



SUSTAINABILITY FOCUS

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Aerospace and Arms Proliferation: New UN Arms Trade Treaty Confirms Sector Responsibilities

Introduction

Until April 2013, no globally agreed standards existed to ensure that conventional arms¹ were transferred responsibly. The lack of regulations has led to arms proliferation (the diversion of arms into illegal markets)². Transferred arms have been misused by some government forces or ended up in the hands of criminal groups or war lords. Stakeholders have regularly highlighted the Aerospace industry's adverse human rights impact, sometimes holding companies responsible for complicity in human rights abuses committed while using the arms they produced and sold.

The Aerospace industry designs and manufactures a wide range of highly advanced technological equipment, ranging from civil airliners to submarines. Defence products manufactured by the industry include military aircrafts, helicopters and all their subsystems, but also conventional and nuclear missiles, as well as land and naval defence systems. The sector is characterised by a strong government involvement. Governments are exclusive buyers for the defence and military segments, they are often present as major shareholders and also play a significant role in marketing and selling defence products. Finally, production and exportation of defence products are in many cases surrounded by national security secrecy. Although States are responsible for preventing arms proliferation through the respect and implementation of arms trade regulations, companies that manufacture arms have a responsibility to ensure that their products do not end up being used in violation of humanitarian law. Companies' specific responsibilities in this area are outlined in the UN Guiding Principles on Business and Human Rights³.

Vigeo's analysis of the Aerospace sector reveals some good practices in terms of commitment to the prevention of arms proliferation, but initiatives undertaken appear fairly limited. In addition, some of the companies have been involved in controversies related to arms proliferation.



The UN Arms Trade Treaty: a legal breakthrough

The sale of conventional arms and defence equipment has traditionally been regulated on a national and regional basis, through statutory controls on defence exports⁴. While some of these are legally binding, others are voluntary. International institutions (for example the European Union or the UN), regional organisations (for example the OECD) and countries also establish lists of countries subject to arms embargoes, such as North Korea, Syria and Iran.

For many years, observers have argued that the various national and regional arms control regimes contain loopholes or hold no significant powers to adequately handle the issue of arms proliferation. In particular, following a series of crises and conflicts in the late 1980s and 1990s (the Balkans conflicts, the Rwanda genocide, conflicts in West Africa among others), civil society organisations became increasingly concerned about the serious human rights and humanitarian impact of irresponsible arms transfers⁵.

In 2006, following campaigns by Nobel peace laureates and NGOs such as Amnesty International, a petition calling for global controls on arms trade and an *Arms Trade Treaty* was handed to the UN Secretary General Kofi Annan⁶. In 2009, a UN resolution recognised the role that weak international arms transfer controls play in exacerbating armed conflict, the displacement of people, organized crime, terrorism and damage to socio-economic development. This resolution also detailed the steps for the establishment of the international *Arms Trade Treaty*, which was finally voted on April 2nd 2013. Only three countries – Iran, Syria and North Korea –

which are all under various forms of UN sanctions today, voted against the adoption of the Treaty. The Arms Trade Treaty is a legally binding instrument establishing common international standards for the import, export and transfer of conventional arms. It will establish obligations for governments to assess all arms transfers to ensure that weapons will not be used for human rights abuses, violations of humanitarian law, transnational organised crime, or terrorism. It will also require governments to refuse any transfers of weapons if there is a risk countries would use them to violate human rights or commit war crimes.



Vigeo key findings

Aerospace companies can formulate policies and establish systems aimed at preventing their products from being used in violation of humanitarian law.

Vigeo's analysis of the European and North American Aerospace sector revealed that most companies commit to the prevention of arms proliferation through the respect of arms export legislation. Over the 24 companies analysed in the two zones, a majority have published a policy to respect national or regional arms export legislation (for example the US International Traffic in Arms Regulation). Five leaders (four European and one North American) have also a dedicated structure in charge of this policy, such as a Group Export Compliance Officer or a Corporate Export Control Department. However, only one-fourth of the companies under review (all European) report on measures implemented to ensure

that their products are not sold to countries where they can fuel conflicts.

Companies in the sector have provided trainings for employees in charge of sales, conducted audits of allegations, and established confidential reporting systems of violations. Two leaders have introduced specific contractual clauses: EADS and Safran⁷. These two companies require clients to sign an agreement on non-re-exportation. EADS is the only company to have recourse to a third party verification of its Export Compliance System. Interestingly, none of the companies under review appears to have implemented measures to allow the traceability of exports. In the past two years, three of the 24 companies under review have been involved in allegations regarding their involvement in arms proliferation⁸.

Risks and opportunities

Companies that are involved in arms proliferation, or do nothing to prevent it, face several risks. Human rights violations committed while using the company's products or services may submit the company to *legal proceedings* which may lead to fines and costs of trials. In June 2012, US Federal prosecutors announced criminal charges against one of United Technologies Corporation's Canadian subsidiaries and a fine of more than USD 75 million for a violation of U.S. export laws for having sold military software to China. Likewise, in August 2011, a class-action lawsuit was filed by ethnic Serbians seeking more than USD 10 billion in damages from L-3 Communications. The lawsuit alleged that L-3 and its subsidiary, MPRI (Military Professional Resources Inc.), helped arm and train Croatians who would have killed or displaced 200,000 Serbs in the Krajina

region of Croatia in 1995. Finally, human rights violations linked to a company's products or services that are revealed to the public, through media or by Human Rights organisations, may impact the *reputation* of the company among the general public or in the eyes of public authorities. As an illustration, in 2007, a group of European NGOs revealed the involvement of BAE Systems, Finmeccanica and EADS in the transfer of military helicopters to Myanmar through India. The companies were accused of undermining the EU arms embargo towards Myanmar⁹. In August 2011, Boeing received unwelcome publicity when the Wall Street Journal reported that one of its subsidiaries (Narus) had discussed a business deal with Libyan officials in the beginning of 2011, concerning the provision of sophisticated Internet-filtering capabilities to Libya.



Conclusion

For the first time in history, through the Arms Trade Treaty, global trade in conventional weapons will be regulated in an attempt to halt the proliferation of arms leading to violent conflict and human rights abuses around the world. As producers of weapons, companies in the Aerospace industry have a particular responsibility to ensure the respect and correct implementation of the Treaty within their sphere of influence and operations. Today, although many companies in the sector commit to respect arms export controls and prevent arms proliferation and related human rights violations, few of them appear to have effective systems in place to ensure the respect of their commitments. The new Treaty may have a positive impact on Aerospace companies' efforts to prevent arms proliferation, to the benefit of both the companies themselves and their stakeholders.

Contacts

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Notes and Sources

- 1) The terms *conventional weapons* or *conventional arms* generally refer to weapons that are in relatively wide use and that are not weapons of mass destruction. Conventional weapons include for example small arms and light weapons, military jets, helicopters, battleships, tanks, as well as (non-nuclear) bombs, shells, rockets, and missiles. Certain types of conventional weapons are regulated or prohibited under United Nations Conventions, such as antipersonnel landmines and cluster munitions. Conversely, the term "*non-conventional weapon*" refers to weapons of mass destruction (nuclear, biological, and chemical weapons).
- 2) "Arms proliferation" is a term used to describe the diversion of arms into illegal markets, or the sale to countries subject to export controls or embargoes.
- 3) Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework
- 4) Regional and institutional initiatives in place include the EU Council Common Position on export controls of arms, OSCE Principles Governing Conventional Arms Transfers, the Wassenaar Arrangement, the Australia Group, and OECD's regulatory controls of arms exports. National legislation on import and export controls of arms include for example the US International Traffic in Arms Regulations.
- 5) "The long journey towards an Arms Trade Treaty", Amnesty International, 27/03/2013
- 6) <http://controlarms.org>
- 7) EADS: company answer to Vigeo's question and CSR Report 2011 p 18-19, Safran: company answer to Vigeo's question and Document de Référence 2010 p 32
- 8) Boeing, United Technologies Corporation, L-3 Communications
- 9) "Indian helicopters for Myanmar: making a mockery of embargoes?", Amnesty International, July 2007