

THE COMPLEX ISSUE OF THE FIREARMS INDUSTRY: AN ANALYSIS OF THE RESPONSIBILITIES OF STATES AND COMPANIES

The complex issue of the firearms industry: an analysis of the responsibilities of states and companies

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Summary: 1. Introduction; 2. Actions of the Mexican Government and Corporate Responsibility; 3. State Obligations; 4. Accountability and Guiding Principles; 5. International Regulation and Differentiated Responsibilities; 6. Conclusion; 7. References.

Abstract: The armed conflicts plaguing the world incur an immeasurable human cost, resulting in deaths, destruction, and widespread suffering. Amidst this bleak scenario, complex ethical and legal questions arise regarding the active involvement of states and private companies, especially those linked to the firearms industry. This article delves into the intricate issues surrounding the arms industry, examining the responsibilities of various actors, from production and marketing to the ultimate use of these weapons. The analysis addresses the crucial importance of regulation and oversight by states, emphasizing the need to establish stringent norms to control the production and sale of firearms. Furthermore, it explores the ethical and legal responsibilities of companies involved in this sector, highlighting the obligation to respect human rights throughout all phases of their operations. In this context, the research is grounded in a comprehensive bibliographic approach, utilizing sources such as books, scientific articles, official documents, and other relevant sources on the firearms industry. The relevance of John Ruggie's Guiding Principles on

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Business and Human Rights is also emphasized as a conceptual basis for evaluating the ethical conduct of companies in the arms industry. These principles advocate for the necessity of companies adopting due diligence in their activities, considering potential impacts on human rights. The application of these principles, therefore, emerges as a focal point in the quest for effective solutions. In a broader context, the article underscores the vitality of disarmament, arms control, and the mitigation of armed violence as crucial elements for the protection of human rights. This imperative demands close collaboration between governments, companies, and individuals, emphasizing the need for joint efforts to address and resolve the detrimental ramifications of the uncontrolled proliferation of firearms. In conclusion, understanding the interconnection between the arms industry, state regulation, and respect for human rights emerges as an essential step toward building a safer and more ethical world.

Keywords: FirearmsIndustry, Responsibility, Control, HumanRights, Regulation, Disarmament.

1. Introduction:

Arms manufacturing companies represent a highly competitive and lucrative sector in the global economy. Annually, they generate billions of dollars, driven by the demand from governments and military organizations across various parts of the world. Major corporations such as Lockheed Martin, Boeing, Raytheon, BAE Systems, and Northrop Grumman lead the sector, offering a wide range of products, from firearms and ammunition to air defense systems, warships, and military aircraft.⁴

Sales of weapons and military services by the top 100 companies in the sector reached the figure of 597 billion dollars in 2022, as revealed by the Stockholm International Peace Research Institute (SIPRI).⁵ Among the countries that hold top positions in the ranking are the United States, with a value of \$801 billion, followed by China with \$293 billion. Following them are India, the United Kingdom, and Russia, with \$65.9 billion. Together, these countries represent 61.7% of the total amount of \$2.113 trillion.⁶

Additionally, Brazilian exports of defense products increased in 2023, reaching \$1.1 billion in the first nine months, marking a growth of 63% compared to 2022. These figures

reflect the significance of the defense industry for the country's economy, as it accounts for approximately 5% of the GDP and generates 2.9 million jobs. Moreover, it is noteworthy that Brazil is the largest exporter of defense products in South America.⁷

Conflicts in various regions, including Ukraine and the Middle East, have driven an increase in the activities of arms companies. Orders for new weaponry reached unprecedented levels by the first half of 2023, with expectations of continued growth due to the ongoing conflict between Israel and Hamas⁸. Projections suggest that this growth trend will persist in the coming years, fueled by military modernization and geopolitical tensions.

Despite the profitability of the firearms industry, armed violence in the United States continues to claim the lives of over 40,000 people each year, leaving double that number injured. The economic cost associated with this violence is estimated to be around \$557 billion annually.⁹

Recently, arms companies have faced increased public scrutiny due to their sales to oppressive regimes or involvement in controversial conflicts. This pressure has generated demands for greater transparency and accountability within the industry.

The obligations of states in the face of commercial activities conducted without due care, whether negligently or intentionally by private companies associated with the firearms industry, are significant. States must ensure that their laws and regulations adequately address the arms trade, avoiding contributions to armed conflicts or human rights violations.

In turn, arms companies also bear important responsibilities. They must conduct their operations with diligence and transparency, ensuring that their products are not used to violate human rights or fuel conflicts.

⁷NASCIMENTO, Alexandre. Brasil aumenta em 63% a venda de armas e produtos de defesa para o exterior. Portal O Tempo. 30 de October de 2023. Available at: <<https://www.otempo.com.br/economia/brasil-aumenta-em-63-a-venda-de-armas-e-produtos-de-defesa-para-o-exterior-1.3263083>>. Accessed on: 5 Mar. 2024.

⁸ PALOMBARO, Valerio. "Finanças e armas, um recorde de US\$ 1 trilhão para apoiar a indústria militar." IHU - Instituto Humanitas Unisinos. Vatican News, 29 de fevereiro de 2024. Available at: <<https://www.ihu.unisinos.br/637016-financas-e-armas-um-recorde-de-us-1-trilhao-para-apoiar-a-industria-militar>>. Accessed on: 5 Mar. 2024.

⁹ EVERYTOWN FOR GUN SAFETY. The Gun Industry Rakes in Billions While Our Communities Pay the Price. 13 de janeiro de 2023. Available at: <<https://www.everytown.org/the-gun-industry-rakes-in-billions-while-our-communities-pay-the-price/>>. Accessed on: 5 Mar. 2024.

These responsibilities extend from manufacturing to the sale and distribution of firearms, requiring measures to ensure the responsible and legal use of their products.

Therefore, in light of the construction of an *Amicus Curiae* developed through an Advisory Opinion requested by Mexico from the Inter-American Court of Human Rights, this article aims to conduct an analysis of the scope of what is understood as the firearms industry. It addresses the responsibility of different actors involved and the role of states and international organizations in regulating the process from manufacturing to the use of firearms.

The methodology adopted in the article primarily involved bibliographic research, consisting of the analysis of books, scientific articles, official documents, and other sources on the topic of the firearms industry.

4. Actions of the Mexican Government and Corporate Responsibility

Initially, it is essential to understand the scope of what is meant by the firearms industry. In our analysis, we consider the industry itself, the arms trade, and the consumers of such products. We will address the responsibility of the actors involved in each scenario and the role of states and international organizations in regulating the process from manufacturing to the use of firearms.

The motivation for this discussion lies in the actions of the Mexican government concerning the trafficking of arms that affect its territory, especially those originating from the United States. These arms strengthen cartels, violate the human rights of Mexicans, and contribute to drug trafficking in the United States. Therefore, Mexico has filed two lawsuits in U.S. courts to discuss and understand the responsibility of companies that manufacture and sell these weapons, impacting other states, as seen in incidents that have occurred on Mexican soil.

Regrettably, these actions have not yielded any positive results, as in the United States, legislation is relatively lenient regarding holding the firearms industry accountable for the harmful effects on human rights. It is crucial to highlight the existence of the federal law in

the U.S., the Protection of Lawful Commerce in Arms Act (PLCAA)¹⁰, enacted in 2005, aiming to immunize companies in the industry. Consequently, several states have enacted similar laws to protect companies involved in the manufacturing and sale of firearms and ammunition, as well as dealers and other members of the industry.¹¹

The Mexican State had to resort to the Inter-American Court of Human Rights (IACHR), requesting an Advisory Opinion (AO) regarding the responsibility of private entities in the violation of human rights, especially concerning the applicability of Articles 4 and 5 of the American Convention on Human Rights (ACHR). The objective is to guide states on possible procedures to promote the judicial protection of victims of practices by the arms industry, regardless of the country they are located in and the local laws to which they are subject.

5. State Obligations

Regarding the obligations of states concerning the negligent or intentional trade of firearms, it is first necessary to establish laws and regulations that control the production, sale, transfer, and possession of firearms. These laws should ensure that only suitable and authorized individuals and entities have access to firearms and that they are used responsibly and legally.

The regulation of the production and use of weapons is so complex that it is necessary to regulate both the production processes and the commercialization and use of the artifacts produced by the arms industry with great caution.

In this regard, concerned about the cross-border movement of such products, the United Nations General Assembly in 2013, through the Arms Trade Treaty (ATT)¹², outlined in its articles 5, 7, 11, and 14, that states should establish effective national regulations to

¹⁰CONGRESS.GOV. Protection of Lawful Commerce in Arms Act. Available at: <<https://www.congress.gov/bill/109th-congress/senate-bill/397/text>>. Accessed on: 01 Jun. 2023.

¹¹GIFFORDS LAW CENTER. Gun industry immunity. Available at: <<https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/>>. Accessed on: 03 Jun. 2023.

¹²ICRC. 2013 Arms Trade Treaty. Available at: <https://www.icrc.org/en/download/file/148645/dp_consult_41_2013_arms_trade_treaty_web.pdf>. Accessed on: 01 Jun. 2023.

control the transfer of arms. These regulations should take into account factors such as the risk of diversion, misuse, and humanitarian impact.

States must exercise effective oversight over the activities of arms manufacturing companies, ensuring they are acting in accordance with laws and regulations as defined in the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials. Article 5 of the mentioned document establishes that states should request companies to appropriately mark ammunition and firearms during manufacturing, providing information such as the manufacturer's name, place of manufacture, and serial number. This practice is crucial to ensure product traceability and link the manufacturer's commitment to the quality of products produced through processes under their responsibility.

In this same document, there are other important issues that should be noted by the States to ensure greater control over the arms trade, such as security measures, export, import, and transit licenses or authorizations, maintenance of information, and information exchange. These identifying elements serve another crucial purpose, namely to ensure that the products are properly legalized, even when destined for cross-border consumption

It is the responsibility of the States to ensure that companies proven to act negligently in the marketing or manufacturing of firearms are held accountable for the damages caused. However, the State's ability to act is significantly hindered when dealing with manufacturers outside its jurisdiction, making it challenging to hold them accountable for criminal actions. Laws vary widely among nations, and particularly in the regulation of the arms industry, there is the additional challenge of confronting the influence they exert on legislative bodies. In some countries, this influence is backed by the economic Power of these industries. Supporting this argument, the news website DW reported in 2021 that the world's top 100 arms producers collectively generated \$592 billion¹³ in revenue, with American arms manufacturers accounting for approximately half of global sales.

In this context, Damiani, in his article titled "War Economy: an analysis of the relationship between the military-industrial complex and imperialism in capitalist accumulation," establishes the organic composition of capital, predicting that: Department

¹³ DW. O mundo gasta mais com armas, apesar da crise econômica. Available at: <<https://www.dw.com/pt-br/mundo-gasta-mais-com-armas-apesar-de-crise-econ%C3%B4mica/a-63981690>>. Accessed on: 01 Jun. 2023.

1 consists of capital goods; Department 2 is characterized as consumer goods, and; Department 3 involves destructive commodities. Department 3 has emerged as a lucrative sphere in capital accumulation. The military-industrial complex has become a highly profitable sphere of production, meaning that investing in this area is considered a very interesting practice for the expanded production of capitalism in contemporary society.

Therefore, the significant challenge imposed on States is evident in controlling the ambitions of arms companies that often disregard human rights, prioritizing their interests over the value of human life. These companies play a prominent role in their interactions with the state economy.

6. Accountability and Guiding Principles

If the task seems challenging for states, there are somewhat reassuring facts on the international level. There is the case adjudicated by the International Criminal Court (ICC) in the Lubanga case, where the trafficking of weapons to armed groups recruiting children as soldiers was deemed a war crime. This is a successful instance in which an international body acted positively, emphasizing states' responsibility to regulate the arms trade.

Additionally, in this transformative scenario, we have the work of John Ruggie, who seeks to hold companies accountable for human rights violations by establishing the Guiding Principles on Business and Human Rights¹⁴. These principles impose obligations on both companies and states to take measures to prevent human rights violations. They also guide efforts to minimize the negative impacts that business activities may impose on human rights

Danielle Anne Pamplona and Ana Rachel Freitas Silva¹⁵ explain the principles and their relevance in practice. In this case, the need for the implementation of the three principles (protect, respect, and remedy) by states is evident, encouraging companies to adopt internal preventive measures against human rights violations or to minimize potential impacts from established conduct.

¹⁴ RUGGIE, John Gerard. *Protect, respect and remedy: a framework for business and human rights*. 2008. Available at: <<https://digitallibrary.un.org/record/625292>>. Accessed on: 13 de Mai. 2023.

¹⁵ SILVA, Ana Rachel Freitas. PAMPLONA, Danielle Anne. Os Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos: houve avanços? Available at: <[Principios_Orientadores_da_ONU_para_empresas_e_direitos_humanos_houve_avancos_20191230_114879_kuisvm](#)>. Accessed on: 13 Mai. 2023.

Regarding the responsibilities of firearm companies, there is an expectation that some companies will exercise supervision over operational processes to ensure that their actions do not contribute to human rights violations or illegal firearms trade. This presupposes the implementation of export control measures, verification of end-users, and an assessment of the risks of the misuse of their weapons.

Different responsibilities exist depending on the geographical location of the company. When products are intended for the domestic market, they are subject to the internal laws of their countries, making controls more effective and the manufacturer's accountability more efficient. However, when products are destined for the international market, accountability becomes more complex, difficult to control, and enforce, as the laws in destination countries do not directly affect the manufacturers.

In terms of international trade, exporting companies must observe export control laws and regulations, respect international restrictions and embargoes, and assess the risk of diversion or misuse of weapons. However, even in this scenario, controls and accountability instruments are fragile. The main international document addressing corporate accountability for human rights violations is the Guiding Principles on Business and Human Rights. Its application depends on the legislation of each country and should be examined by the judiciary, which may consider the possibility of holding manufacturers accountable extraterritorially.

Despite the complexity of the international scenario affecting global production, there are some situations that make the landscape less bleak, such as the case of *Doe vs. Nestlé*¹⁶.

. In 2015, the company adopted the Guiding Principles on Business and Human Rights, transforming corporate responsibility to respect human rights into a set of direct questions that companies must answer. While the mentioned case may not bear any resemblance to situations involving firearms manufacturers, it does provide relevant information about the importance of companies committing to conducting due diligence.

¹⁶ SUPREME COURT OF THE UNITED STATES. *Nestle USA, inc Vs. Doe et al.* Available at: <https://www.supremecourt.gov/opinions/20pdf/19-416_i4dj.pdf>. Accessed on: 02 Jun. 2023.

The recommendation for companies to conduct due diligence is defined in Principle 13¹⁷ of the Guiding Principles on Business and Human Rights. It states that companies should avoid causing or contributing to adverse human rights impacts through their own activities and should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services through their business relationships.

At this point, it is important to highlight the international document titled Extractive Industries Transparency Initiative (EITI)¹⁸, which constitutes a global initiative aimed at promoting transparency and accountability in extractive industries by disclosing information about their operations, payments, and contracts. The goal is to combat corruption and enhance international governance. Although not specific to the trade of firearms, this instrument also serves as inspiration for improving the regulation of arms manufacturing companies.

Therefore, to prevent arms manufacturing companies from violating human rights, their activities and practices should be transparent, providing clear information about their supply chain, clients, and corporate responsibility policies.

There is also the international agreement involving 33 nations titled the "*Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*"¹⁹, which holds a soft law status. This arrangement establishes guidelines for the export control of conventional arms and dual-use goods. After a state signs and ratifies the document, it can require companies to comply with the agreement's guidelines.

7. International Regulation and Differentiated Responsibilities

Companies that fail to adhere to national and international laws regarding human rights must be held accountable for the violations or illegal activities they engage in. This includes cooperating with investigations, providing reparations for damages caused, and implementing corrective measures to prevent future violations.

¹⁷ NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS. Guiding Principle 13. Available at: <<https://globalnaps.org/ungp/guiding-principle-13/>>. Accessed on: 02 Jun. 2023.

¹⁸ EITI. The EITI Standard. Available at: <https://eiti.org/sites/default/files/attachments/english_eiti_standard.pdf>. Accessed on: 02 Jun. 2023.

¹⁹ CLAVE. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Available at: <<https://inecip.org/wp-content/uploads/Acuerdo-Wassenaar.pdf>>. Accessed on: 02 Jun. 2023.

It's important to note that there are significant differences in responsibility between companies that manufacture firearms and those that sell them. Manufacturers of firearms bear primary responsibility for the safety, quality, and compliance of their products, similar to any other manufacturing process. They must ensure that their weapons are produced according to established standards, meet legal requirements, and do not have defects or failures that could pose a risk to consumers. This is implicitly related to industry quality standards.

Companies engaged in the sale and distribution of products manufactured by these industries also have their share of responsibility. This responsibility includes complying with the laws and regulations applicable to the arms trade in their country. Specifically, when dealing with imported products, these actors must ensure that the products comply with the customs requirements of the destination country. They should also ensure that sales transactions are conducted legally, avoiding sales to potential consumers who are legally prohibited, conducting background checks, and respecting export and import restrictions — in essence, adhering to the rules imposed by the state on its citizens for acquiring weapons.

If a weapons sales company neglects these obligations and illegally imports or sells weapons improperly or for illegal purposes, they can be held accountable for any damage or violation of human rights resulting from these transactions.

To complete the accountability circuit on this issue, it's also necessary to consider the responsibility of consumers in the use of weapons. The final decision on the proper use of resources ultimately rests with the individual who possesses the weapon. Therefore, they bear full responsibility for any misuse.

10. Conclusion

A problem surrounding the firearms industry is complex and controversial, with direct impacts on society involving various stakeholders. This study addressed the analysis of responsibility among different actors, ranging from States and international organizations to firearm manufacturing, selling, and consuming companies.

States bear a primary obligation to regulate and control this industry, establishing laws and regulations to oversee the production, sale, transfer, and possession of firearms. Monitoring the activities of manufacturing companies and imposing sanctions on those acting negligently or intentionally are crucial measures to ensure societal safety.

On the other hand, companies in the firearms sector must act responsibly and ethically, ensuring the quality and safety of their products and preventing their weapons from being used for illicit purposes. Moreover, transparency in their operations and compensating for damages caused by their negligent or intentional actions are essential.

The challenge of holding companies accountable operating in different jurisdictions is significant. However, there are international initiatives, such as the Guiding Principles on Business and Human Rights, seeking to hold companies accountable for human rights violations.

The promotion of disarmament, arms control, and the reduction of armed violence are indispensable measures to protect human rights and build a safer and more just society. International organizations have the responsibility to take a stance on this issue, encouraging States and companies to adhere to international treaties and regulate them internally for the effective international protection of human rights.

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