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# ARMS SUPPLY TO SAUDI ARABIA: A POSSIBLE IMPLEMENTATION OF BELGIUM'S STATE RESPONSIBILITY?

BY

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## Introduction

In August 2019, the fifth Conference of States Parties to the Arms Trade Treaty ("ATT") was held in Geneva. While the priority theme was dedicated to gender and gender-based violence, (2) the (non-)effectiveness of the ATT's implementation was also at the core of discussions. (3) Taking into account the ATT's object and purpose, which include the reducing of human suffering, (4) States Parties have considered not only the general implementation of the Treaty but also the issue of the prohibited transfers. (5) As a State Party to the ATT, Belgium is bound by "the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms". (6) However, as demonstrated by this Chronicle, one of Belgium's loyal customers raises questions with regard to these high standards. Saudi Arabia's abuses in the context of the Yemeni conflict have indeed been denounced, along with the support it has been continuously benefiting from.

Without pretending to offer a complete overview of an extremely complex situation, it is important to briefly recall some of the main elements of the Yemeni conflict. Since 2014, an armed conflict has gripped the country, with the forces of the President Abdo Rabbu Hadi opposing the Houthi armed group, former ally of the ex-President Ali Abdallah Saleh. From March 2015, a coalition of a dozen States, led by Saudi Arabia ("the Coalition"), has

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(2) Arms Trade Treaty, Fifth Conference of States Parties, Geneva, 26-30 August 2019, *Final Report*, 30 August 2019, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1, §22.

(3) *Ibid.*, §25.

(4) Arms Trade Treaty, 2 April 2013, UN General Assembly Resolution A/RES/67/234, Article 1 ("ATT").

(5) Arms Trade Treaty, Fifth Conference of States Parties, Geneva, 26-30 August 2019, *Final Report*, *op. cit.*, §25; Arms Trade Treaty, Fifth Conference of States Parties, Geneva, 26-30 August 2019, *Working Group on Effective Treaty Implementation Chair's Draft Report to the CSP5*, 26 July 2019, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, §5.

(6) ATT, Article 1.

supported Hadi's internationally recognised government through military operations.

The Yemeni conflict has a severe impact on civilians. Violations of international humanitarian law ("IHL") and international human rights law ("IHRL"), by both parties, have been repeatedly denounced. The Saudi Arabian-led international Coalition is the main perpetrator of these abuses. (7) It has conducted air strikes, breaching the rules of proportionality, precaution and distinction, and causing thousands of civilian deaths. (8) In addition, the Coalition has established a partial air and naval blockade, denying civilians access to humanitarian aid. (9) This blockade has serious consequences on human rights, such as the right to health and food. (10) Half of the Yemeni population lives in "pre-famine conditions", entailing that an approximated 14 million people are "entirely reliant on external aid for survival". (11) The conflict has led the *Happy Arabia* to endure the world's largest humanitarian crisis. (12)

Despite this conduct, the Coalition has benefited from continuous support from Western countries, including through arms supply. (13) In Belgium, one of the supplier countries, (14) decisions on arms transfers are a regional competence. (15) In 2017, the Walloon Region authorised transfers of arms to Saudi Arabia for more than 152 millions euros. (16) Over the previous three

(7) Amnesty International, Report 2017/18, p. 481; Human Rights Watch, World Report 2018. Events 2017-Yémen, p. 1 ; L. Héau and C. Stiernon, "La guerre oubliée du Yémen. Impasse militaire, casse-tête politique et catastrophe humanitaire", *Les rapports du GRIP 2017/10,* Brussels, p. 3 ; Human Rights Watch, World Report 2019. Events 2018-Yemen.

(8) Amnesty International, Report 2017/18, p. 481; Final report of the Yemen Panel of experts mandated by Security Council Resolution 2342 (2017), 26 January 2018, S/2018/68; Amnesty International, Report 2016 /2017, p. 476; Amnesty International, Report 2017/18, pp. 479, 481; "Yémen — Un hôpital MSF détruit par des frappes aériennes de la coalition", MSF, 18 March 2016, *available at*: www.msf-azg.be, *accessed on* 29 April 2018; Human Rights Watch, World Report 2019. Events 2018-Yemen; Final report of the Yemen Panel of experts mandated by Security Council Resolution 2402 (2018), 25 January 2019, S/2019/83, pp. 47-51.

(9) Human Rights Watch, World Report 2018. Events 2017-Yémen, p. 1; Amnesty International, Report 2017/18, p. 481; Final report of the Yemen Panel of experts mandated by Security Council Resolution 2402 (2018), 25 January 2019, S/2019/83, pp. 56-57.

(10) Amnesty International, Report 2017/18, p. 481; UNHCHR, Report on the situation of human rights in Yemen, including violations and abuses since September 2014, A/HRC/36/33, 5 September 2017, §43; Security Council Resolution 2216, S/RES/2216 (2015), 14 April 2015, §14.

(11) "Half the population of Yemen at risk of famine : UN emergency relief chief", *UN news,* 23 October 2018, *available at* : news.un.org, *accessed on* 27 December 2018.

(12) Human Rights Watch, World Report 2019. Events 2018-Yemen.

(13) L. Héau and C. Stiernon, *op. cit.*, p. 12.

(14) Observatoire des armes wallonnes, Last updated report, 30 August 2019, *available at:* https://www.amnesty.be/IMG/pdf/oaw_-_draft_final_.pdf, *accessed on* 30th October 2019.

(15) Loi spéciale du 12 août 2003 modifiant la loi spéciale du 8 août 1980 de réformes institutionnelles ; Chambre des représentants de Belgique, Résolution visant à reconsidérer la politique étrangère de la Belgique à l'égard du Royaume d'Arabie saoudite, texte adopté en séance plénière, 8 juin 2017, Doc. 54 2055/011.

(16) Walloon Government, arms report 2017, p. 58 ; in 2018, transfers to Saudi Arabia amounted to 225,7 millions euros (walloon Government, arms report 2018, p. 66).

years, the Region granted licences for 33.514.269 (17); 575.861.451 (18); and 396.925.695 (19) euros, respectively. These numbers do not even take into account the 3.2 billion euros 15 year contract between the Belgian producer *CMI* and the Canadian company *General Dynamics*. (20) This contract provides for the supply by *CMI* of turret artillery aimed at being assembled on armoured vehicles in Canada, and ultimately sent to Saudi Arabia. (21)

The legality of exports to Coalition members has been challenged. Both the European and Belgian Parliaments expressed their support for the implementation of an embargo on weapons supply to Saudi Arabia. (22) In June 2019, one year after having proceeded to a number of suspensions, (23) the Belgian *Conseil d'État* annulled eight licences. (24) The administrative Court considered that the Walloon Region failed to demonstrate that it had assessed

> "le comportement du pays acheteur à l'égard de la communauté internationale et notamment son attitude envers le terrorisme, la nature de ses alliances et le respect du droit international". (25)

Arms' transfers to Saudi Arabia have not only been challenged in Belgium, but also in other important exporting States. For example, risks of serious breaches of IHL, and the threat to regional stability, have led the Netherlands to negate licences to both Saudi Arabia and the United Arab Emirates. (26) In England and Wales, the High Court of Justice had first dismissed an action introduced against exports, underlining Saudi Arabia's genuine respect for its international obligations and the fact that the exports did not pose any risk of IHL violations. (27) However, that decision was

(17) Walloon Government, arms report 2016, p. 68.

(18) Walloon Government, arms report 2015, p. 65.

(19) Walloon Government, arms report 2014, p. 65.

(20) *Ibidem.*

(21) "La Wallonie vend toujours plus d'armes (infographie)", *Le Soir*, online 7 January 2016, *available at:* www.lesoir.be, *accessed on* 29 April 2018.

(22) European Parliament Resolution of 25 February 2016 on the humanitarian situation in Yemen, 2016/2515(RSP); Chambre des représentants de Belgique, Résolution visant à reconsidérer la politique étrangère de la Belgique à l'égard du Royaume d'Arabie saoudite, texte adopté en séance plénière, 8 juin 2017, Doc. 54 2055/011.

(23) C.E. (15th Chambre), 29 June 2018, no. 242.023, 242.025, 242.029 and 242.030, *L'a.s.b.l. CNAPD et L'a.s.b.l. Ligue des Droits de l'Homme v. La Région wallonne*. On 7 August 2020, several licences were suspended by the Conseil d'État (n° 248.128), while others were maintained (n° 248.129). These decisions followed the suspension of previous licences in March 2020 (n° 247.259).

(24) C.E. (15th Chambre), 24 June 2019, no. 244.800, 244.801, 244.802, 244.803, 244.804, *L'a.s.b.l. CNAPD and L'a.s.b.l. Ligue des Droits de l'Homme v. La Région wallonne.*

(25) Décret du 21 juin 2012 relatif à l'importation, à l'exportation, au transit et au transfert d'armes civiles et de produits liés à la défense, Article 14(1), 6th Criterium.

(26) L. Héau and C. Stiernon, *op. cit.*, p. 23.

(27) High Court of Justice, Queen's Bench Division, *Campaign against arms trade v. The Secretary of State for international trade, case n°: CO/1306/2016*, London, 10 July 2017, §210; R. Isbiter, "Court action to implement the arms Trade Treaty", *safeworld blog*, 19 December 2016; Amnesty

recently reversed by the Court of appeal in June 2019,(28) on the grounds that the licencing authority failed to show that it had taken account of the historic pattern of IHL violations by the Coalition.(29)

Although it surely constitutes a positive step towards a better compliance with IHL and IHRL, the recent Belgian administrative decisions require to be put in perceptive. As underlined by Willy Borsus himself,(30) the licencing authority maintains a wide margin of discretion in the assessment of the criteria.(31) The licencing process is also characterised by a significant lack of transparency.(32) In addition, the annulment of some licences does not represent a general condemnation of exportations to Saudi Arabia.(33) In any event, licences that were annulled by the Council of State in June 2019 had, in fact, already been executed.(34)

This paper aims to examine the possible implementation of Belgian responsibility, under Article 1 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA"), for the arms transfers to Saudi Arabia authorised by the Walloon Region since the first intervention by the Coalition in 2015. The issue of attribution shall not be examined here, as it is clearly established by the national licence granting process and the relevant rules on State responsibility.(35) Moreover, the paper does not aim to assess the moral legitimacy of the transfers, nor to prove the constitutive elements of the violations denounced by various reports, and presumed to be established. Only the conformity of the transfers with the relevant norms of international law will be addressed.

International, *Court ruling over UK arms sales to Saudi Arabia a 'deadly blow' to Yemeni civilians*, 10 July 2017, *available at*: www.amnesty.org, *accessed on* 27 December 2018.

(28) Court of Appeal (civil division) on appeal from the High Court of Justice Queen's bench division divisional court (2017), *Campaign against arms trade v. The Secretary of State for international trade*, *case No. T3/2017/2079,* London, 20 June 2019.

(29) *Ibid.*, §§138, 167.

(30) Parlement Wallon, *Bulletin des QR* nº 17, (2017-2018), 18 May 2018, *available at:* https://www.parlement-wallonie.be.

(31) C.E. (15th Chambre), 24 June 2019, No. 244.800, 244.801, 244.802, 244.803, 244.804, *L'a.s.b.l. CNAPD and L'a.s.b.l. Ligue des Droits de l'Homme v. La Région wallonne.*

(32) Commission d'Accès aux Documents Administratifs, Avis Nº. 304, 15 July 2019; « Exportations d'armes wallonnes : suite (et non fin) de la saga judiciaire », *LDH*, online 20 May 2019, *available at:* http://www.liguedh.be/exportations-darmes-wallonnes-suite-et-non-fin-de-la-saga-judiciaire/, *accessed* 30 October 2019.

(33) E. Slautsky, "L'exportation d'armes wallonnes en Arabie saoudite : de la suspension à l'annulation", *Justice en Ligne,* 24 September 2019, *available at:* http://www.justice-en-ligne.be, *accessed on* 30 October 2019.

(34) C.E. (15th Chambre), 24 June 2019, No. 244.800, 244.801, 244.802, 244.803, 244.804, *L'a.s.b.l. CNAPD and L'a.s.b.l. Ligue des Droits de l'Homme v. La Région wallonne*; « Willy Borsus : "Les 8 licences d'exportations d'armes wallonnes annulées par le Conseil d'État étaient obsolètes" », *Le Soir*, 14 June 2019, *available at:* https://www.lesoir.be, *accessed on* 30 October 2019.

(35) Draft Articles on Responsibility of States for internationally Wrongful Acts with commentaries, *Yearbook of the International Law Commission, 2001*, Vol. II, Part Two, ("ARSIWA"), Article 4, 8 ; comment Article 8 §2.

The transfers shall be analysed in respect of three relevant sets of rules. It will be argued that the authorised exports are in breach of: first, the Arms Trade Treaty ("ATT") (I); second, the obligation to ensure respect of IHL, enshrined in Common Article 1 to the Geneva Conventions of 1949 ("Common Article 1") (II); and, third, the prohibition to aid and assist another State in the commission of an internationally wrongful act in the sense of Article 16 ARSIWA (III).

## I. — Breaches of the ATT

The ATT is of critical importance in the context of arms trade. It was ratified by Belgium on 3 June 2014 and entered into force on 24 December 2014. Its object includes the establishment of the strictest possible regulatory standards of the international arms trade for the purpose of:

"Contributing to international and regional peace, security and stability; Reducing human suffering; Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties". (36)

Thus, it does not aim to create a general prohibition of arms trade, but is rather a means to ensure that States are held responsible for their transfers. (37) By rendering the field of arms trade more transparent, and moving towards the harmonisation of national control mechanisms, the ATT contributes to the normalisation of the arms market. (38)

The ATT regulates transfers of a series of conventional arms listed under its Article 2(1), as well as their parts and components, (39) and munitions. (40) Since 2015, Walloon arms transferred to Saudi Arabia have included: handguns; munitions; armoured vehicles and their components; explosive agents; artillery pieces; rockets or other explosives; military airplanes; and armor. (41) For the purpose of this paper, it shall be presumed that the entirety of the material at stake falls under the ATT's scope. On that basis, the present section aims to establish that the exportations are in breach of the obligations contained in Article 6(3) (A) and Article 7 (B) ATT.

(36) Arms Trade Treaty, 2 April 2013, UN General Assembly Resolution A/RES/67/234 ("ATT"), Article 1.

(37) L. Simonet, *Le Traité sur le commerce des armes, Genèse, analyse, enjeux, perspectives du premier instrument juridique consacré à la réglementation des transferts internationaux d'armes conventionnelles*, Paris, Éditions A. Pedone, 2015, p. 10.

(38) *Ibid.*

(39) ATT, Article 4.

(40) ATT, Article 3.

(41) Walloon Region, Arms Reports 2015, 2016, 2017.

### A. — *Violations of Article 6(3) ATT*

Article 6 ATT provides for three situations in which arms transfers are strictly prohibited. (42) In particular, transfers are prohibited where a State has:

> "knowledge at the time of authorization that the arms or items would be used in the commission of [...] crimes against humanity, grave breaches of the Geneva Convention of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a party" (43).

As previously mentioned, numerous reports have denounced breaches of IHL and IHRL by the Coalition in Yemen. Most notably, the wrongful acts committed by the Coalition include attacks directed against civilians and civilian objects, as well as other war crimes as defined by the Rome Statute of the International Criminal Court ("ICC").

However, Article 6(3), ATT, raises two issues regarding its scope, in terms of the subjective element it requires. First, this section shall establish that, at the time it authorised the exportations under scrutiny, Belgium had knowledge of the risk (1). Second, the level of risk met the required threshold (2).

#### 1) *The State has knowledge at the time of authorisation...*

Article 6 does not specify a requisite threshold of knowledge. However, absolute certainty does not seem indispensable, and the requirement of knowledge appears to be met where the State should have known how the arms were going to be used.

Indeed, in accordance with the general rule of interpretation enshrined under Article 31 of the Vienna Convention on the Law of Treaties ("VCLT"), the notion of knowledge must be interpreted in good faith, and in accordance with its ordinary meaning in the light of the treaty's object and purpose. (44) The ATT's first objective is to

> "establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms" (45).

It would be contrary to such an objective to exclude, from the scope of Article 6(3) ATT, cases where the State *ought to have known* the expected

(42) L. Simonet, *op. cit.*, p. 87.

(43) ATT, Article 6(3).

(44) Vienna Convention on the Law of Treaties, adopted in Vienna on 23 May 1969, *UNTC 1980 Vol. 1155, I-18232* ("VCLT"), Article 31(1).

(45) ATT, Article 2.

use of the goods. (46) Accordingly, a level of knowledge of absolute certainty cannot be considered to be required. (47)

Additionally, the requirement of knowledge has been discussed in the context of other international norms. Notwithstanding the very distinct nature of those norms, the discussions surrounding their application can, to a certain extent, enlighten the interpretative process. (48)

First, as discussed *infra,* the notion of knowledge has been examined in the context of the rules on aid and assistance enshrined under Article 16 and Article 41 ARSIWA. It should be already noted that, in the context of these Articles, the internationally wrongful act must *be happening or have happened*. In contrast, the application of Article 6 and Article 7 of the ATT only requires that the transferred arms *might be used* in the commission of a future wrongful act. (49)

Second, knowledge has been addressed by the ICJ in its *Genocide* case (50). The Court distinguished the thresholds required by, on the one hand, the rule on complicity; and, on the other hand, the obligation to prevent. Both were imposed by the Convention on the Prevention and Punishment of the Crime of Genocide. Complicity in genocide requires, *at the least,* that the State's organs must be aware that genocide was about to be committed or was under way. That means that *"full knowledge of the facts"* is required. To the contrary, a State may breach its prevention obligation even if it had no certainty,

> "it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed". (51)

A State *should have known* when the circumstances are of public notoriety, or when it breached its due diligence obligation by not taking into account the information from reliable sources. (52) Such sources include UN organs; the international and non-governmental organisations; and, the main media outlets. (53) In assessing whether a transfer complies with the criteria under Article 6(3) of the ATT, the State must take into consideration all the information at its disposal

(46) C. Da Silva and B. Wood (Ed.), *Weapons and international law — The arms trade Treaty annotated,* Brussels, Larcier, 2015, p. 103.

(47) C. Stiernon, "Commerce des armes et responsabilité internationale des États exportateurs", *Notes d'analyse du GRIP*, 30 March 2017, Brussels, p. 10.

(48) VCLT, Article 31(3)(c).

(49) S. Casey-Maslen, A. Clapham, G. Giacca, S. Parker, *The arms trade treaty — A commentary,* Oxford, Oxford University Press, 2016, p. 205.

(50) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007,* ("*Genocide* case") p. 43.

(51) *Genocide* case, §432.

(52) S. Casey-Maslen, A. Clapham, G. Giacca, S. Parker, *op. cit.*, p. 207; C. Da Silva and B. Wood (Ed.), *op. cit.*, p. 103.

(53) *Ibidem.*

and the probable final use of the exported arms. (54) Consequently, the more information the State has, the more difficult it will be to prove that it was unaware of how the exported goods would be used.

The previous conduct of the importing State shall also be taken into account. (55) As soon as there is proof of actual or recent IHL or IHRL violations by that State, there is a manifest risk that such violations may continue to occur or shall reoccur in the future. Thus, the transferring State cannot pretend to ignore the possibility that the arms it considers exporting would be used in the commission of breaches of international law.

The determination of the obligation under article 6(3) ATT relates, to a certain extent, to the notion of due diligence. As it will be shown, this concept plays a central role in the assessment of the legitimacy of arms transfers. Indeed, we will see *infra* that due diligence recurs in each obligation analysed. However, the precise content and scope of due diligence is still unsettled and the notion remains at the centre of controversies. (56)

Finally, parts and components are targeted by Article 4 of the ATT. Where they are exported to a State which intends to re-export them, the first-exporting State must take into account the declared final user in the assessment of the risks. (57)

Violations of IHL and IHRL by the parties to the Yemeni conflict, particularly by the Saudi Arabian-led Coalition, have been denounced repeatedly at the UN (58), the EU (59) and the Belgian (60) levels and by international NGOs. (61) Violations committed by Saudi Arabia in the context of

(54) C. Da Silva and B. Wood (Ed.), *op. cit.*, p. 88.

(55) S. Casey-Maslen, A. Clapham, G. Giacca, S. Parker, *op. cit.*, p. 207.

(56) *See for example* S. Cassella (Dir.), *Le standard de due diligence et la responsabilité internationale*, SFDI Journée d'études franco-italienne du Mans, Paris, Pedone, 2018 ; ILA Study Group on Due Diligence in International Law, Second Report, July 2016.

(57) C. Stiernon, *op. cit.*, p. 11.

(58) Human Rights Council Resolution A/HRC/RES/36/31 of 29 September 2017 ; Final report of the Yemen Panel of experts mandated by Security Council Resolution 2204 (2015), S/2016/73, 22 January 2016 ; Final report of the Yemen Panel of experts mandated by Security Council Resolution 2266 (2016), S/2017/81, 31 January 2017 ; Final report of the Yemen Panel of experts mandated by Security Council Resolution 2342 (2017), S/2018/68, 26 January 2018 ; Security Council, 8191st meeting (AM), SC/13227, 27 February 2018, meeting coverage ; UNOCHA, Humanitarian needs overview 2018-Yemen, December 2017, *available at* : https://www.unocha.org, *accessed on* 29 April 2018.

(59) European Parliament Resolution of 9 July 2015 on the situation in Yemen (2015/2760 (RSP)); European Parliament Resolution of 25 February 2016 on the situation in Yemen, 2016/2515(RSP); European Parliament Resolution of 15 June 2017 on the humanitarian situation in Yemen, 2017/27/27(RSP); European Parliament resolution of 4 October 2018 on the situation in Yemen (2018/2853(RSP)).

(60) Chambre des représentants de Belgique, Résolution visant à reconsidérer la politique étrangère de la Belgique à l'égard du Royaume d'Arabie saoudite, texte adopté en séance plénière, 8 juin 2017, Doc. 54 2055/011.

(61) Amnesty International, Report 2016 /2017- 2017/2018; Human Rights Watch, World Report 2018, Events 2017-Yémen; L. Héau et C. Stiernon, *op. cit.*

the intervention of the Coalition in Yemen are thus of public notoriety and the numerous reports and documents that attest them leave no doubt as to Belgium's awareness in that regard.

2) *... that the arms or items would be used in the commission of...*

The knowledge requirement relates to the risk that the exported arms would be used in the commission of one of the acts listed in Article 6, ATT. The threshold of risk required by Article 6 is higher than the *overriding risk* of Article 7(3), ATT. However, it is lower than the level of risk required to prove complicity in the commission of a war crime. (62)

The ATT is a preventive instrument, intended to prevent the commission of the acts listed in its Articles 6 and 7. This implies an interpretation that facilitates this aim. (63) The arms or items exported *would* thus *be used* in the commission of a wrongful act where there is sufficient reason to believe in such a use. This interpretation has been confirmed by the common declaration of a group of States who stated that transfers shall be prohibited

> "when there is a clear and reasonable ground to believe that such weapons will be used in violation of international human rights law or international humanitarian law". (64)

The International Committee of the Red Cross ("ICRC") has established various criteria that must be considered in the risk assessment, including the previous violations by the importing State and its official commitment to respect and transpose IHL and IHRL at the domestic level. (65)

It is argued that the numerous violations of IHL and IHRL, committed by the Coalition since its first intervention in Yemen in 2015, constitute a reasonable basis to conclude that the arms *would be used* in the commission of one of the listed wrongful acts. More specifically, the available information indicates a risk of attacks against civilian objects or civilians protected as such and other war crimes.

### B. — *Violations of Article 7 ATT*

When the transfer does not fall within the scope of any of the prohibition under Article 6, the exporting State is still obliged to assess its impact on

(62) C. Da Silva and B. Wood (Ed.), *op. cit.*, p. 103.

(63) VCLT, Article 31(1); C. Da Silva and B. Wood (Ed.), *op. cit.*, p. 103.

(64) Joint statement on elements for a Treaty from Argentina, Chile, Colombia, Guatemala, Jamaica, Mexico, Peru, Trinidad and Tobago, and Uruguay to the Chairman, July 21, 2010, *available at:* http://wwwupdate.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/2010-07-21/21072010-JointStatement-E.PDF, *accessed on* 29 April 2018.

(65) ICRC, *Arms transfer decisions. Applying international humanitarian law and international human rights law criteria — A practical guide*, 12 September 2017, pp. 7-8.

peace and security, IHL and IHRL. (66) The State shall not authorise the export if it determines that there is "an overriding risk of any of the negative consequences in paragraph 1". (67)

Accordingly, the State must first clearly demonstrate that the proposed export would legally and effectively contribute to peace and security. (68) However, in 2015, the European Parliament condemned:

> "the air strikes by the Saudi-led coalition and the naval blockade it has imposed on Yemen, which have led to thousands of deaths, have further destabilised Yemen, have created conditions more conducive to the expansion of terrorist and extremist organisations such as ISIS/Da'esh and AQAP, and have exacerbated an already critical humanitarian situation" (69).

The Parliament urged the parties to "end the use of violence immediately" (70). The Parliament repeatedly expressed its concerns regarding the threat to regional and international stability, and called upon the parties to engage in negotiations. (71) Therefore, it can hardly be argued that the arms transfer to Saudi Arabia would contribute effectively to peace and security.

Second, the export shall be negated when the State determines that there is an *overriding risk* that the arms or items could be used to commit or facilitate the commission of serious violations of IHL or IHRL. (72)

Article 7 has a broader scope than Article 6, ATT. However, the notion of *overriding risk* is not defined, neither by the ATT nor by other instruments. It has been interpreted as a "sufficient degree of likelihood"; (73) a manifest or substantial risk; or a risk more probable than improbable to be realised. (74) According to another interpretation, it is necessary to assess the risk regarding the possible positive impact of the export. Should the risk be more important than the expected positive impact, the export shall be prohibited. (75)

(66) ATT, Article 7(1); L. Simonet, *op. cit.*, p. 95.

(67) ATT, Article 7(3).

(68) Amnesty International, *Applying the Arms Trade Treaty to ensure the protection of Human Rights*, London, Amnesty International publications, 2015, p. 22.

(69) European Parliament resolution of 9 July 2015 on the situation in Yemen, 2015/2760(RSP), §3.

(70) *Ibid.*, [A].

(71) European Parliament resolution of 15 June 2017 on the humanitarian situation in Yemen, 2017/27/27(RSP), §I; European Parliament resolution of 4 October 2018 on the situation in Yemen, 2018/2853(RSP), §4.

(72) ATT, Article 7(1)(3).

(73) Arms Trade Treaty, Working group on effective Treaty Implementation, 'Food for thought Paper on practical measures to conduct likelihood assessments under Articles 6 and 7 of the Arms Trade Treaty', submitted by Switzerland on March 2, 2018, ATT/CSP4.WGETI/2018/CHE/255/M1.CHE.Arts6§7.

(74) ICRC, *Arms transfer decisions. Applying international humanitarian law and international human rights law criteria — A practical guide*, 12 September 2017, p. 13.

(75) P. Sands QC, A. Clapham and B. N. Ghralaigh, *The lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi*

As it is the case for the prohibitions enshrined under Article 6, the previous conduct of the importing State is of particular importance in establishing the *overriding risk*. (76) The respective assessment shall commence with an inquiry into the general conduct of the importing State, regarding its human rights obligations. It is then necessary to determine whether specific violations have been committed through the use of classical arms and, finally, whether there is a risk that such violations would occur as a result of, or be facilitated by, the relevant transfer authorisation. (77)

Considering that the threshold is lower than the one required by Article 6, it is submitted that Belgium should have determined the existence of an *overriding risk*, in the sense of a *sufficient degree of likelihood* of serious violations of IHL and IHRL in Yemen. An in-depth analysis of the kind of violations which are considered to be "serious" exceeds the scope of this paper. Thus, let us only recall that there were *overriding risks* of utilisation of starvation as a method of warfare; indiscriminate and disproportionate attacks; and attacks contrary to the principle of distinction. With regard to the violations of IHRL, the right to life; safety; health; education; and food were threatened by the indiscriminate attacks and the blockade measures of the Coalition.

Accordingly, it is submitted that the Walloon Region ought to have refused the export licences, if not on the basis of the absolute prohibition of Article 6(3), at least on the basis of Article 7. However, the persistent controversies surrounding the matter, both in Belgium and the EU, and the recurrent discussions on effective implementation by States Parties, evidence the lack of uniformity in the implementation of the ATT. (78)

## II. — Breach of Common Article 1 Geneva Conventions

Common Article 1 to the 1949 Geneva Conventions provides the obligation for States Parties not only to respect IHL, but also to ensure respect for the Conventions in all circumstances. The ICJ has recognised the customary nature of this obligation. (79) States, whether or not they are parties to the armed conflict, have the obligation to "do everything reasonably in their

*Arabia's military intervention in Yemen, Legal opinion prepared by Matrix Chambers on instructions from Amnesty International UK*, Oxfam and Safeworld, 11 December 2015, p. 54; Amnesty International, *Applying the Arms Trade Treaty to ensure the protection of Human Rights, op. cit.*, p. 22.

(76) P. Sands QC, A. Clapham and B. N. Ghralaigh, *op. cit.*, p. 50.

(77) Amnesty International, *Applying the Arms Trade Treaty to ensure the protection of Human Rights*, *op. cit.*, p. 16.

(78) *See for example:* Arms Trade Treaty, Fifth Conference of States Parties, Geneva, 26-30 August 2019, *Final Report*, *op. cit.*, §25.

(79) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986*, p. 14, §220.

power to ensure that the provisions are respected universally" (80). States are obliged to ensure respect not only by their organs or persons under their jurisdiction, but also by other States and non-State Parties. (81) This is explained by the *erga omnes* nature of the obligations created by the Conventions. (82)

The obligation to ensure respect has both negative and positive aspects. The positive aspect requires States to use all means at their disposal to prevent and cease violations. Whereas, under the negative aspect, States shall refrain from aiding and assisting other States in the commission of such violations or from encouraging them. (83) However, this distinction shall not be conceived too strictly, at the risk of diminishing the accountability of States. (84)

The ICRC finds an illustration of the obligation's negative aspect in the area of arms transfers. The commentary to Common Article 1 provides that:

> "Article 1 requires High Contracting Parties to refrain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions". (85)

This obligation, enshrined in Article 1, Geneva Conventions, is one of means, and not result. It reflects the more general obligation of due diligence, which compels States to ensure other States' rights. (86) According to the ICJ's developments in the *Genocide* case, due diligence must be assessed *in concreto,* taking into consideration a State's capacity to effectively influence the commission of the wrongful act. The State's influence capacity depends on its political and economic links with the authors. Consequently, the stronger these links, the higher the capacity of influence and the more demanding the obligation to ensure respect of the Conventions. (87) However, the State cannot justify itself by stating that, even if it had done everything in its power, the violations still would have occurred in any event. This is not relevant according to the ICJ. (88)

(80) 2018 ICRC commentary to Common Article 1, §119.

(81) *Ibid.*, §120.

(82) *Ibid.*, §119.

(83) *Ibid.*, §144.

(84) A. Seibert-Fohr, "From complicity to Due Diligence: When Do States Incur Responsibility for Their Involvement in Serious International Wrongdoing?", *German Yearbook of International Law*, Vol. 60 (2017), p. 10.

(85) 2018 ICRC commentary to Common Article 1, §162.

(86) O. Corten, "La 'complicité' dans le droit de la responsabilité internationale: un concept inutile?", *AFDI*, 2011, pp. 68-70.

(87) K. Dörmann and J. Serralvo, "L'article 1 commun aux Conventions de Genève et l'obligation de prévenir les violations du droit international humanitaire", *International Review of the Red-Cross*, Vol. 96, Sélection française 2014/3 and 4, p. 43; R. Geib, "The obligation to respect and to ensure respect for the Conventions", *in The 1949 Geneva Conventions. A commentary*, Oxford, Oxford University Press, 2015, p. 125.

(88) *Genocide* case, §130.

Further, the obligation enshrined in Article 1 does not require a threshold of severity to be met. Nevertheless, the severity of the violations is relevant when determining the precise scope of the obligation binding the State, and the measures that can reasonably be expected from that State. (89) Similarly, no subjective element of intent is required by Common Article 1, which enshrines an autonomous primary norm. (90) It can already be noted that, according to a certain interpretation, the negative aspect of the obligation to ensure respect is in fact "a specific affirmation of secondary state responsibility as set out in Article 16 ARSIWA" (91). However, a condition of intent could potentially be read into Article 16 commentary. (92) If confirmed, such a requirement of intent would imply that material support, which is granted despite knowing that it would be used in the commission of violations, could constitute a violation of Common Article 1, irrespective of whether it amounts to aid and assistance in the sense of the rules on State responsibility. (93) The controversial content of Article 16 will be further discussed within the next section.

Applied to arms transfers, a violation of Common Article 1 implies a certain threshold of risk. Accordingly, a State shall negate the export licence wherever there is a serious, manifest, substantial, or important risk (94) that the transferred arms would be used in violation of IHL.

Weapons and military means represent a determinative element for the parties to an armed conflict, whether international or non-international. Western States have the capacity to effectively influence the respect of IHL, in the context of the Yemeni conflict, through their exports to Saudi Arabia. (95) Due to all the information made available by numerous reports regarding the conduct of the Coalition, the risk that the transferred weapons would be used in violation of IHL appears at least "manifest", "substantial" and "important". Thus, the due diligence obligation under Article 1 obliges Belgium to negate the export licences in direction to Saudi Arabia. The argument put forward by Belgium, according to which "*[u]n embargo d'une seule région ou d'un seul pays n'aura, hélas, aucun impact international, notamment*

(89) R. Geib, *op. cit.*, p. 125; K. Dörmann and J. Serralvo, *op. cit.*, p. 44.

(90) 2018 ICRC commentary to Common Article 1, §§159, 160.

(91) L. Ferro, "Western Gunrunners, (Middle-)Eastern Casualities: Unlawfully Trading Arms with States Engulfed in Yemeni Civil War?", *Journal of Conflict & Security Law* (2019), p. 15.

(92) ARSIWA, Article 16, commentary, §5.

(93) 2018 ICRC commentary to Common Article 1, §160.

(94) K. Dörmann and J. Serralvo, *op. cit.*, p. 54; ICRC, *Arms transfer decisions. Applying international humanitarian law and international human rights law criteria — A practical guide*, *op. cit.*, p. 14; C. Stiernon, *op. cit.*, p. 8.

(95) ICRC, *Arms transfer decisions. Applying international humanitarian law and international human rights law criteria — A practical guide*, *op. cit.*, p. 14; Council of the European Union, *Guide d'utilisation de la position commune 2008/944/PESC du Conseil définissant des règles communes régissant le contrôle des exportations de technologie et d'équipements militaires*, Doc. 9241/09, 29 April 2009, Brussels, p. 45.

*sur le respect des droits de l'homme"*, (96) is irrelevant. The Belgian exports cannot be justified by the lack of a European or UN Embargo. This position, in addition to being illogical, is also contrary to the principles developed by the ICJ. (97)

## III. — State's "complicity" in the sense of Article 16 ARSIWA

Turning to the secondary norms enshrined in the State responsibility framework, Article 16 ARSIWA is particularly relevant when it comes to arms transfers. It contains the prohibition for States to bring their aid and assistance to the violation of an international norm by another State. This provision is considered part of customary international law. (98)

There is no condition concerning the nature of the aid or assistance brought by the assisting State. What matters is the causal link between the aid or assistance and the commission of the principal wrongful act. (99) The notion, sometimes also referred to as *complicity,* is normative in nature and must be assessed on a case-by-case basis. (100)

State responsibility for aid and assistance in the commission of an internationally wrongful act, under Article 16 ARSIWA, requires two conditions to be met. First, it is required that the act would also have been wrongful "had it been committed by the assisting State itself". (101) Second, the assisting State must be aware of the circumstances making the conduct wrongful. (102) More controversially, the ILC commentary to Article 16 appears to include a third condition, where it states that the assisting State must act with a view to facilitating the commission of that wrongful act and actually do so. (103) However, the content of such an "intent" requirement, and even its mere existence, are debated. (104)

The first condition does not raise any issue, as it is sufficient to observe that Belgium ratified the instruments containing obligations regarding IHL and IHRL and, specifically, the Geneva Conventions of 1949. For the rest, it is argued that the condition of knowledge (A) and intent, if any, (B) are

(96) *See* the chronicle and specifically the answer given by Willy Borsus *in* Parlement Wallon, *Bulletin des QR* n° 17, (2017-2018), 18 May 2018, *available at*: https://www.parlement-wallonie.be.

(97) *Genocide* case, §130.

(98) *Genocide* case, §417.

(99) J. Crawford, *State responsibility. The general part, Cambridge studies in international and comparative law*, Cambridge University Press, 2014, p. 402.

(100) *Ibid.*, p. 405; ARSIWA, Article 16, commentary, §9.

(101) ARSIWA, Article 16, commentary, §3.

(102) *Ibid.*

(103) *Ibid.*

(104) *E.g.:* L. Ferro, *op. cit.*, p. 14; O. Corten, *op. cit.*, pp. 73-75.

fulfilled in the case of Belgium. Therefore, it must be considered as a *complicit* State, in respect of the violations perpetrated by Saudi Arabia in the context of the Yemeni conflict.

### A. — *Belgium has knowledge of the circumstances of the wrongful act*

Similarly to Articles 6(3) and 7 ATT and Common Article 1 to the 1949 Geneva Conventions, the threshold of knowledge, which is required by the rule on aid and assistance, is still to be determined. (105)

According to Alexandra Boivin, the threshold is met not only by an objective, in the sense of real and direct, knowledge, but also by *constructive knowledge* deriving from the due diligence requirements. Indeed, it cannot be considered that a State is unaware of the abusive use of the arms by another State where such information is widely spread. (106) Other authors have found that the threshold was met in case of "actual or near-certain knowledge" (107), or "virtual certainty, on the part of the assisting State of the eventual possibility of unlawful use of its assistance" (108). These cases appear to include situations where the assisting State *should have known* that its assistance would be utilised unlawfully.

However, members of the ILC seem to have adopted a stricter threshold of knowledge during their discussions on Article 16. (109) Similarly, the ICJ established that state complicity in the commission of genocide requires the assisting State's organs to, "at the least", be "aware that genocide was about to be committed or was under way". (110) This interpretation seems to exclude the lower threshold of *should have known*. (111)

In any event, Harriet Moynihan has developed the concept of "wilful blindness", characterising the conduct of a State which deliberately ignores the wrongful conduct of the assisted State. (112) By that *wilful blindness*, the

(105) S. Zwijsen, M. Kanetake et C. Ryngaert, "State Responsibility for Arms Transfers. The Law of State Responsibility and the Arms Trade Treaty", *Ars aequi*, février 2020, p. 152; V. Lanovoy, *Complicity and its limits in the law of international responsibility*, Oxford;Portland, Oregon;, Hart Publishing, 2016, p. 100.

(106) A. Boivin, "Complicity and beyond: international law and the transfer of small arms and light weapons", *International review of the Red Cross*, Vol. 87, nº 859, September 2005, p. 471.

(107) J. Crawford, *State responsibility. The general part*, *op. cit.*, p. 408.

(108) H. Moynihan, "Aiding and assisting: the mental element under article 16 of the international law commission's articles on state responsibility", *International and Comparative Law Quarterly*, 2018, Vol. 67, nº 2, p. 460.

(109) *Ibidem.*; V. Lanovoy, *Complicity and its limits in the law of international responsibility*, *op. cit.*, p. 99 *quoting* ILC, 'Summary Record of the 2681st Meeting', 29 May 2001, reproduced in (2001) 1 YBILC90, 95, §50.

(110) *Genocide* case, §432.

(111) H. Moynihan, *op. cit.*, p. 460.

(112) *Ibid.*, p. 461.

assisting State tries to escape its responsibility, turning a blind eye to the risk of actual or future violations by the assisted State. However,

> "where the evidence stems from credible and readily available sources, such as court judgments, reports from fact-finding commissions, or independent monitors on the ground, it is reasonable to maintain that a State cannot escape responsibility under Article 16 by deliberatively avoiding knowledge of such evidence" (113).

Accordingly, where a State has knowledge, near-certain knowledge or where it deliberately closes its eyes on the risk of violations, the "subjective" element under Article 16 shall be considered met. However, Article 16 would not go as far as imposing a due diligence obligation, upon States, akin to the one enshrined in Common Article 1 to the Geneva Conventions. (114)

### B. — *A contested condition : Belgium intends to facilitate the commission of the wrongful act*

No condition of intent stems from Article 16 ARSIWA itself. However, its commentary establishes that "the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so". (115) Further, the commentary specifies that such condition implies that the aid or assistance must be "clearly linked to the subsequent wrongful conduct", (116) meaning that "the relevant State organ intended, by the aid or assistance given, to facilitate the occurrence of the wrongful conduct". (117) As already mentioned, (118) this condition is contested and discussions exist among scholars regarding its mere existence. (119) Sufficient practice appears to be lacking in order to determine the necessity or exact scope of any subjective requirement of intent. (120) The relationship between such intent and the condition of knowledge also remains unclear. (121)

It follows from a certain interpretation, that the conditions of knowledge and intent are so closely linked that it is sufficient to prove knowledge or

(113) *Ibid.*, p. 462.
(114) *Ibid.*
(115) ARSIWA, Article 16, commentary, §3.
(116) *Ibid.*, §5.
(117) *Ibid.*
(118) Section II.
(119) *E.g. :* L. Ferro, *op. cit.*, p. 14 ; O. Corten, *op. cit.*, pp. 73-75 ; V. Lanovoy, *Complicity and its limits in the law of international responsibility*, *op. cit.*, pp. 101-103, 227-234 ; S. Zwijsen, M. Kanetake et C. Ryngaert, "State Responsibility for Arms Transfers. The Law of State Responsibility and the Arms Trade Treaty", *op. cit.*, p. 155.
(120) V. Lanovoy, *Complicity and its limits in the law of international responsibility*, 59, *op. cit.*, pp. 235-236.
(121) *Ibid.*, p. 235.

*virtual certainty* to deduce intent,(122) although assimilating intent with knowledge might be seen as problematic.(123)

Similarly, without confounding rules on State responsibility on the one hand, and individual criminal liability on the other, a parallel can be drawn between Article 16 ARSIWA and Article 30(2)(b) of the ICC Rome Statute.(124) According to the latter, the intent criterion is met not only when someone "means to engage in the conduct", but also when that person is aware "that a circumstance exists or a consequence will occur in the ordinary course of events".

In any case, it is not necessary to establish an element of intent where the conduct for which State responsibility is sought is also covered by a primary norm, which does not itself require any element of intent.(125)

The question whether the assisting State shall share the intent of the main perpetrator of the violation (*dolus specialis*) was raised by the ICJ in the *Genocide* case. However, it remained unanswered. The Court considered that, in any event, it was not established that the authorities of FRY had continued to furnish aid and assistance to the VRS, with knowledge of the specific genocidal intent of its leader.(126) Nonetheless, the aid and assistance brought by a State constitutes a distinct internationally wrongful act from the one it contributed to.(127) Thus, the two conducts must be considered to violate two distinct obligations. Accordingly, it is argued that, even if the aid or assistance must be linked to the wrongful conduct of the assisted State, Article 16 does not require the proof of a shared intent between the two States.

Finally, let us recall that, for State responsibility to be engaged, it is not necessary that the exported arms had been essential to the commission of the wrongful act. It is sufficient that they represented a significant, or substantial, contribution to the wrongful act.(128)

In view of the aforementioned interpretations of Article 16 and its conditions, it is argued that the requirements of knowledge and intent (if deemed applicable) of Belgium, in the context of its transfers to Saudi Arabia, are met. The available information establishes its certain knowledge or virtual

(122) H. Moynihan, *op. cit.*, p. 469.

(123) V. Lanovoy, *Complicity and its limits in the law of international responsibility*, *op. cit.*, p. 102.

(124) Rome Statute of the International Criminal Court, Rome, 17 July 1998, in force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544.

(125) O. Corten, *op. cit.*, p. 75.

(126) *Genocide* case, §422.

(127) C. Dominicé, "Attribution of conduct to multiple states and the implication of a State in the act of another State", in *The law of international responsibility. Oxford commentaries on international law*, Oxford, *Oxford University Press*, 2010, p. 286.

(128) ARSIWA, Article 16, commentary, § 5; C. Stiernon, *op. cit.*, p. 12; J. Crawford, *op. cit.*, p. 403.

certainty, or, at least, its *wilful blindness* to the violations. As for the highly contested intent requirement, it is firstly submitted that it does not need to be proven. However, even considering that proving intent is required, Belgium's *intent* to facilitate the considered violations can be deduced from the fact that it authorised the unlawful transfers, despite the information at its disposal.

## Conclusion

Saudi Arabia violates IHL and IHRL in the context of the Coalition's intervention in the Yemeni conflict, as repeatedly denounced by official documents. However, Belgium has continuously supplied Saudi Arabia with weapons, breaching its international obligations. Therefore, the export licences attributable to Belgium constitute an internationally wrongful act, for which the State should be held responsible.

More specifically, it has been established that Belgium's conduct breaches its obligations under Article 6(3) and Article 7 ATT; Common Article 1 to the Geneva Conventions of 1949; and constitutes a form of aid and assistance in terms of Article 16 ARSIWA.

All these obligations require a certain level of knowledge that the exported arms would be used by Saudi Arabia in the commission of violations of IHL or IHRL. However, none of them clearly define the respective thresholds of knowledge, or risk, required. Common minimal principles could, nevertheless, be inferred regarding their *subjective* element. Accordingly, States must take into consideration all the elements released by reliable sources when assessing an export request. This shall include the previous conduct of the importing State, as well as the previous violations committed by the receiving State. Thus, the required level of knowledge covers not only the certain knowledge, but also the cases in which a State *should have been aware* of the violations that would be facilitated by the transferred weapons. In the delicate determination of the exporting State's degree of knowledge under Article 6 ATT or 16 ARSIWA, due diligence seems to play the predominant role. Due diligence is also more generally reflected in the substance of the obligation to ensure respect of IHL under Common Article 1 to the Geneva Conventions.

Considering the substantive amount of information made available by reliable sources on previous and ongoing violations of IHL and IHRL by the Saudi Arabian-led Coalition in Yemen, it can at least be considered that Belgium *should have known* that the arms it exports would be used in the commission or facilitation of such violations. In addition, we have seen that Belgium cannot hide behind the absence of an embargo at the EU or UN level. Accordingly, it is here submitted that Belgium could be held responsible for the internationally wrongful act of continuous arms transfer to Saudi Arabia.

Today, the illegality of the transfers to Saudi Arabia appears to be more extensively acknowledged. (129) Subsequently, new questions can be raised concerning the modalities of implementation of the corresponding State responsibility at the international level. How, and by whom, could the international responsibility of Belgium be implemented regarding its arms exportation to Saudi Arabia since the Coalition's first intervention? This discussion could utilise Article 48 ARSIWA as a starting point. This Article entails that Belgian responsibility could be invoked by a "State other than an injured State". This is so because the existing norms regulating arms trade seem to be due to the international community as a whole. (130) In any event, this question calls for separate developments.

Another major issue which was left aside by this paper is the lack of transparency, which characterises not only the licencing process of the weapons (131) but also their movements subsequent to the initial transfer. Despite States' obligation to prevent their diversion, (132) arms' traceability has proven to be challenging. (133) This raises further questions in terms of the level of due diligence exercised by States in the control of the final destination of their weapons. (134)

(129) *See for example* the recent opinion on the transfers: E. David, D. Turp, B. Wood, V. Azarova, *Avis Sur La Légalité Internationale Des Transferts D'armes Vers L'Arabie Saoudite, Les Émirats Arabes Unis Et Les Membres De La Coalition Militairement Impliqués Au Yémen*, 10 December 2019.

(130) ARSIWA, Article 48(1)(b); International Criminal Tribunal for Ex-Yugoslavia, *The Prosecutor v. Zoran Kupreskic et al.*, Case No IT-95-16-T, Judgment (Trial Chamber), 14 January 2000, §519; *Barcelona Traction, Light and power company, limited*, Judgment, I.C.J. Reports 1970, p. 32, §33.

(131) Commission d'Accès aux Documents Administratifs, Avis N°. 304, 15 July 2019.

(132) ATT, Article 11 (1).

(133) E. David, D. Turp, B. Wood, V. Azarova, *op. cit.*, p. 106.

(134) M. Camello, "Les États européens face aux défis du détournement d'armes", *Éclairage GRIP, online* 24 December 2019, *available at:* https://www.grip.org/fr/node/2885, *accessed on* 26 December 2019.