Towards an Arms Trade Treaty

Next steps for the UN Programme of Action

There is an imperative need for an international Arms Trade Treaty, based on fundamental principles of international law, to reduce the human cost of arms proliferation, prevent unscrupulous weapons suppliers finding the weakest point in the supply chain, and ensure that all arms exporters are working to the same standards.

The ultimate goal is a firm and unambiguous international mechanism to prohibit the transfer of weapons and ammunition to places where they are likely to be used for serious abuses of human rights, or to violate international humanitarian law. Such a treaty would not hinder responsible trade, but it would prevent defence exports from undermining international security and prosperity. The UN Biennial Meeting of States on preventing the illicit trade in small arms and light weapons in New York in July 2005 offers a vital opportunity for making progress towards the achievement of this goal.

Amnesty International
iansa international action network on small arms
Oxfam International

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Arms transfers, community safety, and the Control Arms campaign

This briefing paper focuses on one particular aspect of the proliferation of arms – international arms transfers – which is in need of reform by states acting at the international level. In order to prevent armed violence and increase safety at the community level, many other issues must be addressed. They include the root causes of conflict, the demand for arms, and the question of responsible use. These issues are addressed in separate documents produced by the Control Arms campaign.

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Summary

The international arms trade is dangerously out of control. Irresponsible arms transfers fuel human rights abuses and are a proven catalyst for conflict, prolonging wars once they break out, increasing their lethality, and adding to the immense human cost. Every year, hundreds of thousands of men, women, boys, and girls are killed because of the uncontrolled proliferation of arms; many more are maimed, tortured, or forced to flee their homes. In conflicts in Colombia, Nepal, Chechnya, and many other places, the continuing international supply of arms adds to the impact of those already in use there.

The primary responsibility for controlling the flow of arms rests with governments – *all* governments, whether they are manufacturers or not, that export, re-export, transit, or import arms. The right of states to acquire weapons for legitimate self-defence and responsible law enforcement is clear. It is a concomitant of their broader responsibilities and legal obligations to ensure that transferred arms are not instrumental in violating international human rights or humanitarian law, or hampering development.

Despite the suffering and poverty fuelled by irresponsible arms sales, there is still no comprehensive, binding international treaty on the conventional arms trade. The current system of transfer controls is an ill-fitting patchwork, with gaps and inconsistencies:

- national controls are inconsistent, based on weak and differing standards, often barely enforced;
- most regional and multilateral arms-control regimes are barely applied, owing primarily to a lack of political will and the absence of strong provisions for implementation;
- unlike the case of weapons of mass destruction, the few international controls that exist are rudimentary and manifestly not strong enough.

A new international arms control treaty, based on fundamental principles of international law and properly implemented, would reduce the human cost associated with arms proliferation, prevent unscrupulous arms suppliers finding the weakest point in the supply chain, and ensure that all arms exporters are working to the same standards.

Controlling international arms transfers is in the fundamental interest of all states. The global earnings from legal exports of small arms and light weapons (SALW) amount to US$4bn worldwide – a paltry sum compared with the human, economic, security, and development costs (in both developed and developing countries) that result from their uncontrolled proliferation. Insecurity in one state has an impact far beyond its borders; arming states or actors without conditions or regard for their behaviour – as occurred strikingly in Iraq and Afghanistan twenty years ago – can lead to major armed conflict, a system of organised crime, insurgency, and terrorism which affects the whole world. The global economy suffers: a typical civil war in a low-income country is estimated to cost US$50bn per year, providing a stark comparison with worldwide international aid of only US$60bn per year.

The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (PoA), agreed in 2001, requires states to authorise arms transfers in line with 'the existing responsibilities of States under relevant international law' (Section II, paragraph 11). Yet what are these existing obligations? Are they clear and understood by states? Without elaboration of these obligations, and agreement on them, this element of the PoA is likely to remain generally unimplemented.

The following initiatives are urgently needed.

1. States must agree a set of global principles on international arms transfers, consistent with their existing responsibilities under relevant international law.

This paper presents such principles, developed by states, lawyers, and non-government organisations (NGOs). They include:

- express limitations on transfers, contained in binding UN Security Council resolutions, such as arms embargoes, and specific treaties;
- a requirement on states not to transfer weapons if they will be used or are *likely to be used* for serious violations of human rights, international humanitarian law, and principles governing international relations.

A number of regional and multi-lateral agreements on arms control already recognise the importance of such principles. At an international meeting in Tanzania in February 2005, 31 government representatives from different world regions agreed on global principles for international arms transfers based on existing international law and a process to take these forward. Such principles should be discussed in further regional, multilateral, and international forums over the coming 12 months. They should be agreed at the UN Review Conference on small arms (July 2006) and incorporated into the redrafted Programme of Action or other conference document.

2. States must set up an effective and efficient process to develop these global principles on international arms transfers into a legally binding international instrument.

The proposed Arms Trade Treaty (ATT) is a coherent response to the commitments in the Programme of Action by drawing together and consolidating states' current obligations under international law. It is a simple clear framework which provides a universal standard for international arms transfers to stop arms getting into the wrong hands. The ATT was inspired by Nobel Peace Laureates and developed by lawyers, human rights organisations, and humanitarian NGOs. It now enjoys the support of a

growing number of governments, as well as more than 600 civil society organisations worldwide. In March 2005, following the lead of Costa Rica, Finland, Tanzania, Kenya and others in championing the ATT, the UK government pledged to promote the ATT during its presidencies of the G8 group of nations and the European Union in 2005.

Negotiations on such an instrument must begin in 2006, either within the UN small arms process or outside it, but certainly with the support of the 2006 Review Conference.

1. Why do we need strong controls on arms transfers?

The arms trade remains dangerously out of control. The uncontrolled proliferation of conventional weapons, and particularly small arms and light weapons (SALW), has led to a massive human toll in lost lives, lost livelihoods, and lost opportunities to escape poverty. Mohamed Alio from Northern Kenya, for example, can no longer sustain his livelihood, based on livestock, because of armed cattle raids. According to him, 'Life has become far worse because of firearms. It has increased our poverty and it has changed the way we see conflict. In the past we used only spears. Now with guns there are a lot of deaths.'

Irresponsible arms transfers fuel a wide range of grave human rights abuses and are a proven catalyst for conflict, prolonging wars once they break out, increasing their lethality, and adding to the human cost. In conflicts in Sudan, Colombia, Nepal, Chechnya, and many other places, the continuing international supply of arms adds to the impact of those already in use there.

In one recent example, the US government shipped 2,657 weapons to bolster Haiti's police force (HNP) in August 2004, and is considering the sale of an additional US$1.9m in weapons in 2005. This is despite a US arms embargo and allegations of serious and widespread human rights abuses committed by the highly militarised police force. Since September 2004, the violence in Haiti has escalated to alarming proportions and, according to recent reports, the number of victims exceeds 600. Although the situation in Haiti is complex and the HNP is only one of many armed actors, among them gangs with heavy arms that the HNP has to face, many fear that the HNP is increasingly becoming a source of criminal violence, rather than an effective institution to reduce crime and guarantee public security. There have been numerous instances of summary and unlawful killings – at least 11 in a two-week period in October 2004. Without proper vetting of current HNP officers and those being integrated from the former military, and major police retraining and restructuring, there is a very real danger that these arms will be used for police brutality, and/or be channelled to other armed groups in Haiti.[1]

States' right to acquire weapons for legitimate self-defence and responsible law enforcement cannot be viewed in isolation from their broader responsibilities and legal obligations on the transfer of arms. Governments that export arms have a duty to ensure that they are not instrumental in violating international human rights or humanitarian law, or hampering development.

What is needed is a firm and unambiguous international mechanism to prohibit the international transfer of weapons and ammunition to places where they are likely to be used for serious abuses. Fulfilling these obligations should not be viewed as a hindrance to trade, but as a way of ensuring that defence exports do not undermine international security and prosperity.

Recent statements by relevant international bodies demonstrate broad agreement on the need for much stronger arms-transfer controls to help ensure peace and prosperity. These include the following:

- the Agenda for Humanitarian Action, agreed by all 191 states party to the Geneva Conventions in December 2003,[2] which commits states to 'urgently enhance efforts to prevent the uncontrolled availability and misuse of small arms and light weapons';
- the UN Secretary General's High Level Panel on Threats Challenges and Change,[3] whose report in December 2004 recommends that 'Member States should expedite and conclude negotiations on legally binding agreements on the marking and tracing, as well as the brokering and transfer, of small arms and light weapons';
- the most recent statement from the UN Security Council, in February 2005, which urges 'arms-exporting countries to exercise the highest degree of responsibility in small arms and light weapons transactions, according to their existing obligations under relevant international law';[4]
- a statement by the UN Secretary General Kofi Annan, who in February 2005 said, 'We must work to conclude multilateral instruments on key issues such as marking, tracing, brokering and transfer of small arms as soon as possible';[5]
- a report by the Commission for Africa, which in March 2005 urged: 'As a matter of priority and no later than 2006, the international community should open negotiations on an international Arms Trade Treaty'.[6]

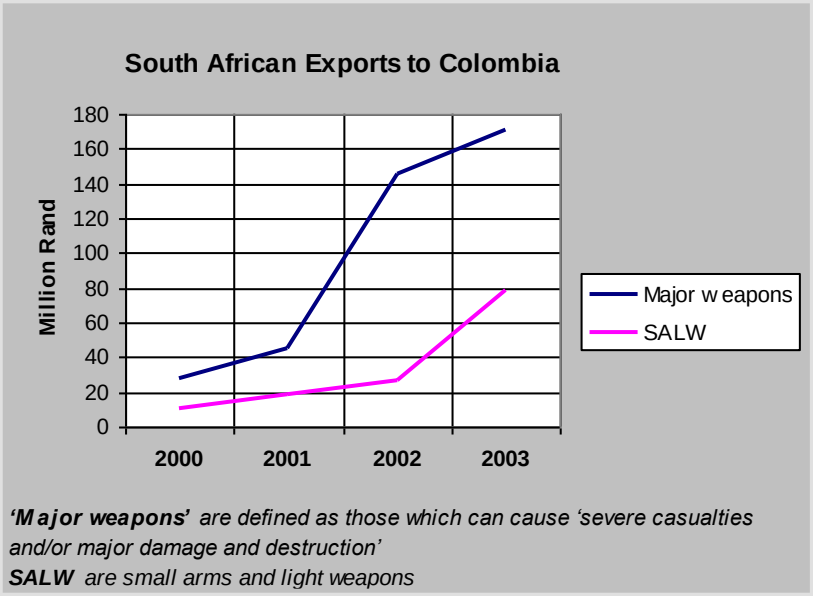
The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons, agreed in 2001, also provides a political mandate to discuss and develop international standards on transfers, requiring states to authorise arms exports in line with 'existing obligations of states under relevant international law'.

Box 1: Example - Questionable arms transfers from South Africa[7]

A primary goal of the policy of the government of South Africa is to reinforce and promote South Africa as a 'responsible producer, possessor and trader of defence-related products', promoting the benefits of arms control for international peace and security. Accordingly, in 2002, the South African government enacted new legislation on arms control. The National Conventional Arms Control Act includes 11 wide-ranging criteria for arms-export licensing decisions, which include adherence to international law, norms, and practices.

Despite the four layers of governmental decision making, and the clarity afforded by the criteria – for example, criterion 'C' according to which the government committee considering arms-export applications 'must avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms' – South Africa has exported arms to several questionable locations.

For example, there has been a steady and inexorable rise of arms exports to Colombia, the value of which reached US$33m in 2003 – see graph.



'Major weapons' *are defined as those which can cause 'severe casualties and/or major damage and destruction'*
SALW *are small arms and light weapons*

This increase has taken place despite the publicly-available evidence of abuses of human rights and international humanitarian law perpetrated in Colombia during this period by armed groups on all sides, including the armed forces. In ten years more than 12,000 incidents of grave abuse were perpetrated by armed actors on all sides in the conflict.[8]

South Africa has exported arms to a number of other countries with similarly questionable human rights records. These include Algeria, a country with a recent history of internal conflict and widespread human rights abuses (in 2003, heavy weapons worth US$30m and sensitive support equipment, such as missile guidance systems and gunsights, worth US$23m); and Nepal, where a crackdown on the pro-democracy movement, plus army and security-force operations in the ongoing conflict with the Maoist rebels, have resulted in multiple violations of human rights – despite which, military communications equipment worth US$2.5m were supplied by South Africa in 2003.

Who transfers weapons?

More states are involved in the international arms trade than might at first appear. The largest exporters of SALW by value in 2001 were the USA, Italy, Belgium, Germany, Russia, Brazil, and China. Other important exporters are Austria, Canada, the Czech Republic, Iran, Japan, Pakistan, Singapore, and Spain.[9]

However, measuring SALW transfers by financial value ignores the potentially huge impact of relatively small-value transfers. Assault rifles cost only a few hundred dollars each – but only a few hundred such rifles can lead to major instability, with catastrophic effects for civilian populations.

The international arms trade is not based solely in the 'North'. At least 92 countries have the capacity to produce small arms or ammunition, and around half of these are developing countries.[10] Some of this is production licensed from manufacturers in rich industrialised countries: for example, the German company Heckler and Koch has licensed production of its military small arms to several countries, including Turkey, Iran, and Pakistan – none of which imposes export controls based on international standards of human rights and international humanitarian law.

Countries which are not renowned for the *manufacture* of weapons often play an important role in the *transit and transfer* of arms. For example, Viet Nam has reportedly transferred weapons to Myanmar; Lebanon, Liberia, Burkina Faso, and Niger have transferred weapons to Sierra Leone; Namibia to the Democratic Republic of Congo (DRC) and Angola; Burkina Faso to Benin. [11]

Transfers occur when surplus and collected weapons are resold, as countries seek profits from re-selling equipment that is no longer needed. In 2000, for example, nearly two-thirds of Slovakia's arms exports were surplus weapons, as opposed to new production.[12]After arms and ammunition had been collected in Albania, large stocks of surplus ammunition were flown to Rwanda in 2002, which are likely to be used in eastern DRC.[13]

Thus arms transfers involve all countries, whether they suffer the effects of arms or transfer weapons – not only newly manufactured arms, but re-exported, second-hand, surplus, or collected weapons, and weapons in transit.

Current controls do not work

The current regime, consisting of national and regional/multilateral controls, poses several major problems:

Divergent standards. The absence of minimum international standards means that potential human rights abusers can too easily

obtain weapons. Current standards are the products of states' own policies. They are usually not based on obligations under international law; therefore they vary considerably between states, they are not consistent, and there are gaps and loopholes. For example, unlike most exporting countries, China does not appear to have a provision tying arms exports to human rights: it has exported weapons to some countries where gross violations occur, such as Myanmar, North Korea, Pakistan, DRC, and Sudan.[14]

Without a common international standard, states concerned about maintaining their market share employ the (morally redundant) argument that 'if we don't sell it, someone else will', thus contributing to the proliferation of arms. Clear common standards, based on international obligations and with no regional bias, would ensure that all arms exporters were working to the same standards.

Divergent interpretation and implementation. States party to the same regime sometimes interpret the criteria differently. For example, even though both Germany and Belgium are subject to the same EU controls, in 2002 Germany refused on the grounds of human rights to sell 65,000 assault rifles to the Nepalese government, but Belgium agreed to supply 5,500 light machine guns. Further, the lack of implementation measures, guidelines, and mechanisms in most multilateral transfer controls may result in the agreement amounting to little more than a signed piece of paper. Although implementation of the EU Code of Conduct on Arms Exports is clearly still imperfect, its 'Operative Provisions' provide a useful model, which should be improved upon and included in similar agreements.

A new instrument is needed which includes clear standards and definitions, specifying precise rights and obligations, thus providing clarity and certainty. It should also include unambiguous provisions for implementation.

Strong transfer controls are in the interests of states

The unregulated arms trade poses threats to goods and values common to the whole international community. The earnings from legal SALW exports – US$4bn worldwide – are paltry, compared with income from other forms of international trade; they are especially insignificant compared with the human, economic, security, and development costs (in both developed and developing countries) caused by their uncontrolled proliferation. While arms exporters may profit in the short term (a popular saying among employees of the Russian defence industry is 'the war is bad – but it pays well'[15]), the significant long-term costs are borne by the whole international community. Some countries, often developing nations, are directly affected by the unregulated arms trade, and other states

must provide them with a range of support in terms of humanitarian assistance, peace-building initiatives, reconstruction and development aid.

Box 2: The Dar es Salaam Conference, February 2005

Three important inter-government meetings have been held specifically to discuss global principles for arms transfers and the proposed Arms Trade Treaty. The most recent meeting took place in Tanzania in February 2005. The conference document, which was agreed by all 31 states present,[16] agreed that there is a need to continue with discussions of global guidelines and principles for improved arms-transfer controls, based on existing obligations under relevant international law and respect for human rights. It was also agreed that the workshop results should be brought to the attention of the Second Biennial Meeting of States in 2005 and the Review Conference in 2006.

Participants also recommended potential next steps, including:

- wide dissemination of the conclusions of the meeting;
- a commitment by governments to hold more meetings on this issue to move the process forward;
- the establishment of a dialogue with a variety of stakeholders, including manufacturers, UN agencies, and other relevant international organisations.

It was agreed that the development of global principles for arms transfers could be taken forward by interested states at the Review Conference in 2006; and/or that it could become a parallel and complementary process within the UN system, leading to the creation of an international instrument.

Now that both human and national security have become globalised, with insecurity in one state having an impact far beyond its borders, there is a powerful **security** imperative for strong controls. Without strong controls and commitments, SALW can quickly and easily cross national boundaries, resurfacing in unexpected places. Experience shows that arming states or actors without conditions or regard for their behaviour – as occurred strikingly in Iraq and Afghanistan twenty years ago – can lead to major armed conflict, a system of organised crime, insurgency, and terrorism which affects the whole world, not solely the states involved.

There is also a persuasive **political and administrative** argument in favour of strict control. Currently, the lack of clarity concerning standards, and differences in their interpretation, mean that arms-export officials do not have effective tools to enable ministers to make good decisions. A clear legal framework would protect states, and decision-making individuals within states, from international sanction. Viktor Yushchenko, recently elected President of Ukraine, has pledged that the new Ukrainian government will establish full control and supervision of arms exports, declaring 'We do not need ... deals that would later spark scandals.'[17]

The impact of irresponsible arms transfers on **development** is unequivocal. At the local level, livelihoods are destroyed and opportunities to escape poverty are lost. On a wider scale, national and international companies can no longer operate: trade and foreign direct investment are reduced, tourists stay away, and the management of infrastructure and national resources is disrupted. A typical civil war in a low-income country is estimated to cost US$50bn per year, or 250 per cent of an average country's GDP; since, on average, two civil wars break out every year, the costs of irresponsible arms transfers have been estimated at US$100bn per year.[18] This provides a stark comparison with global international aid of only US$60bn per year. Moreover, countries in conflict obviously have little hope of achieving the Millennium Development Goals, which are designed (among other things) to halve global poverty, promote primary education and women's empowerment, reduce child and maternal mortality, and combat HIV/AIDS and other diseases by 2015.

Wider global **social and economic** impacts are also undeniable. Civil wars cost low-income countries US$100bn, but there are much wider associated global costs: for example, illicit drugs production thrives on territory outside the control of recognised governments, and 95 per cent of the world's production of hard drugs takes place in contexts of armed conflict.[19] Valuable natural resources are illegally exploited by armed groups and their state sponsors, ruining millions of lives and impeding local development, as has occurred in DRC. International trade suffers and illicit markets thrive, to the detriment of national economies. A reputable study even links the collapse of the Thai *Baht* in the late 1990s to inflows of illegal profits from weapons merchants who used the stock market and property markets to launder their proceeds.[20] In this case, the collapse of one nation's currency had economic repercussions worldwide.

The **moral and human rights** arguments against unregulated arms transfers are unambiguous: there is an overwhelming case for greater constraint. In a study by Amnesty International of 12 countries in different world regions, 40–90 per cent of the documented incidents of grave abuses of human rights over a 10-year period were perpetrated with small arms and light weapons.[21] It is never right to supply weapons to recipients who are likely to use them to commit atrocities, even if other, less responsible, states are willing to do so. People in developing countries bear the greatest burden of armed violence, not only because the great majority of conflicts take place in poor countries, but also because they have fewer social-support systems and safety nets to protect them. In December 2004, appalling levels of violence directed at civilians in North Kivu, DRC, led to the displacement of more than 150,000 people, the evacuation of humanitarian workers, and the suspension of supplementary feeding for about 1,300 children.[22] Women worldwide pay a heavy price. A

tiny fraction of the world's arms are carried and used by women, but they account for a large proportion of the victims. In the Sierra Leone conflict, 43 per cent of civilians killed were women. Women are particularly at risk from armed violence in the home: data from the USA show that the risk of a woman being killed by her husband or male partner increases five-fold if he has access to a gun.[23] Thus the case for strong international standards is compelling. States already have obligations under international law, and these must be upheld. International standards and the rule of law are essential to the functioning of our society, encapsulating the basic rules of social coexistence and helping to promote a co-operative international culture.

Transfer controls and the UN Programme of Action

Arms transfers were a major topic at the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects. Some states argued that state-sanctioned transfers lay outside the scope of the conference, because the conference focused on the illicit trade. However, this view is both unhelpful and misleading, for two key reasons:

1 The illicit trade is not only that which is illegal under national law, as is often supposed. In fact, the United Nations General Assembly and the UN Disarmament Commission have held the view that the 'illicit' trade in arms is that which is contrary to national and/or international law. This definition was noted at the 2001 Conference. Thus it is perfectly possible for a transfer to be state-sanctioned, yet illegal. The armed opposition UNITA movement in Angola, for example, while subject to a UN arms embargo from 1993, received weapons from traffickers in several countries, including Bulgaria, Romania, Rwanda, Togo, Ukraine, South Africa, former Zaire and Zambia.[24]

2 The government-authorised trade in arms can and does fuel the illicit trade. Most illicit arms start their life in the legal sphere and at some point in the supply chain are diverted into the illicit trade and to illicit users. Thus strong controls on the state-sanctioned trade would prevent arms becoming illicit.

Consensus finally emerged that transfer controls should be included in the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects (PoA), but the two commitments achieved are the result of compromise. Section II, Paragraph 2, commits states to enacting adequate legislation and procedures for arms transfers. More importantly, Section II, Paragraph 11, commits states to authorise arms transfers in line with existing obligations under international law:

> To assess applications for export authorisations according to strict national regulations and procedures that cover all small arms and light weapons and are **consistent with the existing responsibilities of States under relevant international law**, taking into account in particular the risk of diversion of these weapons into the illegal trade…

Yet what are these existing obligations? Are they clear and understood by states? The reality would suggest not. Most states have enacted some national legislation on arms transfers, and there are examples of good practice, yet there are few, at best, cases where the legislation has captured all states' existing obligations under international law.

The paragraph of the PoA quoted above necessitates international elaboration of these obligations, and agreement on them – without which, this element of the PoA will go largely unimplemented.

Box 3: Small arms or all arms?

The UN SALW process enjoys political support and includes a mandate from the General Assembly for all states to implement the Programme of Action on international transfers (Programme of Action, Section II, para 11). There is therefore both an opportunity and an imperative to work within this process on transfers. Indeed, stronger transfer controls on small arms and light weapons would be a huge step forward, given that these weapons cause such immense human suffering.

However, in practice, governments tend to enact conventional arms control laws covering the transfer of small arms, light weapons, and larger conventional arms in one control list. Hence in technical, administrative, legal, and human-cost terms, a new international instrument to regulate arms transfers would more logically cover all conventional arms – and this is the ultimate goal of the Control Arms campaign.

The campaign and some governments are actively working on both aspects: seeking progress in the UN SALW process, in addition to building support for the need for a binding instrument covering all conventional arms which would be progressed in other forums of the UN. These two strands of work are mutually reinforcing; both are based on common global principles for responsible arms transfers.

2. Getting agreement on global principles

Recently, a concerted effort has been made on the part of governments and civil-society organisations to elaborate principles for international arms transfers based on international law. There has been progress at regional level (see Box 4), and work at the international level has been led by the call for an Arms Trade Treaty (of which more below), as well as the Montreux Process.[25]

The principles included in these initiatives and instruments are not exactly the same, and they do not all fully reflect states' obligations under international law, but the developing momentum means that there is now a series of building blocks which provide a strong basis for working towards international consensus on effective transfer controls.

Box 4: Recent progress at regional level

In several regions, there has recently been a clear objective to review and develop arms-transfer principles.

Great Lakes and Horn of Africa: 11 states adopted the Nairobi Protocol for the Prevention, Control and Reduction of SALW in April 2004. This has prompted an innovative initiative to develop guidelines to assist states in implementing this legally binding commitment. Principles for arms transfers, based on states' existing obligations under international law, will achieve ministerial approval in June 2005.

West Africa: the 1998 ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons is currently being strengthened and the intention is to transform the Moratorium into a legally-binding convention as recommended by UN experts; the contribution of civil society to this process includes promoting transfer principles firmly based on states' existing obligations under international law.

Americas: the OAS Model Regulations for Brokers of Firearms, their Parts and Components and Ammunition, agreed in November 2003,[26] apply a set of detailed transfer criteria based on international law to control arms brokering, including prohibitions relating to acts of genocide or crimes against humanity; human rights violations; war crimes; UN embargoes or sanctions; support for terrorist acts; diversion; or breaches of multilateral arms-control agreements.

Europe: the 1998 EU Code of Conduct, which covers all conventional weapons, not solely small arms, contains eight criteria for arms transfers, many of which are based on international law, including human rights law. Following civil-society pressure in late 2004, these have been amended to include stronger reference to international humanitarian law, to reflect more clearly states' existing obligations under international law.

What are the 'existing responsibilities of states under relevant international law'?

Although international law allows states to acquire armaments required for their legitimate national security and defence, states must still comply with a large body of obligations under international law.

1. Direct obligations on states concerning the types and recipients of weapons

There are a number of clear, direct and binding obligations on states in international law that refer specifically to arms transfers. These include:

- UN Security Council resolutions, binding on all states, including arms embargoes;
- Specific treaties binding on states which have ratified the treaties, such as anti-personnel landmines and other weapons and munitions banned under the Inhumane Weapons Convention.[27]

2. Ensuring respect for international human rights and international humanitarian law and the non-use of force in international relations.

The UN Charter requires states to respect, protect,and fulfil human rights, and the main Covenants of international human rights law recognise 'the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms'. Similarly states have a solemn moral and legal responsibility, under Article 1 common to the Geneva Conventions of 1949, to 'respect and ensure respect' for international humanitarian law.

Thus states are obligated not only to abide by the conventions and covenants themselves, but also to help to ensure that other states abide by them. So if a state knowingly supplies arms into situations where gross violations of international humanitarian or human rights law are likely to occur, then the supplying state would be failing in its obligations to promote observance and/or acting to ensure respect for that law.

It is important to note that as a matter of international customary law (law that is universally established to such an extent that it is binding on all states), basic human rights and international humanitarian law apply both to states and to armed groups within states, where they exercise *de facto* control over territory and take on responsibilities analogous to a government.

Further, under the UN Charter and customary law there is a general prohibition on the use of force in international relations, and a

prohibition on the interference in the domestic affairs of another state. For example, the International Court of Justice in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua* between Nicaragua and the USA found that by arming, equipping, financing, and supplying the Contras forces, the USA had acted in breach of the obligation not to intervene in the affairs of another state.[28]

3. State responsibility for internationally wrongful acts

The principle that a state can bear legal responsibility for helping another state to breach international law has been recognised by the General Assembly in the *Articles on Responsibility of States for Internationally Wrongful Acts*, adopted by the United Nations General Assembly in 2001,[29] which declare:

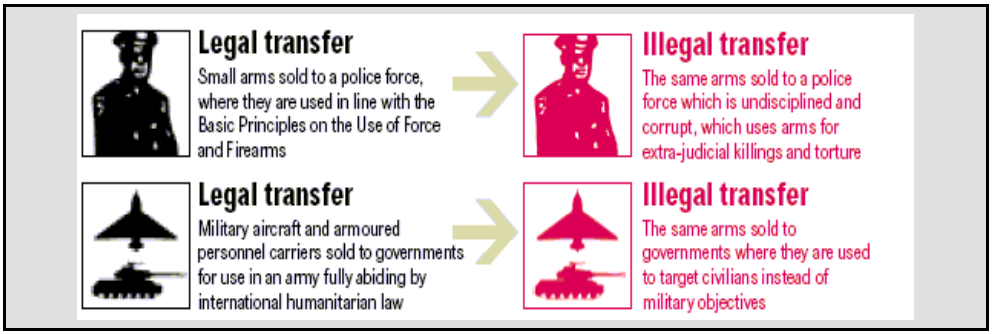
> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
> - that State does so with knowledge of the circumstances of the internationally wrongful act; and
> - the act would be internationally wrongful if committed by that State.

Therefore all states have a responsibility to not knowingly aid or assist another state in the commission of any unlawful act. If a state knows, or should know, that weapons or munitions are likely to be used in breach of international law, that transfer must not go ahead. States involved in arms transfers bear some responsibility for the abuses carried out with the weapons that they furnish.

Box 5: Legal or illegal transfer?

States also have a responsibility to exercise their criminal jurisdiction over those responsible for international crimes. According to the Statute of the International Criminal Court, which a majority of states have ratified, an individual must be prosecuted for 'facilitating the commission' of serious international crimes if s/he 'aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission'. This could include deliberate acts to supply arms, knowing that those arms would be used for unlawful acts such as crimes against humanity and genocide.[30]

Whether an arms transfer is legal or not may depend on the use to which the arms will be put. A transfer would be illegal if transferred arms were subsequently used to violate international law if the exporting state knew, or should have known, the likely use.



Global principles for international arms transfers

Six key principles for global transfers emerge from states' existing obligations under international law. These principles (which form the basis of the proposed Arms Trade Treaty) are given below, and are further elaborated in the Appendix.

1 All international transfers of arms shall be authorised by a recognised state and carried out in accordance with national laws and procedures which reflect, as a minimum, states' obligations under international law.

2 States shall not authorise international transfers of arms which would violate their expressed obligations regarding arms under international law.

3 States shall not authorise international transfers of arms where they will be used or are likely to be used for violations of international law.

4 States shall take into account other factors, including the likely use of the arms, before authorising an arms transfer.

5 States shall submit to an international registry comprehensive national annual reports on international arms transfers, and the registry shall publish a compiled, comprehensive, international, annual report.

6 States shall establish common standards for specific mechanisms to control all aspects of arms transfers, including brokering, licensed production etc, as well as operative provisions to strengthen implementation.

3. Developing a new international instrument

What kind of instrument is needed?

Despite the scale of human suffering and poverty fuelled by irresponsible arms transfers, there are still no comprehensive international binding controls on the conventional arms trade. The focus of states on the illicit trade in small arms and light weapons is very important, but it reveals only a part of the picture.

What is needed is a conventional arms-control instrument with all the following essential qualities:

- **It must be international**. The arms trade is international by its very nature; thus, to be successful, controls must be introduced and enforced at the international level. National and regional controls are very important, but currently they are not mutually consistent. They contain loopholes and ambiguities, and in some places regional controls do not exist. Arms manufacturers and traders have shown themselves to be adept at shifting their operations to the weakest part of the supply chain, exploiting weaknesses in national controls.
- **It must be comprehensive**. There are treaties prohibiting the transfer and/or use of specific weapons that have indiscriminate effects (such as anti-personnel landmines) and specific types of weapon that cause unnecessary suffering (such as explosive devices with no detectable fragments. There are also temporary binding prohibitions on transfers to certain countries under UN embargoes. But there are currently no treaties or instruments in force to help states effectively to control the trade in all conventional weapons, or even small arms and light weapons, to all parts of the world according to universal rules.
- **It must be binding**. It is abundantly clear that almost all political agreements and declarations which currently exist, such as those made through the OSCE and the Wassenaar Arrangement,[31] are not strong enough to stop arms getting into the wrong hands. There are no legally binding controls which incorporate principles for arms transfers yet, but many governments have already realised the need for binding instruments on arms control – for example, those who have signed the OAS Convention[32] and the UN Firearms Protocol[33] which has recently come into force, and governments in Southern Africa, and the Great Lakes and Horn of Africa, where initial political declarations in favour of

arms control have been developed into legally-binding protocols;[34] the same process is currently ongoing in West Africa.

A global binding instrument to control conventional arms transfers would complement current international work on arms control. The UN SALW process, guided by the General Assembly, is already committed to developing international instruments on marking and tracing, and illicit brokering. Controls on international transfers are the other vital piece of the arms-supply jigsaw. This reality is reflected strongly in the recommendation from the Secretary General's High Level Panel on Threats, Challenges, and Change, in which these three forms of control are addressed together: one will not succeed without the other. It is an excellent first step to be able to trace misused weapons back to their source, but is it not better to prevent them getting into the wrong hands in the first place?

Universally-accepted standards to help states to prevent irresponsible arms transfers and illicit arms brokering now would, if properly implemented, cost far less in terms of human lives and wasted resources than responding after the event with disarmament, demobilisation, and rehabilitation programmes and expensive peacekeeping operations.

Box 6: Example - Questionable Canadian controls

Canada is ranked tenth among the world's exporters of major conventional weapons[35] and is also a significant exporter of small arms and ammunition, exporting quantities worth US$54m in 2001.[36]

More than half of Canada's exports go to the USA, a fact that is a cause of major concern because these exports are not recorded in the government's annual report to Parliament, thus providing no transparency and allowing no oversight.

Further, Canada requires no controls on Canadian arms or components that are upgraded, remanufactured, or incorporated into other weapons systems, and then resold. This has meant that Canadian arms and weapons parts can be transferred to countries where there are major concerns that the weapons would be used to violate human rights. This occurred when Canadian helicopters were sold to the USA and subsequently shipped to Colombia, a destination which would not have been eligible to receive direct Canadian exports.[37]

In 2002, direct recipients of Canadian arms deliveries included Algeria, Brazil, India, Israel, Jamaica, Nigeria, the Philippines, Saudi Arabia, Sri Lanka, and Turkey,[38] all countries involved in armed conflict and/or serious abuses of human rights.

The Philippines is a regular recipient of transfers of Canadian military equipment. Parts for aircraft and aircraft engines continued to be transferred to the Philippines in 2000 and 2001,[39] during which time Amnesty reported periodic aerial bombardment of villages suspected of harbouring members of opposition groups. The result was mass displacement of civilians, including 400,000 in central Mindanao in 2001.[40]

The Arms Trade Treaty

Governments' interest in an Arms Trade Treaty builds on the various regional initiatives on arms control that governments have led in the past few years – in East and West Africa, Europe, and elsewhere. The initial proposal for the Treaty grew out of the NGO campaign in Europe for a legally binding EU Code of Conduct; it was supported by the moral leadership of Nobel Peace Laureates, particularly Dr Oscar Arias the former President of Costa Rica, who with a group of NGOs made the first call for a new international instrument for arms control in 1997.[41]

Lawyers from the Lauterpacht Research Centre for International Law in Cambridge, UK, when asked to review states' existing obligations for arms transfers, developed a discussion paper entitled 'What is Legal? What is Illegal? Limitations on Transfers of Small Arms under International Law'.[42] This was subsequently developed into a proposal for a Framework Convention on International Arms Transfers, more popularly known as the Arms Trade Treaty, or ATT. The text was first circulated at the UN conference on small arms in 2001 and has since been slightly amended and reviewed by many national and international lawyers and government experts.

The objective of such a treaty is to consolidate states' existing and emerging obligations under international law into one framework convention. It is a simple, clear document, which does not contain new substantive legal obligations but provides an unambiguous universal standard for international arms transfers.

The ATT defines the criteria against which any proposed cross-border transfer (export, import, transit, or transhipment) of conventional arms should be permitted. It requires states to incorporate these criteria into their national laws and to make regular public reports to an international registry of all arms transfers.

The core principles of the proposed treaty are those described above and in the appendix to this paper. They are presented in a legal 'process text' or concept paper which can be found at www.armstradetreaty.org/fccomment.html. This document is not intended to be viewed as a final treaty text; it was drawn up to stimulate debate among governments and to demonstrate how such a convention might look. Governments must now develop the concept into a binding international instrument, using the 2006 UN Review Conference to achieve a commitment to begin negotiations on a treaty.

Momentum is now gathering among governments, and the Arms Trade Treaty has the explicit support of a growing number of states, including Cambodia, Costa Rica, Finland, Germany, Ghana, Iceland, Kenya, Mali, New Zealand, Senegal, and the UK. In March 2005, the

UK government made a public pledge to promote the ATT during its presidencies of the G8 and the EU in 2005. Other states engaged in discussions about an ATT include Canada, Ireland, Mexico, Netherlands, Poland, Spain, Sri Lanka, Brazil, and Russia. Most of these states participated in a meeting in Dar es Salaam in February 2005, where 30 government representatives agreed on global principles for international arms transfers, and a process to take these forward.

Further, the ATT has the backing of more than 600 civil-society organisations worldwide and is the main international objective of the global Control Arms campaign. As well as 21 Peace Laureates, the ATT is supported by many key figures, including President Lula of Brazil, Mary Robinson (the former High Commissioner for Human Rights), and former Archbishop Desmond Tutu, plus currently more than 250,000 supporters from 152 countries around the world. In April 2005, a civil-society conference in Nairobi involved 175 participants from 75 countries who supported the call for an ATT.

A framework approach

Arms control is complex and multi-faceted, with many different interrelated aspects to be considered. Thus the Arms Trade Treaty has been developed as a framework convention which would have at its heart a set of common core principles to regulate and control the international arms trade. Important issues such as brokering, licensed production, and end-use certification, which require the core principles but involve more detailed operational provisions, may either be agreed at the same time if there is already consensus, or may be addressed in subsequent instruments or protocols. These instruments will combine to develop, over time, an integrated and comprehensive regime to control the international trade in conventional arms.

This is a pragmatic approach. Rather than attempting to regulate all aspects of the arms trade in one single instrument, the framework approach starts within the realm of the possible. It enables progress to be made swiftly on the core principles on those operational provisions that can easily be agreed by consensus; other detailed technical aspects can be addressed on a step-by-step basis, as consensus emerges.

Implementation, monitoring, and enforcement

Effort must be directed not only at policy change to reach agreement on the main provisions for an effective Arms Trade Treaty, but also at implementation, monitoring, and enforcement.

Implementation requires the translation of the international commitment into national legislation, regulations, and guidelines. There are useful precedents for this, particularly in the transfer guidelines prepared under the Nairobi Protocol, the legislative and regulatory guidelines produced by SEESAC (South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons),[43] and model regulations in Central America.[44] Just as new members of the European Union have been assisted by longer-established members to implement the EU Code of Conduct, so arms exporters with experience of applying criteria to arms transfers should be prepared to provide assistance to others to implement an ATT.

Monitoring is important to ensure compliance, to develop best practice in implementation, and to build confidence between states. National-level monitoring is important, through parliamentary scrutiny and publicly available, transparent reports. Timely and accurate reporting is also an important indicator of a government's commitment to its obligations. International monitoring will also be required, at a minimum to collate national reports and organise annual meetings and review conferences.

As is usual practice, an Arms Trade Treaty should provide for its own **enforcement** and dispute-resolution mechanisms. There will need to be a process for states to consult and co-operate with each other, to settle any dispute that may arise with regard to the application or the interpretation of the ATT. Beyond this, the details of enforcement and dispute resolution need to be solidified in discussion with states.

4. Recommendations and next steps

The terrible impact of irresponsible international arms transfers will continue to worsen without decisive action on the part of the states concerned. The current process is not moving far enough or fast enough.

We are at a critical point where *urgent* action is needed now. According to the CrisisWatch Bulletin from the International Crisis Group, ten conflict situations deteriorated in April 2005, while only five improved: in Togo, election-related violence killed at least 29 people, and some 11,500 people fled the country; in Haiti, bloody clashes pitting peacekeepers and police against ex-soldiers and street gangs intensified; in Myanmar, relations between the government and ethnic-minority groups worsened as rebels clashed with state security forces and pro-government militias. Conflicts in Afghanistan, Ecuador, Egypt, Ethiopia/Eritrea, Israel/Occupied Palestinian Territories, North Korea, and Uzbekistan also deteriorated.[45] In many other countries not experiencing armed conflict, Amnesty International has reported recent human rights abuses by armed forces,[46] and in all world regions armed criminal violence remains endemic.[47]

There are major political opportunities in the next 12 months to achieve progress. The UN SALW process, including the UN Review Conference for the Programme of Action in July 2006, offers both an opportunity and an imperative for strong international action to prevent SALW getting into the wrong hands. It is critical for states to achieve real progress within this UN process. However, this is not the only forum in which to achieve change; there are many other complementary events and opportunities in UN, multilateral, and regional forums where states must take decisive action. The urgency is such that responsible exporters and arms-affected states must forge ahead now and must not be held back by the few.

The goal is a new international instrument to control arms transfers, based on international law to help prevent and eradicate unlawful armed violence. Such an instrument should include, as a minimum, the 'global principles' presented in this paper.

The process of developing such an instrument must be effective and swift, and it can and should begin in 2006. Negotiation could be either within the UN SALW process, or in a complementary process. But in either case, the 2006 Review Conference is a key opportunity for progress – to affirm the global principles and the need for such an instrument.

Making progress within the UN SALW process

To fulfil their PoA commitment, states must take steps without delay to develop global principles on SALW transfers, in order to develop these into a new international instrument.

The second UN Biennial Meeting of States in New York in July 2005 offers opportunities to discuss and develop consensus on the need for strong SALW-transfer controls, based on states' existing obligations under international law. These opportunities will occur during states' national reporting, in the thematic debate on export controls, and in important meetings in the margins of the conference.

The UN Preparatory Committee (PrepCom) meeting in January 2006, and subsequent preparatory meetings that may take place in advance of the UN Review Conference on the UN PoA in July 2006, offer further opportunities to develop these ideas and broaden support to push for a robust commitment at the Review Conference.

The UN Review Conference in July 2006 is a forum to help achieve change. To address the global problem, strong positions must be taken by arms-affected countries and arms-exporting countries to agree on at least the following measures:

- a set of global principles and operative provisions on international SALW transfers, consistent with the existing responsibilities of states under relevant principles of international law (as required by the UN PoA Section 2, paragraph 11), to be incorporated into the redrafted Programme of Action or other core conference documents;
- an effective and efficient process to develop these principles into a legally-binding international instrument, as a matter of urgency.

Opportunities outside the PoA

The various initiatives underway, as well as other regional and international processes, present many opportunities to achieve progress. These include the following.

- the development of a group of interested states to take forward development of the global principles and the Arms Trade Treaty;
- the next proposed inter-government meeting on the Arms Trade Treaty, which should take place in Latin America in late 2005;
- the development and strengthening of arms controls in different regions of the world, as well as in other multilateral processes such as the Wassenaar Arrangement, the G8, and regional bodies, encouraged by like-minded groupings such as the Human Security Network;

- the UN Millennium+5 Review Summit in September 2005, which, among other things, will critically consider issues of peace and security and set the agenda for the international community. This must include a strong recommendation on the need for a legally binding international instrument on arms transfers;
- the UN First Committee on Disarmament and International Security meetings, held in October and November each year;
- the next annual UN Security Council Open Debate on small arms, which is expected to be held in January or February 2006, and other deliberations on UN arms embargoes.

Actions for individual states

1 Develop understanding and compliance at national level:

- government experts should review the proposed principles for an Arms Trade Treaty and build their understanding and expertise on states' current international legal obligations;
- ensure that current policy and practice is in line with these obligations and principles. In most cases, this will probably mean reviewing some aspects of national legislation and/or guidelines and practice on arms-export controls.

2 Become involved in the process of developing global principles and a binding international instrument:

- engage with other governments who have already expressed their commitment to implement the global principles and/or to a binding international instrument;
- join the group of interested states who are providing some leadership for this process;
- actively participate through high-level representatives at any meetings on the issue.

3 Become proactive in promoting these principles to other governments:

- encourage debate and firm action to control arms based on existing international law at the Biennial Meeting of States (July 2005), Prepcom(s) (January 2006), and Review Conference (July 2006), in addition to all other opportunities for progress;
- work to strengthen regional principles and operational measures to control arms transfers to ensure that they are consistent with existing international law, as an objective in its own right, and as a step towards the achievement of a new international instrument;

- lobby other governments to support the universal principles, operational measures, and the process to develop an Arms Trade Treaty – bilaterally, at sub-regional and regional levels, in multilateral groups, and within the UN.

Appendix 1: Global principles for arms transfers

Principle 1: Responsibilities of states

All international transfers of arms shall be authorised by a recognised state and carried out in accordance with national laws and procedures that reflect, as a minimum, states' obligations under international law.

Principle 2: Express limitations

States shall not authorise international transfers of arms that violate their expressed obligations regarding arms under international law.

This includes:

1 Obligations under the Charter of the United Nations – including:
   - decisions of the Security Council, such as those imposing arms embargoes;
   - the prohibition on the use or threat of force;
   - the prohibition on intervention in the internal affairs of another state.

2 Any other treaty or decision by which that state is bound, including:
   - binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional bodies to which a state is party;
   - prohibitions on arms transfers that arise in particular treaties which a state is party to, such as the 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious and its protocols, and the 1997 Anti-personnel Mines Convention.

3 Universally-accepted principles of international humanitarian law:
   - prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;
   - prohibition on weapons that are incapable of distinguishing between combatants and civilians.

4 Transfers which are likely to be diverted for any of the above or be subject to unauthorised transfer.

Principle 2 encapsulates existing express limitations under international law on states' freedom to transfer and to authorise transfers of arms. It focuses on circumstances in which a state is already bound not to transfer arms, as set out in expressed limitations in international law. The language is clear: 'states shall not …'.

When new binding international instruments are agreed, new criteria should be added to the above principles: for example, if there is a new binding instrument on marking and tracing, or illicit brokering.

Principle 3: Limitations based on use or likely use

States shall not authorise international transfers of arms where they will be used or are likely to be used for violations of international law, including**:**

1 breaches of the UN Charter and customary law rules relating to the use of force;
2 the commission of serious violations of human rights;
3 the commission of serious violations of international humanitarian law, genocide, and crimes against humanity;

Nor should they be diverted and used for the commission of any of the above.

In Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. All states should abide by the principles of state responsibility, as set out in international law, which include supplier-state responsibility and accountability for the use of arms transferred between states.

Principle 4: Factors to be taken into account

States shall take into account other factors, including the likely use of the arms, before authorising an arms transfer, including:

1 the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control, and disarmament.

States should not authorise the transfer if it is likely to:

2 be used for or to facilitate the commission of violent crimes;
3 adversely affect regional security and/or stability;
4 adversely affect sustainable development;
5 involve corrupt practices;
6 contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non- proliferation, arms control, and disarmament to which the exporting, importing, or transit states are party;
7 or be diverted for any of the above.

Principle 4 does not contain clearly stated prohibitions on the authorisation of arms transfers. Instead, it identifies possible consequences that states are required to take into account before authorising an arms transfer, imposes a positive duty on states to address these issues, and establishes a presumption against authorisation where these consequences are deemed likely.

Principle 5: Transparency

States shall submit comprehensive national annual reports on international arms transfers to an international registry, which shall publish a compiled, comprehensive, international, annual report.

Principle 5 is a minimum requirement to increase transparency so as to help ensure compliance with Principles 1-4 above. States should report each international arms transfer from or through their territory or subject to their authorisation. Reporting should be standardised and tied to the implementation of the normative standards set out in the treaty. These reports should be sent to an independent and impartial Registry of International Arms Transfers, which should issue a comprehensive annual report.

Principle 6: Comprehensive Controls

States shall establish common standards for specific mechanisms to control: (a) all import and export of arms; (b) arms brokering activities; (c) transfers of licensed arms production; and (d) the transit and trans-shipment of arms. States shall establish operative provisions to monitor enforcement and review procedures to strengthen the full implementation of the Principles.

Principle 6 will help ensure that states enact national laws and regulations according to common standards, and ensure that the principles are implemented consistently.

Notes

[1] Robert Muggah, 'Securing Haiti's Transition: Reviewing Human Insecurity and the Prospects for DDR', March 2005, *Small Arms Survey*; 'Outrage over U.S. guns for Haiti police', 23 April 2005, *South Florida Sun-Sentinel*, http://www.sun-sentinel.com/; Amnesty International Press release 11 November 2004, AI Index: AMR 36/060/2004.

[2] This agenda was agreed at the 28th International Conference of the Red Cross and Red Crescent on 6 December 2003, by 191 States party to the Geneva Conventions, as well as the Red Cross and Red Crescent Societies, the Federation, and ICRC. www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5WNJKP/$File/IRRC_852_28th_conf_resolutions_Eng.pdf

[3] The report 'A More Secure World: Our shared responsibility' was published in December 2004:**Error! Hyperlink reference not valid.**

[4] President's statement at the UN Security Council open debate on small arms in February 2005 (S/PRST/2005/7). See also President's statement at the UN Security Council open debate on small arms in January 2004 (S/PRST/2004/1); UNSC statement on the implementation of arms embargoes (Resolution 1196, 16 September 1998); UNSC Resolution on children in armed conflict (1460 (2003), 30 January 2003)

[5] www.un.org/apps/news/story.asp?NewsID=13435&Cr=disarm&Cr1=

[6] http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/11_03_05africa.pdf

[7] Sources: Private Memorandum from Amnesty International (International Secretariat) to the Portfolio Committee on Defence of the Parliament of South Africa, 10 March 2005; 'SA sells arms to hot spots', *Mail and Guardian*, 24 March 2005, www.mg.co.za/articlePage.aspx?articleid=200229&area=/insight/insight__national/; presentation by Gerhard Rossouw, Ministry of Foreign Affairs, at Nairobi meeting on transfers, November 2004.

[8] AI analysis of 1,059 reports published by AI between 1991 and 2002. Note that this is based upon *incidents* of grave human rights abuse reported by AI; and one 'incident' may often involve dozens of victims.

[9] *Small Arms Survey 2004: Rights at Risk*, Oxford University Press, 2004, pp. 100-102.

[10] Data from Omega Foundation, cited in *Small Arms Survey 2004*, *op.cit.,* p. 9.

[11] *Small Arms Survey 2004, op.cit.,* pp. 128-33 and 113-14. Data from Comtrade.

[12] Human Rights Watch, *Ripe for Reform*: *Stemming Slovakia's Arms Trade with Human Rights Abusers,* http://hrw.org/reports/2004/slovakia0204/, February 2004, cited in 'Undermining Global Security' (Amnesty International).

[13] Joint Amnesty International and Oxfam research 2003-04.

[14] *Small Arms Survey 2004, op.cit.,* pp 128-33.

[15] 'The War Is Bad, Of Course, But... It Pays Well', 15 April 2005, Kommersant www.kommersant.com/page.asp?id=570348

[16] Tanzania, Burundi, Djibouti, DRC, Kenya, Rwanda, Sudan, Uganda, Mozambique, South Africa, Botswana, Malawi, Senegal, Mali, Nigeria Finland, Germany, Ireland, Netherlands, Norway, Poland, Russia, Spain, Sweden, UK, Canada, Colombia, Costa Rica, Nicaragua, Japan.

[17] 'Yushchenko says Ukraine must improve weapons exports, pledges better controls', Associated Press, 28 March 2004.

[18] Paul Collier, 'Development and Conflict', 1 October 2004, Presentation given at the Centre for the Study of African Economies, Department of Economics, Oxford University.

[19] *Ibid.*

[20] Peter Chalk, 'Light arms trading in SE Asia', *Jane's Intelligence Review*, 1 March 2001.

[21] AI internal review of cases

[22] 'Humanitarian Challenges in Africa', Statement by Jan Egeland, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Security Council Consultations, 27 January 2005.

[23] 'The Impact of Guns on Women's Lives', Amnesty International, IANSA, Oxfam International, 2005.

[24] *Small Arms Survey 2004*, *op.cit.,* p. 129. United Nations Panel of Experts established by the Security Council pursuant to resolution 1237 (1999) of 7 May 1999: Final Report of the UN Panel of Experts on Violations of Security Council Sanctions Against UNITA - The "Fowler Report" - S/2000/203 - 10 March 2000. Addendum to the final report of the Monitoring Mechanism on Sanctions against UNITA - S/2001/363 – 18.

[25] Inspired by the Canadian government, this aims to make progress on three key aspects of the PoA, one of which is SALW transfers, by the creation of a like-minded caucus of states and NGOs.

[26]**Error! Hyperlink reference not valid.**

[27] The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty) and the Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious, and its protocols.

[28] 'Military and Paramilitary Activities in and against Nicaragua, (Nicaragua v. United States of America)', *ICJ Reports* 1986, p.14.

[29] Developed by the International Law Commission. The General Assembly subsequently adopted Resolution 56/83 (12 December 2001), which took note of the Articles and recommended them to the attention of Governments. www.law.cam.ac.uk/rcil/ILCSR/A_56_83(e).pdf. These articles seek to formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationallywrongful acts.

[30] From Article 25 3(c) of the International Criminal Court (ICC) Statute. If the state does not prosecute for such crimes, the ICC can do so.

[31] OSCE (the Organisation for Security and Cooperation in Europe) is made up of 55 countries. The Wassenaar Arrangement is focused specifically on arms supply and involves 33 major arms suppliers.

[32] Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials

[33] The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. This was the first major policy document adopted by the UN on small arms. In April 05, Zambia became the 40th ratification

34 These two protocols do not yet include legally binding provisions to prohibit arms transfers where they would contribute to grave violations of international law.

[35] SIPRI 2004, Table 12A.2. Data from 1999-2003.

[36] Calculations based on UN Comtrade data. Taken from *Small Arms Survey 2004 op. cit.*, p.104, Table 4.1.

[37] 'A Catalogues of Failures: G8 Arms Exports and Human Rights Violations' (AI Index: IOR 30/003/2003), Amnesty International.

[38] 'Export of Military Goods from Canada : Annual Report 2002' released in November 2004.

[39] www.dfait-maeci.gc.ca/trade/eicb/military/section03-en.asp?#6 and www.dfait-maeci.gc.ca/trade/eicb/military/table3-en.asp

[40] Amnesty International Annual Report 2000 and 2001 (AI Index: POL 10/001/2000 and POL 10/001/2001).

[41] In 1996, the Nobel Peace Laureates supporting the idea of a binding International Code of Conduct on Arms Transfers were: Dr Oscar Arias, the Dalai Lama, Rev. Desmond Tutu, Mikhail Gorbachev, Jose Ramos Horta, Betty Williams, Mairead Maguire, Joseph Rotbalt, Elie Weisel, Amnesty International and the American Friends Service Committee. Now many more Nobel Peace Laureates support the initiative. The first NGOs were American Friends Service Committee, Amnesty International, Arias Foundation, British American Security Information Council, Demilitarisation for Democracy and Saferworld. Many more NGOs now actively support the ATT.

[42] By Emanuela Gillard, Lauterpacht Research Centre for International Law, Cambridge. See www.armstradetreaty.org/background.html

[43] SEESAC: South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: www.seesac.org/resources/current_eng.htm

[44]**Error! Hyperlink reference not valid.**

[45] International Crisis Group, CrisisWatch N°21, 1 May 2005**,** www.crisisgroup.org/home/index.cfm?id=3350&l=1

[46] See Amnesty International reports on www.amnesty.org

[47] See for example, Small Arms Survey, chapter 6, pages 174 to 199

This briefing paper was compiled and shaped by Debbie Hillier of Oxfam from the legal and other research of members and advisors of the Arms Trade Treaty Steering Committee, including Amnesty International, the Arias Foundation, IANSA, Oxfam International, Saferworld, and lawyers at the Lauterpacht Centre for International Law.

Copies are available to download from www.controlarms.org

AI Index - POL34/007/2005

Amnesty International is an independent worldwide voluntary activist movement working for human rights, with more than 1.5 million members, supporters and subscribers in over 150 countries and territories. It has national sections in 54 countries in every region of the world.

Email: info@amnesty.org.uk

The International Action Network on Small Arms is the global movement against gun violence - more than 500 civil society organisations working in 100 countries to stop the proliferation and misuse of small arms and light weapons. IANSA seeks to reduce the impact of small arms through advocacy, promoting the development of regional and thematic networks, supporting capacity building and raising awareness.

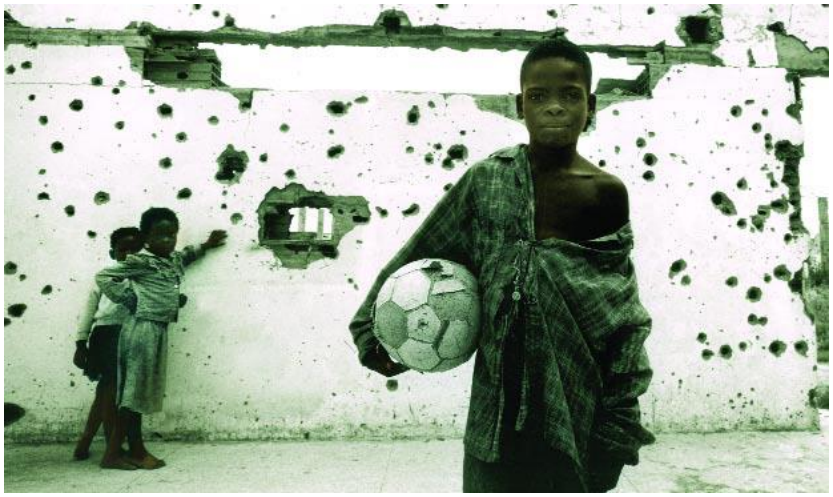
Email: contact@iansa.org

Oxfam International is a confederation of twelve organisations working together in more than 100 countries to find lasting solutions to poverty and injustice: Oxfam America, Oxfam-in-Belgium, Oxfam Canada, Oxfam Community Aid Abroad (Australia), Oxfam Germany, Oxfam Great Britain, Oxfam Hong Kong, Intermón Oxfam (Spain), Oxfam Ireland, Novib Oxfam Netherlands, Oxfam New Zealand, and Oxfam Quebec. Please call or write to any of the agencies for further information, or visit www.oxfam.org.

Email: advocacy@oxfaminternational.org

Towards an Arms Trade Treaty

Next steps for the UN Programme of Action



Arms are out of control

Arms kill more than half a million men, women, and children on average each year. Many thousands more are maimed, or tortured, or forced to flee their homes. The uncontrolled proliferation of arms fuels human rights violations, escalates conflicts, and intensifies poverty. The time for world leaders to act is now.

To confront this crisis, Oxfam, Amnesty International, and the International Action Network on Small Arms (IANSA) have together launched an international campaign calling for effective arms controls to make people genuinely safer from the threat of armed violence.

You can help us to put an end to this horrific abuse.

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