



Submission to the United Nations Expert Mechanism on the Right to Development

1. Introduction: Arms Build-Ups and the Militarisation of Societies

The global peace and security situation is facing major challenges due to escalating militarisation, armed conflicts and crises. Militarisation fundamentally undermines development by diverting critical public resources away from education, health, and climate action. The systematic expansion of armed forces, weapons development, and military spending directly inhibits human progress and threatens the realisation of sustainable development goals.

Contexts involving the breakdown of peace and security—including arms build-ups and inadequate arms control—pose significant risks to the protection of the right to development. Arms build-ups, or the rapid and systematic increase of a State's military strength, lead to a breakdown of peace and security both directly and indirectly. Arms build-ups often lead to arms diversions, where arms are diverted to non-state actors, such as paramilitary groups or organised crime groups.¹ This is especially problematic given the incredible opacity within which military spending operates.² Arms diversions fuel armed conflict, as more weapons are put in the hands of more adverse actors.³ Armed conflicts pose a major threat to societal development as they destroy critical infrastructure, disrupt economic growth, and promote or sustain corruption and political instability.⁴

As governments prioritise military spending, this comes at an opportunity cost to other forms of spending, particularly development spending.⁵ A decrease in development spending may lead to a breakdown of peace and security, as fewer resources are directed, for instance, to social infrastructure and climate action. Food insecurity, inequality, climate change and the associated loss of livelihoods it entails lead to insecurity as people increasingly turn to illegal means to make a living. Thus, the right

¹ United Nations, 'Arms races do not lead to peace' (27 April 2026) <https://www.un.org/en/peace-and-security/arms-races-do-not-lead-to-peace> accessed 6 July 2026.

² Ara Marcen and Najla Dowson-Zeidan, 'Access to information in a world in crisis: how opacity in the defence sector makes countries more vulnerable to corruption' (Transparency International UK, 8 September 2021) <https://www.transparency.org.uk/news/access-information-world-crisis-how-opacity-defence-sector-makes-countries-more-vulnerable> accessed 7 July 2026.

³ United Nations, 'The true cost of peace: rebalancing world military spending for a sustainable and peaceful future' (9 September 2025) <https://www.un.org/en/peace-and-security/the-true-cost-of-peace> accessed 7 July 2026.

⁴ Paola Vesco and others, 'The impacts of armed conflict on human development: a review of the literature' (2025) 187 *World Development* 106806 <https://www.sciencedirect.com/science/article/pii/S0305750X24002766> accessed 7 July 2026.

⁵ United Nations, 'Arms races do not lead to peace' (27 April 2026) <https://www.un.org/en/peace-and-security/arms-races-do-not-lead-to-peace> accessed 8 July 2026.

to development is threatened twofold: both via the direct decrease in funding to development projects, and through the aforementioned consequences of a breakdown of peace and security.

The developments in Libya serve as an example. The years leading up to 2011 marked a massive and rapid arms build-up in Libya by Muammar Gaddafi's regime, supplied in large part by European States.⁶ European countries supplied the regime with sniper rifles, military vehicles, ammunition, and crowd-control equipment, warranted at the time by Gaddafi's compliance with migration and counterterrorism measures. However, once Libya's government began using these weapons on their own people, these same States reversed course, and NATO launched a military intervention in March 2011. This intervention led to a complete regime collapse, with Muammar Qaddafi killed. It also left massive military stockpiles unsecured. International arms control measures failed: end-use monitoring was limited, mapping or securing of stockpiles unserious, and there was no comprehensive disarmament strategy. Border-monitoring and arms prevention measures were lacking. Some of the largest weapons stockpiles in Africa, containing thousands of small arms, anti-aircraft weapons, heavy machine guns, artillery shells, and explosives, were ripe for the picking. The collapse of the State following an arms build-up and without any coordinated effort for disarmament was a field day for militias, traffickers, and insurgent groups.

The rapid dissemination of these weapons fuelled chaos in Libya. With power no longer centralised, a now heavily armed race for legitimacy and control ensued amongst the various militias and rival governments. Power was fragmented and localised, with towns and districts controlled by distinct armed factions. Libya became a hub for arms trafficking, human smuggling, and mercenary recruitment. Not only were the impacts felt within Libya, but arms flowed outside the State's porous borders along trafficking routes and into Niger, Chad, Mali, Sudan, and beyond. Nigeria's Boko Haram were able to upgrade their weaponry, and consequently their terror tactics. Al-Qaeda also benefited from these arms diversions, with Libyan weapons supporting operations in Algeria and the greater Maghreb-Sahel corridor. Not only did these new modern weapons intensify conflicts, but they altered their very nature, with groups now emboldened to pursue loftier ambitions beyond their previous abilities.⁷

Civilians felt the harshest effects of the conflict and insecurity fuelled by the mass diversion of Libyan weapons post 2011. Before the NATO intervention, Libya had one of the highest per capita incomes in the region, a 95% literacy rate, and a relatively strong economic performance.⁸ Libyan oil reserves funded a welfare state which offered free education, housing, public services, health care, and offset food costs to its citizens.⁹ While corruption and inequality diverted much of this relative wealth away from Libyan citizens, sparking social unrest leading up to the intervention, there was social infrastructure in place which provided basic rights.¹⁰ With the onset of civil war following the intervention, not only did civilians bear the brunt of the violence imposed by militia groups and State actors, but for those who survived the terror, they faced extreme poverty and state-wide economic

⁶ Iain Overton, 'Impact of Libyan Arms Proliferation After NATO Intervention in Africa: The Role of the UK and France's Air Campaigns and Their Impact on Regional Destabilisation' (AOAV, 28 July 2025) <https://aoav.org.uk/2025/impact-of-libyan-arms-proliferation-after-nato-intervention-in-africa-the-role-of-the-uk-and-frances-air-campaigns-and-their-impact-on-regional-destabilisation/> accessed 7 July 2026.

⁷ *Ibid.*

⁸ Dina Mansour-Ille, 'Libya's Political Crisis: A Legacy of Failed Interventionism' (PRISME Initiative, 11 June 2024) <https://prismeinitiative.org/publications/libyas-political-crisis-dina-mansour-ille/> accessed 8 July 2026.

⁹ Jennifer Philipp, 'Everything You Need to Know About Poverty in Libya' (The Borgen Project, 26 October 2024) <https://borgenproject.org/about-poverty-in-libya/> accessed 8 July 2026.

¹⁰ Dina Mansour-Ille, 'Libya's Political Crisis: A Legacy of Failed Interventionism' (PRISME Initiative, 11 June 2024) <https://prismeinitiative.org/publications/libyas-political-crisis-dina-mansour-ille/> accessed 8 July 2026.

decline, mass displacement, critical infrastructure collapse, and a diversion of social resources. Tens of thousands of civilians have been killed, and millions have been displaced across the Sahel and Lake Chad region.¹¹

2. Restrictions of Arms Build-Ups under International Law

It is argued under the right to development, as enshrined in the 1986 Declaration on the Right to Development and the current Draft International Covenant on the Right to Development, that excessive militarisation comes at the expense of societal development. For instance, the Preamble of the 1986 Declaration reaffirms "a close relationship between disarmament and development"¹² and states "that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples"¹³.

Article 7 of the Declaration provides that States should promote international peace and security, work towards general and complete disarmament and, in particular, ensure that resources released by effective disarmament are used for development.¹⁴ Similarly, Article 23(2) of the Draft Covenant requires States to "pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control so that [...] resources can be used for the full realization of the right to development for all".¹⁵ Development is thus linked with the long-standing objective of general and complete disarmament.

As stipulated by the International Court of Justice, "any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the co-operation of all States"¹⁶. Cooperation in the area of disarmament and arms control is thus essential for ensuring and upholding the right to development. As provided by draft Article 3(i), "the realization of the right to development requires an enabling national and international environment created through a spirit of cooperation and unity among individuals, peoples, States and international organizations, [...]. This principle includes the duty to cooperate with full respect for the principles of international law."¹⁷

An obligation for States to "cooperate with each other in ensuring development and eliminating obstacles to development" is further implemented in draft Article 8(2) and similarly in draft Articles 12(1) and draft Article 13 on the duty to cooperate.¹⁸ Specifically, draft Article 13(4)(k) obliges States to eliminate "illicit arms flows by all necessary means, in accordance with international commitments".¹⁹

¹¹ Iain Overton, 'Impact of Libyan Arms Proliferation After NATO Intervention in Africa: The Role of the UK and France's Air Campaigns and Their Impact on Regional Destabilisation' (AOAV, 28 July 2025) <https://aoav.org.uk/2025/impact-of-libyan-arms-proliferation-after-nato-intervention-in-africa-the-role-of-the-uk-and-frances-air-campaigns-and-their-impact-on-regional-destabilisation/> accessed 7 July 2026.

¹² UN General Assembly, *Declaration on the Right to Development*, GA Res 41/128 (4 December 1986) preamble.

¹³ *ibid.*

¹⁴ *ibid* art 7.

¹⁵ UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 23(2).

¹⁶ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, para 100.

¹⁷ UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 3(i).

¹⁸ *ibid* arts 8(2), 12(1) and 13.

¹⁹ *ibid* art 13(4)(k).

Generally, arms control treaties do not explicitly address development. However, the regulation or reduction of arms development and transfer—the primary focus of these treaties—indirectly supports the conditions necessary for the development of individuals and societies. This indirect support for development becomes even more evident when examining specific agreements.

For example, agreements such as the Chemical Weapons Convention, the Biological Weapons Convention, the Comprehensive Nuclear-Test-Ban Treaty, the Treaty on the Non-Proliferation of Nuclear Weapons, and the Treaty on the Prohibition of Nuclear Weapons all aim to limit or prevent the possession or testing of various weapons.²⁰ By restricting state expenditures on certain weaponry and reducing access to arms, these treaties decrease state readiness for conflict and promote the reallocation of resources toward non-military spending. This, in turn, reduces the risk of armed conflict and allows States to direct resources toward economic and social development.

Other treaties address the lingering dangers posed by certain weapons long after conflicts end. The Convention on the Prohibition of Anti-Personnel Mines and the Convention on Cluster Munitions specifically address weapons that continue to harm civilian populations even after conflicts have ended.²¹ By targeting the removal and prohibition of anti-personnel mines and cluster munitions, these treaties aim to protect and restore agricultural land, ensure civilian safety, and support post-conflict reconstruction—all of which are vital foundations for sustainable development.

While certain treaties have been signed to set an upper ceiling on major categories of conventional arms (e.g. the Treaty on Conventional Armed Forces in Europe²²) or numerical ceilings on strategic nuclear weapons (e.g. the Strategic Arms Reduction Treaty, commonly known as START I²³, and the Treaty Between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, commonly known as the New START²⁴), the treaty practice in this regard is extremely limited and subject to geopolitical interests of major global powers. With no international prohibition of arms build-ups, States are thus arguably free to accumulate conventional weaponry subject to limitations arising out of the right to development, that is, societal development and the allocation of expenditures to a variety of sectors to ensure development.

Of special relevance in the context of arms possession are legal regimes regulating arms trade. The Arms Trade Treaty (ATT), a key international arms control treaty, regulates the global trade of conventional weapons and seeks to reduce the illegal arms trade.²⁵ Article 6(3) of the ATT also explicitly prohibits arms transfers when a State knows that the arms would be used to commit mass

²⁰ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (adopted 3 September 1992, entered into force 29 April 1997) 1974 UNTS 45 ('Chemical Weapons Convention'); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (adopted 10 April 1972, entered into force 26 March 1975) 1015 UNTS 163 ('Biological Weapons Convention'); Comprehensive Nuclear-Test-Ban Treaty (adopted 10 September 1996, not yet in force) 35 ILM 1439 ('Comprehensive Nuclear-Test-Ban Treaty'); Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161 ('Treaty on the Non-Proliferation of Nuclear Weapons'); Treaty on the Prohibition of Nuclear Weapons (adopted 7 July 2017, entered into force 22 January 2021) 729 UNTS 3 ('Treaty on the Prohibition of Nuclear Weapons').

²¹ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (adopted 18 September 1997, entered into force 1 March 1999) 2056 UNTS 211 ('Convention on the Prohibition of Anti-Personnel Mines'); Convention on Cluster Munitions (adopted 30 May 2008, entered into force 1 August 2010) 2688 UNTS 39 ('Convention on Cluster Munitions').

²² Treaty on Conventional Armed Forces in Europe (adopted 19 November 1990, entered into force 9 November 1992) 2441 UNTS 140.

²³ Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (START I) (signed 31 July 1991, entered into force 5 December 1994) 1762 UNTS 3.

²⁴ Treaty Between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (New START) (signed 8 April 2010, entered into force 5 February 2011) 2799 UNTS 3.

²⁵ Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014) 3013 UNTS 269 ('Arms Trade Treaty').

atrocity crimes.²⁶ Article 7 further restricts the State's transfer of arms in situations where there is an overriding risk that the arms could be used to violate international humanitarian law or would "contribute to or undermine peace and security."²⁷ Where there is a lack of peace and security, the conditions necessary for development cannot be sufficiently met. Collectively, the varied objectives of these treaties directly impact peace, security and development.

3. The Requirements under Contemporary International Law in Support of Arms Build-Up

While the language of both the Declaration on the Right to Development and the Draft Covenant impose implied restrictions on States' excessive possession of arms, military build-ups, or military expenditures in light of the objective of general and complete disarmament, caution must be given against overly restrictive interpretation of the right to development which restrains the capacities of States and prevents States from meeting their positive obligations under international human rights law, while simultaneously not undermining the realisation of the right to development.

Positive obligations of States dictate action which should be taken in order to ensure the enjoyment of human rights. For instance, the right to life imposes on States not only a negative obligation to refrain from unlawful killing, but also a positive obligation to protect individuals against foreseeable threats to life. Under Article 2 of the European Convention on Human Rights, States must take reasonable and feasible measures when they know, or ought to know, of a real and immediate risk to life.

In *Osman v. United Kingdom*, the European Court of Human Rights (ECtHR) held that Article 2 requires States to take appropriate steps to safeguard the lives of those within their jurisdiction and may impose a duty to take preventive operational measures against threats posed by third parties.²⁸ The UN Human Rights Committee adopted the same approach in General Comment No. 31, emphasising that States must protect individuals not only from violations committed by State agents, but also from harmful acts committed by private actors.²⁹

This obligation necessarily extends beyond reacting to specific incidents. A State cannot effectively protect life unless it maintains institutions capable of doing so. Police, emergency services and, where circumstances require, the armed forces must be adequately trained, equipped and organised to respond to foreseeable threats. Although human rights courts do not prescribe specific levels of public expenditure on law enforcement armament or equipment, the duty to protect life would be meaningless if States were obliged to maintain security institutions so weak that they could not perform their protective function.

The ECtHR's judgment in *Finogenov and Others v. Russia* illustrates this principle. The Court held that a State's positive obligation arises where authorities know or ought to know of a real and immediate risk to life and retain control over the situation.³⁰ At the same time, the Court acknowledged that

²⁶ *ibid* art 6(3).

²⁷ *ibid* art 7.

²⁸ *Osman v the United Kingdom* (App no 23452/94) (ECtHR, 28 October 1998) [115]–[116].

²⁹ Human Rights Committee, *General Comment No 31 (80): The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) para 8.

³⁰ *Finogenov and Others v Russia* (Apps nos 18299/03 and 27311/03) (ECtHR, 20 December 2011) [209].

States must make operational choices regarding resources and priorities and are not required to bear an impossible or disproportionate burden.³¹ Nevertheless, Russia was found responsible despite actively attempting to rescue the hostages during the Moscow theatre siege. The violation resulted from deficiencies in planning, coordination, preparedness and medical support.³² The case demonstrates that compliance with Article 2 depends not only on willingness to act, but also on the existence of adequate operational capabilities.

The State's duty may also require the deployment of military force where civilian lives are endangered. In *Isayeva v. Russia*, the ECtHR accepted that the situation in Chechnya justified the deployment of army units equipped with military aviation and artillery in order to suppress an armed insurgency and restore state control.³³ Implicit in this reasoning is the understanding that States may deploy such forces when necessary to protect life against serious threats such as terrorism, insurgency or large-scale violence.³⁴ For the deployment to be meaningful, States and their armed forces must possess adequate material, personal and operational capacities.

The Inter-American Court of Human Rights has developed a similar doctrine. In *Pueblo Bello Massacre v. Colombia*, the Court held that a massacre carried out by paramilitary groups could not have occurred if there had been effective protection for civilians in a danger that was reasonably foreseeable to the armed forces and security services.³⁵

Likewise, in *Mapiripán Massacre v. Colombia*, Colombia was held responsible for failing to provide effective protection against foreseeable attacks by paramilitary forces.³⁶ These judgments confirm that a State may violate the right to life not only through direct action, but also through inadequate protective action against non-state violence. Thus, in order to meet its positive obligation in this regard, the State's forces have to be adequately equipped with arms, necessitating a certain build-up of armaments.

A useful analogy can be drawn from *Budayeva and Others v. Russia*. Although the case concerned natural disasters rather than armed conflict, the ECtHR found a violation because the State had failed to establish adequate preventive and emergency-response mechanisms despite longstanding knowledge of the risks.³⁷ The Court's reasoning shows that the positive obligation to protect life includes a duty to maintain effective protective systems in advance of foreseeable dangers. Per analogy, a State should also maintain reasonably well-equipped police or armed forces to address foreseeable threats to human lives.

It can also be argued that in order to ensure the right to life of its population, a State facing an act of aggression and resorting to self-defence in response to that act of aggression is obliged to obtain and possess the quantity and quality of conventional arms necessary to engage militarily to repel an act of aggression and ensure the right to life of its population. While General Comment No. 36 of the UN

³¹ *ibid* [209]–[213].

³² *ibid* [243]–[249], [250]–[261], [273]–[274].

³³ *Isayeva v Russia* (App no 57950/00) (ECtHR, 24 February 2005) [180].

³⁴ *ibid* [173]–[175], [180].

³⁵ *Pueblo Bello Massacre v Colombia* (Merits, Reparations and Costs) Judgment of 31 January 2006, Inter-American Court of Human Rights, Series C No 140, [140].

³⁶ *Mapiripán Massacre v Colombia* (Merits, Reparations and Costs) Judgment of 15 September 2005, Inter-American Court of Human Rights, Series C No 134, [111]–[123], [139]–[141].

³⁷ *Budayeva and Others v Russia* (Apps nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02) (ECtHR, 20 March 2008) [128]–[137], [142]–[160].

Human Rights Committee³⁸ does not explicitly mention that a defending State has a legal obligation under Article 6 of the International Covenant on Civil and Political Rights to militarily defend its population against aggression, General Comment No. 36 strongly supports the proposition that States have positive obligations to protect the right to life, and those obligations can reasonably be understood to include measures to defend the population against unlawful external violence where the State has the capacity to do so. As the UN Human Rights Committee stipulated, "States parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate ipso facto article 6 of the Covenant."³⁹ The Committee stressed that States must take *appropriate measures* to protect life, which includes protecting individuals against reasonably foreseeable threats to life.⁴⁰

Thus, while the State has the right to self-defence and not necessarily a duty to engage in self-defence under public international law, where military defence is the only effective means of protecting life from an aggressor State, military defence may become part of fulfilling that obligation to take reasonable and appropriate measures to protect the life of the population. The commission of an act of aggression likewise breaches an obligation under draft Article 10 of the Draft Covenant as it impairs the ability of the State acting in self-defence to comply with its obligations with regard to the right to development by being forced to invest in arms build-ups to deter the act of aggression at the expense of societal development.⁴¹ By engaging in an act of aggression, a State would also violate the right to development under draft Articles 14(1) and 23(1).⁴²

Where a State loses effective control over part of its own territory because of occupation, it does not lose jurisdiction entirely, as ruled by the ECtHR, and instead, it retains positive obligations, namely to take diplomatic, judicial and economic measures, use available international accountability mechanisms, continue efforts to protect affected citizens, avoid recognising unlawful situations or pursue feasible measures to secure Convention rights.⁴³ These obligations are obligations of means rather than result.

While the ECtHR never upheld that there is a duty to acquire arms or rebuild military capacity in this context, where an invaded State lawfully seeks to regain effective control over occupied territory, measures aimed at strengthening its defence—including the acquisition of weapons—are not inconsistent with its obligations and may form part of its broader duty to protect its population under international law.

In situations falling outside of the scope of international armed conflicts, such as non-international armed conflicts and law enforcement operations, a State is similarly obliged to ensure positive obligations under human rights law towards its population, resulting in a necessity to accumulate sufficient armaments.

³⁸ Human Rights Committee, *General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc CCPR/C/GC/36 (3 September 2019).

³⁹ *ibid* para 70.

⁴⁰ *ibid*, paras 21-23.

⁴¹ See UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 10.

⁴² See *ibid* arts 14(1), 23(1).

⁴³ *Ilașcu and Others v Moldova and Russia* App no 48787/99 (ECtHR (GC), 8 July 2004) [333]–[335]; *Catan and Others v Republic of Moldova and Russia* Apps nos 43370/04, 8252/05 and 18454/06 (ECtHR (GC), 19 October 2012) [109]–[110], [147]; *Mozer v Republic of Moldova and Russia* App no 11138/10 (ECtHR (GC), 23 February 2016) [100], [151]–[152]; *Ukraine and the Netherlands v Russia* Apps nos 8019/16, 43800/14 and 28525/20 (ECtHR (GC), 9 July 2025) [555]–[557].

Taken together, the positive obligation to protect life encompasses both a duty to act and a duty to be capable of acting. States are not required to guarantee absolute safety, nor to allocate unlimited resources to security institutions. However, they must devote reasonable resources to maintaining adequately trained, staffed and equipped police and military forces capable of responding to foreseeable threats to life. Where loss of life results from systemic deficiencies in preparedness, personnel, equipment or institutional capacity, a State may breach its positive obligation to protect the right to life even if it attempts to intervene once the danger materialises. The duty to protect therefore includes a corresponding duty to maintain effective protective capabilities.

A State's failure to protect human life cannot be justified solely by the claim that it lacked sufficient military or security capabilities where that incapacity is itself the result of prolonged neglect, systemic underfunding, or a persistent failure to maintain effective protective institutions. To accept such an argument would allow States to evade responsibility by relying on deficiencies of their own making. If a State may incur responsibility under human rights law when it actively intervenes but fails to act within the limits imposed by the right to life, it follows a fortiori that responsibility may also arise where the State is unable to act at all because it has knowingly allowed its protective capacities to deteriorate. A lack of capability should not excuse a failure to protect where that deficiency results from sustained policy choices that undermine the effectiveness of the police, emergency services, or armed forces.

The provision of security to the population constitutes one of the most fundamental functions of a State and lies at the heart of the social contract between a State and its citizens. A State that is unable to protect individuals against reasonably foreseeable threats to life risks undermining its own legitimacy and the very purpose for which public authority exists. Effective security institutions, whether civilian or, where necessary, military, are therefore not merely instruments of public policy but essential prerequisites for the protection of fundamental rights. Without the capacity to maintain public order and safeguard life, broader social, economic, and political development cannot be effectively secured.

Such an understanding is, moreover, in accordance with the provision of Article 5 of the UN Declaration on the Right to Development which stipulates that States must take steps to "eliminate the massive and flagrant violations of the human rights of peoples and human beings"⁴⁴, including violations resulting from "foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination"⁴⁵ and Article 5(4) of the Draft Covenant which obliges States to "take resolute action to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and discrimination, colonialism, domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to otherwise recognize the fundamental right of peoples to self-determination"⁴⁶.

In the attempt to uphold these obligations, States may be required to have a sufficient armament to prevent or adequately defend against foreign domination, aggression, occupation, interference, and

⁴⁴ UN General Assembly, *Declaration on the Right to Development*, GA Res 41/128 (4 December 1986) art 5.

⁴⁵ *ibid.*

⁴⁶ UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 5(4).

the other threats outlined in the abovementioned Articles. In the context of a breakdown of peace and security and situations gradually leading to such a condition, States require sufficient arms and gradual or even rapid accumulation of arms to uphold their varied obligations. In achieving sufficient arms build-up in the face of the outlined threats, a State may have to divert resources from development into weaponry. A limitation on the enjoyment of the right to development under these circumstances would not breach the right to development, as such limitations to the enjoyment of the right to development would be performed in accordance with obligations arising out of human rights and international law.⁴⁷

4. Conclusion

Contemporary international law does not provide general restrictions on States' possession of armaments. Certain arms control regimes prohibit States Parties from the possession of chemical, biological and nuclear weapons. When it comes to conventional weaponry, States are free to obtain and possess a practically unlimited number of conventional weapons, which may result in arms build-ups and arms races. Arms trade regimes, as well as the obligation to respect and ensure respect for international humanitarian law,⁴⁸ certainly restrict arms exports to States where the commission of core international crimes can be expected.

An argument can even be made in favour of arms build-ups when a State is practically motivated to accumulate conventional weaponry to ensure its positive obligations under human rights law. Positive obligations under human rights law require that a State actively intervenes to protect human rights and engage in activity to secure the effective enjoyment of human rights.

By contrast, the emerging right to development⁴⁹ requires that States implement policies promoting societal growth. An excessive arms build-up thus can be restricted to divert resources into the provision of state services. Given the emergence of the right to development, further criteria have to be elaborated which would strike a balance between situations where international law requires States to take action to obtain and possess sufficient quantity and quality of conventional weaponry to meet its obligations under international law and human rights law, and the requirements under the right to development to avoid excessive arms build-up at the expense of other crucial state services.

Thus, to meet both its obligations under the emerging right to development and positive obligations under the human rights law, a State with a high crime rate or in a situation of a non-international armed conflict or defending itself in a legitimate act of self-defence against an act of aggression, could

⁴⁷ See *ibid* art 20.

⁴⁸ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, art 1; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85, art 1; Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 1; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 1.

⁴⁹ For the purposes of this submission, the right to development is referred to as "emerging" given the non-binding status of the UN Declaration on the Right to Development, the proposed Draft Covenant on the Right to Development and a number of other non-binding documents referring to the right to development. While the right to development enjoys broad international recognition and has been repeatedly affirmed in universal and regional declarations and political instruments, its status as a rule of customary international law remains contested. Although there is substantial evidence of *opinio juris*, many commentators argue that sufficiently uniform State practice has not yet crystallised to establish the right in its entirety as customary international law. Article 22 of the African Charter on Human and Peoples' Rights thus remains a rare example of a binding State obligation arising out of a treaty which codifies the right to development as an individual and collective right.

have a higher upper ceiling enabled for the possession of conventional arms and related expenditures than a State with low crime rate or not engaging in an armed conflict, thus justifying lesser enjoyment of civil, cultural, economic, environmental, political and social development in the case of a State facing violence. On the other hand, a State not facing violence could have a lower upper ceiling for armament expenditures under the right to development, thus being obliged to ensure development. Such a balancing exercise would ensure that the obligations under the right to development are compatible with the positive obligations under human rights law.

This understanding is reinforced by the current language of the Draft Covenant on the Right to Development, which stipulates in draft Article 8 that States shall cooperate with each other in ensuring development "while complying with their human rights obligations under international law"⁵⁰. The compatibility is further stressed by draft Article 3(b) stating that "the right to development should be realized in a manner that reflects the universality, inalienability, indivisibility, interdependence and interrelatedness of all human rights"⁵¹, draft Article 3(c) referring to development as "a human right that is indivisible from and interrelated and interdependent with all other human rights"⁵² and noting that development as a human right "must be normatively anchored in a system of rights and corresponding obligations established by international law"⁵³.

Similarly, draft Article 4 stresses that the right to development "is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms"⁵⁴ and draft Article 6 provides that "all human rights, including the right to development, are [...] interrelated, interdependent, indivisible and equally important"⁵⁵ and that "the right to development is an integral part of human rights and must be realised in conformity with the full range of civil, cultural, economic, environmental, political and social rights."⁵⁶

Thus, while the right to development has the potential to re-shape norms of international human rights law by demanding the establishment of conditions which enable the full realisation of civil, political, economic, social and cultural rights, the right to development must not be invoked or used to justify limitations, restrictions, violations or abuses of any other human rights and positive obligations stemming from human rights. The well-being of individuals and collectives remains the central subject of development and national and international development policies and programmes have to create conditions favourable for the realisation of the right to development.⁵⁷ Yet, ensuring constant improvement of the well-being of the entire population and of all its individuals cannot be done at the expense of maintaining security in the society, which requires sufficient arms build-up and capacities of State law enforcement agencies and militaries.

The protection of the right to development depends on a secure and peaceful environment. International human rights law and the 2030 Agenda for Sustainable Development, particularly Sustainable Development Goal 16, recognise that peace, justice, effective institutions, and international cooperation are mutually reinforcing with development. Effective arms control, conflict prevention, disarmament efforts, and peaceful dispute resolution help create conditions in which

⁵⁰ UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 8.

⁵¹ *ibid* art 3(b).

⁵² *ibid* art 3(c).

⁵³ *ibid*.

⁵⁴ *ibid* art 4.

⁵⁵ *ibid* art 6.

⁵⁶ *ibid*.

⁵⁷ See UN General Assembly, *Declaration on the Right to Development*, GA Res 41/128 (4 December 1986) art 3.

individuals and peoples can fully realise their right to development. Insufficient quantity and quality of armaments in the State's law enforcement and military thus create conditions affecting the population's security and may breach positive obligations arising out of human rights law. Sufficient arms build-up may create favourable conditions for societal development and security. Excessive arms build-up creates conditions directly and indirectly affecting peace and security as well as impacts the realisation of the right to development.

As held by the African Commission on Human and Peoples' Rights, development should result in the empowerment of the people concerned and should expand the realm of their capabilities and choices⁵⁸. A State failing to ensure security for its people (and positive obligations under the human rights law), both internally and internationally, is thus unable to expand the capabilities and choices for its people, while a State excessively accumulating arms, which may result in the militarisation of public policy, increased military expenditures, regional insecurity and arms races, expansion of armed violence, increased inequality, proliferation of weapons, prolonged and intensified conflicts and undermining of international cooperation likewise creates conditions where capabilities and choices are not expanding.

A balancing exercise between security and development expenses is thus the materialisation of the right and the duty to take regulatory or other measures to realise the right to development on the territory in accordance with international law, and consistent with the Draft Covenant, as envisaged by its draft Article 3(h).⁵⁹ Similarly, draft Article 24(a) obliges States to ensure that development policies and practices are consistent with obligations under international law.⁶⁰

Active, free and meaningful participation of society, as one of the elements of the right to development⁶¹, in transparent⁶² and democratic formulation of national and international policies on development⁶³ and armaments ensures that the State does not excessively arm itself at the expense of societal development, while at the same time ensuring that society's perception of security and views on national and international security of the State and its population are respected, thus satisfying the right of self-determination of the people, the well-being of the community and its right to development.

⁵⁸ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* Communication No 276/2003 (African Commission on Human and Peoples' Rights, 4 February 2010) para 283.

⁵⁹ See UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 3(h).

⁶⁰ *ibid* art 24(a).

⁶¹ See UN General Assembly, *Declaration on the Right to Development*, GA Res 41/128 (4 December 1986) art 2(3). See also *Draft Covenant on the Right to Development*, art 8(4); see also *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* Communication No 276/2003 (African Commission on Human and Peoples' Rights, 4 February 2010) paras 277, 283.

⁶² *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* Communication No 276/2003 (African Commission on Human and Peoples' Rights, 4 February 2010) para 277.

⁶³ See UN Human Rights Council, *Draft International Covenant on the Right to Development*, UN Doc A/HRC/54/50 (18 July 2023) annex, art 8(5).