

Arms Exports to Middle East: A Question of Legality

<http://www.balkaninsight.com:80/en/article/arms-exports-to-middle-east-a-question-of-legality-07-26-2016>

Human rights and arms experts believe some of Central and Eastern Europe's weapons trade with Saudi Arabia, the region's principal supplier of weapons to Syria, is likely breaking international law.

Lawrence Marzouk, Aubrey Belford and Joshua Futtersak

Since the escalation of the Syrian conflict in 2012, weapons have been pouring into four countries who supply arms to ongoing conflicts in Syria and Yemen: Saudi Arabia, Jordan, the United Arab Emirates (UAE), and Turkey.

Reporters for the Balkan Investigative Reporting Network (BIRN) and the Organized Crime and Corruption Reporting Project (OCCRP) found that since 2012 exports of weapons and ammunition worth at least 1.2 billion euros have been agreed by Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Slovakia, Serbia, and Romania [link to regional story].

The bulk of the deals, totalling 829 million euros, were made with Saudi Arabia.

The source countries have granted the arms export licences despite ample evidence that many weapons are ending up in Syria, with armed opposition as well as Islamist groups accused of widespread abuses.

Arms trade and human rights experts said the diversion of these weapons and their use by groups suspected of committing war crimes raised questions about the legality of the trade.

Patrick Wilcken, an arms trade researcher for Amnesty International, believes the evidence uncovered by BIRN and the OCCRP points to the "systematic diversion of weapons to armed groups accused of committing serious human rights violations".

"If this is the case, the transfers are illegal under the ATT (the United Nations' Arms Trade Treaty of 2014) and other international law and should cease immediately," he said.

A flawed system

The global arms trade is regulated by three layers of interconnected legislation -- national, European Union (EU) and international – but there are no formal mechanisms to punish those who break the law.

Beyond the blanket ban on exports to embargoed countries, each licence request is dealt with individually. As a result, the lawfulness of the approval hinges on whether countries have carried out due diligence on a range of issues, including the likelihood of the arms being diverted and the impact the export will have on peace and stability.

Roy Isbister, an expert on arms trade laws with the London-based NGO Saferworld, stresses due diligence entails more than simply ticking off a document checklist.

"Due diligence obliges states to not only collect paperwork, but to assess that paperwork. And, in turn, assessing paperwork is itself only part of a proper export risk assessment," he said.

"States that rely on end-use certificates and the like as sufficient justification for issuing licences are not meeting their legal obligations."

Bosnia and Herzegovina (BiH), Bulgaria, Croatia, the Czech Republic, Montenegro, Romania, Serbia and Slovakia are signatories of the ATT, which entered into force in December 2014, and lists measures to prevent the illicit trade and diversion of arms.

Member states of the EU are also governed by the legally-binding 2008 Common Position on arms exports, requiring each country to take into account eight criteria when accessing arms exports licence applications, including whether the country respects international human rights, the preservation of "regional peace, security and stability" and the risk of diversion.

As part of their efforts to join the EU, BiH and Montenegro have already accepted the measures and amending their national law. Serbia is in the process of doing so.

In May 2013, an EU arms embargo on exports to Syria was lifted, under pressure from the governments of France and the UK, to allow supplies to reach the Syrian opposition. However, all three layers of law remained in force, requiring countries to go beyond just checking the paperwork.

Weapons exports are initially assessed based on an end-user certificate, a key document issued by the government of the importing country which guarantees who will use the weapons and that the arms are not intended for re-export.

Authorities in Central and Eastern Europe told BIRN and the OCCRP that they also inserted a clause which requires the buyer to seek approval if they later want to export the goods.

Beyond these initial checks, countries are required to carry out a range of other risk assessments, although conversations with, and statements from, authorities revealed little evidence of that.

Diversions to Syria

A large number of arms exports to the Middle East are being diverted to Syria, according to evidence collected by BIRN and the OCCRP from contracts, UN reports, and social media postings showing Eastern-European-made weapons in heavy use in the conflict [note to regional story].

Reporters for BIRN and the OCCRP obtained Saudi contracts and end-user certificates with Serbian and Slovakian arms brokers detailing requests for vast amounts of old Soviet, Warsaw-Pact and Yugoslav era weaponry.

Arms expert Jeremy Binnie, Middle East and Africa editor from Jane's Defence Weekly, points out that weapons from Central and Eastern Europe are largely incompatible with Saudi Arabia's western-procured military equipment and are likely to be diverted to Syria, or, to a lesser extent, Yemen or Libya.

Article 11 of the ATT covers diversion of weapons from their intended recipient, and requires countries to take a series of measures to prevent this.

Although the Treaty suggests that countries may stop the export based on the risk of diversion, it does not clearly state that they must do so. States that discover their exports have been diverted must take “appropriate measures” according to national and international law, although this is not explained further.

The EU Common Position is clearer, however, and dictates that exporters must assess the “existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions”.

Bodil Valero, a Swedish Green Party Member of the European Parliament who was rapporteur for the last EU arms export report, believes this risk assessment is not being carried out properly. “Countries selling arms to Saudi Arabia or the MENA[Middle East-North Africa] region are not carrying out good risk assessments and, as a result, are in breach of EU and national law,” she explained.

Licensing authorities for Croatia, Slovakia and Montenegro all indicated to BIRN and OCCRP that they rely largely on verifying documents such as end-user certificates when approving an exports.

Only the Czech Foreign Ministry directly addressed the issues of human rights violations and diversion of weapons, pointing out that some licences had been turned down on that basis.

In November 2013, Serbia blocked the export of weapons and ammunition worth 20 million euros to Saudi Arabia amid widespread concerns that it would not be used by that country’s expensively-equipped security forces but would, instead, end up in Syria, according to a confidential report from Serbia’s Ministry of Defence obtained by BIRN and the OCCRP.

The documents also reveal fears were raised that Belgrade’s path to EU membership could be stymied and its relationship with long-time ally Russia damaged if the deal went ahead.

Yet just over a year later, and after the adoption of the ATT, Serbia approved exports of arms and ammunition worth 135 million euros to Saudi Arabia.

Asked about Serbia’s volte-face on the exports, Stevan Nikcevic, the state secretary at the Ministry of Trade responsible for approving arms export licences, said that the ministries that had blocked the earlier sale “didn’t have the same concerns” now.

The arms export licences to Saudi Arabia were approved because they would have a “positive impact” on the “operation of Serbia’s defence industry”, said the Serbian Ministry of Defence, one of the ministries consulted as part of the licensing process, in a written response to BIRN and the OCCRP.

While economic factors cannot be taken in consideration, Swedish MEP Valero believes they weigh heavily on the decisions made by countries in Central and Eastern Europe.

“They want to have people working in the arms industry with jobs, of course,” she said.

A UN Human Rights report, published in March 2015, also noted that Croatia, despite its international obligations, was showing “a disturbing lack of concern about the re-transfer and end use of weapons to countries including Syria and Iraq.”

Darko Kihalic, the head of the arms licensing department at the Croatian Ministry of the Economy, told BIRN and the OCCRP that there is little more that Croatia can do apart from checking the paperwork.

Saudi Arabia is not a “blacklisted” country, he said, adding: “Are there misuses? There probably are.”

Valero, however, underlined: “In the end it is always the [exporting] government that has responsibility. They take the decision and they have to be accountable for these decisions.”

Trail of atrocities

Under Article 6 of the ATT, the sale of weapons or ammunition is prohibited if the exporter has prior “knowledge” these will be used in war crimes or attacks directed against civilians.

A legal opinion on the sale of UK weapons to Saudi Arabia, prepared by London’s Matrix Chambers in December 2015, looked at what “knowledge” meant in this circumstance. It found that the ATT’s Article 6 would be breached if the exporter “was aware, or should normally have been aware” that they would be used in attacks directed against “civilians/civilian objects or in the commission of war crimes”.

Article 7 requires governments to assess the risk of the arms being used to commit or facilitate a serious breach of international humanitarian law or terrorist act and whether they “would undermine peace and security”.

If, despite mitigating measures, there is an “overriding risk of any of the negative consequences” the sale must be blocked.

While forces loyal to Syrian President Bashar Al-Assad and the Islamic State are acknowledged by groups such as a Human Rights Watch to have committed by far the most widespread atrocities, other moderate and Islamist opposition groups supported by the US and Gulf states have also been the subject of serious allegations, including claims of perpetrating war crimes.

Saudi Arabia-backed Jaysh Al-Islam, a powerful Islamist group, is alleged to have carried out executions, chemical weapon attacks and to have used caged prisoners as human shields, according to credible press reports and cases documented by Human Rights Watch

In May 2016, Amnesty International accused Fatah Halab, an alliance of fighters in Aleppo including western-backed moderates and Saudi-supported Islamists that recently received Serbian heavy machine guns, of “repeated indiscriminate attacks that may amount to war crimes” against a Kurdish neighbourhood.

Magdalena Mughrabi, of Amnesty International’s Middle East and North Africa programme, called on Turkey, the Gulf states and “other backers” to halt weapons transfers to rebels.

Moderate forces under the Free Syrian Army (FSA) umbrella, which have received military equipment from the US, have been implicated in human rights abuses, including shelling civilian areas and targeting civilian offices with a Yugoslav M79 rocket-launcher, according to Human Rights Watch. The targeting civilian areas and property are both reasons to block an arms export deal under Article 6 of the ATT.

This type of weapon was part of a batch of arms transported to Jordan in 2012 and 2013 and later transferred to Syria.

“I don't think anyone is fighting clean in Syria at the moment,” said Hadeel Al-Shalchi, a researcher and expert on the Syrian conflict at Human Rights Watch.

“On the government side [there are] airstrikes on hospitals, on marketplaces, on large civilian infrastructure areas. And from the armed opposition groups, what they do is fire mortars, locally made rockets, artillery ... into environments like Aleppo city.”

Amnesty’s Mughrabi added: “The international community must not turn a blind eye to the mounting evidence of war crimes by armed opposition groups in Syria. The fact that the scale of war crimes by government forces is far greater is no excuse for tolerating serious violations by the opposition.”

Way forward

While no formal sanctions mechanism exists to punish countries that flout their international obligations, Valero argues that non-governmental organisations and individuals can take legal action against governments if they believe that arms export laws are being broken.

In England, the Campaign Against Arms Trade has launched a judicial review against the British government for its continued exports to Saudi Arabia.

It alleges that the UK’s Department of Business, Innovation and Skills broke national, EU and ATT arms export laws as there is a clear risk these arms could be used by Saudi forces in Yemen in breach of international humanitarian law.

The British government argues that its weapons exports system is among the most robust in the world. The case is ongoing.

MEP Valero said that if action in national courts fails, other options exist.

“I think these [Central and Eastern European] countries could be taken to the European Court of Justice,” she said.

In March of this year, the Netherlands became the first EU country to stop arms exports to Saudi Arabia, citing mass executions and civilian deaths in Yemen.

[Read our investigation into the 1.2-billion-euro arms pipeline to the Middle East.](#)