22 February 2022

English only

Human Rights Council
Forty-ninth session
28 February–1 April 2022

Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military

Conference room paper of the Special Rapporteur on the situation of human rights in Myanmar

Summary

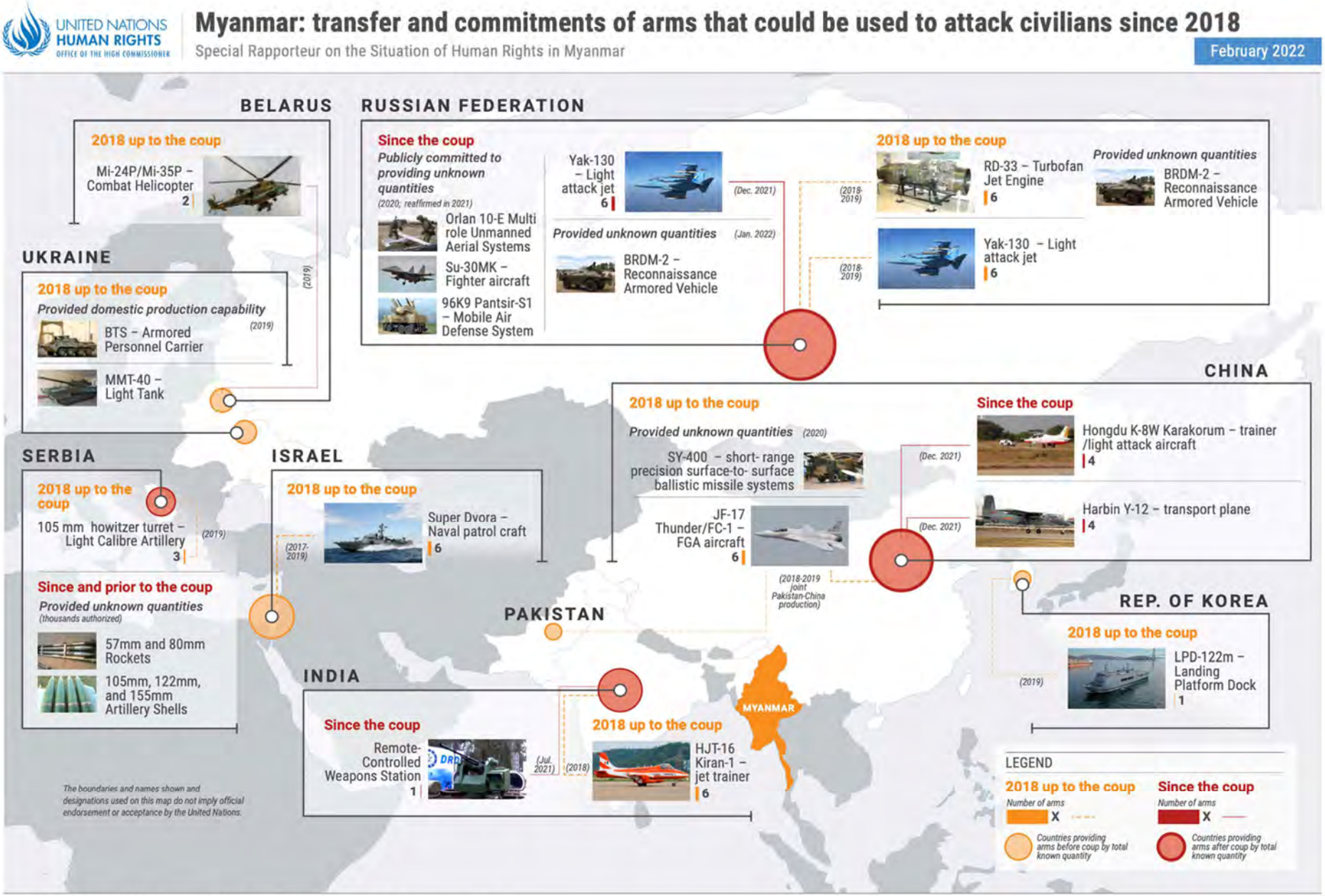
The Myanmar junta is committing gross human rights violations against the people of Myanmar. It is bombing villages indiscriminately, forcibly displacing hundreds of thousands. Its troops have engaged in mass killings on numerous occasions and tortured dozens to death. It is criminalizing basic human rights, including the right to express dissent—both on the streets and online. It is actively committing probable crimes against humanity and war crimes.

This paper examines a key aspect of the international community's response to the Myanmar military's illegal coup and these subsequent violations of international law – the supply of weapons to the military junta that are used to attack the people of Myanmar. It also makes recommendations to reduce the flow of weapons to the junta and save lives.

The paper details known arms transfers from Member States to Myanmar since 2018, and in particular since the military coup on 1 February 2021, that could be used by the Myanmar military to attack civilians. The Special Rapporteur also discusses the legality of these transfers, applying international humanitarian law, customary international law related to state responsibility, and the Arms Trade Treaty, where applicable.

As the Myanmar military's attacks against civilians escalate, it is critical that Member States immediately consider how they might alter their response to this crisis. This can begin by examining the role of the Security Council and Member States since the junta's coup one year ago. How have the actions, or inaction, of the Security Council and Member States contributed to the crisis in Myanmar? What changes can and must be made to save lives, reduce human suffering, and protect the human rights of the Myanmar people?

Amongst his recommendations, the Special Rapporteur urges the Security Council to impose a comprehensive arms embargo and targeted economic sanctions against the Myanmar military. At the very least, he urges Member States of the Security Council to immediately propose a resolution to stop the flow of weapons that are actively being used by the military junta to attack Myanmar civilians: jet aircraft, attack helicopters, armored vehicles, light and heavy artillery, missiles and rockets that can be used to target ground targets, artillery shells, and small arms. The choice between action and inaction is literally a matter of life and death.



Updated: 18 February 2022 Sources: OHCHR, open sources Contact: ohchr-sr-myanmar@un.org

Contents

		Page
I.	Introduction	4
II.	Mandate and Methodology	6
III.	International Legal Framework	7
	A. Arms Embargos	7
	B. International Humanitarian Law	8
	C. Customary International Law on State Responsibility	9
	D. Arms Trade Treaty	10
IV.	Myanmar Context: Clear Knowledge of Atrocity Crimes and use of Internationally Procured Weapons	11
	A. Pre-coup attacks against civilians and use of international arms	11
	B. Post-coup attacks against civilians and use of international arms	12
V.	Arms Transfers to Myanmar Military Since 2018	13
	A. Tier I	14
	1. China	14
	2. Russian Federation	16
	3. Serbia	19
	B. Tier II	21
	1. India	21
	C. Tier III	22
	1. Pakistan	22
	2. Belarus	23
	3. Ukraine	24
	D. Tier IV	26
	1. Israel	26
	2. Republic of Korea	27
VI.	Member States with Arms Embargos	29
VII.	Third-Party Transfers	31
VIII.	Conclusions	32
IX.	Recommendations	33
APP. 1	Member States with Arms Embargoes Against Myanmar	36

I. Introduction

1. Since the illegal military coup led by Senior General Min Aung Hlaing one year ago, the military has killed more than 1,500 civilians, detained at least 12,000, and forcibly displaced over 440,000 people, 150,000 of whom are children.[1] There is strong evidence that the junta has committed war crimes and crimes against humanity, including acts of murder, persecution, imprisonment, sexual violence, enforced disappearance, deportation and forcible transfer, and torture.[2] Fundamental rights, including freedom of expression, assembly and association have been criminalized. The situation of human rights in Myanmar is dire and deteriorating.

2. To carry out its attacks, the junta has utilized internationally acquired jet aircraft, combat helicopters, armored personnel vehicles, and missiles to target civilians in violation of humanitarian law and international criminal law. Attacks against civilians, and the indiscriminate bombing of homes and villages, are escalating.

3. Since the coup, three Member States have authorized the supply of the types of weapons to the Myanmar military that it is using to attack civilians: the Russian Federation, China and Serbia. As this paper demonstrates, these transfers have occurred with the full knowledge that they would be used to attack civilians, in probable violation of international law.

4. The Special Rapporteur strongly urges that one or more Member States of the Security Council introduce a resolution that will prohibit weapons that can be used to attack civilians from being transferred to the Myanmar military. While adoption is far from assured, the people of Myanmar deserve a fully transparent debate and to know where the Member States of the Security Council stand on a question that is literally a matter of life or death.

5. On 18 June 2021, the General Assembly adopted a resolution calling for Member States to prevent the flow of arms into Myanmar.[3] The resolution was welcomed by the people of Myanmar, civil society organizations (CSOs) and international human rights advocacy groups. The failure of the resolution to have any discernable impact on the crisis and the capacity of the junta to launch attacks on civilians, however, has led to frustration, despair, and cynicism. While not a single member of the Security Council voted against the General Assembly resolution, the Security Council has yet to consider taking action to stop or even limit the flow of weapons to the military junta.

6. The call for the international community to cut off the Myanmar military's access to weapons in response to gross violations of international law is not new. The Independent International Fact-Finding Mission on Myanmar (FFM) made exactly this recommendation in 2018, when it released its detailed report finding the military acted with "genocidal intent" in conducting deadly "clearance operations" against the Rohingya in 2017. The FFM in its report recommended that "States should not authorize the transfer of arms to Myanmar,

[1] Assistance Association for Political Prisoners, Daily Briefing in Relation to the Military Coup, 17 Feb 2022, https://aappb.org/?p=20197; UNOCHA, Myanmar: Humanitarian Update No. 15, 15 Feb 2022, https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Myanmar%20-%20Humanitarian%20Update%20No.15_FINAL.pdf; Save the Children, "Violence intensifies in Myanmar as at least 150,000 children forced from their homes in the year since military coup," 28 Jan 2022, https://www.savethechildren.net/news/violence-intensifies-myanmar-least-150000-children-forced-their-homes-year-military-coup.

[2] *See, e.g.,* A/HRC/48/18, Report of the Independent Investigative Mechanism for Myanmar, 5 Jul 2021, para. 35, https://undocs.org/A/HRC/48/18 ("The available information indicates that security forces have carried out a widespread and systematic attack on the civilian population. In this context, the reports of murders, sexual assaults, arbitrary detentions, enforced disappearances, torture and persecution collected by the Mechanism, if substantiated, would amount to crimes against humanity."); Statement of Nicholas Koumjian, Head of the Independent Investigative Mechanism for Myanmar, on the anniversary of the military's seizure of power in Myanmar, 1 Feb 2022, https://iimm.un.org/statement-of-nicholas-koumjian-head-of-the-independent-investigative-mechanism-for-myanmar-on-the-anniversary-of-the-militarys-seizure-of-power-in-myanmar/.

[3] A/RES/75/287, The Situation in Myanmar, Resolution adopted by the General Assembly on 18 June 2021, o.p. 7, https://undocs.org/en/A/RES/75/287.

considering the overriding risk that they would be used to undermine peace and security and in the commission of serious crimes of international law."[4]

7. Despite the clear recommendation by the FFM beginning in 2018, and despite the atrocity crimes committed by the Myanmar military since 1 February 2021, arms continue to flow to the military.

8. The Myanmar military has a well-documented history of using internationally-acquired arms in probable war crimes and other atrocity crimes for at least a decade. Thus, where Member States have authorized arms transfers, they knew, or should have known, that their arms would be used to target civilians. As such, these arms transfers to the Myanmar military are not only reprehensible, they also likely violate international law.

9. The paper focuses on those arms transfers that violate international humanitarian law, treaty law, and customary international law on State responsibility by virtue of the Myanmar military's ability to use those arms to attack civilians. For the purposes of this report, the Special Rapporteur draws a distinction between transfers of weapons that are likely to be used to attack civilians, and those that are likely not to be used in such a manner. While transferring weapons in the latter category, such as submarines or missile defense systems, may not violate international law, he finds these transfers troubling as they may afford a legitimacy that the junta craves. A prohibition of their transfer to the Myanmar military should also be considered. For the purposes of this paper, however, the Special Rapporteur focuses his analysis on those weapons that have a direct nexus to attacks on civilians and therefore present plausible violations of international law.

10. The paper analyses these arms transfers from two temporal perspectives. Firstly, and most egregiously, it seeks to identify arms transfers that have taken place since the 1 February 2021 coup. These transfers are of particular concern given that since its illegal coup, the junta has been consistently and grievously attacking the people of Myanmar using foreign-obtained jet aircraft, combat helicopters, artillery, armored personnel vehicles, and bombs. Secondly, the Special Rapporteur has also sought to identify weapons transfers that have taken place since 2018—using that time frame as the point of reference given it was after the military's genocidal attacks against the Rohingya in Rakhine State and after the publication of the FFM report, both of which demonstrated that the military had the willingness to use weapons to commit human rights abuses and atrocity crimes.

11. The Special Rapporteur believes that the United Nations and broader international community must recalibrate their response to the crisis. Without such a course correction, he fears that the civilian death toll, as well as the number of people arrested, tortured and displaced, will rise significantly in the coming weeks and months.

12. Specifically, the Security Council should impose a comprehensive arms embargo on the Myanmar military, adopt targeted economic sanctions, and refer the situation in Myanmar to the International Criminal Court so that those who are responsible for this crisis will be held fully accountable. At the very least, a prohibition on the sale of weapons that have or could be used to attack civilian targets should be established.

13. The Special Rapporteur also believes that blocking the junta's access to weapons and armaments must be coupled with coordinated action to cut its access to revenue, just as the people of Myanmar are doing through widespread boycotts on goods linked to the military. Without legitimacy and against broad opposition among the people of Myanmar, the military junta operates as a foreign occupying military power. Military force is therefore its only means of exerting control. While perceived by junta leaders as a strength, the size of the military is also a vulnerability as it requires significant resources to equip and sustain. If the revenues necessary to maintain such a military are reduced, the junta's capacity to assault, control and terrorize the people of Myanmar will diminish.

14. To degrade the junta's finances, the Security Council should also impose targeted economic sanctions against the Myanmar military's sources of funding. Absent action on this front, Member States should impose their own targeted financial sanctions. Some Member States have already done so. Many options exist for the Security Council and Member States

[4] A/HRC/39/CRP.2, Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, 17 Sep 2018, para. 1709, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf.

to cut the junta's access to revenue. The largest single-source of revenue to the military, the oil and gas sector, has not been sanctioned. And the junta retains near unfettered access to billions of the State of Myanmar's foreign exchange reserves, which should be cut off. Other targets include non-lethal materials that the junta needs to continue waging war, such as jet fuel for its fighter aircraft and helicopters and Myanmar business associates closely aligned with the military.

15. The Special Rapporteur recognizes that even if his recommendations are fully implemented, the junta will not immediately stop its war against the people of Myanmar. Stopping the flow of all new weapons, however, would degrade the junta's ability to sustain its assaults on the people of Myanmar.

16. There is no single action that will resolve the crisis in Myanmar. But, unless the international community makes meaningful, timely changes to how it responds, we can fully expect that conditions in Myanmar will deteriorate even further as the junta continues its flagrant and brutal violation of international human rights and humanitarian law. More people will be arrested, tortured and killed, more villages bombed, and the human rights of more and more people violated if there are no changes to how the world reacts to these atrocities.

II. Mandate and Methodology

17. The Special Rapporteur submits this conference room paper to the Human Rights Council in accordance with his mandate as provided by the Council in resolution 46/21.

18. Resolution 46/21 requested "the Special Rapporteur to undertake thematic research with a view to monitoring the implementation of the recommendations made by the independent international fact-finding mission on Myanmar (FFM), and to provide detailed updates on the issues covered by the mission in its reports and conference room papers."[5]

19. Two of the key recommendations the FFM made to the United Nations and its Member States were to impose a comprehensive arms embargo on Myanmar and targeted sanctions on its military.[6] The Special Rapporteur submits this paper to provide the Council with the requested information on progress toward the implementation of the FFM's recommendation for a comprehensive arms embargo. A future paper will focus on targeted economic sanctions.

20. In order to develop this paper, the Special Rapporteur conducted extensive outreach to Member States, researched global arms trafficking databases and customs records, reviewed Member States' policies and practices on weapons transfers, and carried out open-source research on weapons systems. He extends his sincere gratitude to individuals and organizations who provided the information and assistance that helped to make this report possible.

21. Outreach to Member States took the form of meetings with Member States' missions in New York and Geneva and written correspondence. The Special Rapporteur also sent a call for inputs to all Member States relating to their policy on arms sales vis-à-vis Myanmar.[7]

22. In advance of the publication of this paper, the Special Rapporteur provided relevant extracts to every Member State identified as having transferred arms to the Myanmar military since 2018. He provided Member States initial findings in October 2021 and near final draft language throughout January and February 2022. He received substantive feedback from the Republic of Korea, Serbia, Ukraine, and India and appreciates their engagement with his mandate. Their feedback was extremely valuable and appreciated. The Government of China noted to the Office of the High Commissioner of Human Rights that they believed the paper was outside the mandate of the Special Rapporteur, but provided no further feedback on the

[5] A/HRC/RES/46/21, Situation of human rights in Myanmar, 24 March 2021, para. 49, https://undocs.org/A/HRC/46/L.21.

[6] *See, e.g.*, A/HRC/39/CRP.2, *supra* note 4, para. 1700, 1709.

[7] Call for contributions: Special Rapporteur on the situation of human rights in Myanmar, 6 Jun 2021, https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/MM/Pages/Arms-transfers-to-Myanmar.aspx.

factual allegations provided to them. Russia, Pakistan, Belarus, and Israel did not respond to the Special Rapporteur's communications.

III. International Legal Framework

23. To assess the legality of arms transfers to Myanmar, the Special Rapporteur examined international humanitarian law, as codified in the Geneva Conventions, customary international law related to State responsibility, and the Arms Trade Treaty.

A. Arms Embargos

24. In response to the coup and the military's attacks on the people of Myanmar that followed, on 18 June 2021, the General Assembly adopted, by an overwhelming majority, a resolution that "calls upon all Member States to prevent the flow of arms into Myanmar."[8] Resolution 75/287 passed by a vote of 119 in favor, one against (Belarus), and 36 abstentions.[9] While not a single member of the United Nations Security Council voted against the resolution, the Security Council has not considered, let alone voted on a resolution that could make the UNGA resolution binding on Member States. Forty-four Member States have established arms embargoes against Myanmar and more have stated a clear policy that they will not export arms to Myanmar.[10]

25. General Assembly resolutions reflect the views of Member States and provide policy recommendations but are non-binding. The implementation of the recommendations contained in resolutions is the responsibility of each Member State.[11] Member States impose arms embargos under their domestic legal frameworks, where such frameworks exist.

26. The Special Rapporteur notes that the best way to achieve a comprehensive, enforceable arms embargo is through a binding resolution of the UN Security Council. The Security Council's authority to impose arms embargos emanates from its power under Chapter VII to take measures "to maintain or restore international peace and security," including non-military measures in which it may "call upon the Members of the United Nations to apply such measures."[12] Since the founding of the United Nations, the Security Council has imposed mandatory arms embargos in at least 27 separate situations.[13] Arms embargos can apply to an entire country, prohibiting arms from entering a country's borders, or be targeted to specific parties within a country.[14] Security Council embargos typically prohibit the direct and indirect supply of weapons, ammunition, military vehicles and equipment, as well as financial and technical military assistance.[15]

27. A key rationale for imposing a Security Council arms embargo is the Responsibility to Protect (R2P) doctrine. R2P holds that States have a duty to protect their own citizens from "genocide, war crimes, ethnic cleansing and crimes against humanity," and if they are incapable or unwilling to do so, the international community itself bears the responsibility to

[8] A/75/287, *supra* note 3.

[9] A/75/PV.83, United Nations General Assembly, Official Records of the 83rd Plenary Meeting, Agenda item 34, Draft resolution A/75/L.85/Rev.1, 18 Jun 2021, at 5/19, https://undocs.org/en/A/75/PV.83.

[10] *See* Appendix 1 and Section IV. Member States with Arms Embargos, below.

[11] Permanent Mission of Switzerland, "The GA Handbook: A practical guide to the United Nations General Assembly," 2017, at 52, https://www.eda.admin.ch/dam/mission-new-york/en/documents/UN_GA__Final.pdf.

[12] United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 41, https://www.un.org/en/about-us/un-charter/chapter-7.

[13] Stockholm International Peace Research Institute (SIPRI), "Arms Embargos," https://www.sipri.org/databases/embargoes.

[14] *See, e.g.*, S/RES/864 (1993), Security Council resolution 864 (1993) [on extension of the mandate of the UN Angola Verification Mission II and possible arms and oil embargo against UNITA], o.p. 19, https://digitallibrary.un.org/record/197326/files/S_RES_864%281993%29-EN.pdf.

[15] *See, e.g.*, S/RES/2127 (2013), Adopted by the Security Coincol at its 7072nd Meeting, 5 Dec 2013, o.p. 54, https://www.sipri.org/sites/default/files/2016-03/UN-Resolution-2127_0.pdf.

protect that State's citizens.[16] The General Assembly resolved that the responsibility to protect should be implemented through "collective action, in a timely and decisive manner, through the Security Council . . . ."[17] In his report on "Implementing the Responsibility to Protect," former UN Secretary General Ban Ki-Moon highlighted the importance of arms embargos as tools to implement R2P. He stressed: "Particular attention should be paid to restricting the flow of arms or police equipment, which could be misused by repressive regimes that are manifestly failing to meet their core responsibilities [to protect]."[18] The Secretary General also highlighted that while only the Security Council has the authority to impose binding arms embargos, it "has not been uncommon for regional or subregional bodies or ad hoc groups of Member States to undertake such measures without formal prior authorization from the Council." [19]

B. International Humanitarian Law

28. In the absence of a global sanctions regime imposed by the Security Council, States have other obligations under international humanitarian law, as expressed in the Geneva Conventions, that are triggered in the context of a non-international armed conflict. Situations of non-international armed conflict now arguably exist in Kayah, Kayin, and Chin States, and Sagaing and Magway Regions, in addition to the States identified in the FFM's 2018 and 2019 reports: Kachin, Shan, and Rakhine States.[20]

29. Those Member States that continue to provide weapons and associated equipment to another State that is engaged in violations of international humanitarian law must recognize that those transfers in many cases violate international humanitarian law. Common Article 1 to the Four Geneva Conventions requires States to "undertake to respect and to ensure respect for the present Convention in all circumstances."[21] The International Committee of the Red Cross's (ICRC) authoritative commentary on Article 1 further requires that States "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."[22] Thus, if a transferring state knows that the state receiving the weapons systematically commits

[16] A/RES/60/1, Resolution adopted by the General Assembly on 16 Sep 2005, para. 139, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf.

[17] *Ibid*.

[18] A/63/677, UN Secretary-General, "Implementing the Responsibility to Protect," 12 Jan 2009, para. 58, https://undocs.org/A/63/677.

[19] *Ibid*.

[20] To qualify as a non-international armed conflict under international humanitarian law two overarching criteria must be met: (1) the armed groups involved must show a minimum degree of organization, and (2) the armed confrontations must reach a minimum level of intensity. The level of intensity of the violence is determined by examining the duration and gravity of the armed clashes, the type of government forces involved, the number of fighters and troops involved, the types of weapons used, the number of casualties and the extent of the damage caused by the fighting. The level of organization of the armed group is assessed by looking at factors such as the existence of a chain of command, the capacity to transmit and enforce orders, the ability to plan and launch coordinated military operations, and the capacity to recruit, train and equip new fighters. The Special Rapporteur took these factors into account in coming to the determinations regarding non-international armed conflicts, and highlights here the large numbers of deaths and clashes/attacks in these regions (utilizing ACLED data up to 1 February 2022 [note: the Special Rapporteur utilizes ACLED data as representative of the intensity of fighting and cannot vouch for its absolute accuracy]), as well as level of organization, with each of these areas having organized and operational EAOs and/or PDFs: Sagaing Region: 5,069 deaths & 1,775 separate battles/violence against civilians/explosions; Magway Region: 1,441 deaths & 670 separate battles/violence against civilians/explosions; Kayah State: 712 deaths & 309 separate battles/violence against civilians/explosions; Kayin State: 128 deaths & 339 separate battles/violence against civilians/explosions; Chin State: 97 deaths & 313 separate battles/violence against civilians/explosions. *See* ACLED Data Export Tool, (Country: Myanmar, Event Type: All, From: 02/01/2021, To: 02/01/2022), https://acleddata.com/data-export-tool/.

[21] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 Aug 1949, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.30_GC-I-EN.pdf.

[22] Commentary of 2016, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949, Article 1: Respect for the Convention, International Committee of the Red Cross, para. 153 and 168, https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1#83_B.

violations of international humanitarian law using certain weapons, the transferring state has to deny further transfers of those weapons, even if those weapons could also be used lawfully.[23] Common Article 1 applies to non-international armed conflicts and international armed conflicts equally.[24]

C. Customary International Law on State Responsibility

30. Under customary international law concerning State responsibility, any state that continues to sell arms to another state with knowledge of the "internationally wrongful acts" the state is committing with those arms is itself likely aiding and abetting in those wrongs. As articulated in Article 16 of the International Law Commission's (ILC) draft Articles on Responsibility of States for Internationally Wrongful Acts, "a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."[25] "Internationally wrongful act[s]," include, but are not limited to, crimes against humanity, genocide, and war crimes.[26] The ILC's Commentary to Article 16 specifically highlights arms transfers as a form of aid or assistance:

> "a State may incur responsibility if it . . . provides material aid to a State that uses the aid to commit human rights violations. In this respect, the General Assembly has called on Member States in a number of cases to refrain from supplying arms and other military assistance to countries found to be committing serious human rights violations. Where the allegation is that the assistance of a State has facilitated human rights abuses by another State, the particular circumstances of each case must be carefully examined to determine whether the aiding State by its aid was aware of and intended to facilitate the commission of the internationally wrongful conduct."[27]

31. To meet the intent requirement, a State must either have actual knowledge that the unlawful activity will occur or be virtually certain that the receiving State will act unlawfully, a higher threshold than international humanitarian law's "expectation" standard.[28] In other words, a State cannot shield itself from responsibility by arguing that its purpose is not to facilitate wrongful conduct—but rather, for example, financial gain—if the State is virtually certain that its arms would be used in the commission of atrocity crimes. Finally, there is no

[23] Harriet Moynihan, "Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism," Chatham House, Nov 2016, at 27, https://www.chathamhouse.org/sites/default/files/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf.

[24] *See* Commentary of 2016, Convention (I), *supra* note 22, para. 125 ("The High Contracting Parties undertake to respect and to ensure respect for 'the present Convention' in all circumstances. This wording covers not only the provisions applicable to international armed conflict, including occupation, as defined by common Article 2, but also those applicable to non-international armed conflict under common Article 3, which forms part of 'the present Convention'. Thus, the High Contracting Parties must also ensure respect for the rules applicable in non-international armed conflict . . . .").

[25] A/56/10, Report of the International Law Commission on the work of its fifty-third session, 23 Apr – 1 Jun and 2 Jul – 10 Aug 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10, Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 16 (2001), https://legal.un.org/ilc/documentation/english/reports/a_56_10.pdf.

[26] *Ibid.*, commentary to art. 15, para. 2 at 62 (citing genocide, crimes against humanity, and other "composite acts" that, through a series of aggregated actions constitute an international wrongful act).

[27] *Ibid.*, commentary to art. 16, para. 5 at 66.

[28] Miles Jackson, Complicity in International Law, University of Oxford, Oct 2013, at p. 201 ("where a state provides assistance to another state with the knowledge that the aid will be used to commit a wrongful act, the state's intent that its aid facilitate that act may be inferred"), https://web.archive.org/web/20201108034308id_/https://ora.ox.ac.uk/objects/uuid:4f6db506-c5a7-43d6-af49-fec9ad2d7461/download_file?safe_filename=THESIS02&file_format=application%2Fpdf&type_of_work=Thesis; *see also,* Harriet Moynihan, "Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism," Chatham House, Nov 2016, at 13, https://www.chathamhouse.org/sites/default/files/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf.

requirement that the aid or assistance be "essential" to the performance of the internationally wrongful act—"it is sufficient if it contributed significantly to that act."[29]

32. Article 16 reflects customary international law. The International Court of Justice has found that Article 16 is "reflecting a customary rule."[30] Some Member States have explicitly stated that "these articles were legally binding statements of customary international law," and many other States, Russia included, acknowledge that "the draft articles were actively being applied in courts as normal customary law."[31] Other States have found that all 59 Articles in their entirety do not reflect customary international law, but even those States acknowledge that "there is general consensus among States that many of the Articles reflect customary international law."[32] Any disagreements over the Articles have not focused on, or even referenced, Article 16.[33] There is, to be sure, substantial dispute amongst Member States regarding whether the Articles should be adopted as a new convention, but concerns on this point revolve around opening up the Articles to new interpretations and watering down their current authority on state responsibility. In sum, "Article 16 has taken hold as a rule of customary international law, one that defines acceptable conduct for states in their participation in the wrongdoing of other states."[34]

D. The Arms Trade Treaty

33. The United Nations Arms Trade Treaty (ATT) provides a global set of rules governing the trade in conventional weapons. The ATT goals include "reducing human suffering" and "contributing to international and regional peace, security and stability."[35] It was adopted at the UN General Assembly in April 2013 and entered into force in December 2014. The ATT applies to specific conventional arms, including: (a) battle tanks, (b) armored combat vehicles, (c) large-calibre artillery systems, (d) combat aircraft, (e) attack helicopters, (f) warships, (g) missiles and missile launchers, and (h) small arms and light weapons.[36]

---

[29] *See* A/56/10, *supra* note 25, commentary to art. 16, para. 5 at 66.

[30] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) (Judgment) (2007) ICJ Rep 43, para. 420, https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf.

[31] *See, e.g.*, GA/L/3395, Legal Committee Delegates Differ on Applying Rules for State Responsibility: Convention Needed, or Customary Law Adequate?, Germany and Russia commentary, 19 Oct 2010, https://www.un.org/press/en/2010/gal3395.doc.htm.

[32] General Assembly, Sixth Committee (Legal) – 74th session, Responsibility of States for internationally wrongful acts (Agenda item 75), United Kingdom Statement, 14 Oct 2019 ("While there is general consensus among States that many of the Articles reflect customary international law, there remain a significant number of Articles on which States' views diverge . . ."), https://www.un.org/en/ga/sixth/74/pdfs/statements/resp_of_states/ uk.pdf; *see also* General Assembly, Sixth Committee (Legal) – 71st Session, Community of Latin American and Caribbean States Statement, 7 Oct 2016 ("CELAC notes and welcomes that the draft provisions have been widely used as reference by international and municipal courts and tribunals, some of which have been considered as reflecting customary international law"), https://www.un.org/en/ga/sixth/71/pdfs/statements/resp_of_ states/celac.pdf; Finland, on behalf of Nordic Countries, Sixth Committee (Legal) – 71st Session, 7 Oct 2016 ("There is no question about the existence of international responsibility, and the articles reflect a widely shared consensus on its articulation, notwithstanding the fact that there may be different views on specific details"), https://www.un.org/en/ga/sixth/71/pdfs/statements/resp_of_states/nordic.pdf; Canada, Australia, New Zealand, Sixth Committee (Legal) – 71st Session, 7 Oct 2016 (". . . international courts and tribunals increasingly put weight behind the draft Articles as guidelines for their decisions and have found that many of the Articles are reflective of customary international law").

[33] *See, e.g.*, General Assembly, Sixth Committee (Legal) - 74th session, Responsibility of States for internationally wrongful acts (Agenda item 75), People's Republic of China Statement, 14 Oct 2019 (China summarizing the major points of concern, which do not include Article 16: "as regards some of the topics in the Draft Articles, such as 'serious breaches of obligations under peremptory norms of general international law', 'countermeasures' and 'measures taken by States other than an injured State', States interpret them differently and have expressed major concerns.").

[34] Miles Jackson, Complicity in International Law, *supra* note 28.

[35] The Arms Trade Treaty, Article 1, https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253.

[36] *Ibid.*, Article 2.

34. Article 6 of the ATT prohibits Member States who accede to or ratify it from transferring the arms in these categories "if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes."[37] Where exports are not prohibited under Article 6, Article 7 of the ATT prohibits Member States from transferring arms where it assesses there is an unmitigable risk that those arms "could be used to commit or facilitate a serious violation of international humanitarian law" or "international human rights law." Article 3 applies the provisions of Article 6 and Article 7 to munitions and ammunition used in the conventional arms covered by the ATT.

35. 110 Member States are now party to the ATT, while 31 have signed but not yet ratified or acceded, leaving 54 Member States that have not joined the ATT.[38]

IV. Myanmar context: Clear knowledge of atrocity crimes and use of internationally procured weapons

36. The Myanmar military's systemic violation of the Geneva Conventions and perpetration of atrocity crimes have been reported by a variety of organizations for over three decades.[39] Despite the longstanding evidence, the Special Rapporteur submits that at a minimum by 2018 all Member States knew, or would have expected, that arms transferred to Myanmar would be used in attacks against civilians in violation of international law.

A. Pre-coup attacks against civilians and use of international arms

37. The FFM found that there were reasonable grounds to conclude that since 2011, the temporal start of its mandate, in Kachin and Shan States the military had engaged in the crimes against humanity of murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, persecution, and enslavement.[40] In Rakhine State, the FFM found reasonable grounds to conclude that the military committed these same acts plus the additional acts of extermination and deportation and acted with genocidal intent in its murder of thousands and forced displacement of roughly 700,000.[41] Moreover, the FFM found reasonable grounds to conclude that from 2011-2017 the military violated the Geneva Conventions through its commission of probable war crimes in Kachin, Shan, and Rakhine States, including murder, torture, cruel treatment, outrages upon personal dignity, attacking civilians, displacing civilians, pillaging, attacking protected objects, taking hostages, sentencing or execution without due process, as well as rape, sexual slavery and sexual

[37] *Ibid*., Article 6.

[38] The Arms Trade Treaty, Treaty Status, https://thearmstradetreaty.org/treaty-status.html?templateId=209883.

[39] *See, e.g.*, Amnesty International, "Allegations of Extrajudicial Executions, Torture and Ill-Treatment in the Socialist Republic of the Union of Burma," Sep 1987, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs3/16-03-87-ocr.pdf; Amnesty International, "Burma: Extrajudicial Execution and Torture of Members of Ethnic Minorities," May 1988, https://www.amnesty.org/en/documents/asa16/005/1988/en/; Internal Displacement Monitoring Centre, "Burma: worst army attacks in years displace thousands," 10 May 2006, https://reliefweb.int/sites/reliefweb.int/files/resources/0BB7BF12EDC310D1C125716A004E0456-idmc-mmr-10may.pdf; Human Rights Watch, "Crackdown: Repression of the 2007 Popular Protests in Burma," 6 Dec 2007, https://www.hrw.org/report/2007/12/06/crackdown/repression-2007-popular-protests-burma; Human Rights Watch, "Untold Miseries" Wartime Abuses and Forced Displacement in Burma's Kachin State, 20 Mar 2012, https://www.hrw.org/report/2012/03/20/untold-miseries/wartime-abuses-and-forced-displacement-burmas-kachin-state; A/HRC/25/64, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, 2 Apr 2014, para. 51 (finding that "the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court"); Fortify Rights, "They Gave Them Long Swords: Preparations for Crimes Against Humanity Against Rohingya Muslims in Rakhine State," Jul 2018, https://www.fortifyrights.org/downloads/Fortify_Rights_Long_Swords_July_2018.pdf.

[40] A/HRC/39/CRP.2, *supra* note 4, para. 1511.

[41] *Ibid.*, para. 1511.

violence.[42] The FFM also found in 2019 that the Myanmar military had engaged in probable war crimes during its conflict with the Arakan Army in Rakhine and Chin States.[43]

38. In its attacks against civilians over the years, the Myanmar military has consistently used aerial bombardment from combat helicopters, fighter jets, and artillery, as well as ground armored vehicles. As reported in the FFM's 2018 report, witnesses in Dar Gyi Zar in Rakhine State saw the arrival of two or three helicopters on 12 November 2016 from which soldiers opened fire using automatic weapons.[44] Shooting from the helicopters continued for up to two hours. At least one woman was shot and killed inside her house and witnesses saw up to 15 other bodies of people killed by gunfire from the helicopters.[45] On or around 14 December 2016, the Myanmar military attacked Nam Ha village in Muse Township, Shan State with mortars and airstrikes by four jet fighter planes despite no presence of armed combatants there.[46] The military's genocidal attacks in Rakhine state involved an estimated 60 tanks and armored personnel carriers. The Myanmar military relocated eight Mi-17 attack helicopters to Rakhine State, and at least one Myanmar Navy ship fired upon a Rohingya village from the Bay of Bengal.[47]

39. The military used internationally procured arms to attack civilians after the 2017 attacks against the Rohingya and prior to the coup. For example, in January 2018, the Tatmadaw carried out airstrikes in Tanai, Kachin State, killing civilians, destroying property, causing displacement, and disrupting livelihoods.[48] The FFM received credible reports that the Tatmadaw used Mi-35 combat helicopters in the attack.[49] The military reportedly also used jet fighters to conduct indiscriminate air strikes in Rakhine and Chin States between March and May 2020.[50]

B. Post-coup attacks against civilians and use of international arms

40. Since the coup, global attention has once again focused on the Myanmar junta's probable war crimes and crimes against humanity. The junta has killed at least 1,500 civilians, detained at least 11,000, and targeted civilians in villages, towns, and cities, forcibly displacing over 440,000 people, 150,000 of whom are children.[51] The Independent Investigative Mechanism on Myanmar's preliminary investigation on attacks since the coup indicates that the Myanmar junta has likely committed crimes against humanity of murder, persecution, imprisonment, sexual violence, enforced disappearance and torture.[52] The IIMM has also stated that military attacks on civilians since the coup "may qualify as war crimes."[53]

---

[42] *Ibid.*, para. 1513.

[43] A/HRC/42/50, Report of the independent international fact-finding mission on Myanmar, 8 Aug 2019, para. 40-54, https://undocs.org/en/A/HRC/42/50.

[44] A/HRC/42/CRP.3, "The economic interests of the Myanmar military," Independent International Fact-Finding Mission on Myanmar, 12 Sep 2019, para. 153, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Documents/A_HRC_42_CRP_3.docx.

[45] A/HRC/39/CRP.2, *supra* note 4, para. 1084; A/HRC/42/CRP.3, *supra* note 47, para. 153.

[46] A/HRC/39/CRP.2, *supra* note 4, para. 127.

[47] *Ibid*., para. 762, 770, 961, 1084, 1152, and 1156.

[48] A/HRC/42/CRP.3, *supra* note 44, para. 155; A/HRC/39/CRP.2, *supra* note 4 para. 310, 311.

[49] A/HRC/42/CRP.3, *supra* note 44, para. 155.

[50] *See, e.g.*, Amnesty International, "Myanmar: Indiscriminate airstrikes kill civilians as Rakhine conflict worsens," 8 Jul 2020, https://www.amnesty.org/en/latest/news/2020/07/myanmar-indiscriminate-airstrikes-kill-civilians-rakhine/.

[51] Assistance Association for Political Prisoners, Daily Briefing in Relation to the Military Coup, 17 Feb 2022, https://aappb.org/?p=20197; UNOCHA, Myanmar: Humanitarian Update No. 15, 15 Feb 2022, https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Myanmar%20-%20Humanitarian%20Update%20No.15_FINAL.pdf; Save the Children, "Violence intensifies in Myanmar as at least 150,000 children forced from their homes in the year since military coup," 28 Jan 2022, https://www.savethechildren.net/news/violence-intensifies-myanmar-least-150000-children-forced-their-homes-year-military-coup.

[52] *See e.g.,* A/HRC/48/18, *supra* note 2.

[53] Statement of Nicholas Koumjian, Head of the Independent Investigative Mechanism for Myanmar, on the anniversary of the military's seizure of power in Myanmar, 1 Feb 2022, https://iimm.un.org/statement-of-nicholas-koumjian-head-of-the-independent-investigative-mechanism-for-myanmar-on-the-anniversary-of-the-militarys-seizure-of-power-in-myanmar/.

41. The military has relied on internationally procured arms to conduct its attack on the people of Myanmar. To crack down on protesters beginning in mid-February, the military employed armored personnel carriers to position troops throughout major cities.[54] And the Special Rapporteur has reported to the General Assembly numerous instances of indiscriminate air strikes using fighter jets, combat helicopters, bombs and rockets. From late March to early May 2021, junta forces conducted aerial bombardments and shelled civilian locations in Papun (Mutraw) District, Kayin (Karen) State. During these two months, according to reliable information, junta forces, using fighter jets, helicopters and artillery, conducted at least 27 air attacks, dropping 47 bombs and firing at least 575 mortar shells into civilian areas in Papun.[55] Between 21 May and 15 June, the military killed at least 65 civilians in attacks on Demoso and Loikaw Townships, Kayah State. The military used fighter jets to bomb Demoso before following up with rockets and mortars, forcing tens of thousands of people to flee into the surrounding jungle.[56] In Loikaw, the military also used helicopters, fighter jets and heavy artillery to attack the town. In May 2021, during the military's siege on Mindat, Chin State, sources described the rape of a woman by junta personnel, the firing of shells at civilian locations, looting, and military helicopters dropping ordnance on the town.[57]

42. Airstrikes have continued throughout the country, intensifying in Kayah State and other regions. On January 4, 2022, two Mi-35 attack helicopters reportedly launched six rockets and fired machine guns into Gahe village in Indaw township, Sagaing Region, killing four siblings aged 5-26 when a missile fired from a helicopter struck their home.[58] In the weeks preceding the publication of this paper, the military has carried out air strikes in at least Demoso and Hpruso townships in Kayah State; Kawkareik and Myawaddy townships in Kayin State; Tedim township in Chin State; and Katha, Ye-U and Khin-U townships in Sagaing Region.

V. Arms Sales to Myanmar Military Since 2018

43. As the preceding section demonstrates, by 2018, the world had been alerted to the genocidal attacks against the Rohingya and accumulated years of reporting on war crimes and crimes against humanity. Arms transfers to the Myanmar military after 2018 were done with the full knowledge that they would likely be used in attacks against civilians. As such, Member States had an obligation under international humanitarian law, customary international law, and the Arms Trade Treaty to prevent arms transfers from their respective jurisdictions to Myanmar.

44. Despite this, credible reporting shows that arms continued to be provided to the Myanmar military since the coup. Arms transfers from China and Russia—and commitments of even more transfers —are particularly egregious, collectively providing the military with numerous fighter jets, armored vehicles, and in the case of Russia, the promise of further arms. Since the coup, Serbia has authorized rockets and artillery for export to the Myanmar military, while prior to the coup Serbia transferred limited heavy artillery systems. Pakistan, through its partnership with a Chinese state-owned entity, was involved in the manufacture and transfer of jet fighters prior to the coup, and late breaking reports indicate that Pakistan may soon transfer munitions to Myanmar. Belarus and Ukraine provided lethal arms pre-coup and have yet to impose an arms embargo on the military. Pre-coup, the Republic of Korea transferred an amphibious landing craft and Israel transferred attack boats. Notably,

[54] "Armoured vehicles deployed to major Myanmar cities after mass protests," *Nikkei*, 14 Feb 2021, https://asia.nikkei.com/Spotlight/Myanmar-Crisis/Armoured-vehicles-deployed-to-major-Myanmar-cities-after-mass-protests.

[55] *See, e.g.*, Karen Peace Support Network, "Terror from the skies: coup regime's escalated offensives cause mass displacement across Mutraw," May 2021 at 8, www.karenpeace.org/wp-content/uploads/2021/05/Terror-from-the-Skies_Briefing_KPSN_English.pdf.

[56] A/76/314, Report of Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, 2 Sep 2021, para. 40, https://undocs.org/en/A/76/314.

[57] *Ibid*., para. 35.

[58] "Myanmar military helicopter attack on populated village kills 5 people," *Radio Free Asia*, 7 Jan 2022, https://www.rfa.org/english/news/myanmar/helicopter-01072022154230.html.

the Republic of Korea has imposed an embargo since the coup, and Israeli officials have indicated Israel now maintains a policy of not transferring arms to Myanmar.

45. The following section details known arms transfers from Member States to Myanmar since 2018 that the Myanmar military could use to attack civilians. The Special Rapporteur also discusses the legality of these transfers, applying international humanitarian law, customary international law related to state responsibility, and the Arms Trade Treaty where applicable.

46. The research and analysis conducted by the Special Rapporteur has allowed him to distinguish several categories of transfers. Firstly, and most problematically, he identifies those Member States—China, Russia, and Serbia—that have transferred categories of weapons used to attack civilians since 2018 and that continued to authorize and transfer them to the Myanmar military following the coup. Secondly, he identifies a Member State—India—that has transferred arms to the Myanmar military prior to the coup and made one arms transfer since the coup that could be used to attack civilians, though there is no indication this type of weapon has been used to do so. Thirdly, he identifies those Member States—Belarus, Ukraine, and Pakistan—that transferred types of arms the military has used to attack civilians since 2018, though research indicates they have not transferred further weapons since the coup and have yet to impose an arms embargo. Finally, he identifies those Member States—Israel and the Republic of Korea—that transferred naval vessels since 2018 that could be used in attacks against civilians and that have a stated or express policy of no longer transferring arms to the Myanmar military.

A. Tier I: Arms transferred, including since the coup, of the types used against civilians

1. China

47. China abstained from UNGA Resolution 75/287 along with 35 other Member States. China has acceded to the Geneva Conventions and, effective 4 October 2020, to the Arms Trade Treaty. China has not imposed an arms embargo on Myanmar and, in fact, continues to transfer arms to the Myanmar military.

48. Since 2018, China-origin sales to Myanmar have focused on fighter jets, missiles, and related munitions. China has supplied the Myanmar military with JF-17M "Thunder" jet fighter airplanes as part of a 2015 $560 million USD agreement between the military and Chinese state-owned enterprise Aviation Industry Corporation of China (AVIC) and Pakistan's state-owned Pakistan Aeronautical Complex (PAC).[59] Myanmar ordered 16 and received six of the JF-17 in December 2018. The military reportedly held a Buddhist merit-making ceremony upon their receipt during which Min Aung Hlaing released 70 caged birds.[60] As of September 2021, the military reportedly had seven JF-17's in its Air Force fleet.[61] China sold Myanmar dozens of missiles for use with JF-17 aircraft, and the JF-17 can also carry unguided rockets and bombs and has a 23mm twin-barrel autocannon.[62]

49. In 2020, China also reportedly allowed a state-owned entity to transfer to the Myanmar military a ballistic missile system. Reports first surfaced in May 2017 that the Myanmar military sought to acquire SY-400 precision guided surface-to-surface missiles

[59] SIPRI Arms Transfers Database, Transfers of major weapons: Deals with deliveries or orders made for 2016 to 2020, Recipient: Myanmar, Supplier: China, Information generated: 22 Jan 2022, https://armstrade.sipri.org/armstrade/page/trade_register.php; Chen Chuanren, "JF-17 for Myanmar Seen Flying in China," *AIN Online*, 15 Jun 2017, https://www.ainonline.com/aviation-news/defense/2017-06-15/jf-17-myanmar-seen-flying-china.

[60] "Myanmar Air Force officially inducts new JF-17 fighter jets," *Air Recognition*, Dec 2018, https://www.airrecognition.com/index.php/archive-world-worldwide-news-air-force-aviation-aerospace-air-military-defence-industry/global-defense-security-news/global-news-2018/december/4702-myanmar-air-force-officially-inducts-new-jf-17-fighter-jets.html.

[61] "2022 World Air Forces," Flight International, https://www.flightglobal.com/download?ac=83735 at 25.

[62] SIPRI Arms Transfers Database, *supra* note 59; "FC-1/JF-17 Thunder Technical Specifications," *Military Aviation* (*Milavian*), 16 Nov 2007, https://www.milavia.net/aircraft/fc-1/fc-1_specs.htm.

manufactured by state-owned China Aerospace Science and Industry Corporation (CASIC).[63] Nearly three years later, in April 2020, multiple defense industry reports indicated that Myanmar would soon receive the ballistic missiles, technical support, and loan assistance to pay for the missiles.[64] Reporting did not specify the number of missiles, the total cost of the purchase, or the precise date of delivery. The DF-12A missiles that fire from the SY-400 system are marketed for export with a range of 280 kilometers and warhead weight of 480 kilograms, both just under the 300 kilometer distance and 500 kilometer weight that would implicate the guidelines in the Missile Technology Control Regime (MTCR).[65] China is not a Member of the MTCR, but has agreed to apply the MTCR guidelines. Domestic variants of the missile used by the Chinese military travel up to 400 kilometers, and reports of Myanmar's acquisition of the SY-400 frequently site the 400km range.[66]

50. China continued its transfer of military aircraft after the coup. On 15 December 2021, the Myanmar Air Force commissioned additional aircraft manufactured by Chinese state-owned industries. As with the JF-17, Min Aung Hlaing presided over the commission ceremony of the new aircraft, along with his wife. The two of them jointly released 74 birds for merit and then Min Aung Hlaing "sprinkled scented water on the commissioned aircraft."[67] The new Chinese aircraft consisted of four state-owned Hongdu Aviation Industry Group (HAIG) K-8W Karakorum (K-8) light fighter/trainer jets and four state-owned Harbin Aircraft Industry Group (HAIG) Y-12 (Y-12) military transport planes.[68] The military originally ordered 50 K-8 light attack jets in 2009 and reports indicate only 18 may have been delivered prior to this latest shipment. Options for equipping the K-8 include fuel drop tanks, 23mm cannon pods, unguided rockets, unguided bombs, and short-range air-to-air missiles.[69]

51. The junta-controlled media outlet, *Global New Light of Myanmar,* described the K-8 and Y-12 abilities and purposes as follows: ". . . K-8 airplanes are types of training jets and light fighters. They can be used in air-to-air warfare, air-to-surface warfare, close aviation supporting fire, interception fighting, armed reconnaissance, and training of transfer . . . Y-12 airplane can be used to transport passengers and cargo, for parachuting, maritime reconnaissance, and search and rescue."[70]

52. Through its transfer of numerous fighter jets, missiles, and military transport planes manufactured by state-owned companies, both since 2018 and since the coup, China violated international humanitarian law and likely customary international law. China knew with virtual certainty that the Myanmar military would use the fighter jets and missiles that its state-owned arms manufacturers transferred to Myanmar in attacks on civilians in violation of humanitarian law. Numerous reports highlight jet fighters attacking and killing civilians prior to the transfer of these weapons and, as described above, the military has consistently used jet fighters and missiles in attacks against civilians since the coup, contributing

[63] "Myanmar looks to buy Chinese SY-400 ballistic missile systems," *Defense Blog*, 5 May 2017, https://defence-blog.com/myanmar-looks-to-buy-chinese-sy-400-ballistic-missile-systems/.

[64] *See, e.g.*, "Myanmar to receive first batch of Chinese SY-400 short-range ballistic missiles," *Army Recognition*, 6 Apr 2020, https://www.armyrecognition.com/april_2020_news_defense_global_security_army_industry/myanmar_to_receive_first_batch_of_chinese_sy-400_short-range_ballistic_missiles.html.

[65] "Why Myanmar buys SY-400 ballistic missiles from China?," *China-Arms*, 9 April 2020, https://www.china-arms.com/sy400-ballistic-missile-to-myanmar/; "MTCR: Background and Issues for Congress," Congressional Research Service, 8 Apr 2003, https://crsreports.congress.gov/product/pdf/RL/RL31848/3 ("The MTCR Guidelines call on each of the member countries to exercise restraint when considering transfers of equipment or technology that would provide or help a recipient country build a missile capable of delivering a 500 kilogram (kg) (1,100 pound) warhead to a range of 300 kilometers (km) (186 miles) or more").

[66] Center for Strategic and International Studies Missile Defense Project, DF-12/M-20 Missile, 31 Jul 2021, https://missilethreat.csis.org/missile/df-12/; "China delivered SY-400 Short-range Ballistic Missile (SRMB) to Myanmar," *Global Defense Corp*, 9 Apr 2020, https://www.globaldefensecorp.com/2020/04/09/china-delivered-sy-400-short-range-ballistic-missile-srbm-to-myanmar/.

[67] "Only when all officers and the rank and file of mechanical engineering, navigation, radar and meteorological sectors work in concert will they successfully perform all military operations, Senior General stresses," *Global New Light of Myanmar*, 16 Dec 2021, https://www.gnlm.com.mm/only-when-all-officers-and-the-rank-and-file-of-mechanical-engineering-navigation-radar-and-meteorological-sectors-work-in-concert-will-they-successfully-perform-all-military-operations-senior-gene/.

[68] Mrityunjoy Mazumdar & Jon Grevatt, "Myanmar Air Force inducts new aircraft," *Janes*, 17 Dec 2021, https://www.janes.com/defence-news/news-detail/myanmar-air-force-inducts-new-aircraft.

[69] "China's K-8 Jets: A Killer for Myanmar," *Defense Industry Daily*, 30 June 2010, https://www.defenseindustrydaily.com/Chinas-K-8-Jets-A-Killer-for-Myanmar-06457/.

[70] *Global New Light of Myanmar*, *supra* note 67.

substantially to killings and forced displacement of civilians in at least Chin, Kayah, and Kayin States in violation of the Geneva Conventions. These transfers likely violate China's obligations under the Geneva Conventions to "undertake to respect and to ensure respect for the present Convention in all circumstances."[71] Based on China's knowledge of past patterns of the Myanmar military's use of arms transfers in attacks against civilians, such weapons transfers would likely violate the Conventions and customary international law due to both the virtual certainty that these arms would be used against civilians and their significant contribution to attacks against civilians.

53. China has acceded to the Arms Trade Treaty and is bound to comply with the ATT as of its date of ascension, 4 October 2020. This means that the transfer to Myanmar of four K-8 jet fighters and four Y-12 planes in December 2021 implicate its ATT obligations. Article 6 of the ATT prohibits Member States who accede to, or ratify it, from transferring weapons "if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes."[72] Based on the wide reporting of the Myanmar military committing attacks against civilians using fighter jets since 1 February 2021, China had the requisite knowledge. The Myanmar military continued to use jet fighters to attack civilians and China continued to provide them. These transfers are a probable violation of China's obligations under the ATT.

2. Russian Federation

54. Russia abstained from voting on General Assembly Resolution 75/287 and has not imposed an arms embargo on Myanmar. Russia acceded to the Geneva Conventions and has not acceded to the Arms Trade Treaty. Russia has not imposed an embargo on Myanmar and, in fact, continues to transfer arms to the Myanmar military.

55. Russia's relevant arms transfers to Myanmar since 2018 have ranged from jet fighters, to armored vehicles, surface-to-air missiles, and mobile defense systems.

56. According to arms export data, between 2017 and 2019 Russia delivered 75 long-range missiles for Myanmar Air Force's Yak-130 fighter jets, previously acquired from Russia. Russia and Myanmar's military signed an agreement to transfer the state-owned Irkutsk Corporation-manufactured Yak-130s to Myanmar in 2015. Myanmar received six between 2015 and 2016 and another six between 2018 and 2019.[73] The Yak-130, like the K-8 from China, is classified as a trainer jet / light jet fighter. It can carry up to three tons of air-to-air missiles, air-to-surface missiles, guided bombs, free-fall bombs, incendiary bombs, rockets, gun pods and external fuel tanks.[74] The Yak-130 also carries a 23mm cannon. The Yak-130 is increasingly recognized as a highly capable jet fighter against counter-insurgency ground forces.[75] The Russian Federation reportedly also transferred engines for the China-built JF-17 combat aircraft, delivering six between 2018-2019.[76]

[71] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

[72] The Arms Trade Treaty, *supra* note 35, Article 2, 5 (prohibiting the transfer of tanks, combat vehicles, large-calibre artillery systems, combat aircraft, helicopters, warships, missiles, small arms and light weapons).

[73] SIPRI Arms Transfers Database, Transfers of major weapons: Deals with deliveries or orders made for 2010 to 2020, Recipient: Myanmar, Supplier: Russia, Information generated: 21 Jan 2021, https://armstrade.sipri.org/armstrade/page/trade_register.php; United Nations Register of Conventional Arms, Russian Federation 2018, Major Conventional Arms – Exports, https://www.unroca.org/russian-federation/report/2018/ (listing the export of six "combat aircraft" to Myanmar in 2018).

[74] "Yakovlev Yak-130 Specifications-Common Armaments," *WeaponSystem.net*, https://weaponsystems.net/system/178-Yakovlev+Yak-130; "Yak-130 Specifications," *Airforce Technology*, 5 Jan 2021, https://www.airforce-technology.com/projects/yak_130/.

[75] Thomas Newdick, "Why Russia's Yak-130 Is More Than a Mere Training Jet," *The National Interest*, 17 Apr 2021, https://nationalinterest.org/blog/reboot/why-russia%E2%80%99s-yak-130-more-mere-training-jet-183001.

[76] "Trends in International Arms Transfers 2020," SIPRI, Mar 2021, https://sipri.org/sites/default/files/2021-03/fs_2103_at_2020.pdf at 6.

57. On 22 January 2018, Myanmar and Russia also reached an agreement for Myanmar to purchase six Sukhoi Su-30MK fighter jets for approximately $200 million.[77] Russia's Deputy Minister of Defense Alexander Fomin announced the deal, proclaiming that the Su-30MK "will become the main fighter aircraft of Myanmar's air force to protect the country's territorial integrity and repel any terror threats," according to Russia's state-owned news service.[78] The same report stressed the success of Russian weapons "during their operation in Myanmar's Armed Forces," with the Deputy Defense Minister listing some weaponry that Russia had transferred to Myanmar to date, stating: "These are, in particular, the Mi-24, Mi-35 and Mi-17 helicopters, as well as the MiG-29 fighter aircraft, the Yak-130 combat-capable trainer aircraft, the Pechora-2 air defense system and other equipment."[79] According to the Myanmar Times, during the trip in which the Su-30MK fighter jets deal was signed—four months following the genocidal attacks against the Rohingya—Russia's Defense Minister assured Min Aung Hlaing that Russia would "stand by Myanmar in its efforts to end the Rakhine violence."[80]

58. In 2019, Russia agreed to transfer BDRM-2MS armored reconnaissance vehicles to Myanmar.[81] The BDRM-2MS is a sophisticated armored vehicle with an array of cameras, including thermal vision and a target acquisition system, and cameras providing 360° awareness outside of the vehicle. The vehicle has one 14.5mm and one 7.62mm machine gun. There is limited reporting on the number of vehicles Myanmar received.[82] The military used the BDRM-2MS at checkpoints in Naypyitaw outside of Parliament during the day of the coup on 1 February and it was seen driving in other locations in the immediate aftermath.[83] The BDRM-2MS was also featured in the junta's celebration of Myanmar Armed Forces Day in 2021 when the military killed more than one hundred people, including children.[84]

59. On 22 January 2021, just a week prior to the coup, the Russian Ministry of Defense (MOD) announced a major arms deal with Myanmar. The Russian MOD said that it would supply an undisclosed number of radar stations, Pantsir-S1 self-propelled short-range air-defense (SHORAD) systems, and Orlan-10E multirole unmanned aerial systems (UASs).[85] The deal was signed in Naypyidaw by Min Aung Hlaing and Russia's Deputy Minister of Defense.[86] The Pantsir S-1 system incorporates two sets of twin 30mm automatic cannons and eight missiles that can engage targets from 1.2 km to 20 km and are radio guided.[87] The Pantsir S-1 can also hit ground targets, with one report highlighting its use to target "mobile terrorist targets" in one conflict zone and another noting its cannons "possess a secondary

[77] "Moscow to deliver six Su-30 fighter aircraft to Myanmar," *TASS*, 22 Jan 2018, https://tass.com/defense/986222; *see also* SIPRI Arms Transfers Database, *supra* note 73 (listing Myanmar as ordering six Su-30Mks for $200 million from Russia).

[78] "Moscow to deliver six Su-30 fighter aircraft," *supra* note 77.

[79] *Ibid*.

[80] "Russia to sell six fighter jets to Myanmar," *Myanmar Times*, 23 Jan 2018, https://www.mmtimes.com/news/russia-sell-six-fighter-jets-myanmar.html.

[81] SIPRI Arms Transfers Database (Russia), *supra* note 73.

[82] "The army of Myanmar received a shipment of the upgraded BRDM-2 MS," WeapoNews.com, 8 Feb 2020, https://weaponews.com/news/65359419-the-army-of-myanmar-received-a-shipment-of-the-upgraded-brdm-2-ms.html.

[83] Virginia Pietromarchi and Mersiha Gadzo, "Myanmar's military stages coup d'etat: Live news," *al Jazera*, 1 Feb 2021, https://www.aljazeera.com/news/2021/2/1/myanmar-military-stages-coup-against-aung-san-suu-kyi-live; "Myanmar coup leaders threaten 'action' to quell mounting protests" (video), *CBS News*, 8 Feb 2021, https://www.cbsnews.com/video/protests-grow-in-myanmar-opposing-coup/ at 00:28-00:35.

[84] "Russian BRDM-2MS 4x4 modernized armored vehicles in service with Myanmar army," *World Defense News*, 4 April 2021, https://worlddefencenews.blogspot.com/2021/04/russian-brdm-2ms-4x4-modernized-armored.html?view=flipcard.

[85] "Russia to supply air defense systems Pantsir-S1 to Myanmar," *TASS*, 22 Jan 2021, https://tass.com/defense/1247857; Gabriel Dominguez and Mark Cazalet, "Myanmar to acquire Pantsir-S1 SHORAD systems, radar stations, and Orlan-10E UASs from Russia," *Janes*, 25 Jan 2021, https://www.janes.com/defence-news/news-detail/myanmar-to-acquire-pantsir-s1-shorad-systems-radar-stations-and-orlan-10e-uass-from-russia.

[86] "Russia to supply air defense systems Pantsir-S1," *supra* note 85.

[87] Dominguez and Cazalet, *supra* note 85.

capability to attack ground targets."[88] The Orlan-10E UAS can fly at a maximum speed of 70 miles per hour for up to 18 hours and carry various sensor options including daylight and thermal imaging cameras, 3D mapping gear, and laser designators to indicate the precise location of potential targets.

60. A Russian state-owned media outlet reported on the Pantsir-S1 and Orlan-10E deal, boasting that the military-technical cooperation arrangement between Russia and Myanmar "makes steady progress" since the 2001 initial agreement was reached. The article highlights some of the armaments Russia had provided Myanmar's military since then: "Russia has supplied to Myanmar 30 planes MiG-29, twelve combat training jets Yakolev-130, ten helicopters Mi-24 and Mi-35P, eight air defense missile systems Pechora-2M and also radars, armored vehicles and artillery pieces."[89]

61. Since the coup, the Russian Federation has on multiple occasions reaffirmed the importance of continuing to strengthen military ties with Myanmar and reassured the junta that it would make good on Myanmar's existing arms orders. In June, Russian global news agencies Interfax reported that a military delegation from Myanmar went to Russia to observe the manufacturing process for the Panstir S-1 and in August a senior Russian defense official confirmed Russia would, "deliver (the systems) in line with the terms and conditions stipulated in the contracts."[90] On 23 July 2021, Russia's Head of Military-Technical Cooperation stated that Moscow "continues to implement plans" to supply the Su-30s and Yak-130.[91]

62. Since the coup, the Russian Federation has not only committed to fulfill past orders, but is also striking new arms deals with the Myanmar military. In August, Russia announced that Myanmar was part of a group of countries that had collectively signed 2 billion Euros in new arms transfer agreements.[92] Specific arms agreements by country were not available, though Russia cited "great interest" from customers in equipment including T-90MS tanks, the Antey-4000 air defense system, Mi-17, Mi-28NM helicopters, and small arms.[93]

63. In December 2021, reports indicated that the Russian Federation had authorized the export to Myanmar of six additional Yak-130s jet. The Yak-130s were commissioned into the Myanmar Air Force ceremony—receiving Min Aung Hlaing's bird-releasing merit and scented water sprinkling treatment—along with the Chinese aircraft on 15 December 2021.[94]

64. Finally, photographic evidence and analysis of shipping routes by independent investigators shows that in January 2022, the Russian Federation likely authorized the transfer of additional BDRM-2MS to the Myanmar military. According to marine traffic data and photographs that the Special Rapporteur has viewed, on 24 January 2022, a Russia-registered ship that originated in Vladivostok, Russia docked at the Thilawa Port in Yangon.

---

[88] Ayush Jain, "Amid Bloodbath, Myanmar Military Gets Russian Pantsir S-1 Missile Defense System — Reports," *The EurAsian Times*, 7 Apr 2021, https://eurasiantimes.com/amid-bloodbath-myanmar-military-gets-pantsir-s-1-air-defense-missiles-from-russia-reports/; "PANTSIR-S1 specs," *Army Recognition*, 30 Jan 2022, https://www.armyrecognition.com/russia_russian_missile_system_vehicle_uk/pantsir_pantsyr_s1_sa-22_greyhound_air_defense_missile_gun_system_technical_data_sheet_specification.html.

[89] "Russia to supply air defense systems Pantsir-S1," *supra* note 85.

[90] "Myanmar Military Team Visits Russian 'Pantsir' Production Facility amidst Arms Embargo Call," *Defense World*, 10 Jun 2021, https://www.defenseworld.net/news/29776/Myanmar_Military_Team_Visits_Russian__Pantsir__Production_Facility_amidst_Arms_Embargo_Call#.YfDkyfXMIqs; "Военные Мьянмы посетили РФ для знакомства с производством "Панцирей" – источник" (The Myanmar military visited the Russian Federation to get acquainted with the production of "Shell" – source), *Military News*, 9 Jun 2021, https://www.militarynews.ru/story.asp?rid=1&nid=551370&lang=RU (re-print from INTERFAX); "Russia to deliver missile systems to post-coup Myanmar on time – RIA," *Reuters*, 25 Aug 2021, https://www.reuters.com/world/russia-deliver-missile-systems-myanmar-schedule-ifax-2021-08-25/.

[91] *See, e.g.,* "Россия продает хунте Мьянмы военные самолеты" (Russia sells warplanes to Myanmar junta), *Deutche Welle*, 23 Jul 2021, https://www.dw.com/ru/rossija-budet-postavljat-mjanme-istrebiteli/a-58609006?maca=rus-tco-dw.

[92] "Russia Signs 2 Billion Euro worth Contracts with Foreign Customers at ARMY-2021," *Defense World*, 25 Aug 2021, https://www.defenseworld.net/news/30300/Russia_Signs_2_Billion_Euro_worth_Contracts_with_Foreign_Customers_at_ARMY_2021#.YfDq__XMIqs (citing "Russia's MOD TV Channel, ZvezdaTV").

[93] *Ibid.*

[94] Mrityunjoy Mazumdar & Jon Grevatt, "Myanmar Air Force inducts new aircraft," *Janes*, 17 Dec 2021, https://www.janes.com/defence-news/news-detail/myanmar-air-force-inducts-new-aircraft; *Global New Light of Myanmar*, *supra* note 67.

Photographs show numerous vehicles unloaded from the ship, including an unknown number of BDRM-2MS armored vehicles, the same type of armored vehicle Russia likely transferred to Myanmar in 2019.[95]

65. The Russian Federation's transfer of numerous Yak-130 jet fighters, missiles, armored personnel carriers and unmanned aerial surveillance vehicles to a military that has repeatedly attacked civilians using these same types of arms likely violates its obligation under international humanitarian law. Russia had an expectation, based on the widespread facts reported and knowledge of the Myanmar military's past patterns of war crimes involving air strikes and armored personnel carriers to move troops, that these weapons would be used to violate the Geneva Conventions. Indeed, since the coup, the Myanmar military has used fighter jets and missiles to attack civilians in violation of international humanitarian law.

66. The Russian Federation's transfer of these weapons also likely meets the threshold for violating customary international law. The fighter jets and missiles are significant contributors to the junta's aerial bombardment of civilians, which form a component of the ongoing probable crimes against humanity and war crimes. Moreover, Russia appears to continue to transfer arms post-coup, including the Yak-130 fighter jets and likely armored personnel carriers. The Myanmar military continues to actively use these types of arms, particularly fighter jets, in the killing and forcible displacement of civilians. Russian post-coup transfers of fighter jets are arguably being done with actual knowledge of the unlawful activity as the transfers are occurring in the midst of ongoing bombing attacks against civilians.

3. Serbia

67. Serbia voted in favor of UNGA Resolution 75/287. Serbia acceded to the Geneva Conventions, and as of 24 December 2014, acceded to the Arms Trade Treaty. After the coup, Serbia aligned itself with a European Union Council Decision that expands existing restrictive measures on Myanmar related to arms transfers and economic sanctions, though there is no indication Serbia has imposed an embargo.[96] In fact, credible reports provided to the Special Rapporteur demonstrate that since the coup, the Serbian Government has authorized the transfer of potentially thousands of munitions to the Myanmar military.

68. Serbia self-reported to the Arms Trade Treaty Secretariat in 2020 that in 2019 it transferred three "large calibre artillery systems" to Myanmar.[97] Prior to the release of this report, Serbia provided the Special Rapporteur additional details on the nature of the large-calibre artillery systems. Serbia reported that the artillery systems in question were three 105mm howitzer turrets for use atop armored vehicles, such as a tank turret. Serbia told the Special Rapporteur that it provided the turrets to Myanmar as "prototypes" to see if they would fit Myanmar's requirements for fitting the howitzer on armored personnel carriers. Serbia did not indicate whether these turrets had been incorporated into any armored vehicles, though it noted that "there was no further export of the military equipment to Myanmar" following the transfer of the three "prototypes."

69. In June 2021, limited reporting and confidential sources indicated that on 25 June 2021, a delegation from Myanmar would travel to Serbia; the delegation would include members of the Myanmar military and a private company, Myanmar Chemicals and Machinery (MCM), which has reportedly been involved in arms procurement for the

[95] "Arms Being Sent from Myanmar to Russia," Myanmar Witness, 24 Jan 2022, https://www.myanmarwitness.org/reports/arms-being-sent-to-myanmar-from-russia.

[96] "Declaration by the High Representative on behalf of the EU on the alignment of certain countries concerning restrictive measures against Myanmar/Burma," Council of the European Union, 22 Mar 2021, https://www.consilium.europa.eu/en/press/press-releases/2021/04/19/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-alignment-of-certain-countries-concerning-restrictive-measures-against-myanmar-burma/ (amending Council Decision 2013/184/CSP on arms embargos and sanctions by expanding the criteria of Myanmar entities subject to economic sanctions).

[97] Government of the Republic of Serbia, Annual Report on Exports and Imports of Conventional Arms, in Accordance with Article 13(3) of the Arms Trade Treaty: Report for the Calendar Year 2020, 31 May 2021, https://thearmstradetreaty.org/download/dd31aca9-497f-3da1-9d3c-e7a30048f615.

Myanmar military; and the delegation would include Major General Myo Aung from Myanmar's Directorate of Defense Industries, MCM's Aung Hlaing Oo, and others.

70. The Special Rapporteur provided this information to Serbia's Ministry of Foreign Affairs in advance of the scheduled visit, and Serbia's Permanent Mission to UN Offices in Geneva responded, "I wish to assure you that the Ministry of Foreign Affairs of the Republic of Serbia has no information about the alleged visit of a delegation of Myanmar's Military to Serbia on 25 June 2021."[98] Serbia confirmed to the Special Rapporteur prior to the publication of this report, unequivocally, that this meeting in fact did not occur.

71. The Special Rapporteur has learned through credible sources that throughout at least 2020 and even after the coup, the Serbian Government has granted arms export licenses to Serbian arms manufacturers to sell thousands of rockets (57mm and 80mm) and artillery shells (105mm, 122mm, and 155mm) to the Myanmar military. Specifically, since the coup, Serbia authorized export licenses for multiple shipments of rockets and artillery in February 2021, March 2021, April 2021 and June 2021. Credible information indicates that at least one shipment of 80mm rockets was transferred to the Myanmar military on 9 February 2021. The 80mm rockets are used in the Yak-130 trainer/fighter jets and Mi-24/35 attack helicopters that are actively bombing civilians in Myanmar, while large calibre artillery shells of the sort Serbia has authorized have killed numerous civilians.[99] The Special Rapporteur does not have information about whether any shipments of munitions that the Serbian government authorized since the coup have been transferred to Myanmar aside from those sent on 9 February. The Government of Serbia's granting of export licenses for such weaponry, even if all sales were not completed, is deeply troubling given the widespread knowledge of the atrocities the Myanmar military was committing against the people of Myanmar at the time.

72. Regarding the howitzer prototypes, similarly, Serbia would have had knowledge in 2018 that 105 mm howitzers attached to armored vehicles would contribute significantly to the military's attacks on civilians. It is unclear, however, whether the military ever utilized the howitzers.

73. Even more concerning for the Special Rapporteur is the probable transfer of 80mm rockets on 9 February 2021. Indeed, numerous reports highlight how the military has used rockets to attack civilian locations prior to the coup and in at least Kayah, Kayin, and Chin States since the coup. Thus, Serbia's transfers of these arms likely breach Serbia's Geneva Convention obligations and may also violate Serbia's responsibility under customary international law given the virtual certainty that rockets of the sort Serbia has authorized would be used against civilians and the prominent role that rockets have played in Myanmar's attacks on civilians.

74. The granting of export licenses for rockets and artillery shells to the Myanmar military may also violate Serbia's obligations under the Arms Trade Treaty. Article 6 of the ATT prohibits State Parties from authorizing the transfer of weapons, including large calibre artillery systems, aircraft and combat helicopters, "if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes."[100] Article 3 requires State Parties to apply the Article 6 provisions to "ammunition/munitions fired, launched or delivered by the conventional arms" covered under the ATT. Thus, since the rockets and artillery are used in conventional arms covered by the ATT, the ATT applies to Serbia's authorization of the rockets and artillery shells. Based on the widespread reporting of the Myanmar military committing attacks against civilians using artillery and rockets, Serbia had

[98] Republic of Serbia, Permanent Representative to UN Mission in Geneva, Letter to Special Rapporteur Thomas Andrews, 7 Feb 2022.

[99] "Mi-35M (Hind E) Attack Helicopters," *Airforce Technology*, 25 Jun 2018 (attack helicopter can be armed with "up to 80 'S-8' 80mm unguided rockets"); *see, e.g.*, Maung Shwe Wah, "Military attacks Karen State's Kawkareik from ground and air," *Myanmar Now*, 11 Jan 2022, https://www.myanmar-now.org/en/news/military-attacks-karen-states-kawkareik-from-ground-and-air (17 year old boy died from head injuries sustained in artillery attack, including from 105-mm shells); "Burma Army uses mortars and aircraft to terrorize villagers in Doopplaya District, Karen State," Free Burma Rangers, 25 Jan 2022, https://www.freeburmarangers.org/2022/01/25/burma-army-uses-mortars-and-aircraft-to-terrorize-villagers-in-dooplaya-district-karen-state/.

[100] The Arms Trade Treaty, *supra* note 35, Article 2, 5 (prohibiting the transfer of tanks, combat vehicles, large-calibre artillery systems, combat aircraft, helicopters, warships, missiles, small arms and light weapons).

the requisite knowledge in 2020 and certainly following the coup that the artillery shells and rockets it approved for export to the Myanmar military would be used in attacks directed against civilians.

B. Tier II: Arms transferred, including since the coup, of type that could be used against civilians

1. India

75. India abstained from voting on UNGA Resolution 75/287 and has not imposed an arms embargo on Myanmar. India has acceded to the Geneva Conventions, but is not a party member to the Arms Trade Treaty and has not imposed an arms embargo on Myanmar.

76. India was responsive to the Special Rapporteur's inquiries for this paper. While not affirming nor denying the findings, India's representative was eager to provide additional information and context. This context included that Myanmar and India share important security issues along its 1,700 km shared border and in the Bay of Bengal. He noted that any arms transfers that may have been made were based on commitments that were made with Myanmar's civilian government before the attempted coup and based on India's domestic security concerns. He also noted that, as a responsible democracy, India has established a system of "careful scrutiny" to assure that its defense exports are not used against civilian populations.

77. Weapons transferred by India that have the potential for use against civilians since 2018 have consisted of jet trainer aircraft and a remote-controlled weapons/air defense station. The primary function of neither of these weapons appear to be offensive attacks.

78. In 2018, India's state-owned aerospace and defense company, Hindustan Aeronautics Limited (HAL), reportedly gifted six second-hand HJT-16 Kiran-1 jet trainer / light attack aircraft to the Myanmar Air Force.[101] HJT-16 Kiran-1 jets can accommodate two 500lb (227kg) bombs, two rocket pods containing seven 68 mm rockets, or two pods with 7.62 mm machine guns.[102]

79. In July 2021, Indian state-owned Bharat Electronics Limited exported a remote-controlled (RCWS)/air defense weapon station to Myanmar, according to export data.[103] The shipment included five items: an operational system, a gun mount system, an optical system, a system controller and a drive system. This air defense station typically features automatic loading, automatic target tracking and automated ballistics correction. According to arms analysts, the RCWS is designed to hit ground and air targets, and remote control allows the operator to fire free from threats, hitting targets both day and night with "night mode."[104] The fire control system can also be supplemented by an automatic target tracking system.[105]

80. While India has authorized the transfer of only minimal arms with a nexus to civilian attacks, in 2018 it should have known, or expected, that its transfer of jet trainers / light attack jets could be used to violate the Geneva Conventions based on facts or knowledge of past patterns of attacks against Myanmar civilians using fighter jets. The same holds true for the post-coup transfer of the remote-controlled weapon station with capabilities to attack ground targets. The Special Rapporteur was informed that India has "an established system of exercising careful scrutiny to ensure that our defence exports are not used against civilian populations." The Special Rapporteur notes that the provision of jet trainers, even if

[101] "To counter Chinese clout, India to gift 6 HAL Kiran jet trainers to Myanmar," *Times Now*, 1 Dec 2018, https://www.timesnownews.com/india/article/china-hal-kiran-myanmar-indian-air-force-southeast-asia-kaladan-multimodal-project-act-east-policy-narendra-modi-national-socialist-council-of/324243.

[102] India export shipments, Bharat Electronics Limited to Mega Hill General Trading Co. Limited, and Myanmar Directorate of Procurement Office, Data accessed via Panjiva, Inc. on 25 Jan 22, https://panjiva.com; Justice for Myanmar, "Bharat Electronics LTD Arms Sales Continue Via Myanmar Military Broker Mega Hill General Trading," 5 Oct 2021, https://www.justiceformyanmar.org/stories/bharat-electronics-ltd-arms-sales-continue-via-myanmar-military-broker-mega-hill-general-trading.

[103] *Ibid*.

[104] "Indian combat module on the remote control: what it is," *Top War*, 2 Apr 2020, https://en.topwar.ru/169731-indijskij-boevoj-modul-na-distancionnom-upravlenii-chto-on-soboj-predstavljaet.html.

[105] *Ibid.*

scrutinized in such a way as to prevent them from attacking civilians, will enable the Myanmar Air Force to train pilots with the capability to attack civilians.

C. Tier III: Arms transferred prior to the coup of the types used against civilians

1. Pakistan

81. Pakistan abstained from General Assembly A/RES/75/287 along with 35 other Member States. Pakistan is a State Party to the Geneva Conventions but has not joined the Arms Trade Treaty and has not imposed an arms embargo against Myanmar.

82. The suspected transfer of arms from Pakistan since 2018 involves the same transfer of the JF-17 fighter jets jointly produced by Chinese state-owned enterprise, Aviation Industry Corporation of China (AVIC) and Pakistan's state-owned Pakistan Aeronautical Complex. In 2015, Myanmar agreed to a $560 million deal to purchase 16 JF-17 fighter jets jointly developed by the two companies.[106] As of September 2021 the Air Force reportedly had seven JF-17M's in its fleet.[107] The JF-17 can carry guided and unguided rockets and bombs and has a 23mm twin-barrel autocannon.[108]

83. Reports indicate that Pakistan may soon authorize the transfer of numerous munitions to Myanmar, marking the first known transfer of arms from Pakistan to Myanmar since the coup. On 11 February 2022, a report, citing credible sources, stated that Myanmar was considering purchasing from Pakistan air to ground missiles for the JF-17 fighter jets as well as 60 mm and 81 mm mortars, M-79 grenade launchers, and heavy machine guns.[109] The Special Rapporteur notes that there is no evidence that these transfers have actually occurred.

84. Pakistan's involvement in the production and transfer of JF-17 fighter jets in late-2018 may violate its obligations under international humanitarian law and customary international law on state responsibility. The Special Rapporteur notes that the precise terms of the deal, and the extent to which Pakistan had control over the transfers is unclear. Pakistan, however, failed to refrain from transferring weapons where "there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions," as required under humanitarian law.[110] Indeed, prior to becoming Prime Minister of Pakistan, Imran Khan wrote to UN Secretary General Antonio Gutterres on 7 September 2017—days after the genocidal attacks against the Rohingya peaked and prior to the transfer of the JF-17s—stressing that "today there is a genocide of the Rohingyas taking place in Myanmar while the international community remains an appeasing spectator . . . . I call on you, as the Secretary General, to move the UNSC to end the persecution and genocide of the Rohingyas within Myanmar and to bring to an end their inhumane plight [] under Chapter VII of the UN Charter."[111] There was obvious knowledge within Pakistan regarding the atrocities the Myanmar military had committed, and Myanmar military's past patterns demonstrates that it committed probable war crimes and crimes against humanity against civilians, utilizing fighter jets in the commission of those crimes. At the time of the JF-17 transfers, Pakistan would have thus expected that the Myanmar military would use the fighter jet it jointly built against civilians in violation of the Geneva Convention.

---

[106] "Myanmar receives new Sino-Pakistani Fighters; What capabilities does the JF-17 provide," *Military Watch*, 18 Dec 2018, https://militarywatchmagazine.com/article/myanmar-receives-new-sino-pakistani-fighters-what-capabilities-does-the-jf-17-provide; SIPRI Arms Transfers Database, Transfers of major weapons: Deals with deliveries or orders made for 2016 to 2020, Recipient: Myanmar, Information generated: 22 Jan 2022, https://armstrade.sipri.org/armstrade/page/trade_register.php; Chen Chuanren, "JF-17 for Myanmar Seen Flying in China," *AIN Online*, 15 Jun 2017, https://www.ainonline.com/aviation-news/defense/2017-06-15/jf-17-myanmar-seen-flying-china.

[107] Flight International, *supra* note 61.

[108] FC-1/JF-17 Thunder Technical Specifications, *supra* note 62.

[109] "Myanmar and Pakistan in arms deal, guided by China," *The Economic Times*, 11 Feb 2022, https://economictimes.indiatimes.com/news/defence/myanmar-and-pakistan-in-arms-deal-guided-by-china/articleshow/89491351.cms.

[110] Commentary of 2016, *supra* note 22.

[111] Imran Khan (@ImranKhanPTI), Twitter, 8 Sep 2017, Chairman PTI's Open Letter to UNSG Antonio Guterres, 7 September 2017, https://twitter.com/ImranKhanPTI/status/906108688372563968.

85. Pakistan's transfer of JF-17s may also violate customary international law of State responsibility in that fighter jets transferred to Myanmar in late 2018 were virtually certain to be used in the commission of internationally wrongful acts, and they would contribute significantly to those attacks.

86. Finally, the Special Rapporteur stresses that a future transfer of air to ground missiles for the JF-17 fighter jets as well as 60 mm and 81 mm mortars, M-79 grenade launchers, and heavy machine guns would likewise violate international humanitarian and customary international law. As this paper demonstrates, fighter jets and artillery are being used extensively in attacks against civilians that violate the Geneva Conventions and are classified as "internationally wrongful acts."

2. Belarus

87. Belarus was the lone Member State to vote against General Assembly Resolution 75/287 to "call[] upon all Member States to prevent the flow of arms into Myanmar." According to the resolution minutes, Belarus did so because "Belarus does not accept the practice of adopting country-specific resolutions in the General Assembly" and because the resolution "openly encroaches on the mandate of the Security Council with respect to arms control."[112] Belarus acceded to the Geneva Conventions but is not a party nor signatory to the Arms Trade Treaty. Belarus has not imposed an arms embargo on Myanmar.

88. Belarus has sold two combat helicopters to Myanmar since 2018. According to the SIPRI database, Myanmar ordered two Mi-24P/Mi-35P combat helicopters from Belarus in 2018.[113] Belarus delivered the two helicopters, which were reportedly second-hand, in 2019. The Mi-24/Mi-35 has a twin barrel 30mm GSh-30K autocannon alongside the cockpit that can fire up to 1,500-1,800 rounds per minute.[114] It is unclear how these two combat helicopters are further equipped, though the Mi-24/Mi-35 can be armed with various forms of aerial rockets and bombs, carrying dozens of rockets at once.[115] These are the same types of helicopters that fired on the village in Sagaing on 4 January, killing multiple children.

89. Belarussian's state-owned national news agency also reported that in February of 2020, a Myanmar military delegation visited defense industries in Belarus regarding air defense "development and production, maintenance and modernization."[116]

90. The Special Rapporteur invited Belarus to respond to the combat helicopter sales and potential meeting but received no response.

91. Belarus' sale of Mi-24/Mi-35 combat helicopters to Myanmar in 2019 likely violates humanitarian law and customary international law. The transfer of the helicopters violates its obligation to "undertake to respect and to ensure respect for the [Geneva] Convention in all circumstances."[117] Belarus failed to refrain from transferring weapons where "there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions," as required under humanitarian law.[118] The Myanmar military's past actions demonstrate that it committed probable war crimes and crimes against humanity against civilians and utilized helicopters in the commission of those crimes. And indeed, since 2019, when Belarus sold these combat helicopters to Myanmar, numerous reports demonstrate that that the Myanmar military has used attack helicopters in its targeting of

[112] A/75/PV.83, Official Records of the 83rd Plenary Meeting, Agenda item 34, Draft resolution A/75/L.85/Rev.1, 18 Jun 2021, at 5/19, https://undocs.org/en/A/75/PV.83.

[113] SIPRI Arms Transfers Database, Transfers of major weapons: Deals with deliveries or orders made for 2015 to 2020, Recipient: Myanmar, Supplier: Belarus, Information generated: 22 Jan 2022, https://armstrade.sipri.org/armstrade/page/trade_register.php.

[114] Mil Mi-24P, *Weaponsystems.net*, https://weaponsystems.net/system/300-Mil+Mi-24P; 30mm Gryazev-Shipunov GSh-301, *Weaponsystems.net*, https://weaponsystems.net/system/98-30mm+Gryazev-Shipunov+GSh-301.

[115] Mil Mi-24P, *Weaponsystems.net*, https://weaponsystems.net/system/300-Mil+Mi-24P.

[116] "Myanmar delegation gets familiar with Belarus' capabilities in air defense," *Belarusian Telegraph Agency*, 13 Feb 2020, https://eng.belta.by/society/view/myanmar-delegation-gets-familiar-with-belarus-capabilities-in-air-defense-128098-2020/.

[117] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 Aug 1949.

[118] Commentary of 2016, Article 1, *supra* note 22.

civilian populations, including the military's use of two Mi-24/Mi-35 in Sagaing this January, which killed five, three of whom were children.

92. Belarus' sale also may violate customary international law of State responsibility in that combat helicopters sold to Myanmar in 2019, were virtually certain to be used in the commission of internationally wrongful acts and they would contribute significantly to those attacks. Unfortunately, this exact scenario has unfolded as expected.

3. Ukraine

93. Ukraine co-sponsored and voted in favor of General Assembly Resolution 75/287. Ukraine reported to the Special Rapporteur that while it has aligned with the EU decisions concerning an arms embargo and economic sanctions, "these measures are yet to be incorporated in Ukraine's normative framework."[119] Ukraine acceded to the Geneva Conventions and is a signatory to the Arms Trade Treaty as of 23 September 2014, though it has not yet ratified or acceded to it.

94. Ukraine state-owned entities have provided significant support to Myanmar to establish its own capabilities to produce tanks and heavily-armed armored personnel carriers. In 2019, reports surfaced that the Directorate of Defence Industry of Myanmar's military, Myanmar Chemical & Machinery (MCM), Ukroboronservice, Ukraine state-owned Ukroboronprom and Ukrspecexport, had entered into a production agreement for Ukrainian state-owned entities to build a production facility in Myanmar to produce BTR-4 armored personnel carriers and MMT-40 light tanks using 2S1U propelled howitzers.[120] The production plant was set to begin production in 2020.

95. According to export data the Special Rapporteur has on file, while reports of the deal came to light in 2019, Ukrspecexport began shipping equipment to Myanmar in 2015 to build the plant and continued through early 2020.[121] For example in March 2018, Ukrspecexport shipped to "Department of Defense Industry, Headquarters of the Group of Weapons, Republic of Myanmar" items including "Materials for the manufacture of welding of molds for lightly armored machinery (BTR-4U and 2S1U)."[122] The export data shows that throughout 2018 and 2019, the Directorate of Defense Industry and MCM, via its subsidiary Amethyst Trading, received shipments of BTR-4U and MMT-40 parts from Ukrspecexport. These included chassis, engine parts, electrical components, night vision devices and laser rangefinders, as well as technical documentation for assembly and machine sets for production. From 2015 to 2020, Ukrspecexport also shipped equipment to Myanmar's Directorate of Defence Industry for the joint plant, such as horizontal boring, welding, cutting and lathe machinery.

96. The BTR-4 is an armored personnel carrier (APC) with an 8×8 axle configuration, and comes equipped with a 30mm cannon, machine gun (7.62mm) and either four anti-tank missiles or a 30mm automatic grenade launcher.[123] It can carry a crew of seven. The Myanmar military deployed BTR-4s throughout Yangon in the immediate aftermath of the coup. Ukraine had previously exported BTR-4 carriers to Myanmar, so it is unclear whether the BTR-4 currently in use in Myanmar are produced in Myanmar or not.

97. The MMT-40 is Myanmar's new domestically produced tank, based on the chassis of the Ukraine's 2S1 self-propelled howitzer that came to fruition because of the above-

[119] Permanent Mission of Ukraine to UN Offices and other International Organizations in Geneva, Letter to Special Rapporteur Thomas Andrews, 27 Aug 2021.

[120] "Ukraine to build armoured vehicle assembly plant in Myanmar," *Ukrainian Military Pages*, 6 Mar 2019, https://en.ukrmilitary.com/2019/03/ukraine-to-build-plant-in-myanmar.html.

[121] Export Data, Exporter: UKRSPECEXPORT, Recipient Country: Myanmar, 2015-Present, Source: ImportGenius.com (export records showing numerous shipments from Ukrspecexport to "Department of Defense Industry, Headquarters of the Group of Weapons, Republic of Myanmar" for items including "Materials for the manufacture of welding of molds for lightly armored machinery (BTR-4U and 2S1U)" (dated 23 Mar 2018); *see also* Justice for Myanmar, "Ukraine is arming the Myanmar military," 8 Sep 2021, https://www.justiceformyanmar.org/stories/ukraine-is-arming-the-myanmar-military.

[122] *Ibid.*

[123] "BTR-4 Armoured Personnel Carrier (APC)," *Army Technology*, 30 Mar 2014, https://www.army-technology.com/projects/btr-4-armoured-personnel-carrier/.

described production deal.[124] The MMT-40 has a Chinese-made two-man turret armed with one 105 mm cannon.[125] Recent reporting also indicates that the MMT-40 light tank could provide "the Myanmar army more advantages in low-intensity conflicts in the country."[126]

98. Export data also shows that Ukrspecexport exported mobile air surveillance radar and electrical equipment to the Myanmar Air Force from 2018-2020.[127]

99. Post-coup potential dual-use technology shipments from Ukraine to Myanmar continue, according to export data and investigative reporting, though the military application is unknown. In May 2021, Ukrainian state-owned arms trading company Ukroboronservice shipped over 164 kilograms of aircraft parts to a private Myanmar company.[128] A May 2021 shipment to the Myanmar Army's Directorate of Procurement contained turbojet engine equipment, and a February shipment to the private air force supplier Sky Aviator contained mechanical parts.[129]

100. Export data shows that Ukraine state-owned entities continued shipping materials for the BTR-4 and MMT-40 through March 2020. In August 2021, when asked whether they would continue supporting the manufacturing of BTR-4 and MMT-40, a spokesperson for Ukrspetsexport responded, "Currently, Ukrspetsexport has no grounds to suspend the implementation of these projects, as no decisions have been implemented by the relevant state authorities of Ukraine to impose any sectoral or personal special economic sanctions and other restrictive measures against Myanmar."[130]

101. When the Special Rapporteur presented the information on arms shipment to Ukraine, Ukraine responded in part: "Since 2018, Ukraine has not supplied lethal goods to Myanmar" and that "following the coup, the Ukrainian side has ceased any official contacts with the self-proclaimed military authorities in Myanmar, and no new contracts have been concluded for the supply of military goods to that country."[131] This answer leaves open the possibility that Ukraine continues to use intermediaries, including MCM, and while not undertaking new contracts, may continue to provide shipments related to the production of the armored personnel carriers and tanks.

102. Ukraine failed to cease transferring arms even though it would have expected, based on the facts or their knowledge of past patterns of the Myanmar military, that the armed personnel carriers and light tanks that Ukraine was providing would be used in acts that violate international humanitarian law. Providing Myanmar's military with the capability to domestically produce lethal tanks and armored personnel carriers at a time when credible allegations of genocidal attacks, war crimes, and crimes against humanity were widespread—

---

[124] Myanmar army has developed new 105mm light tank based on 2S1 chassis, 30 Mar 2019, *Army Recognition*, https://www.armyrecognition.com/march_2019_global_defense_security_army_news_industry/myanmar_army_has_developed_new_105mm_light_tank_based_on_2s1_chassis.html; *see also* "MA-MMT-40 105mm Light Tank," *Global Security*, https://www.globalsecurity.org/military/world/myanmar/ma-mmt-40.htm. ("There is a cooperation project with Ukraine to develop the MMT-40 light tank, which is not yet known how many will enter service.").

[125] *Ibid.*

[126] Myanmar's first "domestic" MMT-40 light tank, new equipment on the front lines of the Civil War, 27 Jan 2022, https://inf.news/en/military/effb6925d408f7327e15827130ff8b63.html.

[127] Export Data, Exporter: UKRSPECEXPORT, Recipient Country: Myanmar, 2015-Present, ImportGenius.com, (export records showing numerous shipments from Ukrspecexport to "Air Force, Commander-in-Chief 's Headquarters (Air Force)", including on 7 Feb 2019 for "Components of the part, components, blocks, aggregates, special components of radar 80K6K1 No16K102,No16K103; RADAR 80K6K1V No16K101").

[128] Justice for Myanmar, Ukraine is arming the Myanmar military," 8 Sep 2021, https://www.justiceformyanmar.org/stories/ukraine-is-arming-the-myanmar-military; Export Data, Exporter: UKROBORONSERVICE, Recipient: YATANARPON AVIATION, Export date: 27 May 2021, www.importgenius.com.

[129] Export Data, Exporter: MOTOR SICH, Recipient: SKY AVIATOR, Export date: 27 May 2021, importgenius.com.

[130] Eugene Theise, Naomi Conrad, Julia Bayer, "'Stop arming our killers:' what to do with Ukrainian armored personnel carriers for Myanmar?" (translated from Russian), *Deutche Welle*, 27 Aug 2021, https://www.dw.com/uk/prypynit-ozbroiuvaty-nashykh-vbyvts-shcho-robyty-z-ukrainskymy-btramy-dlia-mianmy/a-58924793.

[131] Permanent Mission of Ukraine to UN Office and other International Organizations in Geneva, Letter to Special Rapporteur Thomas Andrews, 27 Aug 2021.

crimes that were perpetrated using the very same arms—violates its Geneva Convention obligations.

103. As to probable violations of customary law, Ukraine would know with virtual certainty that armored personnel carriers and tanks would contribute significantly to attacks on civilians as they are heavily armed and a key component of moving troops into position. Reports indicate that armored personnel characters were in fact utilized to move troops into major cities in advance of cracking down on protesters and were utilized in Rakhine State in 2017.

104. As a signatory to the ATT, Ukraine has "an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty."[132] The stated purposes of the ATT is "reducing human suffering" and "contributing to international and regional peace, security and stability."[133] Providing vehicle component parts as well as the infrastructure to produce light tanks and armored personnel carriers to a military that has used tanks and armored personal carriers in its genocidal attacks in Rakhine State against the Rohingya, is antithetical to both of these goals.

D. Tier IV: Arms transferred prior to the coup of the type that could be used against civilians

1. Israel

105. Israel voted in favor of General Assembly Resolution 75/287. Israel acceded to the Geneva Conventions and signed the Arms Trade Treaty 18 December 2014 but has not yet ratified it. A spokesperson for Israel's Foreign Ministry stated in June 2019, ". . . Israel does not sell arms to Myanmar and this policy has not changed," though there is no indication Israel has imposed a formal embargo on Myanmar. [134]

106. Reports indicate that an Israeli state-owned enterprise delivered attack frigates to the Myanmar military in 2017 and possibly as late as 2019.[135] Israel Aerospace Industries (IAI) agreed to sell six Super Dvora Mk III gunboats following Min Aung Hlaing's visit to Israel in 2015 when he inspected a Super Dvokra Mk III in 2015.[136] The Super Dvora Mk III is a jet-powered craft used for patrols or combat missions. It can reach 45 knots per hour, comes equipped with a 25mm canon and can be mounted with other optional weapons, "including long-range missile launching system and short-range missiles, such as Hellfire surface-to-surface missiles (SSMs)."[137]

107. Prior to the first delivery, an Israeli citizen filed a petition before the Israeli Supreme Court in early 2017, seeking a prohibition—based on the conduct of the Tatmadaw in northern Rakhine State in October 2016—on the implementation of the defense cooperation agreement between Israel and Myanmar.[138] At the request of the Israeli Government, the ruling was

[132] Vienna Convention on the Law of Treaties 1969, Arts.10 and 18 (Signature Subject to Ratification, Acceptance or Approval), United Nations Treaty Collection, https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml.

[133] The Arms Trade Treaty, Article 1, *supra* note 35.

[134] Noa Landau, "Israel to Bar Myanmar Officials From Arms Expos," *Haaretz*, 17 Jul 2019, https://www.haaretz.com/israel-news/.premium-israel-to-bar-myanmar-officials-from-arms-expos-1.7532506.

[135] SIPRI Arms Transfers Database, Transfers of major weapons: Deals with deliveries or orders made for 2015 to 2020, Recipient: Myanmar, Supplier: Israel, Information generated: 21 Jan 2022, https://armstrade.sipri.org/armstrade/page/trade_register.php.

[136] "Israel builds for Myanmar 6 patrol boats Super Dvora Mk 3," *Top War*, 5 Oct 2015 https://en.topwar.ru/83742-izrail-stroit-dlya-myanmy-6-storozhevyh-katerov-super-dvora-mk-3.html

[137] IAI, Super Dvora MK3 Multimission Fast Patrol Craft, Technical Data, https://www.iai.co.il/p/super-dvora-mk3; "Super Dvora MKIII Patrol Boats," *Naval Technology*, 12 May 2015, https://www.naval-technology.com/projects/super-dvora-mkiii-patrol-boats/.

[138] "Israel's Top Court Just Ruled About Arms Sales to Myanmar. But We're Not Allowed to Tell You the Verdict," *Haaretz*, https://www.haaretz.com/israel-news/israel-s-top-court-just-ruled-about-arms-sales-to-myanmar-but-we-re-not-allowed-to-say-more-1.5453954.

sealed. Reports indicate that Myanmar received at least two of the Super Dvora Mk III gunboats out of the six ordered.

108. The Special Rapporteur requested Israel's comments or clarifications on this arms transfer as well as Israel's arms transfer policy towards Myanmar, but received no response. The Special Rapporteur notes that while reporting indicates shipments may have continued through 2019, if shipments in fact ceased in 2017, Israel's transfers would be outside the scope of this report.

109. Given that transfers may have continued until 2019, Israel's provision of jet-driven Super Dvora Mk III beginning in 2017 likely violates international humanitarian law. The vessels are used for patrols and combat missions, come equipped with cannons and missiles, and were transferred to a military that for years has attacked civilians, including those in coastal communities, with automatic weapons and missiles.[139] Israel should have had an expectation "based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions."[140]

110. As a signatory to the ATT, Israel has "an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty."[141] The stated purposes of the ATT is "reducing human suffering" and "contributing to international and regional peace, security and stability."[142] Transferring heavily armed naval vessels to Myanmar's military, which was widely known to have committed probable crimes against humanity and war crimes, arguably defeats the purpose of the ATT.

2. The Republic of Korea

111. The Republic of Korea voted in favor of General Assembly Resolution 75/287 and is one of only two countries to formally impose a new arms embargo on Myanmar since the coup. The Republic of Korea ratified the Arms Trade Treaty and it entered into force for the Republic of Korea on 26 February 2017.[143] A little over a year prior to the coup, however, a Korean shipbuilder, majority owned by the Republic of Korea government, transferred to the Myanmar Navy its largest Naval ship to date.

112. In December 2019, Myanmar inducted the UMS *Moattama* into the Myanmar Navy. As with many of the newly acquired military assets, Min Aung Hlaing personally presided over the commissioning ceremony. Korean shipbuilder Dae Sun Shipbuilding & Engineering, majority owned by the Republic of Korea, built the roughly 125 meters long naval ship, launching it from the Republic of Korea en route to Myanmar in approximately July 2019. Both Myanmar and the Republic of Korea describe the ship as a Multi-Purpose Support Vessel.[144] The Republic of Korea explained to the Special Rapporteur that the purpose of the ship was "to transport relief supplies and humanitarian assistance personnel in case of a natural disaster."[145]

113. Independent military analysts classify the ship as a Landing Platform Dock (LPD) and/or an "amphibious assault ship,"[146] noting that "as any LPD, the *Moattama* is designed for amphibious operations, transportation of personnel as well as disaster relief and

[139] IAI, Super Dvora MK3 Multimission Fast Patrol Craft, *supra* note 137.
[140] Commentary of 2016, Article 1, *supra* note 22.
[141] Arts.10 and 18, Vienna Convention on the Law of Treaties 1969, *supra* note 132.
[142] The Arms Trade Treaty, Article 1, *supra* note 35.
[143] Arms Trade Treaty, States Parties to the ATT, 7 Aug 2020, https://thearmstradetreaty.org/hyper-images/file/List%20of%20ATT%20States%20Parties%20(alphabetical%20order)(07%20August%202020)/List%20of%20ATT%20States%20Parties%20(alphabetical%20order)(07%20August%202020).pdf.
[144] Permanent Mission of the Republic of Korea – Geneva, Letter to Special Rapporteur Thomas Andrews, 28 Oct 2021.
[145] Anthony Davis, "Update: Myanmar Navy commissions its first LPD amphibious assault ship," *Janes*, 27 Dec 2019, https://www.janes.com/defence-news/news-detail/update-myanmar-navy-commissions-its-first-lpd-amphibious-assault-ship; Permanent Mission of the Republic of Korea – Geneva, Letter to Special Rapporteur Thomas Andrews, 28 Oct 2021.
[146] *Ibid.* ("Myanmar Navy (MN) has commissioned its first-ever landing platform dock (LPD) amphibious assault ship").

humanitarian assistance."[147] One analyst highlights that during wartime, LDPs such as the *Moatama* can be used to infiltrate and exfiltrate specialized forces by sea, using both light landing craft and helicopters, while during peacetime they are valuable for humanitarian assistance.[148] The *Moattama* can reportedly transport 35 troop-carrying tactical vehicles, and two Mi-17 helicopters.[149]

114. Since the coup, Min Aung Hlaing appears to be using the *Moattama* as his flag ship, as he oversaw the induction of the Chinese-provided submarine into the Myanmar Navy from the deck of the *Moattama*.[150]

115. Providing a government with equipment to save lives in a natural disaster is obviously not a violation of international law nor an abrogation of any treaty. But Myanmar has demonstrated ample reasons to be sceptical about how it might use a ship that can be used to both provide emergency relief and attack civilians. As the FFM documented, the targets of the Myanmar military in 2017 were Rohingya civilians. While the Republic of Korea's intent was for the *Moattama* to support humanitarian missions, it knew, or would have expected, that the Myanmar military could deploy it to transport military personnel and equipment to attack civilians.

116. Under Article 6 of the Arms Trade Treaty, the Republic of Korea is prohibited from transferring "warships" if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes."[151] Warship are defined under the ATT as "vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or more."[152] The *Moattama* displaces between 7,300-11,300 metric tons, though there is no information on potential armaments. Thus, it is unclear whether the *Moattama* meets the definition of a warship, despite being able to transport troops and related equipment.

117. If the *Moattama* is not considered a warship, Article 7 of the ATT would apply. Under Article 7, the Republic of Korea must not transfer arms not otherwise covered by Article 6 where it assesses there is an unmitigable risk that those arms "could be used to commit or facilitate a serious violation of international humanitarian law" or "international human rights law." The transfer of the *Moattama* occurred 15 months after the genocidal attacks on the Rohingya in Rakhine State, in which the FFM showed that at least one Rohingya village was attacked by a ship on the Bay of Bengal. Given the ability of the *Moattama* to land a large contingent of forces and equipment on the coast, it is foreseeable, that it "could be used"—per the terms of Article 7—to commit attacks by a military that has a history of committing widespread and systematic attacks on a coastal population.

118. The Special Rapporteur stresses, however, that since the coup, the Republic of Korea has imposed an arms embargo on the Myanmar military and has committed to enforcing it.

---

[147] Xavier Vavasseur, "Myanmar Navy's New LPD 'Moattama' In Vladivostok," *Naval News*, 3 Nov 2019, https://www.navalnews.com/naval-news/2019/11/myanmar-navys-new-lpd-moattama-in-vladivostok/.

[148] Mohammad Rubaiyat Rahman, "What Myanmar's New Amphibious Ship Says About Its Naval Ambitions," *The Diplomat*, 9 Nov 2019, https://thediplomat.com/2019/11/what-myanmars-new-amphibious-ship-says-about-its-naval-ambitions/.

[149] *Ibid.*

[150] "The best guarantee for perpetuation of the sovereignty of the State is possessing the dynamic and capable defence force, says Senior General," *Global New Light of Myanmar*, 25 Dec 2021, https://www.gnlm.com.mm/the-best-guarantee-for-perpetuation-of-the-sovereignty-of-the-state-is-possessing-the-dynamic-and-capable-defence-force-says-senior-general/ ("The Senior General from warship Mottama (sic) took the salute of the Guard of Honour and Frigate Aung Zeya, Frigate Kyansittha, Frigate Hsinbyushin and Corvette Tabinshwehti together with fast attack vessels in Single Line Formation and Diamond Formation.").

[151] The Arms Trade Treaty, Article 2, 5, *supra* note 35 (prohibiting the transfer of tanks, combat vehicles, large-calibre artillery systems, combat aircraft, helicopters, warships, missiles, small arms and light weapons).

[152] United Nations Register of Conventional Arms, Categories of major conventional arms, Category VI – Warships, https://www.unroca.org/categories.

VI. Member States with Arms Embargos

119. Many Member States have imposed unilateral embargos against the Myanmar military, in keeping with the Responsibility to Protect. A total of forty-four Member States currently have arms embargos on Myanmar.[153]

120. Australia has imposed an arms embargo against Myanmar since 2011. It prohibits (1) the supply, sale or transfer of arms or "related materiel" to Myanmar (including, but not limited to, weapons; ammunition; military vehicles and equipment; associated spare parts and accessories; and paramilitary equipment); and (2) the provision to Myanmar of services that assist with, or are provided in relation to: the supply, sale or transfer of arms or related materiel to Myanmar; or the manufacture, maintenance or use of arms or related materiel.[154]

121. Canada maintains an arms embargo against Myanmar under the 2007 Special Economic Measures (Burma) Regulations, which includes prohibitions on exporting and importing arms and related material to and from Myanmar; communicating technical data related to military activities or arms and related material; and providing financial services related to military activities or arms and related material.[155] Concerning dual-use technology, Canada reported: "With respect to controlled strategic and dual-use items outside the remit of the arms embargo, Canada's Minister of Foreign Affairs will not issue an export permit if there is a substantial risk that the item could be used to commit or facilitate a serious violation of international humanitarian law or international human rights law, acts of terrorism or transnational organized crime, or serious acts of gender-based violence or violence against women and children."[156] As a member of the G7, Canada urged all countries to immediately suspend arms sales to Myanmar.[157]

122. The European Union has maintained an embargo on arms, munitions, and military equipment since the early 1990s and has widened the scope of the embargo several times since. In response to the relative opening in political space in 2012, the EU lifted most of its restrictive measures. Acknowledging the ever-present threat of the military, the EU kept in place the arms embargo and the embargo on "equipment which might be used for internal repression."[158] In response to the genocidal attacks against the Rohingya, the EU expanded the embargo in 2018, banning the export of (1) dual-use goods and (2) monitoring communications equipment that might be used for internal repression, and prohibiting military training and cooperation.[159] The EU embargo covers the 27 members of the European Union.

123. Ten countries have aligned themselves with the European Union's arms embargo regime on Myanmar. They are: Albania, Armenia, Bosnia and Herzegovina, Iceland, Liechtenstein (which co-sponsored UNGA Resolution 75/287 recommending an embargo on Myanmar), Moldova, Montenegro, North Macedonia, Norway (embargo on Myanmar since 2003), and Turkey.[160] Turkey separately reported to the Special Rapporteur that, "Turkey in effect does not allow the sale of arms and munitions to Myanmar that could be used against

---

[153] *See* Appendix 1 for a chart listing all 44 Member States with known embargoes.

[154] "Myanmar Sanctions Regime," Government of Australia, Department of Foreign Affairs and Trade, https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx.

[155] "Canadian Sanctions Related to Myanmar," Government of Canada, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

[156] Permanent Mission of Canada to the United Nations and the World Trade Organization, Responses by the Government of Canada to the call for contributions from the Special Rapporteur on the situation of human rights in Myanmar on Member State's policies on arms transfers to Myanmar and their response to the call for an international arms embargo, 10 Jun 2021.

[157] "G7 Foreign and Development Ministers' Meeting: Communiqué," European Union External Action Service, 5 May 2021, https://eeas.europa.eu/headquarters/headquarters-homepage_en/97842/G7%20Foreign%20and%20Development%20Ministers%E2%80%99%20Meeting:%20Communiqu%C3%A9.

[158] Council Decision 2012/225/CFSP, amending Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar, Office Journal of the European Union, 26 Apr 2012, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012D0225.

[159] "Declaration by the High Representative on behalf of the EU on the alignment of certain countries concerning restrictive measures against Myanmar/Burma," 24 May 2018, https://www.consilium.europa.eu/en/press/press-releases/2018/05/24/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-alignment-of-certain-countries-concerning-restrictive-measures-against-myanmar-burma/.

[160] *Ibid.*

the people of Myanmar as well as dual use equipment that could be utilized by the army and the security forces."[161]

124. Since the coup, the Republic of Korea and Japan announced formal positions on arms transfers to Myanmar. As part of the 2021 G7 Foreign Ministers' Statement, Japan committed to "continuing to prevent the supply, sale or transfer of all weapons, munitions, and other military-related equipment to Myanmar and the supply of technical cooperation."[162] Japan reported to the Special Rapporteur that, "In line with the Three Principles on Transfer of Defense Equipment and Technology, Japan allows arms to be exported in exceptional cases only under strict scrutiny. In fact, items such as arms and their parts have not been exported to Myanmar for several years."[163] The Republic of Korea decided on March 12, 2021, to suspend any additional exchanges or cooperation in the field of defense and security, ban exporting military supplies, and impose strict controls in the export of dual-use items to Myanmar.[164]

125. Switzerland first imposed an arms embargo on Myanmar in 2000, and expanded it in 2018, prohibiting all arms and equipment that could be used for internal repression. Switzerland's Federal Council also prohibits the sale, supply, export and transit to the military and border guard police of dual-use goods, equipment, technology, and software that can be used to monitor communications, including using the internet and mobile networks. The Swiss measures are equivalent to the measures of the European Union.[165]

126. The United Kingdom, a former EU member, adopted its own arms embargo that includes various restrictions on the trade of military and dual-use goods as well as prohibitions on the provision of monitoring communications equipment and military-related services to Myanmar.[166] As a member of the G7, it also urged all countries to immediately suspend arms sales to Myanmar.[167]

127. The United States has maintained a comprehensive arms embargo on Myanmar since 1993.[168] Immediately following the coup, the U.S. Department of Commerce limited exports of sensitive goods to the military and other entities associated with the coup and imposed export restrictions on Myanmar's Ministry of Defense, the Ministry of Home Affairs, armed forces, and security services.[169] The U.S. also imposed a presumption of denial on all exports

[161] Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva, Letter to Special Rapporteur Thomas Andrews, 26 Aug 2021.

[162] "G7 Foreign and Development Ministers' Meeting: Communiqué," *supra* note 157.

[163] Permanent Mission of Japan to International Organizations in Geneva, Japan's reply to the request for information sent by Mr. Thomas Andrews, Special Rapporteur on the situation of human rights in Myanmar in his letter dated 16 August 2021, 25 Aug 2021.

[164] "Korean Government's Measures on Situation in Myanmar," Ministry of Foreign Affairs, 12 March 2021, http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=321574&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1&titleNm.; Permanent Mission of the Republic of Korea-Geneva, "The Government of the Republic of Korea's Response to the Questionnaire of the Special Rapporteur on the Human Rights Situation in Myanmar", 1 Jun 2021.

[165] "Tightening of sanctions against Myanmar," The Federal Council of Switzerland, 17 Oct 2018, https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-72557.html; "Measures against Myanmar (formerly Burma)," State Secretariat for Economic Affairs SECO, 22 Jun 2021, https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-myanmar--burma-.html; Swiss Confederation, Switzerland's response to the UN Special Rapporteur's request for input on the situation of human rights in Myanmar, 4 Jun 2021.

[166] "The Burma (Sanctions) (EU Exit) Regulations 2019," UK Statutory Instruments 2019 no. 136, Part 5: Trade, https://www.legislation.gov.uk/uksi/2019/136/contents/made.

[167] "UK announces sanctions on gemstone company linked to the military regime in Myanmar," Foreign, Commonwealth and Development Office, 17 May 2021, https://www.gov.uk/government/news/uk-announces-sanctions-on-gemstone-company-linked-to-the-military-regime-in-myanmar.

[168] "Suspension of Munitions Export Licenses to Burma," U.S. Department of State, 58 Federal Register 33293, 16 Jun 1993.

[169] "U.S. Commerce Department Restricts Licensing of Sensitive Exports to Burma's Military and Security Services in Response to the Recent Military Coup, U.S. Department of Commerce, 11 Feb 2021, https://www.commerce.gov/news/press-releases/2021/02/us-commerce-department-restricts-licensing-sensitive-exports-burmas.

and reexports of certain items intended for military use or end users.[170] As a member of the G7, the U.S. is urging all countries to immediately suspend arms sales to Myanmar.[171]

128. Some Member States have expressed informal positions of not cooperating with the Myanmar military and not transferring arms.

129. Brazil responded to the Special Rapporteur's inquiries that while it does not have an arms embargo against Myanmar, prior to any arms transfer Brazil's regulations require it to consider "the possibility that the weapons be used to facilitate violations of human rights or violations of the international law applicable to armed conflicts."[172] Brazil also stressed that it is a member of the ATT and that any proposed shipments to Myanmar would be evaluated in line with its domestic regulations and the ATT. Uzbekistan said it engaged in no cooperation with the Myanmar military related to arms transfers. Honduras responded to the Special Rapporteur's inquiries stressing that it has no commercial, business, or any kind of arms relationship with Myanmar and that it rejects illicit diversions and transfers of arms that can drive serious human rights violations.[173] Similarly, Bangladesh stressed that Bangladesh has "never had any arms trade with Myanmar" so arms embargos "do not apply."[174]

130. Multiple countries the Special Rapporteur corresponded with indicated they would not apply a unilateral arms embargo on Myanmar, deferring instead to decisions by the Security Council on the matter of arms control. These countries include, Argentina, Cambodia, the Philippines, Malaysia, and Singapore. Singapore did note that it reports any arms transfers to the United Nations Register of Conventional Arms and that Myanmar is not one of the countries Singapore lists as exporting arms to.

VII. Third-country Transfers

131. Where embargos are in place, Member States must be vigilant and investigate all suspected cases of third-country sales of goods and technology originating in their countries that might run afoul of their arms and dual-use embargos. The recent confirmed transfer to Myanmar's military of two European-manufactured aircraft highlights this need for vigilance.

132. The latest example of a likely third-party transfer occurred as recently as December 2021. In addition to the Russian and Chinese-origin fighter jets that Min Aung Hlaing inducted into the Myanmar Air Force on 15 December 2021, the commissioning ceremony also saw a ATR 72-600 series civilian transport aircraft and two Airbus AS 365N2 Dauphin 2 multipurpose helicopters entered into the ranks of Myanmar's Air Force fleet.[175] ATR 72-600 are French origin transport planes, manufactured in France by ATR, which is a French domiciled joint venture between Airbus and Italian aerospace firm Leonardo Corporation.[176] Junta-controlled press described the plane as a "medium-transport airplane to transport very important persons, passengers and cargo and perform search and rescue works."[177] The Airbus AS 365N2 Dauphin 2 is likewise manufactured in France by Airbus. The junta

[170] "Commerce Implements New Export Controls on Burma and Makes Entity List Additions in Response to the Military Coup and Escalating Violence against Peaceful Protesters," U.S. Department of Commerce, 4 Mar 2021, https://www.commerce.gov/news/press-releases/2021/03/commerce-implements-new-export-controls-burma-and-makes-entity-list.

[171] "G7 Foreign and Development Ministers' Meeting: Communiqué," *supra* note 157.

[172] Permanent Mission of Brazil to the United Nations Office in Geneva, Letter to Special Rapporteur Thomas Andrews, 27 Aug 2021.

[173] Mission Permanente De Honduras en Ginebra, Suiza, Letter to United Natinos Special Rapporteur, 26 Aug 2021.

[174] Permanent Mission of Bangladesh to the United Nations Office in Geneva, Letter to Special Rapporteur Thomas Andrews, 27 Aug 2021.

[175] *Global New Light of Myanmar*, *supra* note 67; Mrityunjoy Mazumdar & Jon Grevatt, *supra* note 68.

[176] ATR Website, "Who We Are," https://www.atr-aircraft.com/about/who-we-are/; *see also* "UN Security Council members complicit in arms sales to terrorist Myanmar military junta," Justice for Myanmar, https://www.justiceformyanmar.org/press-releases/un-security-council-members-complicit-in-arms-sales-to-terrorist-myanmar-military-junta.

[177] *Global New Light of Myanmar*, *supra* note 67.

similarly described the helicopter as a "the medium-transport helicopter, can transport VIPs, and passengers and can be used for search and rescue."[178]

133. The EU embargo on Myanmar includes military end-use restrictions that should trigger a licensing requirement for the export of aircraft if an exporter has been informed, or is aware, that an item is or may be intended for a specified military end-use. Military end-use restrictions cover situations in which (1) the Item is or may be intended for use with military equipment in a destination country subject to an EU arms embargo or (2) the Item may be intended for use as parts of military goods illegally obtained from the EU, irrespective of destination.[179] Moreover, the EU common position states that "where there are serious grounds for believing that the end-user of dual-use goods and technology will be the armed forces or internal security forces or similar entities in the recipient country," such goods are considered, for the purposes of export control, military technology or equipment.[180]

134. In a separate incident, EU manufactured transport planes were believed to have been transferred from Jordan to Myanmar. In December 2020, investigative reporting uncovered proposals for the alleged transfer of two C-295 military transport planes by the Jordanian Air Force to the Myanmar military via a Myanmar intermediary.[181] The Special Rapporteur quickly made inquiries with the Jordanian Government and on 1 February 2021, Jordan responded: "The concerned two planes are still on offer to be sold in accordance with Domestic Law and Regulations" and stated that the "two planes were never sold to Myanmar, nor was there any agreement or commitment whatsoever concluded with any party on Myanmar's behalf."[182]

VIII. Conclusions

135. Arms transfers to the Myanmar military must stop. There is a direct link between Myanmar's receipt of the weapons outlined in this paper and human rights violations. On 19 January, the Special Rapporteur spoke to a man whose two daughters, aged 15 and 12 years, were killed just days prior by shrapnel from an airstrike the military launched on an internally displaced encampment in Kayah State. The man, whose wife was injured in the attack, took stock of his and his wife's future: "We have lost everything," he said. Arms transfers to the military junta of Myanmar are having horrific consequences for the people of Myanmar.

136. At the outset of the military coup, the people of Myanmar had great hope that the Member States of the United Nations would do all that could reasonably be done to help them. Many evoked, in their appeals and on posters in public demonstrations, the R2P Doctrine—the Responsibility to Protect. Under this doctrine, UN Member States commit themselves to protect their own citizens from atrocity crimes and to take action if another state is either unable or unwilling to fulfill this responsibility, or if the state is itself the actual perpetrator of atrocity crimes, as is the case with the Myanmar junta.

137. The Myanmar people are bitterly disappointed in the response of the international community. They point not only to the unwillingness of Member States to come to their aid in their moment of peril, as called for in R2P, but to the fact that some Member States—

[178] *Ibid.*

[179] "Regulation (EU) 2021/821 of the European Parliament and of the Council, setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast)," 20 May 2021, https://eur-lex.europa.eu/eli/reg/2021/821; *see also* Anahita Thoms, "Export Controls in the European Union," *Global Investigations Review*, 13 Jul 2021, https://globalinvestigationsreview.com/guide/the-guide-sanctions/second-edition/article/export-controls-in-the-european-union#footnote-016.

[180] Article 6, European Union Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0944.

[181] Justice For Myanmar, "Myanmar Military Airbus Deals for Troop Transport and Luxury Travel," 8 Dec 2020, https://www.justiceformyanmar.org/stories/a-dangerous-use-of-public-funds-myanmar-military-airbus-deals-for-troop-transport-and-luxury-travel.

[182] Permanent Mission of the Hashemite Kingdom of Jordan, Letter to Special Rapporteur Thomas Andrews, 1 Feb 2021.

chiefly permanent UN Security Council members China and Russia—are actually aiding these atrocities, as this paper describes.

138. The best and worst of humanity is evident in Myanmar. The military junta continues to relentlessly commit probable crimes against humanity and war crimes against the people of Myanmar. Despite great risks and hardships, however, the people of Myanmar are responding with courage, tenacity, and an unwavering commitment to save their country and their children's future from what is tantamount to a hostile occupying military.

139. The crimes that are being inflicted on the people of Myanmar are not only the result of a brutal military junta, they are facilitated by those who aid and abet them by supplying the arms to carry out their attacks. They are also enabled by those who have yet to take actions that could make a difference. In short, we, the international community, have a responsibility to take steps to end these crimes.

140. The ongoing violations of international law in Myanmar demonstrate an oft proven trend in recent times: governments that perpetrate international crimes rarely act alone.[183] Myanmar has been able to commit the atrocity crimes described in this paper, at least in part, because governments facilitated the transfer of the arms to do so. They knew what was at stake. Given the Myanmar military's systemic perpetration of atrocities over many decades, it was predictable that the junta would use foreign-acquired fighter jets, attack helicopters, heavy artillery, and military transport to attack civilians.

141. The situation of human rights in Myanmar is bad and getting worse as the military junta escalates its oppression and brutal attacks against the Myanmar people. Now, more than ever, it is imperative that the international community come to terms with its role in the systematic human rights violations and atrocity crimes that are being committed against civilians throughout Myanmar. A change of course is imperative if these crimes are to be stopped. As this paper documents, viable options and opportunities for Member States to make a difference exist. What is required is the political will to seize them.

IX. Recommendations

A. To the United Nations Security Council

142. **The best option to stop the flow of arms into Myanmar and to stop the junta's atrocities is through the UN Security Council. It has the tools at its disposal that would allow the international community to live up to its responsibility to protect the people of Myanmar from the Myanmar military. The Special Rapporteur's therefore recommends that the Security Council urgently exercise its Chapter VII responsibilities and powers to:**

a. **Impose a comprehensive arms embargo and economic sanctions regime. The Security Council should urgently consider, debate and vote on a resolution that will prohibit the direct and indirect supply of weapons, ammunition, military vehicles and equipment, dual-use goods, and jet fuel, as well as financial and technical military assistance. The General Assembly made its recommendation loud and clear to the Security Council on this point in Resolution 75/287, having passed with only one dissenting vote.**

b. **Impose targeted economic sanctions on the Myanmar military. Cut the revenue that enables the junta to purchase the weapons and technology that it needs to continue its attacks on the people of Myanmar. Measures to do so include sanctioning Myanmar Oil and Gas Enterprise, and freezing assets that rightfully belong to the people of Myanmar, including the billions in foreign currency reserves the junta has stolen from the people of Myanmar.**

c. **Refer the military junta to the International Criminal Court so that those responsible for the atrocity crimes that have been committed against the people of Myanmar are held fully accountable.**

[183] Rachel López, "The Duty to Refrain: A Theory of State Accomplice Liability for Grave Crimes," 97 Neb. L. Rev. 120 (2018) (citing Miles Jackson, Complicity in International Law (Oxford University Press, 2015) at 221).

143. **The prospect of a veto by a Member State in the UN Security Council should not deter other members from placing a resolution before the Council for consideration, debate and a vote. The people of Myanmar deserve to have a strong resolution—that cuts the supply of weapons and funds to the junta—presented, debated and voted upon in an open, transparent process.**

144. **At absolute minimum, a Security Council Member should urgently put a resolution before the Council to establish an arms embargo that specifically outlaws the sale of those weapons and associated munitions that are killing Myanmar civilians, including, jet aircraft, attack helicopters, armored vehicles, light and heavy artillery, missiles and rockets that can attack ground targets, artillery shells, and small arms.**

B. To Member States

145. **Those Member States that have continued to approve and transfer arms to Myanmar following the coup should stop. For example, Serbia should make good on its alignment with European Union measures to impose an arms embargo and make it clear that it will not allow arms to be transferred from Serbia to Myanmar. At minimum, those countries continuing to engage in the transfer of weapons or dual-use technology should commit to not transferring arms to the Myanmar military that can be used in attacks against civilians.**

146. **Those Member States that sold arms or dual-use equipment to the Myanmar military after 2018 but appear to have since ceased, specifically Pakistan, Belarus, and Ukraine, should impose arms embargos on Myanmar. There should be no ambiguity on this point. For example, Ukraine has publicly aligned with the European Union on sanctions and an arms embargo, but has not implemented such an embargo, and state-owned entities have indicated they could continue to supply arms to Myanmar.[184]**

147. **Absent a Security Council Resolution requiring economic sanctions, Member States should establish targeted economic sanctions against the Myanmar military, its sources of revenue, and its support network. The time for symbolic sanctions that do little to impact the junta's ability to raise funds to sustain itself must end. Reducing the military junta's access to funds will reduce its capacity to purchase fighter jets, missiles, armored personnel carriers, and artillery. To that end, the Special Rapporteur recommends that Member States coordinate with one another, as well as private industry, to freeze remaining revenue streams, financial flows, and assets to the junta. Specifically, Member States should:**

a. **Establish a working group to identify and disrupt the junta's ability to access the State of Myanmar's foreign currency reserves, including by coordinating between Financial Intelligence Units to share information on amounts and locations of reserves. Immediately after the coup, a Member State froze a substantial portion of Myanmar's foreign currency in that country, declaring that the action was done to "to prevent the generals from improperly having access to [it]." It has been nearly one year since any action close to that was taken and, to the best of the Special Rapporteur's knowledge, no other jurisdiction has taken a similar step. The junta should not be allowed to rob assets that rightfully belong to the people of Myanmar and then use that money to purchase weapons to attack them. Where required, Members States should consider imposing targeted economic sanctions on accounts and institutions supporting the junta's access to the State of Myanmar's assets.**

b. **Sanction Myanmar Oil and Gas Enterprise (MOGE). The announcement by TotalEnergies, Chevron Corporation, and Woodside Petroleum that they are**

[184] Eugene Theise, Naomi Conrad, Julia Bayer, "Stop arming our killers": what to do with Ukrainian armored personnel carriers for Myanmar? (translated from Russian), 27 Aug 2021, https://www.dw.com/uk/prypynit-ozbroiuvaty-nashykh-vbyvts-shcho-robyty-z-ukrainskymy-btramy-dlia-mianmy/a-58924793. ("Currently, Ukrspetsexport has no grounds to suspend the implementation of these projects, as no decisions have been implemented by the relevant state authorities of Ukraine to impose any sectoral or personal special economic sanctions and other restrictive measures against Myanmar.")

exiting Myanmar does not mean that oil and gas revenue will stop flowing to the junta. A more effective scenario would have been for these companies to continue operating, but with sanctions imposed preventing the flow of profits to the junta. That said, sanctioning MOGE can still impact the junta's ability to freely move MOGE profits through the international banking system.

c. **Coordinate actions to stop junta leaders from stealing Myanmar's other natural-resource wealth. Prevent governments and private sector interests from buying natural resources such as timber, gemstones, jade, pearl, rare earths and other such products when the funds are channelled to the military junta.**

d. **Enforce existing sanctions to the fullest extent possible. Currently, there is no indication that sanctioning the junta itself—the State Administrative Council—has impacted its ability to receive funds. Similarly, for example, according to recent reporting, Myanmar teak and gems continues to flow to certain countries that have sanctioned Myanmar Timber Enterprise and Myanma Gems Enterprise. Sanctions are meaningless without enforcement.**

e. **Sanction those individuals and entities involved in the import and export of arms to Myanmar including Myanmar-based individuals and entities that serve as intermediaries in the weapons trade. Independent investigators have identified numerous Myanmar-based and foreign-based arms facilitators.[185] Those entities that export and import weapons to aid and abet atrocities should be sanctioned.**

f. **Member States should support CSOs within Myanmar and their INGO affiliates. This includes supporting grass-roots campaigns such as stopping the flow of products and services that support the military junta including jet fuel and insurance products.**

C. To the International Business Community

148. **International investors should examine the extent to which their investments are exposed to arms manufacturers that have sold arms to the Myanmar military in support of its atrocity crimes. They should then take action in accordance with their own human rights policies and the UN Guiding Principles on Business and Human Rights, which state in relevant part, "[B]usiness enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships" and take appropriate action to "prevent and mitigate adverse human rights impact."[186]**

149. **More broadly, investors, brokerage firms, banks and other financial institutions should terminate investments in companies engaged in business operations that directly support the military junta. As the Guiding Principles state, "Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible."[187]**

---

[185] *See, e.g.,* Justice for Myanmar, "Military-linked companies procured USD millions in arms and military equipment," 7 Feb 2022, https://www.justiceformyanmar.org/stories/military-linked-companies-procured-usd-millions-in-arms-and-military-equipment.

[186] A/HRC/17/31, Guiding Principles on Business and Human Rights, 21 Mar 2011, Principle 18 and 19 at 17,18, https://undocs.org/en/A/HRC/17/31.

[187] *Ibid.*, Commentary to Article 19 at 18.

APPENDIX 1: Member States with Arms Embargoes Against Myanmar

No.	*Country*	*Description*
1	**Albania**	Aligned with the EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[188]
2	**Armenia**	Aligned with the EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[189]
3	**Australia**	Prohibits (1) the supply, sale or transfer of arms or "related materiel" to Myanmar (including, but not limited to, weapons; ammunition; military vehicles and equipment; associated spare parts and accessories; and paramilitary equipment); and (2) the provision to Myanmar of services that assist with, or are provided in relation to: the supply, sale or transfer of arms or related materiel to Myanmar; or the manufacture, maintenance or use of arms or related materiel.[190]
4	**Bosnia and Herzegovina**	Aligned with EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[191]
5	**Canada**	Maintains an arms embargo against Myanmar under the 2007 Special Economic Measures (Burma) Regulations, which includes prohibitions on exporting and importing arms and related material to and from Myanmar; communicating technical data related to military activities or arms and related material; and providing financial services related to military activities or arms and related material.[192] Concerning dual-use technology, Canada reported: "With respect to controlled strategic and dual-use items outside the remit of the arms embargo, Canada's Minister of Foreign Affairs will not issue an export permit if there is a substantial risk that the item could be used to commit or facilitate a serious violation of international humanitarian law or international human rights law, acts of terrorism or transnational organized crime, or serious acts of gender-based violence or violence against women and children."[193] As a member of the G7, Canada urged all countries to immediately suspend arms sales to Myanmar.[194]
	European Union	Maintained an embargo on arms, munitions, and military equipment since the early 1990s and has widened the scope of the embargo several times since. In response to the relative opening in political space in 2012, the EU lifted most of its restrictive measures. Acknowledging the ever-present threat of the military, the EU kept in place the arms embargo and the embargo on "equipment which might be used for internal repression."[195] In response to the genocidal attacks against the Rohingya, the EU expanded the embargo in 2018, banning the export of (1) dual-use goods and (2) monitoring communications equipment that might

[188] "Declaration by the High Representative on behalf of the EU on the alignment of certain countries concerning restrictive measures against Myanmar/Burma," 24 May 2018, https://www.consilium.europa.eu/en/press/press-releases/2018/05/24/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-alignment-of-certain-countries-concerning-restrictive-measures-against-myanmar-burma/.

[189] *Ibid.*

[190] "Myanmar Sanctions Regime," Government of Australia, Department of Foreign Affairs and Trade, https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx.

[191] Declaration on alignment with EU restrictive measures, *supra* note 188.

[192] "Canadian Sanctions Related to Myanmar," Government of Canada, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

[193] Permanent Mission of Canada to the United Nations and the World Trade Organization, Responses by the Government of Canada to the call for contributions from the Special Rapporteur on the situation of human rights in Myanmar on Member State's policies on arms transfers to Myanmar and their response to the call for an international arms embargo, 10 Jun 2021.

[194] "G7 Foreign and Development Ministers' Meeting: Communiqué," European Union External Action Service, 5 May 2021, https://eeas.europa.eu/headquarters/headquarters-homepage_en/97842/G7%20Foreign%20and%20Development%20Ministers%E2%80%99%20Meeting:%20Communiqu%C3%A9.

[195] Council Decision 2012/225/CFSP, amending Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar, Office Journal of the European Union, 26 Apr 2012, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012D0225.

		be used for internal repression, and prohibiting military training and cooperation.[196]
6	**Austria**	EU member state—arms embargo applies.
7	**Belgium**	EU member state—arms embargo applies.
8	**Bulgaria**	EU member state—arms embargo applies.
9	**Croatia**	EU member state—arms embargo applies.
10	**Cyprus**	EU member state—arms embargo applies.
11	**Czech Republic**	EU member state—arms embargo applies.
12	**Denmark**	EU member state—arms embargo applies.
13	**Estonia**	EU member state—arms embargo applies.
14	**Finland**	EU member state—arms embargo applies.
15	**France**	EU member state—arms embargo applies. As a member of the G7, urging all countries to immediately suspend arms sales to Myanmar.[197]
16	**Germany**	EU member state—arms embargo applies. As a member of the G7, urging all countries to immediately suspend arms sales to Myanmar.[198]
17	**Greece**	EU member state—arms embargo applies.
18	**Hungary**	EU member state—arms embargo applies.
19	**Ireland**	EU member state—arms embargo applies.
20	**Italy**	EU member state—sanctions, arms embargo applies. As a member of the G7, urging all countries to immediately suspend arms sales to Myanmar.[199]
21	**Latvia**	EU member state—arms embargo applies.
22	**Lithuania**	EU member state—arms embargo applies.
23	**Luxembourg**	EU member state—arms embargo applies.
24	**Malta**	EU member state—arms embargo applies.
25	**Netherlands**	EU member state—arms embargo applies.
26	**Poland**	EU member state—arms embargo applies.
27	**Portugal**	EU member state—arms embargo applies.
28	**Romania**	EU member state—arms embargo applies.
29	**Slovakia**	EU member state—arms embargo applies.
30	**Slovenia**	EU member state—arms embargo applies.
31	**Spain**	EU member state—arms embargo applies.
32	**Sweden**	EU member state—arms embargo applies.

[196] Declaration on alignment with EU restrictive measures, *supra* note 188.
[197] "G7 Foreign and Development Ministers' Meeting: Communiqué," *supra* note 194.
[198] *Ibid.*
[199] *Ibid.*

33	**Iceland**	Aligned with EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[200]
34	**Japan**	As part of the 2021 G7 Foreign Ministers' Statement, committed to "continuing to prevent the supply, sale or transfer of all weapons, munitions, and other military-related equipment to Myanmar and the supply of technical cooperation."[201] Japan reported to the Special Rapporteur that, "In line with the Three Principles on Transfer of Defense Equipment and Technology, Japan allows arms to be exported in exceptional cases only under strict scrutiny. In fact, items such as arms and their parts have not been exported to Myanmar for several years."[202]
35	**Liechtenstein**	Aligned with the Council of the EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[203] Co-sponsored the June 2021 U.N. General Assembly resolution on preventing arms to Myanmar.[204]
36	**Moldova**	Aligned with EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[205]
37	**Montenegro**	Aligned with EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[206]
38	**North Macedonia**	Aligned with EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[207]
39	**Norway**	Norway has implemented an arms embargo against Myanmar since 2003.[208] Enforced with adjustments the EU Regulation No 401/2013 regarding restrictive measures in view of the situation in Myanmar / Burma.[209] The current Norwegian restrictive measures include an embargo on arms and defense material; embargo on equipment which might be used for internal repression; embargo on dual-use goods; embargo on certain telecommunications equipment for use in monitoring or interception of internet or telephone communications; a prohibition against technical assistance and financing related to military activities and related to equipment which might be used for internal repression, dual-use goods and certain telecommunications equipment.[210]
40	**South Korea**	Decided on 12 March 2021, to suspend any additional exchanges or cooperation in the field of defense and security, ban exporting military supplies, and impose strict controls in the export of dual-use items to Myanmar.[211]

[200] Declaration on alignment with EU restrictive measures, *supra* note 188.
[201] "G7 Foreign and Development Ministers' Meeting: Communiqué," *supra* note 194.
[202] Permanent Mission of Japan to International Organizations in Geneva, Japan's reply to the request for information sent by Mr. Thomas Andrews, Special Rapporteur on the situation of human rights in Myanmar in his letter dated 16 August 2021, 25 Aug 2021.
[203] Declaration on alignment with EU restrictive measures, *supra* note 188.
[204] "SE Asia states want to drop proposed U.N. call for Myanmar arms embargo," *Reuters*, 28 May 2021, https://www.reuters.com/world/asia-pacific/southeast-asian-nations-oppose-arms-embargo-myanmar-report-2021-05-28/; "ASEAN Lobbying to Remove Arms Embargo Call from UN Resolution on Myanmar," *Radio Free Asia*, 27 May 2021, https://www.rfa.org/english/news/myanmar/asean-embargo-05272021184301.html
[205] Declaration on alignment with EU restrictive measures, *supra* note 188.
[206] Declaration on alignment with EU restrictive measures, *supra* note 188.
[207] Declaration on alignment with EU restrictive measures, *supra* note 188.
[208] Norway's Contribution to SR Myanmar's Report, 26 May 2021, Norway Ministry of Foreign Affairs.
[209] "Regulations on restrictive measures in light of the situation in Myanmar / Burma," Lovdata, 4 May 2021, https://lovdata.no/dokument/SF/forskrift/2003-07-04-895
[210] Government of Norway, "Sanctions and Measures," 18 June 2021, https://www.regjeringen.no/no/tema/utenrikssaker/Eksportkontroll/sanksjoner-og-tiltak1/sanksjoner-og-tiltak/id2008477/; "Regulations on restrictive measures in light of the situation in Myanmar / Burma," Lovdata, 4 May 2021, https://lovdata.no/dokument/SF/forskrift/2003-07-04-895
[211] "Korean Government's Measures on Situation in Myanmar," Ministry of Foreign Affairs, 12 March 2021, http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=321574&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1&titleNm.; Permanent Mission of the Republic of Korea-Geneva, "The Government of the Republic of Korea's Response to the Questionnaire of the Special Rapporteur on the Human Rights Situation in Myanmar," 1 Jun 2021.

41	**Switzerland**	Switzerland first imposed an arms embargo on Myanmar in 2000, and expanded it in 2018, prohibiting all arms and equipment that could be used for internal repression. Switzerland's Federal Council also prohibits the sale, supply, export and transit to the military and border guard police of dual-use goods, equipment, technology, and software that can be used to monitor communications, including using the internet and mobile networks. The Swiss measures are equivalent to the measures of the European Union.[212]
42	**Turkey**	Aligned with EU Council Decision (CFSP) 2018/655 extending and strengthening the EU arms embargo.[213] Reported to the Special Rapporteur that, "Turkey in effect does not allow the sale of arms and munitions to Myanmar that could be used against the people of Myanmar as well as dual use equipment that could be utilized by the army and the security forces."[214]
43	**United Kingdom**	Adopted its own arms embargo following EU exit that includes restrictions on the trade of military and dual-use goods as well as prohibitions on the provision of monitoring communications equipment and military-related services to Myanmar.[215] As a member of the G7, also urged all countries to immediately suspend arms sales to Myanmar. [216]
44	**United States**	Has maintained a comprehensive arms embargo on Myanmar since 1993.[217] Immediately following the coup, the U.S. Department of Commerce limited exports of sensitive goods to the military and other entities associated with the coup and imposed export restrictions on Myanmar's Ministry of Defense, the Ministry of Home Affairs, armed forces, and security services.[218] The U.S. also imposed a presumption of denial on all exports and reexports of certain items intended for military use or end users.[219] As a member of the G7, the U.S. is urging all countries to immediately suspend arms sales to Myanmar.[220]

[212] "Tightening of sanctions against Myanmar," The Federal Council of Switzerland, 17 Oct 2018, https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-72557.html; "Measures against Myanmar (formerly Burma)," State Secretariat for Economic Affairs SECO, 22 Jun 2021, https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-myanmar--burma-.html; Swiss Confederation, Switzerland's response to the UN Special Rapporteur's request for input on the situation of human rights in Myanmar, 4 Jun 2021.

[213] Declaration on alignment with EU restrictive measures, *supra* note 188.

[214] Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva, Letter to Special Rapporteur Thomas Andrews, 26 Aug 2021.

[215] "The Burma (Sanctions) (EU Exit) Regulations 2019," UK Statutory Instruments 2019 no. 136, Part 5: Trade, https://www.legislation.gov.uk/uksi/2019/136/contents/made.

[216] *Ibid.*

[217] "Suspension of Munitions Export Licenses to Burma," U.S. Department of State, 58 Federal Register 33293, 16 Jun 1993.

[218] "U.S. Commerce Department Restricts Licensing of Sensitive Exports to Burma's Military and Security Services in Response to the Recent Military Coup, U.S. Department of Commerce," 11 Feb 2021, https://www.commerce.gov/news/press-releases/2021/02/us-commerce-department-restricts-licensing-sensitive-exports-burmas.

[219] "Commerce Implements New Export Controls on Burma and Makes Entity List Additions in Response to the Military Coup and Escalating Violence against Peaceful Protesters," U.S. Department of Commerce, 4 Mar 2021, https://www.commerce.gov/news/press-releases/2021/03/commerce-implements-new-export-controls-burma-and-makes-entity-list.

[220] "G7 Foreign and Development Ministers' Meeting: Communiqué," *supra* note 194.