



fidh

SUPPLYING THE MEANS FOR REPRESSION IN BELARUS

**Transfer of crowd-control weapons
(mis)used to crack down on human rights**

briefing paper

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BACKGROUND

On 9 August, final voting was held in the 2020 presidential elections in Belarus, which was preceded by over 1,300 arbitrary arrests of activists and several opposition candidates.¹ Despite numerous confirmed irregularities and lack of transparency in the voting process, the preliminary results awarded the victory to incumbent President Alexander Lukashenko with 80% of the popular vote.² Opposition candidate Svetlana Tikhanovskaya, who claimed the victory for the opposition, reportedly came in second with only 10% of the vote. These results were not recognized by the international community.³

Large protests erupted immediately following the announcement of election results. Since August 2020, people have systematically continued to take to the streets throughout the country.⁴ Although overwhelmingly peaceful, these public protests have been violently dispersed. Law enforcement officials, equipped with shotguns and pistols, rubber bullets and batons, stun grenades and chemical irritants, among others, used unnecessary and excessive force against protesters resulting in injuries to hundreds of individuals and four confirmed deaths.⁵ A recording of Deputy Minister of Internal Affairs Nikolai Karpenkov calling on security forces to «use your weapon and shoot [the protester] right in the forehead, right in the face»,⁶ which has leaked onto the Internet, confirms the deliberate, systematic character of police violence against peaceful protesters, coordinated at the highest political levels.⁷

After violent dispersals of the protests, journalists and civil society organisations documented⁸ used ammunition cartridges with rubber bullets, light and sound cartridges and other ammunition that was employed against the protesters manufactured for the most part in Russia and European Union (EU) countries. In addition, the officers of special law enforcement units were equipped with foreign-made firearms which might have been exported to Belarus in violation of the 2011 EU arms embargo and other international obligations.

This briefing paper analyses crowd-control weapons and firearms employed by the Belarusian security forces to crack down on peaceful protesters, as well as their procurement and application, and briefly outlines possible state and corporate responsibility. Specifically, section 1. details the applicable legal framework for the use and transfer of crowd-control weapons and firearms. Section 2. identifies the types of weapons used, including their manufacturer, country of origin and transfer state, and section 3. provides a brief analysis of whether their transfer violates the applicable law and points to potential state and corporate responsibility.

¹ FIDH, *Belarus: As Protests Continue Ahead of Presidential Election, Authorities Must Refrain from Violence*, 06.08.2020, available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-as-protests-continue-ahead-of-presidential-election>.

² FIDH, *Post-Election Violence in Belarus: Police Must Refrain from Excessive Force Against Peaceful Protesters*, 10.08.2020 available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/post-election-violence-in-belarus-police-must-refrain-from-excessive>

³ BBC news, *Belarus: Lukashenko's new mandate lacks democratic legitimacy, EU says*, 24.09.2020, available at: <https://www.bbc.com/news/world-europe-54277228>

⁴ FIDH, *Post-Election Violence in Belarus: Police Must Refrain from Excessive Force Against Peaceful Protesters*, 10.08.2020 available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/post-election-violence-in-belarus-police-must-refrain-from-excessive>

⁵ FIDH, *Belarus: A strong international reaction is needed to prevent further violence against civil society*, 26.08.2020, available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-a-strong-international-reaction-is-needed-to-prevent-further>.

⁶ By_Pol, *Deputy Minister of Internal Affairs of Belarus will establish a camp for political prisoners*, 15.01.2021, available at: https://www.youtube.com/watch?v=hBHhJgYeYV4&feature=emb_title

⁷ Vlad Kobets, David J. Kramer, *Lukashenko's Brutal Crackdown Has Lethal Help From Moscow*, iSANS, 04.03.2021, available at: <https://isans.org/articles-en/lukashenkos-brutal-crackdown-has-lethal-help-from-moscow.html>

⁸ ISANS, *The use of weapons by Belarusian law enforcement agencies to disperse peaceful protests*, 02.03.2021, available at: <https://isans.org/wp-content/uploads/2021/03/the-use-of-weapons-by-belarusian-law-enforcement-agencies.pdf>; Zerkalo, *We need more weapons: how the authorities militarized the streets of Belarus after the elections* [Нужно больше оружия: как власть милитаризировала улицы Беларуси после выборов], 17.12.2021, available at: <https://news.zerkalo.io/life/1238.html?c>

TERMS AND DEFINITIONS

CROWD-CONTROL WEAPONS

Crowd-control weapons (CCWs) also known as “riot-control weapons,” “non-lethal,” “less lethal,” or “less than lethal” weapons. CCWs include chemical irritants, kinetic impact projectiles, acoustic weapons, water cannons, stun grenades, and other equipment used in policing public assemblies with the exception of lethal weapons such as firearms.⁹

DUAL-USE ITEMS

Goods and technologies are considered to be dual-use when they can be used for both civil and military purposes, such as special materials and chemicals, sensors and lasers, high-end electronics, marine and nuclear equipment, etc. The EU dual-use list includes a range of chemicals used by law enforcement personnel for public assembly management.¹⁰

EXPORT CONTROL

The term ‘export control’ or else ‘trade control’, as used in this publication, refers to the current practice relating to controls on export, import, brokering, transit, shipment, technical assistance as pertains to arms and dual-use items.¹¹

KINETIC IMPACT PROJECTILES

Kinetic impact projectiles (KIPs), commonly known as rubber and plastic bullets, are used for crowd control purposes by law enforcement and are shot from myriad types of guns and launchers, including lethal arms.¹²

LESS LETHAL WEAPONS

The publication employs the term ‘less lethal weapons’ as synonymous to CCWs to designate a wide array of weapons used in policing public assemblies. The term ‘less lethal’ is preferred over ‘non-lethal’ since the use of such weapons can have fatal consequences.¹³

MILITARY USE ITEMS

Goods and technologies are classified as military goods if they are designed specifically for military use, such as small arms, armed vehicles and protective equipment.¹⁴

⁹ International Network of Civil Liberties Organizations, *Lethal in Disguise - The Health Consequences of Crowd-Control Weapons*, available at: <https://www.inclo.net/issues/lethal-in-disguise/>

¹⁰ Council Regulation (EC) No 428/2009 of 5 May 2009, cit., Article 2

¹¹ SIPRI, op. cit.

¹² ACLU, *Kinetic Impact Projectile fact sheet*, 18.07.2016, available at: <https://www.aclu.org/fact-sheet/kinetic-impact-projectiles-fact-sheet>

¹³ ONUDC, *E4J University Module Series on Crime Prevention and Criminal Justice*, Module 4 Use of Force and Firearms, March 2019, available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-4/key-issues/5-the-use-of-lesslethal-weapons.html>

¹⁴ United States government, *Common Dual-Use and Military Control Lists of the EU*, available at: <https://2009-2017.state.gov/strategictrade/resources/controllist/index.htm>

RIOT CONTROL AGENTS

Riot control agents (RCAs)¹⁵ are toxic chemicals designed to deter or disable, by producing temporary irritation of the eyes and upper respiratory tract. The most frequently used RCAs include CN or CS (commonly called tear gas) and OC/Pepper or PAVA (commonly called pepper spray).¹⁶

SMALL ARMS

Small arms are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns.¹⁷ The terms 'small arms' and 'firearms' are employed as synonymous throughout the publication.

¹⁵ The term Riot Control Agents or RCAs is used by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention or CWC), however, we find this term problematic as RCAs are often used by the law enforcement against people who are involved in peaceful demonstrations as opposed to riots.

¹⁶ The Omega Research Foundation, *Manufacture, trade and use of 'tools of torture' in the Council of Europe*, 12.2018, available at: <https://omegaresearchfoundation.org/publications/manufacture-trade-and-use-%E2%80%98tools-torture%E2%80%99-council-europe>

¹⁷ International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, Adopted by the United Nations General Assembly on 8 December 2005, available at: <https://www.unodc.org/documents/organized-crime/Firearms/ITI.pdf>

1. INTERNATIONAL LEGAL FRAMEWORK

The use of less lethal weapons and other law enforcement equipment often results in deaths and injuries that, depending on the circumstances, might amount to violations of the right to life, the right to freedom from torture and other forms of cruel, inhuman or degrading treatment or punishment, the right to health, the right to peaceful protest - freedom of assembly, and have an impact on other human rights.

1.1. The right of peaceful assembly

Freedom of peaceful assembly is a fundamental right that is protected by the Belarusian Constitution¹⁸ and international human rights law instruments, including the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus, the Universal Declaration of Human Rights and commitments undertaken by Belarus within the framework of the Organisation for the Security and Cooperation in Europe (OSCE).¹⁹ States have a positive obligation to protect and promote the right of peaceful assembly, must not interfere with peaceful assemblies and should not, *a fortiori*, prohibit, restrict, block or disperse peaceful assemblies without compelling justification.²⁰

All assemblies must be presumed to be peaceful, and separate acts of violence by some protesters should not serve as grounds for dispersal.²¹ Those individuals who engage in violent actions may fall outside the scope of the protection provided by the right to peaceful assembly but continue enjoying other human rights, in particular freedom from cruel, inhuman or degrading treatment or punishment and the right to life.²² Dispersal may only be considered where violence is serious and widespread, and where law enforcement officials have exhausted all reasonable measures to facilitate the assembly and protect participants.²³

These international norms are being violated in Belarus, where law enforcement personnel have been dispersing protests without compelling justification on the basis that the assemblies were “non-authorized”. According to the Belarus law on public assemblies, assemblies require prior authorization, which is often denied, if not held in places designated by the authorities.²⁴ As follows from the United Nations Human Rights Council (UNHRC) General comment No. 37 on the right of peaceful assembly (article 21 of the ICCPR), its exercise should not depend on prior authorization by the authorities.²⁵

¹⁸ Articles 33, 35 of the Constitution of the Republic of Belarus, available at: <https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>

¹⁹ Articles 19, 21, 22 of the International Covenant on Civil and Political Rights. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁰ General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f37&Lang=en; Amnesty International, Omega Research Foundation, *The human rights impact of less lethal weapons and other law enforcement*, 2015, available at: <https://policehumanrightsresources.org/content/uploads/2015/01/The-Human-Rights-Impact-of-Less-Lethal-Weapons-and-other-Law-Enforcement-Equipment.pdf?x96812>

²¹ UNHRC, *Situation of human rights in Belarus in the context of the 2020 presidential election – Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/4, available at: <https://undocs.org/A/HRC/46/4>

²² UNHRC, Thirty-first session, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66.

²³ OHCHR, *The United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement*, 2020, available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/LLW_Guidance.pdf

²⁴ Venice Commission and OSCE Office for Democratic Institutions and Human Rights, *Joint Opinion on the Law of the Republic of Belarus on Mass Events*, paragraph (a). 106.

²⁵ UNHRC, *General Comment No. 37 on Article 21*, CCPR/C/GC/37, available at: <https://undocs.org/CCPR/C/GC/37>

1.2. Policing of assemblies

The UN Code of Conduct for Law Enforcement Officials (1979) stipulates that law enforcement officials “may use force only when strictly necessary and to the extent required for the performance of their duty”.²⁶ The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the Basic Principles, 1990) specify that “law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms [...]. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”.²⁷ The principles laid down in these documents remain fundamental to policing assemblies around the world.

Whereas the Basic Principles encourage states to develop less lethal weapons for law enforcement officers in order to offer a less-dangerous alternative to lethal weapons, it is now proven that less lethal weapons and related equipment may kill, injure, and inflict torture.²⁸ There’s a vital need for their use to be rigidly controlled: only weapons that have been tested and present a lower risk can be used, and even then with caution and by specially trained officers.

In 2014, Resolution 25/38 of the UNHRC encouraged states “to make protective equipment and non-lethal weapons available to their officials exercising law enforcement duties, while pursuing international efforts to regulate and establish protocols for the training and use of non-lethal weapons”.²⁹ In 2018, the UNHRC further encouraged the establishment of protocols “for the training and use of non-lethal weapons, bearing in mind that even less lethal weapons can result in risk to life”.³⁰

Then-Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, stressed that depending on the seriousness of the pain and the inflicted injury, “excessive use of force may constitute cruel, inhuman or degrading treatment or even torture”.³¹ In a similar vein, the European Court of Human Rights emphasized that the use of physical force against a person, when it is not strictly necessary because of his conduct, violates human dignity and constitutes in principle a violation of the right guaranteed by Article 3” [of the European Convention on Human Rights].³²

To reflect these developments, the 2020 United Nations (UN) Guidance on less lethal weapons in law enforcement only allows “the use of less lethal weapons to disperse an assembly” as “a measure of last resort”; similarly, “any use of force by law enforcement officials shall comply with the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability”.³³ In addition, the Guidance calls for, among others, testing independent from the manufacturer and a legal review of less-lethal weapons before their deployment.

²⁶ Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979, <https://www.un.org/ruleoflaw/files/CODEOF~1.PDF>

²⁷ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <https://www.un.org/ruleoflaw/files/BASICP~3.PDF>

²⁸ Amnesty International, Omega Research Foundation, *The human rights impact of less lethal weapons and other law enforcement*, op.cit.

²⁹ Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, HRC Res. 25/38, UN Doc. A/HRC/25/38, available at: <https://www.ohchr.org/Documents/Issues/Executions/A-HRC-RES-25-38.pdf>

³⁰ ONUDC, *E4J University Module Series on Crime Prevention and Criminal Justice*, Module 4 Use of Force and Firearms, op.cit.

³¹ UNHRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/22/53/Add.2, para. 22.

³² European Court of Human Rights (Grand Chamber), judgment of 28 September 2015, app. no. 23380/09, *Bouyid v. Belgium*, available at: https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2015/10/affaire_bouyid_c._belgique.pdf

³³ United Nations Guidance on less lethal weapons in law enforcement, available at: https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

In the context of generally peaceful protests, the use of indiscriminate less lethal weapons, such as tear gas, stun grenades, and water cannons, is a priori illegal. The use of firearms to disperse an assembly is always unlawful.

In line with international standards, law enforcement officials have a duty “to distinguish between those individuals acting violently and other assembly participants”.³⁴ In situations where some force is necessary, “less lethal weapons [...] shall target only individuals engaged in acts of violence.” The Guidance specifies that the weapons such as tear gas, which is not accurate in principle as it is dispersed at a distance, “should be targeted at groups of violent individuals unless it is lawful in the circumstances to disperse the entire assembly”. It follows that in the context of generally peaceful protests, as it was the case in Belarus, the use of indiscriminate less lethal weapons, such as tear gas, stun grenades, and water cannons, is a priori illegal. The 2020 Guidance provides that “the use of firearms to disperse an assembly is always unlawful”.³⁵

The subsequent chapters of the report contain documented evidence of illegal, unnecessary and disproportional use of force against peaceful protesters by the Belarusian law enforcement. The FIDH cites examples of the use of lethal weapons, in conjunction with less lethal ammunition, leading directly to injuries and fatalities, in flagrant violation of international human rights standards.

1.3. Trade control in law enforcement equipment

The Belarusian regime has a long history of human rights abuses by the police, military and law enforcement institutions. Trading arms with such a regime should therefore be considered highly problematic, as transfers are likely to result in the use of such arms to commit serious violations of human rights. In addition to the obligations of companies and states under general international law, arms and security equipment trade is subject to a number of regulations that may prohibit trade or require export controls depending on a number of factors, such as the type of weapon and the human rights record of the importing country. The applicable regime is complex, with occasional overlaps and gaps.

On a global level

Only a limited range of equipment used by law enforcement is subject to international export controls. However, trade in firearms, such as shotguns and pistols, is regulated more effectively under a range of international and regional legal regimes as compared to less lethal weapons. Trade in most of the less lethal weapons and related munitions is not regulated at the international level.

On the global level, firearms trade is regulated in a series of agreements most prominent of which is the Arms Trade Treaty (2014, ATT).³⁶ ATT prohibits adhering states from granting exports authorisations for conventional arms if the transferred 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 as defined by international agreements to which it is a Party. Furthermore, Article 7 of the ATT prohibits transfers in case they risk to “commit or facilitate a serious

³⁴ OHCHR, *Human Rights and Law Enforcement: A Manual on Human Rights Training for Law Enforcement Officials*, chap. 9.

³⁵ *Ibid.*

³⁶ The Arms Trade Treaty requires all states-parties to adopt basic regulations and approval processes for the flow of weapons across international borders, establishes common international standards that must be met before arms exports are authorised, and requires annual reporting of imports and exports to a treaty secretariat. Read more at: https://www.armscontrol.org/factsheets/arms_trade_treaty

violation of international human rights law”.³⁷ Though there is a certain latitude on the state level as to which weapons to include in national control lists, revolvers and self-loading pistols, rifles and carbines, assault rifles, sub-machine guns, and light machine guns designed for military use, certainly fall within the scope of the treaty.³⁸

According to the ATT Monitor 2016 Report³⁹ and the ICRC,⁴⁰ less lethal weapons such as plastic and rubber bullets, as well as tear gas, fall within the scope of the ATT, as they have potentially lethal consequences as long as they are ‘fired, launched or delivered’ by small arms, so are within the purview of Article 3. This opinion, which is not shared by all States parties, reflects the encouragement in Article 5.3 to apply the provisions of the Treaty ‘to the broadest range of conventional arms’.

110 countries are party to the treaty and another 31 have signed it, however, such major arms exporters as the US and Russia have not ratified the ATT, nor has Belarus.⁴¹

Since 2003, members of the Wassenaar Arrangement (WA) are also obliged to maintain rigorous national export control systems over the trade in conventional arms and dual use items.⁴² Guidelines approved on the WA plenary in 1998 require participating states to assess risks of “the violation and suppression of human rights and fundamental freedoms” before granting export authorisations.⁴³ The WA List of Dual-Use Goods and Technologies and the Munitions List notably covers smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less, and accessories.⁴⁴ This includes rifles and combination guns, handguns, machine, sub-machine and volley guns, as well as smooth-bore weapons, that is, small arms with which the Belarus law enforcement officials are equipped. Most types of RCAs widely used during the Belarus protests, notably CN, are also subject to export controls under the WA. It should be noted, however, that the WA does not cover RCAs individually packaged for personal self-defence purposes, i.e. sprays.

Whilst water cannons, stun grenades, rubber batons and some other types of less lethal weapons are frequently used in the commission of human rights violations, they seem to have escaped import and export controls set in the ATT and the WA.⁴⁵ In this respect, it is important to highlight that the purpose of both the ATT and WA is to control equipment, specially designed or modified for military use, as opposed to law enforcement equipment.

To comply with the obligations under the ATT and the WA, before granting export authorisations the relevant national authorities shall assess the human rights situation in the destination country, among others, by

³⁷ For small arms and light weapons (SALW), the ATT requires that national control lists cover at least the “descriptions used in relevant UN instruments”, for instance, United Nations Register of Conventional Arms. Some States Parties have indicated that both the Wassenaar Arrangement’s Munitions List and the European Union’s Common Military List are utilized as the basis for their national control list / Arms Trade Treaty, adopted at New York on 2 April 2013, available at: https://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch_XXVI_08.pdf

³⁸ The Working Group on Effective Treaty Implementation, *Basic Guide to Establishing a National Control System (Draft)*, 19.03.2019, available at: <https://bit.ly/3jNe3ZC>

³⁹ ATT Monitor, *Report 2016*, chapter 3.2, available at: https://attmonitor.org/wp-content/uploads/2020/07/ATT-ENGLISH-Monitor_16-CHAPTER-3.2.pdf

⁴⁰ International Committee of the Red Cross, *UNDERSTANDING THE ARMS TRADE TREATY FROM A HUMANITARIAN PERSPECTIVE*, 2016, available at: <https://shop.icrc.org/download/ebook?sku=4252/002-ebook>

⁴¹ ATT (Arms Trade Treaty), available at: <https://thearmstradetreaty.org/>

⁴² Arms Control Association, *The Wassenaar Arrangement at a Glance*, December 2017, available at: <https://www.armscontrol.org/factsheets/wassenaar>

⁴³ Wassenaar Arrangement, *Elements For Objective Analysis And Advice Concerning Potentially Destabilising Accumulations Of Conventional Weapons*, adopted in 1998, amended by the Plenary in 2004 and 2011, available at: <https://www.wassenaar.org/app/uploads/2019/consolidated/Elements-for-Objective-Analysis.pdf>

⁴⁴ Wassenaar Arrangement, *List of Dual-Use Goods and Technologies and Munitions List*, December 2020, available at: <https://www.wassenaar.org/app/uploads/2020/12/Public-Docs-Vol-II-2020-List-of-DU-Goods-and-Technologies-and-Munitions-List-Dec-20-3.pdf>

⁴⁵ N. Corney and M. Crowley, *op. cit.*

consulting relevant documents from UN human rights bodies, regional human rights and civil society organisations.⁴⁶

According to civil society and international organisations' reports, the human rights situation in Belarus has been increasingly alarming at least since the late 1990s.^{47,48} In 2004-2007, the situation has progressively deteriorated, as reflected in a series of resolutions stemming from the leading regional and international organisations. In 2004, the Parliamentary Assembly of the Council of Europe adopted Resolution 1371 (2004) "Disappeared persons in Belarus" pointing at the responsibility of the state for the enforced disappearance of opposition leaders in Minsk in the late 1990's and recalling that the crime of enforced disappearance constitutes "a grave and flagrant violation of the human rights and fundamental freedoms".⁴⁹ The European Union went further and, in 2006, adopted Council Regulation No 765/2006 introducing sanctions against President Lukashenko and certain officials of Belarus over violations of "international electoral standards and international human rights law".⁵⁰ In 2007, the UN General Assembly adopted resolution 61/175 on Situation of human rights in Belarus, expressing a "serious concern relating to the deterioration of the human rights situation in Belarus".⁵¹ In view of the above, the risk of misuse of arms transferred to Belarus might have been considered as "high" since, at the latest, 2006. Thus, the WA should have discouraged export authorisations to Belarus since 2006. And state parties to the ATT were prohibited from granting export authorisations since its entry into force in 2014.

On a global level, transfer of shotguns and pistols in service of Belarus law enforcement to Belarus should have been prohibited at least since 2006 under the Wassenaar Arrangement and since 2014 under the Arms Trade Treaty.

While most of the binding obligations laid down in international law are directed at states, private companies, including manufacturers of law enforcement equipment and brokering companies, also have a responsibility to respect human rights and therefore conduct their own human rights impact assessment before shipping such equipment to third countries. Under the UN Guiding Principles on Business and Human Rights (UNGPs), all business enterprises are required to conduct human rights due diligence processes and put in place procedures aiming at identifying, preventing, mitigating and accounting for human rights impacts caused by their operations, business relationships, products or services in any country.⁵² UNGPs recommend that private companies respect all internationally recognized human rights.⁵³ The OECD Guidelines on Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guidance) provides similar recommendations to businesses operating or based in OECD countries.⁵⁴

⁴⁶ UNODA, *ATT Implementation Toolkit - Module 5 - Prohibition on Transfers*, 21.08.2021, available at: <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-5.pdf>

⁴⁷ FIDH, *A Caricature of Autocracy - Civil Society Caught in a Stranghold*, 2001, available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/A-CARICATURE-OF-AUTOCRACY-CIVIL>

⁴⁸ FIDH, *Restrictions on the Political and Civil Rights of Citizens Following the 2010 Presidential Election*, 30.06.11, available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/Restrictions-on-the-Political-and>

⁴⁹ Parliamentary Assembly, Resolution 1371 (2004), Disappeared persons in Belarus. Text adopted by the Assembly on 28 April 2004 (12th Sitting), available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17210&lang=en>

⁵⁰ Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R0765>

⁵¹ UN General Assembly, Resolution 61/175 Adopted by the UN General Assembly: Situation of Human Rights in Belarus, 8 March 2007, A/RES/61/175, available at: <https://www.refworld.org/docid/4624b8932.html> [accessed 28 October 2021]

⁵² Christian Schliemann, Linde Bryk, *Arms Trade and Corporate Responsibility - Liability, Litigation and Legislative Reform*, Friedrich-Ebert-Stiftung, November 2019, available at: <http://library.fes.de/pdf-files/iez/15850.pdf>

⁵³ *Ibid.*

⁵⁴ *Ibid.*

On the European level

The EU Anti-Torture Regulation,⁵⁵ which came into force in 2006, prohibits trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment, and imposes trade controls requirements on a range of equipment that is frequently used in serious human rights violations, but that often escapes national military, dual-use, or strategic export control lists. The latter category includes widely used RCAs such as OC (pepper) spray and PAVA - a synthetic incapacitating spray similar to pepper spray.⁵⁶ The EU dual-use export control regime equally seems to capture a range of RCAs and related equipment creating an authorisation requirement for its export.⁵⁷ The EU Anti-Torture Regulation requires states to consider the human rights situation in the receiving State before authorising exports of other law enforcement and security weapons and equipment.

The EU trade controls pertaining to arms transfer reflect commitments agreed upon in the Wassenaar Arrangement.⁵⁸ The EU Council 2008 Common Position (2008/944/CFSP) laying down common rules governing the control of exports of military technology and equipment, applies to items listed in the Common Military List of the European Union. Among others, the Common Military List covers shotguns, pistols, other types of small arms and related ammunition under ML 1, ML 2 and ML 3.⁵⁹ It also applies to a wide range of explosives and chemicals, including some RCAs and their most common compounds CN and CS (tear gas).⁶⁰

The EU Council 2008 Common Position prohibits exports when inconsistent with international obligations and commitments of member states, in particular sanctions adopted by the UN Security Council or the EU, nonproliferation agreements as well as other international obligations. The Common Position equally forbids export "if there is a clear risk that the military technology or equipment to be exported might be used for internal repression".⁶¹ As relates to Belarus, such risk was present since 2006, according with the Council Regulation No 765/2006 introducing sanctions against certain officials of Belarus, and with certainty since 2011, with the introduction of the EU arms embargo on Belarus.⁶²

Since 2008, transfer of military items to Belarus should have been prohibited under the EU Council Common Position (2008/944/CFSP) due to a clear risk that it might be used for internal repression.

⁵⁵ Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R0125>

⁵⁶ Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, replacing Council Regulation (EC) No 1236/2005 of 27 June 2005, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019R0125>

⁵⁷ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0428-20210101>

⁵⁸ The EU is the flagship regulator of the arms trade and as early as in 1998, the Council of the EU adopted the EU Code of Conduct on Arms Exports requiring member states to refuse an export licence "if there is a clear risk that the proposed export might be used for internal repression". However, the Code of Conduct doesn't have any legally binding force, therefore its impact on trade in arms has been very limited: <https://www.sipri.org/sites/default/files/files/PP/SIPRIPP21.pdf>.

⁵⁹ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0944&from=EN>

⁶⁰ ML7 of the Common Military List of the European Union adopted by the Council on 6 March 2017 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XG0328\(01\)&from=IT](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XG0328(01)&from=IT)

⁶¹ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0944&from=EN>

⁶² Omega Research Foundation, *Review of EU Anti-Torture Regulation and its implementation November 2020*, available at: <https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Omega%20EU%20Anti-Torture%20report%202020.pdf>

In June 2011, in view of the deteriorating situation of human rights, democracy and the rule of law in Belarus, the EU strengthened the existing sanctions on the leadership of Belarus by imposing an arms embargo through Council Decision 2011/357/CFSP,⁶³ implemented through Council Regulation (EU) No. 588/2011. The Decision provided, in part, that “the sale, supply, transfer or export of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Belarus by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories”.⁶⁴ The Regulation specifies in its Annex III the equipment which might be used for internal repression, covering, among others, firearms which are not controlled by ML1 and ML2 of the Common Military List and related ammunition, bombs and grenades, including light and sound grenades, not controlled by the Common Military List, Vehicles equipped with a water cannon, specially designed or modified for the purpose of public assembly management, vehicles specially designed for the transport or transfer of prisoners and/or detainees, a range of RCAs.⁶⁵

The embargo has been repeatedly extended and is currently in effect until February 28, 2022.⁶⁶

Since 2011 at latest, the EU member States were prohibited from exporting to Belarus military technology and equipment, including small arms, as well as equipment which might be used for internal repression.

Since October 2020, the EU has progressively imposed new restrictive measures against Belarus. On 24 June 2021, the Council of the EU introduced measures against the Belarusian regime “to respond to the escalation of serious human rights violations in Belarus and the violent repression of civil society, democratic opposition and journalists”. The new sanctions include the prohibition, among others, to directly or indirectly sell, supply, transfer or export to anyone in Belarus equipment, technology or software intended primarily for use in the monitoring or interception of the internet and of telephone communications, and dual-use goods and technologies for military use and to specified persons, entities or bodies in Belarus.⁶⁷

⁶³ Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus, available at: <https://eur-lex.europa.eu/eli/dec/2011/357/oj>

⁶⁴ *Ibid.*

⁶⁵ Council Regulation (EU) No 588/2011 of 20 June 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:161:0001:0006:EN:PDF>

⁶⁶ Council Decision (CFSP) 2021/353 of 25 February 2021 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0353&qid=1619089378541>

⁶⁷ European Council, *EU imposes sanctions on Belarusian economy*, 24.06.2021, available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/06/24/eu-imposes-sanctions-on-belarusian-economy/> The current and consolidated version of the Council Regulation (EC) No 765/2006 of 18 May 2006 can be accessed here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R0765-20210625>

2. THE MISUSE OF FIREARMS AND CROWD-CONTROL EQUIPMENT

2.1. Firearms

In the first days after the elections in Belarus, law enforcement and military personnel⁶⁸ equipped with firearms were involved in suppressing protests. As a general rule, street assemblies in Belarus were mainly dispersed by OMON and the officers of the GUBOPiK, units of the Ministry of the Interior of Belarus, often without any insignia on their uniforms. In addition, members of anti-terrorist units of the Ministry of Interior and the KGB of Belarus — "Almaz" and "Alpha," respectively, as well as soldiers of the Special Forces unit (SOBR) of the internal troops were involved in suppressing the protests. Some of the law enforcement officers wore civilian clothes, but were nevertheless armed.⁶⁹ In addition, law enforcement officers were routinely issued handcuffs, helmets, rubber batons, and shields.^{70,71}

The order to employ the military personnel during the protests was given by Major General Vadim Denisenko, commander of the special operations forces.⁷² According to media reports, he also ordered shoot to kill "if necessary".⁷³ On 12 October 2020 Deputy Interior Minister Gennady Kazakevich reiterated that the Belarus police is permitted to "use special equipment and military weapons" against protesters if needed.^{74,75} The law "On the Internal Affairs Bodies of the Republic of Belarus" prohibited the use of weapons during assemblies at the time.⁷⁶ However, this unlawful practice was cemented in law "On Amendments to the Laws on Ensuring the National Security of the Republic of Belarus" which came into force on 19 June 2021. Among other provisions, it granted law enforcement the right to use military and special equipment to manage public assemblies and stipulated that officers not be liable for harm caused as a result of the use of force and weapons. The premeditated use of lethal force to disperse mostly peaceful demonstrations constitutes a blatant violation of the right to peaceful assembly and international standards on policing of assemblies.⁷⁷

Overall, no less than 15 citizens died as a result of the post-electoral violence against protesters in Belarus, and at least two of them, including Gennady Shutov and Alexander Tarakhovsky were shot from firearms.⁷⁸

⁶⁸ Under international standards, when the military is conducting law enforcement tasks, the body or unit of the military is considered a law enforcement agency. Details: United Nations, OHCHR, *Guidance on less-lethal weapons in law enforcement*, p. 44. Available at: https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

⁶⁹ ISANS, The use of weapons by Belarusian law enforcement agencies to disperse peaceful protests, op.cit.

⁷⁰ Equipment used for defense, such as shields and helmets, is not controlled by EU trade control agreements.

⁷¹ Irina Tchevtayeva, *What the law enforcement agencies use to disperse protests in Belarus* [Что используют силовики для разгона протестов в Беларуси], op.cit.

⁷² Belsat, *Shutov's trial: we know who ordered the use of armed servicemen during the protests* [Суд по делу Шутова: стало известно, кто приказал использовать вооруженных военных во время протестов], 17.02.2021, available at: <https://belsat.eu/ru/news/17-02-2021-sud-po-delu-shutova-stalo-izvestno-kto-prikazal-ispolzovat-vooruzhennykh-voennyyh-vo-vremya-protetstov/>

⁷³ Ales Petrovich, *In Belarus, a murdered protester was tried and his friend was sentenced* [В Беларуси судили убитого участника протестов и приговорили его друга], op.cit.

⁷⁴ Meduza, *Ministry of Internal Affairs of Belarus threatened to use military weapons to disperse rallies* [МВД Белоруссии пригрозило использовать боевое оружие для разгона митингов], 12.10.2020, available at: <https://meduza.io/news/2020/10/12/mvd-belorussii-prigozilo-ispolzovat-ognestrelnoe-oruzhie-dlya-razgona-mitingov>

⁷⁵ Tom Balmforth, *Belarus allows police to use combat weapons as protests persist*, Reuters, 12.10.2020, available at: <https://www.reuters.com/article/us-belarus-election-protests-arms-idUSKBN26X1TT>

⁷⁶ Law of the Republic of Belarus dated 17 July 2007 No. 263-3, available at: <https://pravo.by/document/?guid=3871&p0=h10700263>

⁷⁷ OHCHR, *Human Rights and Law Enforcement: A Manual on Human Rights Training for Law Enforcement Officials*, chap. 9.

⁷⁸ Human Rights Council, *Situation of human rights in Belarus in the context of the 2020 presidential elections : Report of the United Nations High Commissioner for Human Rights*, Un. Doc. A/HRC/46/4, available at: <https://undocs.org/en/A/HRC/46/4>; Belsat, *At least 15: Deaths linked to post-election protests in Belarus*, 27.05.2021, available at: <https://belsat.eu/en/news/27-05-2021-at-least-15-deaths-linked-to-post-election-protests-in-belarus/>

Brest resident Gennady Shutov (Hienadz Shutau), 43, who received a gunshot wound to the head on August 11, died in a military hospital in Minsk during the crackdown on protests in the city. According to his medical diagnosis he had an open penetrating gunshot wound to the skull, contusion - decomposition of the brain, multi-slip fracture of the skull with a transition to the base. On August 12, 2020, the press service of the Interior Ministry of Belarus reported that firearms were used against protesters in Brest, one person was wounded. Later, the post was edited and the word "firearm" was removed from it.⁷⁹

Shutov was posthumously convicted "for resisting the police". From the materials of the criminal case follows that one of the servicemen, captain of special operations forces Roman Gavrilov and warrant officer Arseniy Galitsin, shot Shutov. Both of them serve in the military unit that is stationed in Maryina Gorka. At the protests they wore civilian clothes and infiltrated the crowd with pistols.⁸⁰

Although most of the weapons available to the law enforcement are manufactured in Belarus or in Russia, spent ammunition found after the protests seems to match, among others, with weapons imported from third countries. Notably, media and civil society organisations reports indicate that during the protests law enforcement officers carried and/or used weapons produced by Remington⁸¹ and Mossberg (USA)^{82,83}, Fabarm⁸⁴ and Benelli⁸⁵ (Italy), SIG Sauer⁸⁶ (Switzerland-Germany) and Glock (Austria).⁸⁷ Experts claim that these weapons are in regular service of the Belarusian special services.⁸⁸

The above firearms are lethal weapons for which less-lethal ammunition is generally available. Judging by the ammunition found after the protests, and notably, rubber and plastic bullets (please refer to the section below), the Belarus law enforcement used these weapons with less-lethal ammunition.^{89,90} It is not clear whether some of the above-mentioned weapons carried by the law enforcement were charged with lethal ammunition. It should be noted however, that even if firearms are used with less-lethal ammunition, the risk of use of lethal force remains high.

⁷⁹ RBC, *A gunshot victim of the Brest protests died in hospital* [Получивший огнестрельное ранение в ходе акций в Бресте умер в больнице], 19.04.2020, available at: <https://www.rbc.ru/society/19/08/2020/5f3ce8929a79474798dd9ff1>

⁸⁰ Ales Petrovich, *In Belarus, a murdered protester was tried and his friend was sentenced* [В Беларуси судили убитого участника протестов и приговорили его друга], op.cit.

⁸¹ 42.tut.by, *What weapons from the countries that announced the embargo on Belarus do the security forces have* [Какое оружие из стран, объявивших Беларуси эмбарго, есть у силовиков], 29.12.2020, available at: <https://devsday.ru/news/details/357164>

⁸² Zerkalo, *We need more weapons: how the authorities militarized the streets of Belarus after the elections*, Ibid.

⁸³ Irina Tchevtayeva, *What the law enforcement agencies use to disperse protests in Belarus* [Что используют силовики для разгона протестов в Беларуси], in Deutsche Welle, 03.11.2020, available at: <https://www.dw.com/ru/ne-odni-rezinovye-puli-cto-primenjajut-dlja-razgona-protetov-v-belarusi/a-55477444>

⁸⁴ @AbraxasSpa, Twitter publication, available at: <https://twitter.com/AbraxasSpa/status/1293084434921644038?s=20>

⁸⁵ Conflict Intelligence Team, *Special Forces fighters may be involved in the murder of a protester in Minsk* [К убийству протестующего в Минске могут быть причастны бойцы спецназа], 14.12.2021, available at: <https://bit.ly/3q2Oh62>

⁸⁶ 42.tut.by, *What weapons from the countries that announced the embargo on Belarus do the security forces have*, Ibid.



⁸⁷ Zerkalo, *We need more weapons: how the authorities militarized the streets of Belarus after the elections*, Ibid.

⁸⁸ ISANS, *The use of weapons by Belarusian law enforcement agencies to disperse peaceful protests*, op.cit.

⁸⁹ UN Peacekeeping PDT Standards for Formed Police Units, 1st edition (2015), available at: <http://repository.un.org/bitstream/handle/11176/387390/Less%20Than%20Lethal%20Weapons.pdf?sequence=24&isAllowed=y>

⁹⁰ The difference between the riot shotgun and the combat shotgun is blurry, and may be more a matter of application than design. A combat shotgun would be used in military combat situations as a primarily offensive weapon, where a riot shotgun would be used in law enforcement or civilian situations as a primarily defensive weapon.

Table 1. Foreign-made weapons carried by the Belarus law enforcement while policing peaceful assemblies

Model and company manufacturer	Image	Possible attribution to a law enforcement unit
Remington Model 870 pump-action shotgun Remington Arms Company, LLC, USA		GUBOPiK (GUBAZiK) or Special Forces (Paratroopers)
Mossberg 500 series pump action shotguns and Mossberg Maverick 88 pump action shotgun O.F. Mossberg & Sons, USA		OMON, Almaz, Alpha, other law enforcement entities
Fabarm 12 gauge single barrel shotgun Fabarm-Fabbrica Bresciana Armi (S.P.A.), Italy		No data available
Benelli M4 Super 90, semi-automatic shotgun Benelli Armi SpA, Italy		Almaz, Alpha, OSAM, SOBR
SIG Sauer P226, full-sized, service-type pistol SIG Sauer, Switzerland-Germany		SOBR, internal troops, OSAM (Border guard), Almaz, KGB Alpha, SBP (President security)
Glock G17, polymer-framed, short recoil-operated, locked-breech semi-automatic pistols Glock GmbH, Austria		KGB Alpha, Almaz, OMON, Nikolai Lukashenko

As noted earlier, the use of firearms to disperse a peaceful assembly is always unlawful. In Belarus, the law enforcement acted in violation of international standards by using weapons against protesters unnecessarily and without precaution, causing the death of at least two protesters. By using lethal weapons against peaceful protesters without an objective necessity – the protesters did not pose a threat to the life of law enforcement officers or third persons – Belarus has also arbitrarily deprived the protesters’ right to life, in violation of Article 6 of the ICCPR .

The relevant national legislation enshrining this practice is also illegal from the point of view of international law. The threat or use of conventional weapons for repression of protests facilitates serious human rights violations committed by the Belarus law enforcement against peaceful protesters, such as violation of the rights to freedom of peaceful assembly, freedom of expression, protection from arbitrary detention, and protection from torture and inhuman treatment.

2.2. Kinetic impact projectiles

Evidence of disproportionate and indiscriminate use of kinetic impact projectiles (KIPs), commonly known as rubber and plastic bullets, by Belarusian security forces is recorded in medical reports, which have fallen into the hands of Belarusian journalists. Those injured during the suppression of protests on the night of August 9-10 were brought to hospitals with gunshot wounds, splinter wounds or open wounds to various parts of the body: abdomen, hips, chest, neck and so on.⁹¹ Independent health sources claim that from August 9 to 23, over two weekends of protests, 45 people with gunshot wounds sought medical attention at hospitals.⁹² The large number of victims indicate that the authorities used force against the crowd and from an unsafe distance, not against individual violent protesters, but indiscriminately against the crowd in an attempt to disperse the protest, which is inherently unlawful under international law.⁹³

10 August, around 10 p.m., Aleh Navahurski was with friends in the center of Baranavichy city. According to him, he joined a crowd of protesters on Komsomolskaya Street and decided to follow along to see what was going on. Around 11 a.m. he stumbled upon a “wall” of shields held by the law enforcers. People around him started to run, and so did Aleh. He did not think that the officers would shoot at the unarmed people, but he ran away from them with hands up. Suddenly, the police started shooting. Oleg felt almost no pain, but after he realized where the bullet hit him, he became frightened: he thought he was left without an eye. At the hospital, Aleh claimed that he fell. He was operated on and stitched up. It is still unknown whether he will be able to fully regain his vision.⁹⁴

A range of KIPs were allegedly fired by the Belarus law enforcement from lethal weapons. After the crackdown on the protests in the streets of Minsk and other cities journalists found, among others, ammunition produced

⁹¹ Tut.by, August protests. What injuries were taken to hospitals from the streets, RUVD and Okrestina [Августовские протесты. С какими травмами везли в больницы с улиц, РУВД и Окрестина], 11.09.2020, available at: <http://web.archive.org/web/20201220050736/https://news.tut.by/society/699761.html>




⁹² Ibid.

⁹³ The ODIHR Handbook on Policing Assemblies, available at: <https://www.osce.org/odihr/226981>

⁹⁴ «Думал, останусь без глаза». История парня, которому во время жестких столкновений в Барановичах пуля попала в глаз, available at: https://news.tut.by/society/698653.html?utm_source=news.tut.by&utm_medium=news-bottom-block&utm_campaign=relevant_news / <http://web.archive.org/web/20201028062724/https://news.tut.by/society/698653.html>

in third countries.⁹⁵ Experts and journalists notably identified the following foreign-made ammunition used to suppress protests in Belarus: STERLING 12 gauge less lethal cartridge with rubber bullet (Turkey),^{96,97} D Dupleks 12/70 cartridge with rubber bullet (Latvia),⁹⁸ Fam-Pionki 12/70 light and sound cartridge ONS 2000 (Poland)^{99,100}.

Table 2. Examples of the foreign-made less lethal ammunition found after the protests

Name	Image	Company manufacturer
Sterling 12 gauge non-lethal cartridge with rubber bullet		Turkey, Sterling
D Duplex 12/70 cartridge with rubber bullet		Latvia, D Duplex
Fam-Pionki 12/70 light and sound cartridge ONS 2000		Poland, Fam-Pionki

⁹⁵ According to some experts, it is possible that Belarus secret services organised a provocation by throwing around foreign-made ammunition: an arms sector specialist Jacek Pieńczak claim that "this is a special kind of ammunition, one cannot buy it in a shop... I suspect that somebody picked up shells at a shooting range and then threw them around in Minsk subway". Details: *Polish ammo in Belarus? Producer denies, experts suspect provocation*, in *ajk/kb*, available at: <https://tvpworld.com/49396081/polish-ammo-in-belarus-producer-denies-experts-suspect-provocation> ; *Polish ammo in Belarus? Producer denies, experts suspect provocation*, 13.08.2020, available at: <https://tech.wp.pl/polska-amunicja-na-bialorusi-od-wejscia-w-zycie-sankcji-nie-sprzedajemy-jej-do-tego-kraju>, 12.08.2021, available at: <https://tech.wp.pl/polska-amunicja-na-bialorusi-od-wejscia-w-zycie-sankcji-nie-sprzedajemy-jej-do-tego-kraju-6542316679375392a>

⁹⁶ Euroradio, *Rubber buckshot and more: What Belarusian law enforcers are shooting at protesters with* [Резиновая картечь и прочее: чем стреляют в протестующих белорусские силовики], 04.11.2020, available at: <https://euroradio.fm/ru/rezinovaya-kartech-i-prochee-chem-strelayut-v-protestuyushchih-belorusskie-siloviki>

⁹⁷ ISANS, *The use of weapons by Belarusian law enforcement agencies to disperse peaceful protests*, op.cit.

⁹⁸ Ibid.

⁹⁹ *Polish ammo in Belarus? Producer denies, experts suspect provocation*, op.cit. ; *Polish ammo in Belarus? Producer denies, experts suspect provocation*, 13.08.2020, available at: <https://tech.wp.pl/polska-amunicja-na-bialorusi-od-wejscia-w-zycie-sankcji-nie-sprzedajemy-jej-do-tego-kraju>, 12.08.2021, available at: <https://tech.wp.pl/polska-amunicja-na-bialorusi-od-wejscia-w-zycie-sankcji-nie-sprzedajemy-jej-do-tego-kraju-6542316679375392a>

¹⁰⁰ A representative of the Fam-Pionki factory in Pionki, central Poland, confirmed, based on the photograph, that it "most likely" was a shell produced in the factory, but was unable to tell when it was manufactured. The company also denied having any illegal cooperation with entities unauthorised to do transactions. The Polish Defence Ministry also denied that it had ever sold weapons or ammunition to Belarus. Details: *Polish ammo in Belarus? Producer denies, experts suspect provocation*, op.cit.

KIPs should generally be used to target violent individuals and only with the aim of preventing an imminent threat of injury.¹⁰¹ The findings of a systematic review of medical literature carried out by Physicians for Human Rights indicate that KIPs cause serious injury, disability, and death. KIPs are inherently inaccurate when fired from afar and therefore can cause unintended injuries to bystanders and strike vulnerable body parts; at close range, they are likely to be lethal. It should be also noted that ammunition with multiple projectiles is inherently indiscriminate because it can hit unintended targets, including bystanders.¹⁰² Therefore, KIPs are not an appropriate weapon to be used for crowd management and specifically for dispersal purposes, as it has been done in Belarus.¹⁰³

In Belarus, KIPs were fired in cases where it was not strictly necessary to do so, and when non-violent means had not been exhausted, as prescribed by international standards. The use of kinetic weapons, not only rubber bullets, but also rubber batons, by the Belarusian police, in many cases amounts to cruel, inhuman or degrading treatment or even torture.

2.3. Riot control agents

Riot control agents (RCAs) work by causing irritation to the area of contact (for example, eyes, skin, nose) within seconds of exposure, the effects of exposure generally do not last longer than 30 minutes. Prolonged or repeated exposure however may cause long-term effects including blindness, respiratory failure, chemical burns to the throat and lungs.¹⁰⁴ Studies suggest that deployment of OC (pepper-gas) should be halted across the EU until independent research has more fully evaluated any risks it poses to health,¹⁰⁵ although international standards do set out possible circumstances in which chemical irritants could be deployed.¹⁰⁶

Maina Kiai, then-UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, noted that tear gas is inherently indiscriminate, making no distinction "between demonstrators and non-demonstrators, healthy people and people with illnesses". The tear gas affects the usually peaceful majority, in violation of international standards mandating the selective disarming of violent protesters, allowing the main demonstration to continue. The European Court of Human Rights has also stated that "the unjustified use of tear gas by law enforcement officials is incompatible with the prohibition of ill-treatment."¹⁰⁷

ISans has identified the following ammunition, mostly Russian-made, used by the Belarus law enforcement to spray chemical irritants: 43-mm shot VGM93.200,¹⁰⁸ hand gas grenade Cheryomukha-6 with irritating effect, hand aerosol grenades "Dreyf" and "Dreyft-2". The latter devices may cause watery eyes, sharp pain and blurred vision, blistering on skin contact.¹⁰⁹

¹⁰¹ OHCHR, *The United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement*, 2020, paragraphs 7.5.1, 7.5.2, available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/LLW_Guidance.pdf

¹⁰² Omega Research Foundation, *Visual Guide to law enforcement and security weapons and equipment*, 2020, available at: <https://omegaresearchfoundation.org/identification-tools/visual-guide-law-enforcement-and-security-equipment>

¹⁰³ ACLU, *Kinetic Impact Projectile fact sheet*, op.cit.

¹⁰⁴ Centers for Disease Controls and Prevention, *Facts About Riot Control Agents Interim document*, 04.04.2018, available at: <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>

¹⁰⁵ European Parliament, *Crowd Control Technologies - Final Study*, PE 168.394/FinSt., June 2000, available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/stoa/2000/168394/DG-4-STOA_ET\(2000\)168394_EN\(PAR02\).pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/stoa/2000/168394/DG-4-STOA_ET(2000)168394_EN(PAR02).pdf)




¹⁰⁶ OHCHR, *The United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, 2020, available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/LLW_Guidance.pdf

¹⁰⁷ The Omega Research Foundation, *Manufacture, trade and use of 'tools of torture' in the Council of Europe*, 2018, available at: https://policehumanrightsresources.org/content/uploads/2018/07/ORF-CoE-Tools-of-Torture-Report-Revised-June-2018-FINAL_1.pdf?x96812

¹⁰⁸ ISANS, *The use of weapons by Belarusian law enforcement agencies to disperse peaceful protests*, op.cit.

¹⁰⁹ *Ibid.*

Table 3. Examples of the foreign-made less lethal ammunition found after protests

Name	Image	Country manufacturer
VGM 93.200, 43 mm less lethal tear gas (CN) round launched by SOBR or OMON officers with Russian GM-94 grenade launchers		Russia
The RG-60AZ Dreif-2 aerosol hand grenade (CN tear gas)		Russia
Cheremukha-6 hand gas grenade (CN tear gas)		Russia

The Belarus OMON used a range of *riot control agents* or chemical irritants to crack down on protesters, including tear gas¹¹⁰ and pepper spray.¹¹¹ In most cases RCAs were delivered by firing a grenade – exposing groups of individuals to health risks without distinguishing between peaceful protesters and those acting violently and causing shrapnel wounds. Numerous reports confirm the indiscriminate and unnecessary use of chemical irritants against predominantly peaceful protesters.¹¹² Many of them were admitted to hospitals with seizures, post-epileptic seizures, eye injuries, and chemical burns to the conjunctiva of the cornea, which may have been caused by the irritants.¹¹³

¹¹⁰ Irina Tchevtayeva, op.cit

¹¹¹ Maria Lisitsyna, *Media reported on the use of tear gas during protests in Minsk* [СМИ сообщили о применении слезоточивого газа на протестах в Минске], 09.04.2020, RBC, available at: <https://www.rbc.ru/society/09/08/2020/5f305bda9a7947d6e659a05b>

¹¹² Mail.ru, *32 protesters were arrested in Minsk over the weekend* [За минувшие выходные в Беларуси задержаны 32 участника акций протеста], 01.03.2021, available at: <https://news.mail.ru/politics/45389339/>

¹¹³ Tut.by, August protests. What injuries were taken to hospitals from the streets, RUVD and Okrestina. Op.cit.

2.4. Stun grenades

Stun grenades, also known as light and sound grenades, unleash a bright flash and a loud bang of about 160-180 decibels. By comparison, ambulance and police sirens produce sound at 120 dB, and exposure to 150 decibels of noise at close distance can cause eardrum rupture and permanent hearing damage.¹¹⁴ A number of serious health risks are associated with the use of these weapons particularly at close range: the sound leaves individuals disoriented and can cause ear damage or post traumatic stress disorder. It also can cause severe burns, blast and shrapnel injuries, and panicked crowds can cause crush injuries. There is also a clear risk of flash-bang grenades being indiscriminate, targeting groups of protesters rather than individual protesters.¹¹⁵

According to journalists and expert groups' reports, the Belarusian security forces were armed with flash-bang grenades of Czech, Polish and Ukrainian origin: Zeveta Ammunition P-1 and ZV-6 hand-held light and sound grenades (Czech Republic),¹¹⁶¹¹⁷ Fam-Pionki 12/70 light and sound cartridge ONS 2000 (Poland), LLC NPP Ecologist Hand aerosol grenade "Teren-6" and hand-held light and sound grenade "Teren7M" produced by a Ukraine manufacturer.¹¹⁸ Czech company Zeveta¹¹⁹ and Polish company Fam-Pionki¹²⁰ deny selling ammunition to Belarus and claim to comply with applicable national and international regulations.

Table 4. Zeveta Ammunition light and sound grenades found after the August 2020 protests

Zeveta Ammunition P-1 and ZV-6 hand-held light and sound grenades		Czech Republic, Zeveta ammunition
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Allegedly, the grenades were launched from grenade launchers, pump-action shotguns, or simply thrown in the direction of protesters, indiscriminately, which constitutes a grave violation of the principles of proportionality and necessity. Journalists collected evidence of the use of the flash-bang grenades against vulnerable populations: at the "March of Pensioners" on October 12, one of the security officials fired from a traumatic pistol "Wasp" - first into the air, and then towards the demonstrators.¹²¹ As later reported by the police, the pistol was charged with a flash-noise cartridge.

¹¹⁴ IAC Acoustics, *Comparative Examples of Noise Levels*, available at: <https://www.iacacoustics.com/blog-full/comparative-examples-of-noise-levels.html>

¹¹⁵ Carrie Feibel, *From 'Flash Bangs' To 'Rubber' Bullets: The Very Real Risks of 'Riot Control Agents'*, in NPR, 06.06.2020, available at: <https://www.npr.org/sections/health-shots/2020/06/06/871423767/from-flash-bangs-to-rubber-bullets-the-very-real-risks-of-riot-control-agents?t=1624478069878>

¹¹⁶ Lukas Andriukaitis, *Belarus riot police disperse crowds with Czech-made flashbangs*, in Atlantic Council, 06.10.2020, available at: <https://www.atlanticcouncil.org/commentary/article/belarus-riot-police-use-czech-flashbangs/>

¹¹⁷ Lidovsky, *Belarusian police allegedly used Czech grenades against the protesters*, 10.08.2020, available at: https://www.lidovsky.cz/svet/beloruska-policie-pry-pouzila-proti-protestujicim-ceske-granaty-vyvazet-se-nesmi-presto-jsou-k-prode.A200810_115723_In_zahranici_hetom

¹¹⁸ ISANS, *The use of weapons by Belarusian law enforcement agencies to disperse peaceful protests*, op.cit.

¹¹⁹ ZEVETA, *public statement* available at: <https://zeveta.cz/2020/09/21/2768/>

¹²⁰ Polish ammo in Belarus? Producer denies, experts suspect provocation, op.cit.

¹²¹ *At the pensioners'march special means were used [На марше пенсионеров применили спецсредства]*, TUT.BY, available at: <https://web.archive.org/web/20201018153950/https://42.tut.by/703798?tg>

According to health sources, only from August 9 to 23, 1,140 people sought medical attention at hospitals; of those, sixty-four were wounded by fragments of military explosive devices.¹²² Victims were taken to hospitals with shrapnel wounds to the face, chest, abdomen and extremities, burns to the upper extremities and abdomen.

In line with international standards, “the use of pyrotechnic flashbang grenades directly against a person would be unlawful as it could cause serious burn or blast injuries and, in certain cases, there could even be a risk of fragmentation”.¹²³ It is highly likely that the shrapnel wounds and burns, injuries of various parts of the body, are precisely the result of the illegal and disproportional use of such grenades against the protesters at close range.¹²⁴ In addition to violating freedom of assembly and the right to life, where these weapons cause injury, such use of these types of weapons constitutes torture and inhuman or degrading treatment or punishment.¹²⁵

Later in November 2021, the same stun grenades were allegedly seen on the Belarusian-Polish border. According to a telegram channel “Belarus Brain,” migrants threw the exact same grenades that were used by Belarus law enforcement police against participants of peaceful protests in August 2020 against Polish border guards. According to the channel, these were P1 grenades made by Czech company ZEVETA Bojkovice A.S.¹²⁶ On November 16, 2021, the Polish authorities stated that the migrants were armed with stun grenades, received from the employees of the Belarusian special services. The Polish defense agency also showed a video¹²⁷ of a certain object flying from the side of the migrants, falling and beginning to smoke.¹²⁸ We cannot assert that it was the Belarusian side that provided the migrants with stun grenades, and it is known that the Polish side also used water cannons and tear gas against the migrants.¹²⁹ However, these facts remain highly concerning and should be investigated.

2.5. Water cannons

The water cannons used by Belarus are water hoses connected to mobile tanks on trucks. They shoot high-pressure streams of water aimed at pushing back and dispersing crowds or restricting access to certain areas. “Water hoses can cause hypothermia, direct injuries from pressurised water, secondary injuries from being knocked down or colliding with objects, and injuries from chemicals and dyes dissolved in the water.” Water cannons can be easily misused because of their indiscriminate character and poor targeting accuracy.¹³⁰

¹²² Tut.by, August protests. What injuries were taken to hospitals from the streets, RUVD and Okrestina, op.cit.

¹²³ OHCHR, *The United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, 2020, available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/LLW_Guidance.pdf

¹²⁴ Tut.by, August protests. What injuries were taken to hospitals from the streets, RUVD and Okrestina, op.cit..

¹²⁵ *Bouyid v. Belgium*, op.cit.

¹²⁶ Telegram channel “Brain Belarus”, November 16 publication, available at: <https://t.me/belamova/22957>, <https://charter97.org/ru/news/2021/11/17/444485/>

¹²⁷ Telegram channel “Zerkalo”, November 16 publication, available at: https://t.me/zerkalo_io/33266

¹²⁸ Zerkalo, *Crisis at the border: Poles and migrants alike talk about the use of stun grenades. Let's look into the issue.*, [Кризис на границе: и поляки, и мигранты говорят о применении светошумовых гранат. Разбираемся в вопросе], 16.11.2021, available at: <https://news.zerkalo.io/life/5826.html?c>; Olga Demidova, *Poland accuses Belarusian law enforcers of arming migrants* [Польша обвинила белорусских силовиков в вооружении мигрантов], in Deutsche Welle, available at: <https://www.dw.com/ru/polsha-obvinila-belorusskih-silovikov-v-vooruzhenii-migrantov/a-59834348>

¹²⁹ RFI, *Polish border guards used tear gas against migrants on the border with Belarus* [Польские пограничники применили слезоточивый газ против мигрантов на границе с Беларусью], 16.11.2021, available at: <https://bit.ly/3FWP7r6>

¹³⁰ Physicians for Human Rights, *Health Impacts of Crowd-Control Weapons: Water Cannons*, 08.10.2020, available at: <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-water-cannons/>

According to journalists' reports, water cannons have been used against protesters in Belarus on several occasions, including with dyes.¹³¹ According to the press service of the Belarusian Interior Ministry, the Belarusian police used water cannons against groups of protesters in order to disperse the demonstrations, which, according to the authorities, "were not sanctioned".¹³² According to international law, the purpose of dispersing an assembly is by no means legitimate, moreover, the use of indiscriminate weapons against groups of individuals acting peacefully violates international standards on the use of force by law enforcement officials (see Section 1.2). The OSCE ODIHR Human Rights Handbook on Policing Assemblies is unequivocal that "water cannons should never be used to disperse a peaceful assembly".¹³³ The use of water cannons poses serious risk of injury, and indiscriminate use of the dye may lead to targeting and consequent arrest of peaceful protesters, journalists, or passers by who were marked with the coloring.

According to journalists' reports, for the first time in Belarus during the 2020 protests, law enforcement agencies resorted to the use of water cannons. In addition to Belarus-made ones, law enforcement agencies allegedly used water cannons "Predators" produced by the UAE/Canadian company Streit Group.¹³⁴ The water canons, according to these reports, are based on Mercedes-Benz and MAN Truck & Bus (Germany), IVECO (Italy), KamAZ (Russia) trucks. The vehicles are equipped with two water pumps with a range of 55-70 meters made by the German company Ziegler.¹³⁵



BR6 Predator water cannon, VW van with an armed trooper in it, 15 November 2020, Minsk, Belarus
Homoatrox, via Wikimedia Commons

¹³¹ Pavlyuk Bykovsky, *New equipment of the Belarusian police: water cannons with dye* [Новая техника белорусской милиции: водометы с красителем], in *Deutsche Welle*, 24.09.2020, available at: <https://www.dw.com/ru/novaja-tehnika-belorusskoj-milicii-vodometry-s-krasitelem/a-55039559>

¹³² RIA, *Water cannon used against protesters in Brest* [В Бресте против протестующих применили водомет], 13.09.2020, available at: <https://ria.ru/20200913/brest-1577178044.html>

¹³³ ODIHR, *Human Rights Handbook on Policing Assemblies*, 2016, P. 77. Available at: <https://www.osce.org/files/f/documents/c/5/226981.pdf>
¹³⁴ "Хищники" для "нетунеядцев": чем интересны водометы, обнаруженные в центре Минска, available at: <http://web.archive.org/web/20210514202613/https://42.tut.by/535441>

¹³⁵ Dmitry Gladky, *"Tsunami", "Predator", "Storm" and their "colleagues". A study of water cannons of the Ministry of Internal Affairs of the Republic of Belarus and countries of the world* [«Цунами», «Хищник», «Шторм» и их «коллеги». Изучаем водометы МВД РБ и стран мира], Onliner, 05.10.2020, available at: <https://auto.onliner.by/2020/10/05/police-water-cannons>

3. ACCOUNTABILITY PROSPECTS

3.1. Transfers violating international obligations and the EU embargo

Most of the relevant international instruments, notably, the ATT and the WA, as well as the 2008 EU Common position and EU Anti-Torture Regulation, prescribe states to refrain from issuing arms export licenses if there is reason to believe that the relevant equipment could be used to fuel human rights violations in the destination country. Considering that the situation in Belarus would have appeared to the EU member states as presenting risks of serious human rights violations since at least 2006 with the introduction of the first round of the EU sanctions on Belarus, the 2008 EU Common Position would have prohibited export of arms and ammunition listed in the EU Common Military List. This would notably concern firearms documented in section 2: the Fabarm and Benelli shotguns, SIG Sauer and Glock pistols. However, the dates of transfers are not always identifiable.

FIDH shared with the mentioned companies a preliminary version of the report, inviting them to highlight any inaccuracies mentioned in the report, as they relate to companies' activities (see Annex 1). The Italian company Fabarm denies having any illicit transactions with Belarus and claims that “the presence, during the protests, of weapons resembling our [Fabarm] products could be lied to the presence on the market of some Turkish-made copies that are also bearing our trademark externally and which are in clear violation of our Industrial rights, but of course this is only an hypothesis”.¹³⁶ Same allegation regarding the Turkish-made copies is reflected in a reply of another Italian arms producer Benelli: “carried out an internal audit to check whether or not there had been any exports of our products to institutions or citizens of Belarus. The result of these checks is that there have never been any exports of any kind to Belarus, either to institutions or to individuals, either before or after the embargo. The presence, during the clashes, of weapons resembling our products could be traced back to the presence on the market of external copies of our Turkish-made M4 Benelli, but this is only a working hypothesis that we suggest”.¹³⁷

Nonetheless, a number of European countries allegedly continued to supply arms to Belarus after 2008, in violation of EU law. One disturbing example, for instance, is a purchase in late 2011 of Swiss-German SIG-Sauer pistols for the SOBR fighters by the Belarusian Interior Ministry.¹³⁸ These items, as documented in the section 2, were allegedly used for internal repression in Belarus. Their transfer to Belarus in 2011 would have violated the 2008 EU Common Position had the weapons been sold directly to Belarus and, depending on the exact date of the transfer, the EU arms embargo as well.¹³⁹ It should be noted in this respect that the producing country is often not the direct supplier of the item,¹⁴⁰ and there is a high chance that they were transferred to Belarus via third countries. Media reports, for instance, indicate that some EU companies tried to bypass the EU arms embargo by transferring firearms and ammunition to Belarus through third countries, for instance, Moldova.¹⁴¹

¹³⁶ See Annex 1 for the full response.

¹³⁷ Ibid.

¹³⁸ Navini.online, *Internal troops of the Ministry of Internal Affairs of Belarus have a new tool to combat the citizens*, 14.03 2012, available at: https://naviny.online/rubrics/society/2012/03/14/ic_news_116_389051

¹³⁹ In the past, SIG-Sauer, headquartered in Germany and the United States, was prosecuted in 2019 for violating export regulations in Germany. In that case, Sig Sauer concealed the final destination of the weapons by submitting forged end-use certificates to the German export authority that listed the United States as the final destination. Ibid.

¹⁴⁰ “Significantly, many important exporters are not major producers of small arms, with substantial numbers of legally acquired small arms entering illicit markets through corruption, seizure, and loss”, for details see: Small Arms Survey, *Weapons and Markets*, available at: <http://www.smallarmssurvey.org/weapons-and-markets.html>

¹⁴¹ Czech firm Česká zbrojovka tried to export over 100 rifles and pistols via Moldova to Russia in 2020, according to a Moldovan document seen by EUobserver. The shipment included 'CZ TSR'-model sniper rifles, which can be used for sport or by special police. And Hungarian firm De

Arguably, the prohibition under the EU Common Position extends to armoured vehicles, notably documented in the section 2 armoured trucks Mercedes-Benz and MAN Truck & Bus (Germany), IVECO (Italy), which were used to carry water cannons, and ammunition, including DDupleks 12/70 cartridge with rubber bullets (Latvia) and Traumatic 12 gauge rubber bullets (Latvia). It is not clear whether the EU Common Military List includes all the KIPs, however. Some items may be covered by various overlapping regimes: some types of the RCAs, depending on the exact substance used in the RCA, are notably covered both by the EU Common Position and the EU anti-torture regulation. Stun grenades, as the ones produced in Poland and Czech republic and documented above, for example, are most likely covered by the EU Common Position, while ammunition containing stun submunitions might not be.

Since the introduction of the EU arms embargo on Belarus in 2011, however, all the equipment used for the internal repression documented in the section 2, was banned from export to Belarus, including the equipment not covered by the EU Common Position.

Some of the items documented above appear to have been produced and transferred to Belarus after 2011. Notably, according to journalists' reports, a stun grenade found after a day of protests, judging by its markings, was manufactured in Czech Republic in 2012.¹⁴² Media did also report a presence of the Belarusian vehicle on the territory of the Czech ZEVETA plant in October 2020.^{143,144} ZEVETA denies selling ammunition to Belarus and claims to comply with all applicable national and international regulations (see Annex 1). However, these highly concerning facts indicating that a Czech-based firm might have violated the EU arms embargo should be investigated further.

As to the water cannons, the media first noticed them on the streets of Belarus shortly before the 2015 elections. According to the media, the Belarusian law enforcement authorities have three such vehicles, each of which is a unique modification made for the Belarusian government.¹⁴⁵ It appears that Streit, by manufacturing in the United Arab Emirates, is going beyond the Canadian government's arms control regulations.¹⁴⁶ Canada is a party to the ATT since 2019 and to the WA. The WA and the ATT military control lists arguably might cover vehicles designed for crowd control as they have potentially lethal consequences. These facts demand further investigation but traceability remains challenging.

The firearms market remains largely nontransparent due to the lack of binding legal instruments that encourage states to report on their small arms exports and imports and the lack of consistency with regards to serial numbers. The EU data and reporting obligations remain insufficient for having a clear picture of issued export licences and occurred transfers.¹⁴⁷ This is also true for the UN Register of Conventional Arms (UNROCA), which maintains one of the largest databases tracking arms transfers across the world.¹⁴⁸ Although the reporting obligations of countries under UNROCA are not legally binding, UNROCA claims to have

Fango and Slovak firm XXeurope also tried to export hundreds of thousands of ammunition cartridges via Moldova to Belarus at about the same time. More details: Andrew Rettman, *EU arms firms trying to flout Belarus and Russia ban*, EU Observer, 6.10.2021, available at: https://euobserver.com/world/153145?utm_source=euobs&utm_medium=email&fbclid=IwAR30QjqOWu8t-Tf3UwvXAteOMyDnrkpfwizrvQYXyOa8GG7pwUb9e6w35YY

¹⁴² Denis Kazakiewicz @Den_2042 Twitter publication, available at: https://twitter.com/Den_2042/status/1322936296902402057

¹⁴³ International Center of Civic Initiatives "Nash Dom", *How Lukashenka uses European weapons against civilians*, 26.06.2021, available at: <https://nash-dom.info/69986> ; Nexta's Twitter publication, available at: https://twitter.com/nexta_tv/status/1306257753019764742?lang=fr ;

¹⁴⁴ Denis Kazakiewicz @Den_2042 Twitter publication, available at: https://twitter.com/Den_2042/status/1322936296902402057 ; The editors of the Belarusian media tut.by contacted the manufacturer of these grenades - ZEVETA Bojkovice A.S., and the company representative commented that the company does not supply ammunition to Belarus and strictly adheres to all international and other agreements for the supply of ammunition.

¹⁴⁵ tut.by, "Хищники" для "нетуняядцев": чем интересны водометы, обнаруженные в центре Минска, available at: <https://42.tut.by/535441?c>

¹⁴⁶ Streit has already been flagged by UN-appointed commissions for violating arms embargoes and selling armored vehicles to war-torn countries such as South Sudan and Libya.

¹⁴⁷ ex: Annual Report according to article 8(2) of Council Common Position. 2008/944/CFSP for appraisal see <https://vlaamsvredesinstituut.eu/wp-content/uploads/2019/03/policy-brief.pdf>

¹⁴⁸ UNROCA, available at: <https://www.unroca.org/>

captured more than 90% of the global arms trade, and its databases give a general idea of the extent of third-countries' trade with Belarus.

According to the UNROCA database, since 2011 Belarus seems to only have imported small arms from Turkey (party to the WA, signatory to the ATT since 2013¹⁴⁹), Serbia (party to the ATT since 2014¹⁵⁰), and South Africa (party to the WA, party to the ATT since 2014¹⁵¹). Belarus' largest importer of small arms is Turkey. From 2007 to 2020, for which data is available, Belarus imported 540 submachine guns (it appears that mostly MP5, yet information is not fully available) as well as 115 bolt action rifles from Turkey, with the last transfer made in 2020. Belarus imported 111 rifles and carbines from Serbia in 2012-2013 and two unnamed small arms from South Africa in 2017. Australia granted authorisation for export of 131 units of small arms and light weapons to Belarus from 2018 to 2019, but it is unclear how many of those were actually exported.

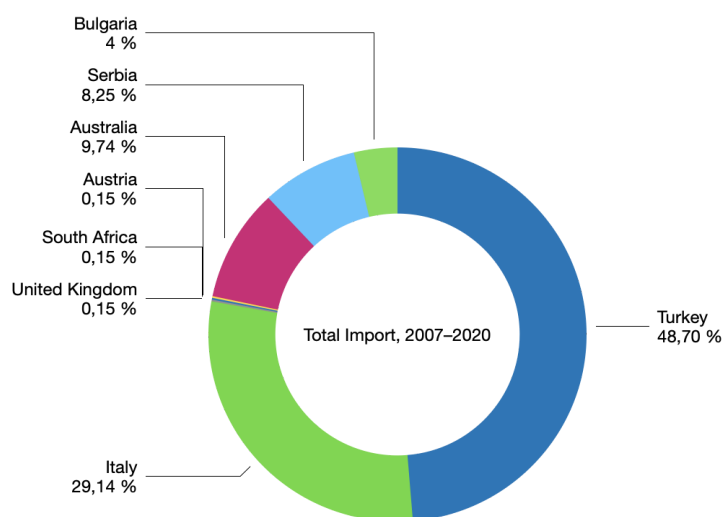


Table 5. Data on small arms exports to Belarus (UNROCA, 2007 to 2020)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Turkey	85						396			59			50	65
Italy	303 +2	15	72											
Bulgaria		50												
UK	1			1										
Serbia						109	2							
Austria				2										
South Africa											2			
Australia												101	30	

¹⁴⁹ Daily Sabah, Turkey signs UN Arms Trade Treaty, 03.07.2013, available at: <https://www.dailysabah.com/business/2013/07/03/turkey-signs-un-arms-trade-treaty>

¹⁵⁰ Ministry of Foreign Affairs of the Republic of Serbia, Arms Control, available at: <https://www.mfa.gov.rs/en/foreign-policy/security-policy/arms-control>

¹⁵¹ UNREC, Arms Trade Treaty Africa, available at: <https://www.unrec.org/default/index.php/en/treaties/316-arms-trade-treaty-africa>

3.2. Responsibility for human rights violations

Under international law, States can be held liable for internationally wrongful acts resulting from the breach of their primary human rights and other treaty obligations. Consequently, State responsibility may result from the breach of arms export regulations like the ATT or a dedicated ban. When applicable, the exporting countries would have had to conduct due risk assessment and refuse authorization of export if they knew that the arms would be used in the commission of violations of human rights or if an arm embargo would be breached. States could be also held responsible for facilitating violations of human rights caused as a consequence of the arms export to third states. Even if they are simply a transferring state, the state remains subject to general international law and its obligations to block the provision of material aid, such as law enforcement equipment, to a state that is known to use such equipment to commit serious human rights violations.

All relevant international and regional arms trade agreements and regimes oblige state parties to enact enforceable systems of arms export controls to ensure that transfers do not violate existing embargoes or contribute to human rights abuses. Hence, states are mandated to investigate and prosecute violations of national export control systems.¹⁵² However, there are currently no international legal standards regarding penalties for export control offenses. Member states of such agreements enjoy a great discretion when it comes to law enforcement of export control regulations and prosecute violators under general legislation on economic (criminal) offenses, (criminal) customs legislation or special export control legislation.¹⁵³

Despite the availability of legal tools to hold arms manufacturers accountable, one of the most acute problems regarding the effective implementation of export controls is the detection, investigation, and prosecution of any violation of such controls. As noted by experts, even within the EU, which has a unified export control system for military and dual-use instruments, the number of export control violations that have been brought to court is very limited.¹⁵⁴

While the accountability prospects under international and EU law are very limited and did not prove to be effective in preventing illicit export of arms and less lethal equipment or facilitating accountability for such export, corporate responsibility for human rights violations offers a complementary toolkit for preventing and prosecuting human rights violations committed by private companies involved in manufacture, brokering services, export and other operations related to arms and less lethal equipment.

Human rights corporate responsibility initiatives aim to create far-reaching obligations for businesses to provide clear information about the specific risks the weapons used in policing assemblies may pose to human rights, be transparent about technical specifications, and conduct safety analyses.¹⁵⁵ According to expert reports, some manufacturers of less lethal weapons do not properly perform quality control of their products to ensure that their equipment is safe to use in policing public assemblies. Such negligent quality control can result in serious health risks to the participants of assemblies, and since no international standards are in place, it is upon companies to ensure their compliance with human rights.¹⁵⁶

Corporate responsibility is often neglected when dealing with violations of arms embargoes and arms export controls because of the competing state responsibility in issuing authorizations through export licenses.

¹⁵² Stockholm International Peace Research Institute (SIPRI), *Detecting, Investigating and Prosecuting Export Control Violations, European Perspectives on Key Challenges and Good Practices*, December 2019, available at https://www.sipri.org/sites/default/files/2019-12/1912_sipri_report_prosecuting_export_control_violations_0.pdf

¹⁵³ Stockholm International Peace Research Institute (SIPRI), op cit, p. 15.

¹⁵⁴ *Ibid.*

¹⁵⁵ Impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests, Report of the United Nations High Commissioner for Human Rights, 24.06.2020, A/HRC/44/24, para. 48.

¹⁵⁶ European Parliament, *Crowd Control Technologies - Final Study*, op.cit.

Rather than shifting responsibilities from governments to enterprises, business' due diligence obligations entail respect for human rights as "a global standard of expected conduct for enterprises", which applies "independently of states' abilities and/or willingness to fulfill their human rights obligations and does not diminish those obligations."¹⁵⁷

Human rights corporate responsibility provides a clear path for accountability as regards engaging business responsibility for exporting tools and thus facilitating the repression in Belarus. While the UNGPs do not offer a dedicated enforcement mechanism, OECD national contact points may be seized in some cases. However, these instruments remain non-binding. Yet, the current legislative movement establishing mandatory due diligence obligations in national legislations has recently opened new avenues for accountability before national courts to hold companies falling under the scope of those legislation accountable for conducting adequate due diligence, adopting all necessary measures to address human rights risks and prevent harm, as well as redressing any violations to which they may contribute directly through their operations or through their business relations, products and services.

Another path is the corporate responsibility under international criminal law, especially for aiding and abetting international crimes, that clearly emerge as a tool that can be mobilized in international law.¹⁵⁸

¹⁵⁷ Christian Schliemann, Linde Bryk, *Arms Trade and Corporate Responsibility - Liability, Litigation and Legislative Reform*, Friedrich-Ebert-Stiftung, November 2019, available at: <http://library.fes.de/pdf-files/iez/15850.pdf>

¹⁵⁸ Christian Schliemann, Linde Bryk, *Arms Trade and Corporate Responsibility - Liability, Litigation and Legislative Reform*, Friedrich-Ebert-Stiftung, op.cit.

RECOMMENDATIONS

Although the EU export control regime, coupled with the sanctions introduced in 2011, appears to capture all the equipment used for the internal repression in Belarus, it has proven ineffective in halting all the transfers of arms and other equipment aiding Lukashenka's regime. In view of the above, FIDH call on the European Union to:

1. Ensure that the existing embargo and sanctions regime is properly implemented, violations investigated, and the regime is not otherwise undercut;
2. Ensure that less lethal weapons are effectively covered by the EU Common Military List, and if it is already the case, clarify which types of less lethal weapons and in which cases;
3. Reinforce transparency and national reporting requirements to create possibility of a public debate at the national level around the details of the various export licenses requested, the reasons for refusing or granting them, the items and equipment in question, their description, value, country of destination, and end user;
4. Impose obligations on private companies producing arms and law enforcement equipment to conduct their own human rights due diligence, including in cases where an export licence has been issued;
5. Take swift action at the EU level to introduce arms embargoes against regimes at the first evidence of a pattern of internal repression;
6. Promote an arms embargo against Belarus at the UN level, covering all arms and equipment that could be used for internal repression;
7. Strengthen the accountability mechanisms at the EU and national levels;
8. Demand that EU Member States, in particular Germany, Italy, Poland and the Czech Republic, investigate and report on the facts indicating the potential violation by these states of Common Position CFSP/2008/944 and Council Regulation 765/2006 and its subsequent amendments;
9. To change its Common Position CFSP/2008/944) into a regulation based on article 207 of the Treaty on the Functioning of the EU, making clear that the eight criteria apply to items on the Military List, as well as components, related maintenance and service contracts, align on the ATT procedures, set up an independent risk assessment unit defining at the EU level sensitive destinations based on the 8 criteria currently referred in the Common position and enhance the transparency and accountability procedures, as well as the participation of civil society and European Parliament in the monitoring and assessment process;
10. Consider placing non-European companies that continue to supply the means of repression to Belarus on its targeted sanctions list;
11. Investigate private companies' compliance with the international human rights standards and the EU law.

Similarly, the report found that global measures are not sufficient to stop the trade in arms, as well as less lethal items, including exports and imports, with Belarus. While Belarus can largely rely on domestic production of arms and related equipment or exports from Russia to continue its repression, it is nonetheless important to take urgent steps to end any contributions by other states to support the Lukashenko dictatorship. To this end, we recommend that the relevant UN mechanisms:

12. Encourage ratification of the ATT and the WA by states that are not parties to these regimes;
13. Expand the ATT and AW military lists to ensure that all equipment that could be used for internal repression, including less lethal weapons, is subject to effective control;

14. Promote the strengthening and establishment of a better reporting and monitoring mechanism to support the creation of an accountability mechanism;
15. Introduce a UN arms embargo on Belarus that also covers less lethal weapons that may be used for internal repression.

A major responsibility for addressing the human rights crisis in Belarus lies with private companies. Companies must act proactively to prevent, mitigate, and remedy human rights impacts related to their operations in Belarus, and conduct thorough human rights due diligence procedures before deciding to do business with Belarus and Belarusian companies. Until the situation in Belarus stabilizes, companies should suspend all transfers of arms and less lethal equipment to Belarus. We call on private companies exporting arms and less lethal weapons to Belarus to:

16. Immediately halt all transfers of items, including lethal and less lethal weapons and related equipment, that can contribute to the internal repression in Belarus;
17. Ensure that lethal and less lethal weapons and related equipment is designed and produced to meet legitimate law enforcement objectives and comply with international human rights law;
18. Stop transfers of lethal and less lethal weapons and related equipment if there is a risk that these items may contribute to the violation of human rights and fundamental freedoms in Belarus as well as other countries where these products may be re-exported to Belarus. To assess such risks, we recommend consulting the reports of the competent bodies of the UN, the EU and the Council of Europe, as well as the reports on the human rights situation of civil society organisations, including FIDH, Human Rights Watch, Amnesty International. Such risk assessments should be conducted including in cases where an export licence has been issued and in cases where there is no need for an export licence, cover geographically the countries at risk and those from which they are acquiring weapons, and identify potential business partners in other countries which may sell and export their products to Belarus..
19. Manufacturers should be transparent about the guidance surrounding the use of such items and make public relevant information about the risks from less lethal weapons and related equipment they produce;
20. Manufacturers should make public the information that can help improve weapons identification and traceability, including for the purpose of detecting illegal arms transfers;
21. Respect international law and the UN Guiding Principles on Business and Human Rights, in particular conduct enhanced due diligence in order to identify, prevent and address human rights abuses linked to their activities, products, services or business relations.

Annex 1



**LEUCHTER &
LEUCHTEROVÁ**
ADVOKÁTNÍ KANCELÁŘ

FIDH

eeac@fidh.org

email

In Prag, 7th December 2021

RE: NGO Report

Dear colleagues

we refer to your email concerning the NGO report on human rights on behalf of our client ZEVETA AMMUNITION due to incorrect information about his production.

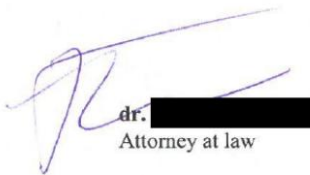
It is important that you defend human rights, but on the other side, you have to take into account that also our client has also rights as protection of his honour and reputation. No one shall be subjected to attacks upon his honour and reputation.

Our client repeatedly proved before Czech authorities that the riots grenades on the used photo in your report did not produce nor deliver to Belarus. You might also check the client's products on the client's web pages and see that it is another company's product. Our client also strictly comply with all duties concerning the trade with licencing goods.

As mentioned above, we would like to kindly ask you to refrain from the unlawful defamation of our client and to unjustified attack on his honour and reputation concerning information that he delivered products to Belarus.

Our client is ready to defend against false information and unjustified attack on his rights involving his honour and reputation and also is ready to prove before the court that the product on the photo was not produced by our client. Furthermore the false information decreases the value of your report.

Best regards


dr. [redacted]
Attorney at law

Advokátní kancelář LEUCHTER & LEUCHTEROVÁ s.r.o.
Mikulandská 122/4, 110 00 Praha 1, IČ: 28972228
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T +420 246 030 860
D mk6gze

E recepcie@leuchter.cz
W www.leuchter.cz

From: Info - Fabarm info@fabarm.com [redacted]
Subject: R: Belarus: items allegedly manufactured by Fabarm used for internal repression on [NGO report]
Date: 13 December 2021 at 13:15
To: [redacted]
Cc: eeac eeac@fidh.org

IF

Dear Sirs,

we received your e-mail message and we examined the attached report.

First of all, we appreciated that you had contacted us to verify any inaccurate information collected, before publishing the report.

Preliminary, we would like to highlight that our Company carried-out transfers to intra-community countries and exports strictly applying the regulations in force in our Country and consequently, no shotguns can be transferred /sold without the necessary authorisations released by the Italian Authorities.

Furthermore, the Italian regulations are perfectly in compliance with the International Agreements aimed at the containing of the illicit Arms Trafficking, you referred in your report. That said, we carried out an internal check to verify if we made exports of our products to Institutions or citizens of Belarus.

The result of our checks is that the only one export we made to Belarus dates back to 2012 to the company JSC BELENERGOTEX located in Minsk.

The shipment was including a total of 10 pieces of shotguns as detailed here following:

- 4 pieces of smooth bore over & Under shotguns 12 Gauge ;
- 1 piece of smooth bore side by side shotgun 12 Gauge;
- 5 pieces of smooth bore semiautomatic shotguns 12 Gauge.

The above mentioned shotguns have a purely hunting use, also given the limited offensive capacity and, in fact, they are considered as civil weapons and excluded from the Small Arms Light Weapons (SALW). Moreover, this sale/export was duly authorised by the Italian Authority, at the end of verification of the Law and Regulations.

The presence, during the protests, of weapons resembling our products could be lied to the presence on the market of some Turkish-made copies that are also bearing our trademark externally and which are in clear violation of our Industrial rights, but of course this is only an hypothesis.

We are pleased to have contributed to making your report as accurate as possible.

Thank you and best regards,

[redacted]
International Sales Dept.



I: Segnalazione ONG francese su M4 Benelli

We have received your communication and examined the attached report.

First of all, we appreciate the fact that you have taken the trouble to verify the accuracy of the information before publishing it.

We would like to point out that our company carries out intra-Community transfers or exports by strictly applying the rules in force in our country and, consequently, no weapon can be transferred without the necessary authorisations granted by the Italian authorities.

Moreover, the Italian rules are in full compliance with the international agreements aimed at curbing illegal arms trafficking that you mention in your analysis.

Having said that, we carried out an internal audit to check whether or not there had been any exports of our products to institutions or citizens of Belarus.

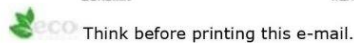
The result of these checks is that there have never been any exports of any kind to Belarus, either to institutions or to individuals, either before or after the embargo.

The presence, during the clashes, of weapons resembling our products could be traced back to the presence on the market of external copies of our Turkish-made M4 Benelli, but this is only a working hypothesis that we suggest.

Glad to have contributed to making your report as correct as possible, we send our best regards.

Benelli Armi S.p.A.

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FIDH

Edition:

FIDH, Omega Research Foundation

Direction:

FIDH

The logo for FIDH, consisting of the lowercase letters 'fidh' in a bold, sans-serif font. The letters are white and are set against a dark purple rectangular background.**CONTACT US**

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KEEP YOUR EYES OPEN

Establishing facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilizing the international community - Advocacy before
intergovernmental bodies

Informing and reporting - Mobilizing public opinion

For FIDH, transforming societies relies on the work of local actors. The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.



FIDH is an
international human rights
NGO
federating 192 organisations
from 117 countries

fidh

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 192 member organizations in 117 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organizations, FIDH is not linked to any party or religion and is independent of all governments.