



# ILLICIT TRAFFICKING IN ARMS: DUE DILIGENCE AND ACCOUNTABILITY OF PRIVATE ACTORS IN THE EUROPEAN UNION

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# ARMS TRANSFER – SOME DATA

- Five countries supplied the 76% of the global arms exports in the period 2018-2022
- Two of them – France and Germany – are European Union members states
- France grew as an arms exporter by 44% since 2013
- Arms imports by EU states = 47% higher in 2018-2022 than in 2013-2017
- Arms imports by NATO European Union states = 65% higher
  
- Source: SIPRI Fact Sheet, March 2023

# HUMAN RIGHTS ISSUE

- Arms trade = national regulations
- Illicit trafficking: import, export, acquisition, delivery, movement or transfer in breach of national or international law
- Diversion of arms = social dangerousness status
  - In time of peace and in time of war
- High risk for the right to life, right to security and personal integrity
- Extraterritorial application of HR treaties
  - Mandatory human rights diligence

# THE ARMS TRADE TREATY

- Entered into force on 24 December 2014
  - 113 States are currently parties
  - All EU states are members
- Sets common standards for the international transfer of conventional weapons
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion
- Scope: export, import, transit, trans-shipment and brokering

# PRIVATE COMPANIES

- Not subjects, so no international responsibility
- Accountability only at the national level
- But, determining the scope of the obligations of private companies contributes to the determination of States' obligations
- And States are under the obligation to respect, protect and fulfill human rights
  - Appropriate internal regulations
  - Monitoring and investigation mechanisms
  - Accountability

# PRIVATE COMPANIES OBLIGATIONS

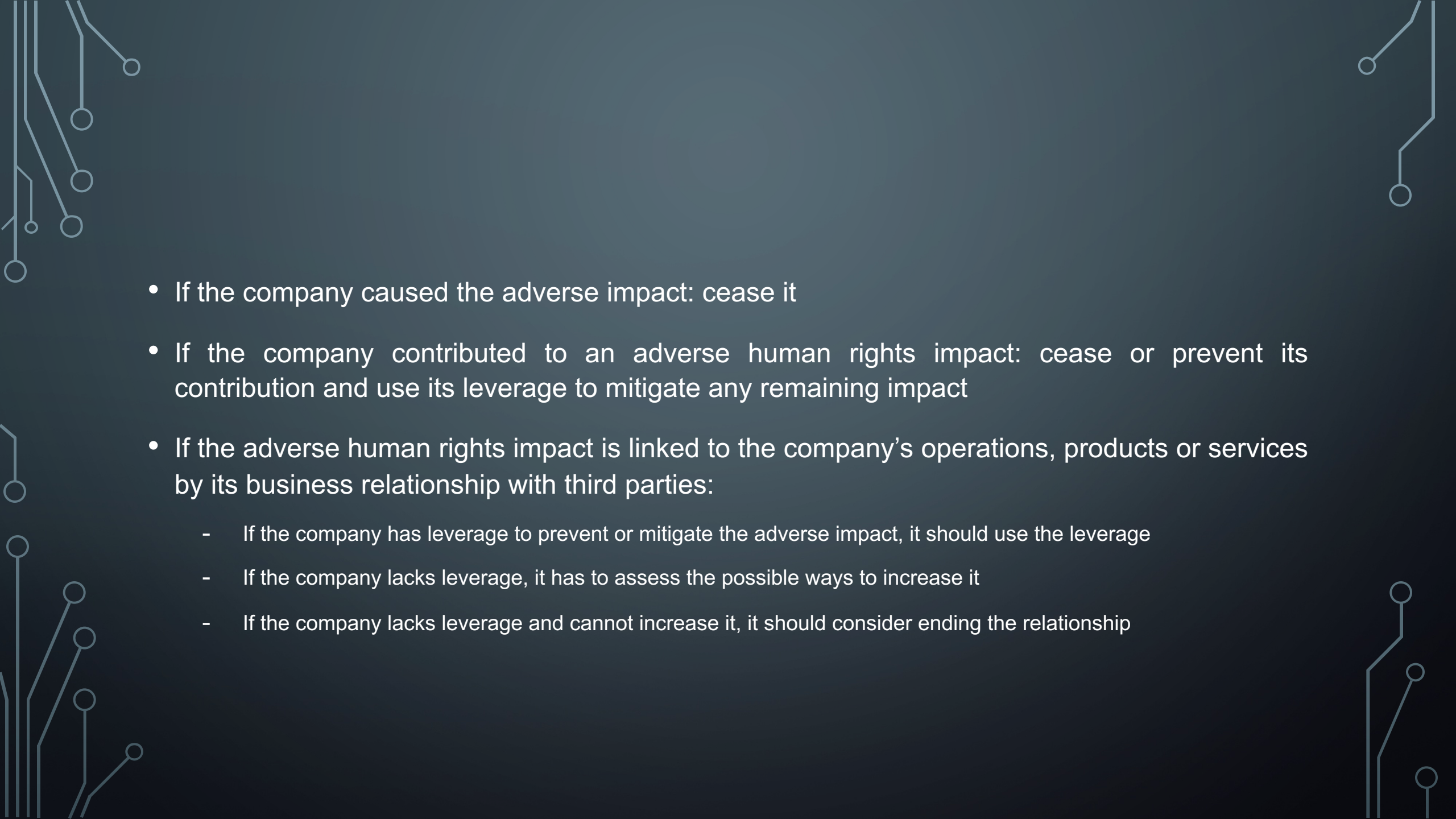
- OECD Guidelines for Multinational Enterprises, 2011
  - OECD Due Diligence Guidance for Responsible Business Conduct, 2018
  - UN Guiding Principles on Business and Human Rights, 2011
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- Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur
  - Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations products or services by their business relationships, even if they have not contributed to those impacts

Which entails:

- A policy commitment to meet their responsibility to respect human rights
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute

# PRIVATE COMPANIES AND ARMS TRAFFICKING

- **Due diligence obligation:**
  - Principle 17 UNGPs: 'Business enterprises should carry out human rights due diligence.'
- **Two different concepts of due diligence:**
  - Process to manage business
  - Standard of conduct required to discharge an obligation
- **Private companies are accountable for:**
  - Their own human rights adverse impact
  - The human rights impact of third parties they have business with

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- The slide features a dark blue background with white decorative circuit-like lines in the corners. These lines consist of vertical and horizontal segments connected by small circles, resembling a network or data flow diagram.
- If the company caused the adverse impact: cease it
  - If the company contributed to an adverse human rights impact: cease or prevent its contribution and use its leverage to mitigate any remaining impact
  - If the adverse human rights impact is linked to the company's operations, products or services by its business relationship with third parties:
    - If the company has leverage to prevent or mitigate the adverse impact, it should use the leverage
    - If the company lacks leverage, it has to assess the possible ways to increase it
    - If the company lacks leverage and cannot increase it, it should consider ending the relationship



# EUROPEAN UNION REGULATIONS

- Council Decision (CFSP) 2019/1560 on Common rules governing control of exports of military technology and equipment
  - Proposition of Regulation on import, export and transit measures for firearms, their essential components and ammunition, 27 October 2022
  - Directive on Corporate Sustainability Due Diligence
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- Ambiguity
  - Need of more due diligence regulations at the national level (accountability)
  - Role of business partners
  - Monitoring mechanisms

The image features a dark blue background with white, stylized circuit board traces in the corners. These traces consist of straight lines of varying lengths and angles, ending in small white circles, resembling a network or data flow diagram. The traces are located in the top-left, top-right, bottom-left, and bottom-right corners, framing the central text.

**Thank you!**