⁴⁶ The White House, 'Additional Rescissions of Harmful Executive Orders and Actions' (14 March 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/additional-rescissions-of-harmful-executive-orders-and-actions/> (accessed 15 July 2025). See also, for changes in Germany's approach: Nina Werkhäuser, 'German arms exports: Churches question license' (Deutsche Welle, 19 December 2024), <https://www.dw.com/en/german-arms-exports-churches-question-u-turn/a-711105467> (accessed 15 July 2025).

⁴⁷ Tian et al (n 5); Wezeman et al (n 5).

⁴⁸ Anna Stavrianakis, 'Introducing the Special Section on "Arms Export Controls during War and Armed Conflict"' (2023) 14 *Global Policy* 107, 107.

For example, despite documented violations of international humanitarian law and the International Court of Justice's finding of a plausible claim of genocide in Gaza,⁴⁹ the continuation of arms transfers to Israel has been justified as being critical for mitigating human rights risks because they support peace and security, regional stability and legitimate self-defence.⁵⁰ Similar arguments have also been deployed to defend the resumption of arms transfers to coalition states involved in the conflict in Yemen after successful legal challenges against such exports.⁵¹ The sufficiency of a due diligence-centred approach to integrating human rights considerations is consequently being tested. In addition to raising serious concerns about the trajectory of arms trade governance, this exploitation of the conceptual malleability of human rights rhetoric calls into question the effectiveness of an approach to human rights protection that frames human rights as a 'risk' requiring mitigation.

On the flip side, the conceptual malleability of human rights is not inherently problematic, as this rhetorical flexibility allows for adaptability to contextual changes and could alternatively be harnessed to reconfigure how and by whom human rights are protected. One avenue for strengthening the status of human rights in arms trade governance, and inhibiting rhetorical exploitation, is to elevate human rights protection in decision-making processes, moving away from the focus on weighing competing interests against human rights risks and the presumption that the mitigation of human rights risks is sufficient for their protection. Human rights are fundamental rights of individuals and communities that should be situated 'on a higher plane'.⁵² This would fundamentally entail the prioritisation of human rights protection in decision-making processes as the foremost consideration.⁵³ Greater and more proactive efforts to protect human rights are essential in the arms trade precisely because the importance of the arms industry to national security permits this business to continue operations and, in fact, exponentially grow during times of international crises.⁵⁴ However, as state-led efforts have halted at present, with international political discord growing, it remains unlikely that state leadership for human rights protection will be revived in the current climate. Nevertheless, states are not the only actors within the arms trade that can take actions to elevate human rights considerations. The boundaries between the state and the market have continued to shift in the arms trade.⁵⁵ Though states retain a primary role in arms transfers, both as participants and regulators, non-state actors have taken on new and important roles in producing, financing and delivering arms to recipients, and have expanded their operations and influence on the decision-making of states.

The significant implications of arms transfers for human rights requires corporations to proactively protect and respect human rights through their policies and practices, including

⁴⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)*, International Court of Justice, Order of 26 January 2024, para 35–39.

⁵⁰ Julian Borger, 'US uses loophole to keep 100 arms sales to Israel under the radar amid Gaza war – report' (The Guardian, 7 March 2024), <https://www.theguardian.com/us-news/2024/mar/06/israel-weapons-sales-loophole> (accessed 15 July 2025).

⁵¹ Dan Sabbagh, 'UK authorised £1.4bn of arms sales to Saudi Arabia after exports resumed' (The Guardian, 9 February 2021), <https://www.theguardian.com/world/2021/feb/09/uk-authorized-14bn-of-arms-sales-to-saudi-arabia-after-exports-resumed> (accessed 15 July 2025). See also: Feinstein and Holden (n 19).

⁵² Steven R Ratner, 'Fair and Equitable Treatment and Human Rights: A Moral and Legal Reconciliation' (2022) 25 *Journal of International Economic Law* 568.

⁵³ *ibid* 568; Peter Cane, 'Morality, Law and Conflicting Reasons for Action' (2012) 71 *Cambridge Law Journal* 59, 85.

⁵⁴ Tian (n 5) 66–79.

⁵⁵ See, generally, on the shifting boundaries between the state and the market: Terence C Halliday and Gregory Shaffer, 'Transnational Legal Orders' in Terence C Halliday and Gregory Shaffer (eds), *Transnational Legal Orders* (Cambridge University Press 2015) 56–7.

prioritising human rights considerations in their decision-making processes.⁵⁶ BHR discourse provides theoretical grounding for such efforts, and spotlights the proactive efforts required by corporations to prioritise and protect human rights over commercial benefits. Interrogating the relationship between corporations and human rights protection has been a core issue in BHR scholarship.⁵⁷ Arguments have been advanced for corporations to adopt proactive roles to human rights protection, including by acting as an ‘agent of justice’,⁵⁸ stepping into a regulatory role where states fail to effectively address human rights issues,⁵⁹ or engaging in altruistic behaviour to help protect human rights because of, for instance, the considerable resources at their disposal to address social issues.⁶⁰ Unlike states, who are constrained by security interests in their decisions to transfer arms, corporations in the arms trade face the classic dilemma highlighted in BHR discourse: how to reconcile their ‘primarily profit-seeking’ orientation with the imperative to protect human rights.⁶¹ Elevating human rights considerations is therefore easier to impel in corporate practices as corporations cannot as easily deflect to security reasons as a basis for proceeding with an arms deal. Corporations therefore have a ‘transformative potential’ to lead the efforts to reframe human rights in arms trade governance, going beyond mere compliance to engage in the proactive protection of human rights.⁶²

Corporate leadership can be exercised even in the absence of regulatory mandates and becomes especially critical when state responses are stalled. Corporations in the arms trade should utilise their unique positions to advocate for human rights protection and impel the elevation of human rights as the foremost consideration in arms transfer practices, for example, by reframing human rights protection as a corporative objective, thereby requiring ‘an elevation of human rights respect to a corporate goal that determines corporate strategy’.⁶³ Manufacturers, investors and shipping agents are key corporate actors in the arms industry that can lead efforts to elevate human rights, drawing on their substantial resources, institutional capacities and leverage in business relationships with customers and suppliers.⁶⁴ Transferred arms being diverted and/or used in human rights and international humanitarian law violations can result in reputational damage or criminal liability, thus corporations have vested interests in protecting human rights as part of their involvement in supporting, supplying and facilitating arms transfers.⁶⁵ Violations of

⁵⁶ David Jason Karp, ‘Business and Human Rights in a Changing World Order: Beyond the Ethics of Disembedded Liberalism’ (2023) 8 *Business and Human Rights Journal* 135; Benjamin Gregg, ‘Beyond Due Diligence: The Human Rights Corporation’ (2021) 22 *Human Rights Review* 65; George G Brenkert, ‘Business Ethics and Human Rights: An Overview’ (2016) 1 *Business and Human Rights Journal* 277, 278–279.

⁵⁷ Santoro (n 34) 155–156.

⁵⁸ Onora O’Neill, ‘Agents of Justice’ (2001) 32 *Metaphilosophy* 180.

⁵⁹ Andreas Georg Scherer and Guido Palazzo, ‘The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy’ (2011) 48 *Journal of Management Studies* 899.

⁶⁰ Alan Strudler, ‘What to Do with Corporate Wealth’ (2017) 25 *Journal of Political Philosophy* 108.

⁶¹ Gregg (n 56) 67.

⁶² *ibid* 68, 78; Florian Wettstein, ‘Normativity, Ethics, and the UN Guiding Principles on Business and Human Rights: A Critical Assessment’ (2015) 14 *Journal of Human Rights* 162, 171.

⁶³ Björn FASTERLING, ‘Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk’ (2017) 2 *Business and Human Rights Journal* 225.

⁶⁴ Gregg (n 56) 68, 78; Wettstein (n 62) 171.

⁶⁵ See, for example, the recent criminal complaint filed in Belgium against FedEx for arms shipments to Israel: The Cradle, ‘FedEx faces criminal complaint in Belgium over arms shipments to Israel’ (The Cradle, 26 June 2025), <https://thecradle.co/articles/fedex-faces-criminal-complaint-in-belgium-over-arms-shipments-to-israel> (accessed 15 July 2025). See, generally, on corporate accountability in the arms trade: Tomas Hamilton, *The Arms Trade and International Criminal Law: Reframing Accountability for Complicit Weapon Suppliers* (Oxford University Press 2025).

international human rights and humanitarian laws have been highlighted by public pressure campaigns against companies involved in arms transfers to Israel. For example, investors and shipping agents have responded to consumer backlash and shareholder interventions by divesting from companies linked to Israel's military.⁶⁶ Though calls for boycotts may be less effective against arms companies, whose clients are primarily governments, potential civil and criminal liability is still a compelling reason to cease their involvement in arms transfers.⁶⁷

Corporate actors should leverage their influence in the arms industry to implement safeguards for human rights, such as establishing independent institutional human rights councils, setting strong industry-wide standards for engaging in arms deals, and improving transparency through regular and detailed reporting, including reporting outcomes from enhanced monitoring and tracking measures. This should include, for example, implementing restrictions on involvement in arms deals or non-engagement with certain actors, as has been evident in the policies of some banks that exclude or restrict financing to arms deals involving intermediaries such as arms brokers.⁶⁸ Additionally, greater oversight should be implemented through corporate institutional structures, which already exist in some companies.⁶⁹ A company's human rights council should assist in assessing potential arms transfers, including comprehensively examining past practices and the character of a potential recipient, and emphasising export restraint.⁷⁰

Moreover, corporations should build on the use of leverage recognised by Principle 19 of the UNGPs, which urges a corporation to 'take appropriate action' to prevent and mitigate adverse human rights impacts, to compel human rights protection in their business dealings. The exercise of leverage is a responsibility of a corporation 'if the threat to human rights is "substantial"' and the corporation can 'at a modest cost' contribute to 'ameliorating the situation', irrespective of whether that corporation contributed to the adverse situation.⁷¹ For example, banks have the potential to use their leverage to push for greater human rights protection from arms companies by refusing to continue business relationships where standards and protection measures are inadequate.⁷² Companies that

⁶⁶ KLP, 'KLP excludes two weapons manufacturers' (KLP Press Room, 30 June 2025), <https://www.klp.no/en/press-room/klp-excludes-two-weapons-manufacturers> (accessed 15 July 2025); Yarno Ritzen, 'Shipping giant Maersk divests from companies linked to Israeli settlements' (Al Jazeera, 23 June 2025), <https://www.aljazeera.com/news/2025/6/23/shipping-giant-maersk-divests-from-companies-linked-to-israeli-settlements> (accessed 15 July 2025); Stefania Spezzati, 'Some European firms retreat from Israel-linked finance amid war pressure' (Reuters, 5 November 2024), <https://www.reuters.com/business/finance/some-european-firms-retreat-israel-linked-finance-amid-war-pressure-2024-11-05/> (accessed 15 July 2025).

⁶⁷ Dan Sabbagh, 'Activists tell UK arms makers they may face criminal liability over sales to Israel' (The Guardian, 20 June 2024), <https://www.theguardian.com/world/article/2024/jun/20/activists-tell-uk-arms-makers-criminal-liability-sales-israel> (accessed 15 July 2025).

⁶⁸ See, for example: Société Générale, 'Environmental and Social General Principles' (2016), 7, <https://www.societegenerale.com/sites/default/files/documents/2020-10/environmental-and-social-general-guide-lines-oct2016.pdf> (accessed 15 July 2025). See, generally: Hiruni Alwishedwa, 'Addressing the Human Rights Risks of Financing the Arms Industry: Insights from Banks' Corporate Policies' [2024] *Business and Human Rights Journal* 1 (FirstView, doi:10.1017/bhj.2024.23).

⁶⁹ See, for example, RTX, whose Human Rights Council 'is responsible for assisting the businesses in their assessment of specific sales opportunities that may present heightened human rights risks': RTX, 'RTX Human Rights Policy', <https://prd-sc102-cdn.rtx.com/-/media/rtx/r/rtx-human-rights-policy.pdf> (accessed 15 July 2025).

⁷⁰ UNGPs, Principle 18.

⁷¹ Stepan Wood, 'The Case for Leverage-Based Corporate Human Rights Responsibility' (2012) 22 *Business Ethics Quarterly* 63, 93.

⁷² Mariëtte van Huijstee, Victor Ricco and Laura Ceresna-Chaturvedi, 'How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy: A guide for civil society organisations' (SOMO,

manufacture parts and components of weapons systems can leverage exporting companies and states by withholding parts, components, servicing, repairs or replacement parts until these actors are in compliance with regulatory standards.⁷³ By strengthening these ‘modest cost’ measures to elevate human rights protection throughout decision-making processes,⁷⁴ corporations can foster a move away from a narrow risk-based approach in the arms sector. In doing so, corporate actors can lead efforts to elevate human rights protection within arms trade governance, helping to reshape industry standards and practices, while also contributing to the broader reframing of human rights as the foremost consideration. Impelling corporate leadership, and indeed even incremental shifts towards this, will undoubtedly require sustained efforts from stakeholders as well as civil society, who for decades have been instrumental in bringing attention to human rights impacts in arms trade governance.⁷⁵

IV. A Way Forward?

The intersection of security, business and human rights in the arms trade presents a uniquely complex and pressing challenge that demands a rethinking of regulatory approaches and the roles of key actors. BHR offers a powerful lens for reshaping arms trade governance, addressing regulatory deficiencies that have resulted in silos between interlinked issues, while also challenging the default approach to how human rights are incorporated into decision-making formula. As traditional state-led governance mechanisms falter under political and strategic pressures, BHR provides practical and conceptual tools for reinvigorating human rights protection in arms transfer decision-making. As a practice, BHR can help bridge long-standing silos in arms trade governance by promoting comprehensive due diligence frameworks that treat human rights impacts, diversion, corruption and lack of transparency as interconnected rather than isolated issues. In doing so, the arms industry can harness existing instruments such as the UNGPs and guidance from symbiotic high-risk sectors to develop due diligence processes that are robust and transparent.

Conceptually, BHR as a discourse offers a more ambitious yet critical path towards reframing how human rights are understood within arms trade governance. The dominant due diligence model, which treats human rights as a risk to be weighed against other interests, is proving insufficient in the face of growing rhetorical manipulation to defend controversial and problematic arms transfer practices. Fundamentally shifting how human rights are framed in arms trade governance, to elevate them as the foremost consideration in decision-making processes, is both necessary and urgent in light of the global resurgence of armed conflict and the corresponding boom in arms production and transfers. The continued supply of weapons to conflict zones such as Myanmar, Palestine, Sudan and Yemen, despite credible evidence of human rights and international humanitarian law violations, highlights the significant challenges to and failure in

CEDHA and Cividep India 2012), 8, <https://www.somo.nl/wp-content/uploads/2012/11/English-version.pdf> (accessed 15 July 2025).

⁷³ See, for example, recent litigation relating to F-35 fighter jet parts and components in the Netherlands and the United Kingdom: León Castellanos-Jankiewicz, ‘Dutch Court Halts F-35 Aircraft Deliveries for Israel’ [2024] *Verfassungsblog*, <https://verfassungsblog.de/f-35/> (accessed 15 July 2025); Galina Cornelisse, ‘On the “Whims of Foreign Courts”’ [2025] *Verfassungsblog*, <https://verfassungsblog.de/uk-high-courts-f-35-ruling/> (accessed 15 July 2025).

⁷⁴ Wood (n 71) 93.

⁷⁵ A notable example of such transformative efforts is the negotiation and eventual adoption on the Arms Trade Treaty: Helena Whall and Allison Pytlak, ‘The Role of Civil Society in the International Negotiations on the Arms Trade Treaty’ (2014) 5 *Global Policy* 453.

protecting human rights of individuals and communities afflicted by armed violence. With states increasingly constrained by political alliances and security imperatives, corporate leadership is an essential alternative for transforming the status quo. Companies involved in the production, financing and delivery of arms must move beyond reactive compliance and take proactive steps to protect human rights, both through their own operational efforts and by leveraging business partners to comply with international human rights standards. At this pivotal crossroads, BHR has the potential to serve as a catalyst for change in an industry long resistant to ethical constraints, bringing coherency to arms trade governance and recalibrating the balance between security concerns, business interests and human rights protection.

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