



GETTING IT RIGHT

The pieces that matter for the Arms Trade Treaty

EMBARGOED UNTIL 00:01 HRS GMT 12 MARCH 2013

Arms and bullets continue to destroy lives. Every continent in the world is marred by devastation caused by armed violence. Yet there is still no effective international regulation of the global arms trade. The need for an Arms Trade Treaty (ATT), which will create globally binding regulation of the international trade in conventional weapons for the first time, is greater than ever. Negotiators at the second and final Diplomatic Conference in March 2013 must deliver a treaty text that holds countries to the highest standards.

SUMMARY

Arms and bullets continue to destroy lives. Every continent in the world is marred by devastation caused by armed violence – and it is ordinary people who are paying the ultimate price with more than one person dying per minute as a direct result of armed violence. Yet there is still no effective international regulation of the global arms trade.

Take for instance the ongoing violence in Syria. The UN has said that nearly 70,000 people have been killed and hundreds of thousands wounded since uprisings began in 2011. Much of this has been fuelled by arms transfers to both the Syrian Government and opposition forces.

The poorly controlled flow of weapons and ammunition around the world fuels the spiralling death toll. Gunrunners continue to operate with impunity on the shady fringes of this deadly trade. And, lax or non-existent reporting obligations make it almost impossible to tell in whose hands a gun, shell, bullet, or even fighter plane, will ultimately end up, or how it got there.

The need for an Arms Trade Treaty (ATT), which will create globally binding regulation of the international trade in conventional weapons for the first time, is greater than ever.

It has been eight months since the July 2012 Diplomatic Conference failed to reach agreement on an ATT. This month (March 2013), states will get a second chance. Time spent in July 2012 was not wasted; it did generate a draft treaty text, and then in October 2012, the UN General Assembly passed a resolution mandating a further negotiating conference. The resolution received unprecedented support: 157 votes in favour, 18 abstentions, and no votes against, demonstrating clearly that the vast majority of member states want an ATT and providing them with a second chance to achieve that goal.

History shows that the most effective treaties are born from strong, comprehensive standards, established from the very outset. Treaties with weak provisions – no matter how broad their support – rarely become strong over time. Even where important countries do not sign, strong treaties have a positive influence on the actions of non-signatories. But some countries are prioritizing universal agreement on the text, and are willing to accept a draft treaty riddled with loopholes. If the ATT is really to make a difference in transforming the global arms trade, the second and final Diplomatic Conference must produce a treaty text that holds countries to the highest standards.

If the ATT is really to make a difference in transforming the global arms trade, the second and final Diplomatic Conference must produce a treaty text that holds countries to the highest standards.

THE TEXT ITSELF

The draft treaty that emerged from the July 2012 negotiations included some very positive elements. However, many of these could be undermined by a number of loopholes that considerably weaken the potential effectiveness of the ATT. In its current form, the treaty does not do enough to increase responsibility and restraint in international arms transfers, leaving millions of people at the mercy of irresponsible arms deals.

The scope of the treaty must include all types of conventional weapons, including ammunition, and parts and components. It must regulate all types of arms transfers, including exports, gifts, and loans.

There are inherent dangers with narrowly defining the scope of the treaty. As we have said before, a gun without bullets is a heavy metal stick. Therefore, it is essential ammunition is comprehensively covered.

If all types of transfer are not included, there is a real risk that a variety of ways in which arms move across borders or change possession will be excluded from the ATT. This includes loans, leases, gifts, and military aid.

These weaknesses in the scope will prevent the treaty from having a meaningful impact on the lives and livelihoods of countless communities across the world.

The text of the ATT must introduce clear and strong rules governing the movement of arms and ammunition, with a clear obligation for states to refuse transfers where there is a substantial risk that those arms would be misused. The list of risks needs to be comprehensive, reflecting the humanitarian and human rights concerns that have driven the ATT initiative from the outset.

COMPLIANCE

To have teeth, the treaty must have strong compliance measures. It is vital that this part of the treaty is as watertight as possible, with realistic and achievable requirements. A worthwhile treaty will build on existing best practice, rather than undermining it. The loophole whereby arms transferred as part of a defence cooperation agreement would be exempt from the ATT, for example, threatens to undermine its entire object and purpose.

With numerous caveats and exemptions within the reporting obligations, the treaty as it stands would not lift the shroud of secrecy surrounding the global arms trade; while weak provisions for regulating the activities of arms brokers mean that the current Treaty text would do little to reign in the unscrupulous middle-men who are so often at the centre of illicit and irresponsible international arms transfers.

A worthwhile treaty will build on existing best practice, rather than undermining it.

While this represents a significant list of challenges, the March 2013 Diplomatic Conference does provide governments with the opportunity to achieve a robust and comprehensive ATT – one which will curb the irresponsible trade in arms, save lives, and reduce the suffering of millions affected by the ravages of war and armed violence. States must ensure that the treaty text establishes high common international standards, while resisting pressures to water down provisions for the sake of universal support for the text.

RECOMMENDATIONS

- The Scope of the treaty must be fully comprehensive. It must control all types of conventional weapons, ammunition and munitions, and parts and components. It must also cover all the ways in which international arms transfers take place.
- The Criteria of the treaty must be robust, and ensure that arms must not be transferred if there is a substantial risk that they would be used to commit serious violations of International Human Rights Law or International Humanitarian Law, exacerbate armed violence and conflict – including gender-based armed violence – encourage corruption, or undermine development.
- The Implementation provisions must ensure that public reporting on all transfers is an obligation on member states, and that activities such as brokering are carefully and comprehensively covered.
- The Final Provisions must ensure rapid entry-into-force of the treaty, and define amendment provisions that allow the States Parties to revisit the treaty over time.

1. INTRODUCTION

A SECOND CHANCE TO NEGOTIATE A STRONG AND ROBUST ARMS TRADE TREATY

For more than a decade, millions of people across the world have campaigned for a treaty to bring the poorly regulated international arms trade under control. This goal is now in sight; in 2013, governments of the world have every chance to secure a strong Arms Trade Treaty (ATT).

The Diplomatic Conference on the ATT of July 2012 was a significant milestone in this process. While the Conference failed to reach agreement, a draft treaty was produced, containing many of the basic elements necessary for the effective control of the global arms trade.¹ However, this text also contains serious weaknesses and loopholes that could fundamentally undermine its effectiveness and eventually only serve to legitimize existing practices of irresponsible arms transfers.

A second and final Diplomatic Conference on the ATT, which will be held in March 2013,² provides an opportunity for States to close the loopholes in the current text and to deliver a treaty that reduces the devastating human costs of the poorly regulated global trade in arms. In other words, the March negotiations give countries the chance to get the text right.

As many statements delivered during the negotiations of July 2012 demonstrate, a large number of States want to see a robust ATT agreed with language that is much stronger than the current draft text.³ Many countries feel that the draft text fails to deliver what the UN General Assembly tasked them to create, namely: 'a legally binding instrument on the highest possible common international standards for the transfer of conventional arms', thereby achieving 'a strong and robust' ATT.⁴

The main challenge of the March negotiations is for the advocates of a strong and robust ATT to secure a text that contains the widest possible scope, the highest international standards or criteria, and clear guidelines for effective implementation.

Worryingly, the draft treaty is seen by a few major arms exporting countries as representing an adequate response to the unregulated trade in arms. This minority seems willing to compromise on the strength of the treaty in the hope of achieving universal agreement on the text.

Approaching the March negotiations with the aim of securing a treaty that has the explicit support of states sceptical of the ATT means that serious loopholes are unlikely to be fixed. Such an approach to consensus creates the danger that all of the pressure during the negotiations will be downwards and that significant support for efforts to strengthen the treaty will be ignored.

It is vital that the majority of States that want to achieve a strong treaty at the March negotiations remain resolute. While a treaty with the widest possible participation should remain the long-term goal, a strong ATT that establishes high international standards will prove far more effective in the long term, than one with weak, compromised text that does little to prevent the irresponsible arms transfers that fuel human suffering.

This briefing paper argues that if the ATT is to meet its objectives it must be strong and robust from the outset. The text that emerges out of the March negotiations must go much further than the draft treaty of July 2012. If the draft text is adopted without specific changes, it could institutionalize unacceptably low standards and legitimize the irresponsible behaviour that often characterizes the current status quo.

This paper provides evidence that strong treaties gain support over time and, consequently, have a real impact. There is also ample evidence to suggest that strong treaties tend to have positive influences on the behaviour of non-States Parties by creating global norms. Additionally, it takes a considerable amount of time, often decades, to change or amend treaties, undermining arguments that a weak agreement this year could be effectively strengthened over time.

Based upon this premise, the paper outlines the steps that need to be taken to ensure that the ATT has a positive impact, namely:

- Identify those specific elements and loopholes in the draft treaty that undermine its ability to address adequately the humanitarian and human rights problems fuelled by the poorly regulated international arms trade.
- Describe the potential impacts of these loopholes if they are not addressed in a final treaty.
- Put forward simple yet effective amendments to enable the ATT to be effective.

While these suggested amendments should not be seen as exhaustive, or as addressing all the weaknesses in the draft text, adopting them would undoubtedly address some of the most serious flaws of the current draft.

The draft treaty also suffers from weak and equivocal language. In each section of the text there is language that undermines the treaty's provisions or turns them into voluntary rather than binding common international standards. Some of the current language blurs the distinction between mandatory and voluntary standards, leaving States uncertain of their obligations. States attending the March negotiations must ensure that the text that materializes is strong and unequivocal.

Ultimately, the ATT will be judged according to its success in preventing arms transfers that contribute to or increase human suffering. If the treaty is replete with loopholes and omissions, irresponsible and illegal transfers of weapons, including their parts, components, and ammunition, will continue to fuel conflict, armed violence, and abuse of human rights, and to undermine development around the world.

Ultimately, the ATT will be judged according to its success in preventing arms transfers that contribute to or increase human suffering.

2. AGREEING A STRONG TREATY *BEFORE* SECURING UNIVERSAL ACCEPTANCE

The global trade in most consumer goods is internationally regulated and carefully controlled. By contrast, the global trade in arms and ammunition is not. Currently, there are no legally binding, robust, and universally applicable criteria governing the transfer of conventional weapons across borders. The ATT is intended to address this lack of global regulation by establishing a legally binding instrument that obligates States to assess the risks of potential negative consequences of arms transfers.

In order to have a lasting humanitarian impact, the risks to be assessed need to include violations of international humanitarian law (IHL) and international human rights law (IHRL), negative impact on socio-economic development, facilitation of corruption, and exacerbation of armed violence. Without full consideration of these risks, the status quo will not change.

The ATT must therefore start life as a strong treaty with the highest common standards. States must not compromise on the strength of these standards merely to achieve universal agreement on the text.

This is not an argument against universality, rather one of sequence. Treaties never start as “universal” and indeed very few treaties ever achieve complete universality; entry-into-force and a subsequent increase in the number of adherents is a process that takes time. If the ATT emerges as a weak international standard, universal – or near universal – adherence to it will be meaningless.

Evidence suggests that strong treaties, gain support over time. For example, the International Covenant on Civil and Political Rights (ICCPR) was adopted and opened for signature, ratification and adoption in 1966. By 1968, only one country had become a State Party to the Covenant.⁵ In due course, the ICCPR gained widespread support and, by February 2013, comprised 167 States Parties.⁶

There are numerous other examples, including:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979: 31 States Parties by 1981, growing to 187 in 2013.
- The UN Convention against Transnational Organised Crime, adopted in 2000: 22 States Parties by 2002, growing to 174 in 2013.
- The UN Convention against Corruption, adopted in 2003: 15 States Parties by 2004, growing to 165 in 2013.

If the ATT emerges as a weak international standard, universal – or near universal – adherence to it will be meaningless.

There is also ample evidence to suggest that strong treaties tend to have positive influences on the behaviour of non-States Parties by creating global norms. A good example of this is the UN Convention on the Law of the Sea (UNCLOS), with 165 States Parties in 2013.⁷ Specifically, while there are a number of States that have not signed or ratified the Convention, many of these countries quickly brought their practice into line with the treaty's core provisions.

Similarly, non-States Parties have generally respected the core provisions of various treaties, including the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Anti-Personnel Mine Ban Convention) adopted in 1997 (161 States Parties in 2013)⁸ and the Convention on Cluster Munitions adopted in 2008 (78 States Parties in 2013), and have tended not to act explicitly against the core provisions of the conventions.

Finally, it is extremely difficult to strengthen weak treaties over time. Amendments and additional protocols often take decades to conclude and depend on the ability of States to generate sufficient political will and momentum to effect change. It took over 40 years for the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights (CESCR) to be adopted, and it will only enter into force in May 2013,⁹ and 20 years for the Optional Protocol to CEDAW to be adopted – both of which established complaint and inquiry mechanisms for the respective Treaties.¹⁰ The Optional Protocol for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which established international inspection systems, was adopted in 2002, 18 years after the adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹

Now is the moment to capture the momentum that has been building since work began within the UN on the ATT in 2006. Negotiators have a second chance in March 2013 to agree the highest common standards aimed at regulating the arms trade, and there is now considerable appetite among most countries to agree a high standard. This momentum will be difficult to regenerate in the future, and States must not let this opportunity slip away.

3. WHAT MUST THE ATT CONTROL?

STRENGTHENING THE SCOPE OF THE ATT

The scope of the ATT must be wide and all-inclusive: It needs to include *all* weapons (including ammunition, parts, and components), and *all* types of transfers.

The treaty must control all types of conventional weapons, including ammunition and munitions, parts, and components. It must regulate all types of transfers of arms, including, among others, exports, gifts, leases, and loans. These elements should, together, make up the scope of the final treaty. By contrast, the scope of the current draft is narrow and weak. This means the Treaty is unlikely to have the humanitarian impact that is required.

The loopholes

1. *The scope of the draft treaty is far too narrow in terms of the weapons it controls:* The draft treaty text implies that only the seven categories of major offensive conventional weapons covered by the UN Register of Conventional Arms (UNROCA) are to be controlled by the ATT, with the addition of small arms and light weapons (SALW).
2. *Ammunition and munitions are inadequately dealt with by the treaty, and not included explicitly in the scope:*¹² Ammunition is instead included in Article 6.4 on exports, which would establish relatively weak controls on international transfers, and exclude ammunition from any effective transparency mechanisms.
3. *Parts and components for conventional arms and equipment are excluded from the scope:*¹³ In the current draft, these crucial items are addressed in the same way as ammunition, and thus their treatment suffers from the same problems.
4. *The definition of international transfers is limited and ambiguous:* By narrowing the definition of international transfers to only cover trade activities undertaken by means of export, import, and transit/transshipment, the treaty risks excluding loans, gifts, and barter from effective control. This would also exempt transfers from the armed forces or state-authorized agencies of one state to another that take place within one country e.g. during or after a peacekeeping operation or a military exercise.

The consequences

1. The humanitarian implications of a narrow scope

As currently drafted, the treaty would not prevent the international transfer of many types of conventional weapons, including armoured troop-carrying vehicles and many types of military aircraft and helicopters (including unmanned drones) to countries where there are concerns over human rights, for example.

By inadequately addressing transfers of ammunition, the treaty could fail to meet its most basic humanitarian objectives.

2. Ammunition is the key to containing conflict

Guns are powerless without bullets. By inadequately addressing transfers of ammunition, the treaty could fail to meet its most basic humanitarian objectives.¹⁴ Patchy global controls on ammunition transfers will not be sufficient to prevent irresponsible transfers from continuing to fuel conflicts and crime around the world, resulting in the death of many thousands of people each year.

Box 1: The global reach of the ammunition trade

A report by Conflict Armament Research in 2012 showed that ammunition shipped by Iran was used in 14 African countries, though it was used by government forces in only four of these cases.¹⁵ The ammunition, manufactured over the past decade, was supplied to governments who then sold it on illicitly, fuelling rebellions, civil wars, armed conflict, and criminal and inter-communal violence in countries across sub-Saharan Africa.¹⁶

The international trade in ammunition remains even less accountable and transparent than the trade in arms, and comparatively little is known about its true scale. While there is some evidence that global sales of ammunition are growing at a faster rate than the SALW they are used with,¹⁷ there are currently no official estimates of the total annual value of authorized transfers of ammunition.¹⁸

This lack of complementary data and transparency in the ammunition industry increases the risk of diversion to unauthorized or illicit users.¹⁹ In turn, there are no official systems in place to record the flow of ammunition to regions where there are serious humanitarian concerns and ongoing conflicts. An ATT with no transparency provisions relating to ammunition would do nothing to change this situation.

Ammunition and parts and components are not included in the scope of the draft treaty, rather they are addressed under the section on exports. As a consequence, these crucial items are controlled for export only, and are bound only by a limited set of risk-assessment criteria relating to International Humanitarian Law (IHL), International Human Rights Law (IHRL), and terrorism. The measures in the draft text relating to diversion, socio-economic development, gender-based violence and violence against children, corruption, and transnational crime are not applied to ammunition. Moreover, as explored further in Chapter 5 there are no reporting and record-keeping requirements for the transfers of these items.

3. The changing nature of the arms trade – the importance of parts and components

Modern weapons cannot be made or maintained without access to parts and components, and these are traded in a globalized market. If the treaty fails to place adequate controls on transfers of parts and components, it will be difficult to reduce the impact of irresponsible arms transfers on human rights, security, and development. Oxfam estimates that the global trade in parts and components between 2008 and 2011 was worth more than \$9.7bn.²⁰ A lack of complete datasets, compounded by few obligations on states to report on such transfers means that these estimates are likely to be grossly conservative.

Without spare parts, weapons can quickly become useless.

The weapons that are fuelling many of the armed conflicts in Africa, for example, include some that are imported from outside Africa as parts, and assembled on the continent. This includes rifles, rocket-propelled grenades (RPGs), mortars, machine guns, and similar SALW.²¹

Without spare parts, weapons can quickly become useless. Box 2 demonstrates how a State's ability to acquire spare parts can dramatically affect the outcome or severity of a conflict.

Box 2: Failure to launch – the case of the Libyan Air Force

Shortages of spares can very quickly limit military capacity. International sanctions had made spare parts largely unobtainable for the regime of Colonel Muammar Gaddafi.²² Consequently, during the conflict of 2011, while the Libyan Arab Jamahiriya had a theoretical total of 374 combat aircraft, most of these were inoperable, thereby limiting the regime's ability to mount air operations.²³

4. Circumventing the ATT: gifts, loans, and leases of arms

The scope of the draft treaty is such that it could be viewed as excluding non-commercial transfers, within which category could fall loans, gifts, and military aid. This means that States could donate or lend weapons to other countries irrespective of whether the recipient would be likely to use them for serious violations of human rights, international humanitarian law, or in supporting terrorist acts. While data relating to gifting, lending, and donating weapons by governments is not widely available, it is clear that these kinds of transfers are a fact of life in the international arms trade. As the case study below illustrates, governments across the world are routinely engaging in these types of transfers, with potentially serious implications for the effectiveness of a future ATT.

Box 3: China's donation of military vehicles to Cambodia

Beijing donated 250 jeeps and trucks to the Royal Cambodian Armed Forces in 2010.²⁴ Cambodian officials have noted that "China has played a key role in improving Cambodia's dilapidated military inventory".²⁵ Unless amended, the current draft of the ATT risks not controlling the transfer of military equipment, or arms, as gifts.

The solutions

1. The treaty needs to control all types of conventional weapons: The scope needs to be broadened beyond UNROCA's seven categories of major conventional weapons plus SALW (the so-called 7+1 formula) so as to apply to all conventional arms. This will be essential if the treaty is to be fully effective in preventing humanitarian harm; and, moreover, it will be vital to ensure that the treaty's relevance does not diminish over time with the development of new types and categories of weaponry.²⁶

'International transfers' of conventional arms need to be clearly defined in the treaty to enable control over the full range of relevant activities.

2. The scope of the draft treaty must be amended to include ammunition and munitions alongside all other conventional arms in Article 2.A.1.²⁷ The application of comprehensive controls on the international transfer of ammunition and munitions will be vital in order to fulfil the goals and objectives of the treaty, which include the need to prevent human suffering. This would mean that, among others, all the factors set out in Article 4.6 as well as reporting and record-keeping requirements would apply to ammunition and munitions.²⁸

3. The draft treaty must be amended to include parts and components alongside complete conventional arms in Article 2.A.1: Parts and components must be incorporated in the scope of the final treaty, particularly given the globalized nature of the arms trade. The ATT must include in its scope all specialized parts and components designed and produced for, or destined for use in, defence equipment. As with ammunition and munitions, incorporating parts and components in the scope ensures that all the export criteria apply to parts and components; it would also ensure that they are fully included in ATT-reporting requirements, thereby bringing much needed transparency into the international arms trade.

4. The scope of the treaty text must apply the same regulatory standards (a) to non-commercial transfers as it does to commercial transfers, and (b) to international transfers undertaken 'in-country', for example after a military or peace-keeping operation: A broader definition of international transfer is required that would clearly include all types of international transfers – both commercial and non-commercial – as well as international transfers of title or control. 'International transfers' of conventional arms need to be clearly defined in the treaty to enable control over the full range of relevant activities, including export, import, transit/transshipment, and brokering.

4. THE RULES OF THE GAME

STRENGTHENING THE PROHIBITIONS AND CRITERIA OF THE ATT

The ATT criteria must be based on the highest international standards: they must contain clear, effective, international standards that build on existing legal standards and best practice.

The risk assessment criteria of the draft treaty must be comprehensive: The ATT must ensure that transfers are denied if there are substantial risks of violations of human rights and international humanitarian law (IHL), perpetration of armed violence (including gender-based armed violence), diversion, facilitating corruption, or undermining socio-economic development.

The ATT must establish clear rules for arms transfers. The criteria of the ATT are the standards by which arms exports are assessed and whereby the risks of misuse are judged. In this sense, the list of risk factors must be comprehensive and, moreover, the threshold whereby they have a material effect on the decision to authorize or deny a transfer should be set at a reasonable level.

The loopholes

1. The prohibitions in Article 3.3 relating to arms for genocide, crimes against humanity and war crimes are too narrowly defined: This is the case both in substance (types of violations) and application.
2. The threshold, whereby there must be an 'overriding risk' of violations of IHL or IHRL before a proposed transfer is denied, is confusing and potentially dangerous: The use of this term necessitates an unacceptable comparative assessment between peace and security and the risk of breaches of international humanitarian and human rights law.
3. The differentiation between obligatory criteria (in Article 4.2) and additional concerns (in Article 4.6) is entirely arbitrary: By failing to include criteria on diversion, gender-based violence, corruption, socio-economic development, and organized crime in the arms export-risk assessment process, the treaty ignores a range of serious risks that are often associated with international transfers of conventional arms.

The criteria of the ATT are the standards by which arms exports are assessed and whereby the risks of misuse are judged.

The consequences

1. *Weak treaty language threatens to undermine respect for existing legal standards, such as the Geneva Conventions, war crimes, and crimes against humanity*

The draft treaty contains two Articles, which set out a framework within which States must consider an arms transfer. Draft Article 3.3 forbids a State from authorizing a transfer ‘for the purpose of facilitating the commission of genocide, crimes against humanity, war crimes constituting grave breaches of the Geneva Conventions of 1949, or serious violations of Common Article 3 of the Geneva Conventions of 1949’. As currently drafted, Article 3.3 would not prevent the supply of weapons to fuel the most egregious violations of IHL and IHRL. There are three problems with this provision:

- a. The scope of ‘war crimes’ specified in this provision is significantly narrower than the range of war crimes established in both treaty and customary international law. By limiting its application to crimes under the Geneva Conventions of 1949, this provision omits a number of other war crimes that are typically carried out with conventional arms, such as intentionally directing attacks against civilian populations, civilian objects, or humanitarian assistance personnel.²⁹
- b. The term ‘for the purpose of’ is exceptionally narrow and suggests that States must be transferring arms expressly to facilitate a war crime, or to break the Geneva Conventions. Clearly, no State would openly admit that it had intended to facilitate such egregious acts. As currently drafted, this wording would not serve the purpose of *preventing* transfers that would facilitate the serious violations set out in this provision. In fact, left as currently drafted, it is hard to see how this provision will have any effect at all.
- c. The draft Article as it relates to ‘genocide’ falls far short of the duty to *prevent* genocide by taking action before it happens, as articulated by the Convention on the Prevention and Punishment of the Crime of Genocide.³⁰ As currently drafted, however, Article 3.3 will apply only where genocide has already taken place.

As currently drafted, Article 3.3 would not prevent the supply of weapons to fuel the most egregious violations of IHL and IHRL.

Box 4: Weapons used in alleged serious violations of human rights in Syria

Despite international outrage, Syria has continued to import weapons systems like helicopters, fighter jets, Surface to Air Missiles, ammunition, and munitions throughout the ongoing conflict.³¹ In 2010, for example, Syria imported more than \$1m worth of small arms and light weapons, ammunition, and other munitions.³² There is evidence that some of these arms have played a central role in the Syrian government’s crackdown on protesters during 2011.³³ In addition to small arms ammunition, the Syrian military has used air-delivered incendiary bombs in at least four locations across Syria since mid-November 2012 according to Human Rights Watch.³⁴ The UN has recently put the death toll during nearly two years of civil war in Syria at 70,000.³⁵

2. *Undermining respect for IHL and IHRL – why ‘overriding risk’ could help to arm human rights abusers*

The draft text requires States to refuse a transfer of arms only if, having assessed any potential contribution to peace and security, there is considered to be an ‘overriding risk’ that a transfer could result in serious violations of IHL, IHRL, or a contribution to terrorist acts. This raises the prospects that a State could choose to ignore risks of violations of IHRL or IHL on the grounds that these did not override a perceived positive contribution that the transfer might make to peace and security. Establishing this type of comparative decision making process runs contrary to existing international legal standards and principles.

Box 5: Military aid to Egypt

Despite continuing human rights concerns in Egypt, in March 2012, the United States released \$1.3 billion in military aid for Egypt, saying US national security required continued military assistance. The US waived congressional conditions imposed in 2011 that tie US aid to progress in Egypt's transition to democracy.³⁶ ‘These decisions reflect America's overarching goal: to maintain our strategic partnership with an Egypt made stronger and more stable by a successful transition to democracy,’ said Victoria Nuland, State Department spokeswoman.³⁷ During 2011, the year of widespread protests against the regime, Egypt received more than \$400m in defence products and services from the United States.³⁸

One of the fundamental aims of the treaty should be to prevent States from authorizing an arms transfer where the risk of serious violations of international human rights and humanitarian law are substantial. In order to fulfil this purpose, the treaty needs to establish a clear, common international threshold. ‘Overriding’ is a very problematic term given its many interpretations. On one hand, it could be interpreted as referring only to a threshold or level of magnitude. However, where that threshold lies is unclear, and it may be interpreted as being so high that States are only obliged to refuse a transfer in extreme and exceptional circumstances.

On the other hand, some States may attempt to interpret ‘overriding’ in this context as a consideration that is more important than others. Following this logic, the State could weigh the risk of humanitarian consequences against other interests, such as a perceived contribution to peace and security as set out in draft Article 4.1. The dangers of this approach are obvious, given that by their very nature arms transfers always take place in the context of peace and security concerns. States may regard themselves as free to argue that for specific transfers their ‘peace and security’ concerns outweigh, or override, even significant humanitarian or human rights harm.

Box 6: Saudi Arabia involved in record-breaking arms deals despite human rights concerns

An Amnesty report³⁹ in 2012 stated that in the Royal Saudi Air Force used fighter-bombers that had been supplied by the United Kingdom in raids in Yemen, which killed many civilians, yet in May 2012 the British Prime Minister David Cameron justified selling arms to Saudi Arabia as 'legitimate and right' on the grounds that 'autocratic countries have a right to self defence'.⁴⁰ In May 2012, BAE Systems signed a deal worth some \$3bn to supply Hawk trainer jets to Saudi Arabia, despite ongoing concerns that they could be used to commit serious violations of human rights.⁴¹ According to the same Amnesty International report, 'Saudi Arabia has been the recipient of record-breaking arms deals involving the UK, yet these have been highly secretive and there's been little or no follow-up over how the weaponry was used'.⁴²

3. Arbitrary distinctions between 'obligatory' risk assessment criteria and 'additional concerns' threaten to undermine the purpose and effectiveness of the treaty

The principles that should guide international arms transfers are presented in two sections. Those set out in Article 4.2 include IHL, IHRL, and the threat contributing to terrorist acts, and these assessments are obligatory. A secondary set of factors listed in Article 4.6 are referred to in the context of States being required only to 'consider taking feasible measures' to avoid the risk of these outcomes, also known as risk mitigation measures.⁴³ Moreover, while addressing gender-based violence and violence against children these concerns are removed from the wider consideration of armed violence, a serious omission in the draft Treaty text.

First, the distinction between these two sets of risks is arbitrary. Each of the five additional criteria has a basis in international law. They are also important in terms of the negative consequences of irresponsible or illicit arms transfers. Each of these criteria also has comprehensive and robust methodologies for quantifying and assessing the risk of their outcome. Furthermore, each of these criteria, when taken together with the obligatory criteria, forms elements of existing best practice in arms transfer control regimes nationally and in regional agreements across the world. To separate them out and remove them from the decision-making process is a fundamental weakening of these existing standards.

As the following specific examples will illustrate, the implications for removing these considerations from the decision making process for arms transfers have a number of dire consequences.

Diversion

Diversion is critical to the movement of arms from the licit to the illicit sphere. All States want to reduce the illicit trade in arms; and clamping down on diversion is an essential step towards achieving this.

In many regions, diversion is the means whereby violent and unaccountable non-State groups and regimes, including those that are subject to international embargoes, acquire the weapons they use to

All States want to reduce the illicit trade in arms; and clamping down on diversion is an essential step towards achieving this.

threaten, maim, and kill. Accordingly, an ATT that does not include diversion among its main risk assessment criteria would fail to tackle one of the key drivers of conflict and armed violence internationally.

States need to remain vigilant about the risks of diversion, and conduct due diligence before approving arms transfers. Including this risk explicitly as part of the assessment criteria for international arms transfers is one way of reducing arms leaking into the illicit market.

Gender-based violence and violence against children

Systemic gender-based violence (GBV) is widespread and has been reported in all the regions of the world. Where cultures of violence and discrimination against women and girls exist prior to conflict, they can be exacerbated during conflict as an extreme manifestation of the abuse women face in peacetime.⁴⁴ According to the Committee on the Elimination of Discrimination against Women, 'Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures'.⁴⁵

The ATT must not create confusion, which could undermine the obligations of states to protect against gender-based violence.

Sexual violence in conflict is used as a tactic of armed groups to assert power and domination, and terrorise the enemy. The former UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Margot Wallström, has stated that in many conflicts 'rape is a front line'.⁴⁶ While GBV is predominately directed at women and girls, men and boys can also be targeted.⁴⁷ Domestic violence, which can be exacerbated by the availability of weapons, may also increase during and after conflict, with vulnerable women and children most at risk.⁴⁸

The ATT must not create confusion, which could undermine the obligations of states to protect against GBV, including armed violence, under provisions of international human rights and humanitarian law treaties, including ICCPR, CEDAW and the Geneva Convention and its Additional Protocols.

Box 7: Sexual violence used by State and non-State actors to intimidate and degrade

In July 2012, the Acting Special Representative of the Secretary-General on Sexual Violence in Conflict, Vijay Nambiar, condemned the sexual violence in eastern Democratic Republic of the Congo that had reportedly been perpetrated by armed groups, including the rebel group known as the M23; and called on authorities to investigate the crimes. He expressed a deep concern that, with violence escalating in the eastern region of that country, 'sexual violence is once again a pattern of the conflict'.⁴⁹

In June 2012, Human Rights Watch warned that security forces in Syria had used sexual violence 'to humiliate and degrade detainees with complete impunity', with reports that government forces had used sexual violence to torture men, women, boys and girls detained during the ongoing conflict.⁵⁰ In a separate report, issued in January 2013, the International Rescue Committee corroborated those findings by reporting that rape was a 'significant and disturbing' feature of the conflict in that country.⁵¹

Organized crime

While organized criminal gangs control less than 2 per cent of the world's small arms, many have access to military-style automatic firearms and other sophisticated types of weaponry that can cause serious harm.⁵² In countries not affected by conflict, gangs represent key protagonists in non-conflict-related armed violence, which claim an estimated two-thirds of global violent deaths.⁵³ Worldwide, at least two million people – and probably many more – are living with firearm injuries sustained in non-conflict settings over the past decade.⁵⁴

Box 8: Gang-related armed violence in Mexico

Recent data on firearms seized from crime scenes in Mexico⁵⁵ reveal that two-thirds can be traced back to the United States.⁵⁶ More than 50.5 per cent (7,329) were unable to be traced to their first retail purchaser.⁵⁷

Corruption

Given the high levels of secrecy that surround many arms deals, the international arms trade is particularly at risk of corruption. Transparency International (TI) estimates the global cost of corruption in the defence sector to be a minimum of \$20bn per year, based on data from the World Bank and Stockholm International Peace Research Institute (SIPRI). This equates to the combined global official development assistance (ODA) provided in 2008 to Afghanistan, Bangladesh, Democratic Republic of the Congo, Iraq, and Pakistan; or the total sum pledged by the G8 in L'Aquila in 2009 to fight world hunger.⁵⁸

According to the US Department of Commerce, 50 per cent of bribery allegations from 1994 to 1999 were in the defence sector.⁵⁹ A survey in 2006 by Control Risks showed that one-third of international defence companies felt they had lost out on a contract in the previous year owing to corruption by a competitor.⁶⁰ Moreover, TI reported in January 2013 that 70 per cent of countries failed to protect against corruption in the defence sector.⁶¹

Recent cases underline the impact that corruption and corruption risks have on the licit global trade in arms.

In countries not affected by conflict, gangs represent key protagonists in non-conflict-related armed violence, which claim an estimated two-thirds of global violent deaths.

Box 9: Bribes worth 10 per cent of the value of the arms sale

In December 2012, six employees of a Finnish defence group, Patria, were charged with bribery and corporate espionage in connection with a Slovenian defence contract for armoured vehicles. According to the prosecution service in Finland, the alleged bribes were 10 per cent of the value of the sale, which exceeded €160m. In September 2012, Slovenia reduced its initial order of 135 vehicles to only 30.⁶²

Socio-economic development

Armed conflict and armed violence affects lives and livelihoods in terrible ways. These considerations must be explicitly factored into decisions on arms transfers. Countries experiencing decades of armed conflict are poorly equipped to sustain progress in long-term development, thereby making them unlikely to meet the Millennium Development Goals (MDGs) by 2015. Research has also found that neighbouring countries are negatively affected by ongoing conflict, with serious consequences on long-term processes of development.⁶³

Countries experiencing decades of armed conflict are poorly equipped to sustain progress in long-term development

This is particularly apparent in Mali, which, prior to the onset of internal conflict, was making steady progress towards achieving MDGs. Relevant UN data illustrated consistent drops in under-five mortality and marked improvements in access to medical care, in school enrolment rates, and overall incremental lowering of extreme poverty over the past decade.⁶⁴ However, following the onset of conflict in January 2012, more than 147,000 civilians have fled northern Mali and sought refuge in neighbouring countries.⁶⁵ Moreover, the prevailing atmosphere of insecurity and threat of armed violence and armed conflict has had dire impacts on the socio-economic development processes, with aid budgets frozen, schools forced to remain closed, and deepening food insecurity in parts of the country. This is likely to reverse the gains made toward achieving the MDGs over the past two decades.

Box 10: Irresponsible arms transfers and their long-term impact on development

In 2006, the value of arms imports to Myanmar was equivalent to a staggering 72 per cent of all ODA received by that country.⁶⁶ Other notable examples during that year include Yemen, at 71 per cent of ODA, and Eritrea, at 34 per cent.⁶⁷ This highlights a disregard for sustainable development goals on the part of supplier and recipient States.

The solutions

1. The prohibitions in Article 3.3 relating to arms for genocide, crimes against humanity and war crimes need to be comprehensively defined and their application made consistent with existing international standards: Minimalist definitions will create thresholds that are simply too high, and that fail to have a meaningful humanitarian impact on armed conflicts.
2. Thresholds for national assessment must be based on 'substantial risk', not 'overriding risk': The treaty must not create a situation whereby States can argue that a perceived positive impact on peace and security has the ability to trump the primacy of international human rights and humanitarian law.
3. Risk assessments for proposed arms transfers need to be obligatory and comprehensive: By creating artificial distinctions between the risk of violations of international human rights law and international humanitarian law, and of a contribution to terrorist acts on the one

hand, and negative consequences in terms of diversion, international crime, gender-based violence and violence against children, corruption and sustainable development on the other, the treaty threatens to undermine existing international legal norms and standards and best practice, and is left fundamentally weakened as a result. The treaty must ensure that all of the potential negative consequences of a proposed arms export referred to in Article 4.2 and 4.6 of the draft text are fully considered in the risk assessment process before a decision is taken on whether or not to authorize the export of conventional arms.

5. MAKING THE TREATY WORK

STRENGTHENING THE IMPLEMENTATION OF THE ATT

The implementation section of the draft treaty is too limited; obligations are unclear and, in places, threaten to undermine existing good practice.

The ATT must provide a clear and comprehensive framework that ensures and supports full implementation of the treaty: It must increase levels of public transparency in the international arms trade.

The loopholes⁶⁸

- 1 *Allowing arms transfers made as part of defence cooperation agreements to be exempt from the treaty is a big loophole:* Article 5.2 stipulates that contractual obligations under defence cooperation agreements cannot be voided by the provisions in the ATT, thereby allowing States to place arms transfers outside the treaty by designating them as part of such an agreement.
- 2 *Reporting requirements will do little to enhance transparency in the international arms trade:* There are three fundamental flaws in the provisions on reporting, namely: (a) record-keeping and reporting requirements do not apply to transfers of ammunition and munitions, or to parts and components; (b) there is no provision for national reports to be made publicly available; and (c) States are at liberty to exclude information that is considered sensitive owing to 'commercial' or 'national security' interests.
- 3 *Requirements relating to the control of brokering are weak and limited in application:* Article 8 only requires that States 'regulate brokering taking place under its jurisdiction', with the decision as to what this might involve left entirely to the discretion of individual countries.

The consequences

1. *The exemption of defence cooperation agreements from the treaty*

The exemption of defence cooperation agreements from the ATT would mean that States could continue to transfer arms despite a high risk of their use in violating human rights or international humanitarian law. A treaty that allows the continuation of arms transfers under such circumstances of serious international crimes runs counter to the very humanitarian purpose of the ATT (see Box 11).

Box 11: Russia honoured Defence Contracts with Syria despite risks of misuse of weapons

In January 2012, a Russian ship carrying 60 tonnes of arms and munitions destined for Syria was stopped in Cyprus. It subsequently continued its journey to Syria via Turkey.⁶⁹ In March 2012, Russia delivered a shipment of refurbished helicopters to Syria causing Hillary Clinton, the then US Secretary of State, to claim Russia was supplying weapons that would be used to massacre civilian protesters.⁷⁰ In response, Sergey Lavrov, Russia's Foreign Minister, stated 'We violated neither international law, nor UN Security Council resolutions nor our national legislation on export control, which is one of the tightest in the world.'⁷¹ In an interview with the Rossiya-1 TV channel, he went on to state that the refurbishment of the helicopters was part of a 2008 defence contract.⁷²

2. *The record-keeping and reporting requirements set out in the draft treaty will do little to enhance transparency in international arms trade*

Some of the world's largest arms exporters, such as Germany, the United Kingdom, and the United States, provide relatively detailed and publicly available information on their transfers of conventional arms, ammunition, and parts and components. By establishing a lower standard, the draft treaty therefore risks undermining current best practice in transparency in the international trade in arms. Moreover exemptions for information considered sensitive for reasons of commercial confidentiality or national security – with no indication of what this could or should entail – could allow states the latitude to withhold reporting on any or all arms transfers on these grounds.

The exemption of defence cooperation agreements from the ATT would mean that States could continue to transfer arms despite a high risk of their use in violating human rights or international humanitarian law.

Box 12: Voluntary reporting mechanisms are not working

Existing reporting and record-keeping systems continue to be ineffective in capturing the extent of the international arms trade. For example, levels of reporting to UNROCA remain disappointing, even after 20 years—only 51 Member States (26 per cent) submitted national reports in 2012, which represents the lowest level ever.⁷³ Moreover, the reporting is patchy geographically, with, for example, only two countries in Africa submitting reports in 2012.⁷⁴

3. *The lack of any specific obligations relating to the control of arms brokering means that this Article will have very little impact*

The provisions are so weak they are unlikely to diminish the role of irresponsible arms brokers in providing arms that breach international embargoes, that fuel conflict and that are used in the perpetration of serious violations of human rights and international humanitarian law.

By establishing a lower standard, the draft treaty therefore risks undermining current best practice in transparency in the international trade in arms.

The solutions

1. *It is clearly unacceptable that the entire treaty can be undermined simply by devising a conflicting 'instrument' or by establishing a defence cooperation agreement:* The simplest solution would be to delete Article 5.2;

2. *The treaty should include an obligation on States to submit annual reports on all transfers:* These reports need to incorporate information both on agreements and on deliveries, on conventional arms, including ammunition and munitions, and on parts and components. States should be obliged to make these reports publicly available. By establishing such obligations, the treaty could dramatically increase levels of public transparency in the international arms trade. Moreover, any exemptions for certain information should be rare and limited exceptions. This would shine a light on State practices, thereby enabling them to demonstrate that they are implementing the treaty in good faith.

3. *The ATT should explicitly require States to take concrete actions to control brokering by their nationals:* These should include ensuring that all brokering activities are authorized and that the authorization process involves assessment of a proposed transfer based on the application of comprehensive national risk assessment criteria.

6. BRINGING THE TREATY TO LIFE

STRENGTHENING THE FINAL PROVISIONS OF THE ATT

There are a number of problems and weaknesses in the section of the draft treaty text that deals with final provisions. Four key areas are identified here:

Early entry-in-force should be the objective – nothing is gained by delay.

Article 16 – Entry into force

The entry-into-force (EIF) requirement of 65 as contained in the draft text is too high. Early EIF should be the objective – nothing is gained by delay. Lowering the EIF requirement to 30 States would still give a high enough threshold to prevent any one country or specific group of countries from forcing the ATT through against the wishes of the broader international community.

Article 20 – Amendments

The current provisions under Article 20 mean that strengthening the treaty over time will be extremely difficult as any amendments to the treaty will require agreement by consensus. In order for the treaty to be able to develop over time it is vital that amendments are decided on by a majority of States Parties present and voting. Normal treaty practice is that only those States Parties that have ratified an amendment are bound by it. Accordingly, there are no compelling arguments against the institution of such a requirement. This underlines the need for States to focus on agreeing the highest possible standards from the very outset.

Article 21 – Conference of States Parties (CoP)

Article 21 specifies a number of tasks and responsibilities for the CoP including the power to ‘consider and adopt recommendations regarding the implementation and operation of this Treaty’. However it is not clear how the CoP is to arrive at these recommendations because there is no explicit provision for the CoP to review implementation of the Treaty by States Parties. The Treaty should provide that reviewing the application and implementation of the Treaty be an explicit function of the CoP.

Article 23 – Relations with States not party to this treaty

Article 23, which sets out relations with States not party to the treaty, is very confusing and its purpose is not clear. It asserts that ‘States Parties shall apply articles 3 and 4 to all exports of conventional arms within the scope of this Treaty to States not party to this Treaty’, which raises the prospect that other, relevant, provisions of the Treaty need not be applied to interactions with non-States Parties. Whether or not this is the intention of this Article, if left un-amended this could serve as a disincentive to States to sign and ratify the ATT. Non-states parties should not be subject to less stringent control, and therefore, this article should be deleted.

7. CONCLUSION AND RECOMMENDATIONS

The eyes of the world will be upon governments in New York in March 2013 to see if they can finalize a treaty that meets its humanitarian purpose: to curb the irresponsible trade in arms, save lives needlessly lost to armed violence, reduce the suffering of thousands affected by the ravages of war, and contribute to the socio-economic development of nations. The March negotiations provide governments with an historic opportunity to achieve a treaty that is wide in scope, has high international standards, and contains clear guidelines for its implementation as well as provisions that will enable the treaty to become a reality in the near future. It is a chance to negotiate a treaty that will make a real difference to the arms trade.

States cannot afford to adopt a weak treaty that is fatally flawed by excessive compromise in order to appease the sceptical few; this will not transform the arms trade.

A majority of States have fought long and hard over the past decade for a robust treaty; they must not be thwarted by a minority willing to trade substance for an illusion of universality. They must stand firm and united to achieve a strong treaty that will create high international norms and that will encourage others to join over time. States cannot afford to adopt a weak treaty that is fatally flawed by excessive compromise in order to appease the sceptical few; this will not transform the arms trade. The international community has come a long way in the last six years, and the positions of States including the most anxious about the ATT have shifted significantly, but there is still more to be done. It is crucial that the process does not now fall at the final hurdle, and that all UN Member States rise to the occasion, agreeing a strong treaty rather than a quick fix.

The year 2013 represents an opportunity for States to act to bring the arms trade under control with a common set of legally binding international rules – failure and delay will be measured in the continued loss of human lives.

The loopholes identified in the draft treaty must be fixed. Without these missing pieces, the treaty cannot be the ‘strong and robust’ regulatory system that States were mandated to achieve by the UN. The treaty that comes out of the Conference in March 2013 must have unambiguous and precise language. States must be clear about the treaty’s provisions and their obligations in implementing the ATT.

RECOMMENDATIONS

- The Scope of the treaty must be fully comprehensive. It must control all types of conventional weapons, ammunition and munitions, and parts and components. It must also cover all the ways in which international arms transfers take place.
- The Criteria of the treaty must be robust, and ensure that arms must not be transferred if there is a substantial risk that they would be used to violate

IHL/IHRL, exacerbate armed violence and conflict – including gender-based armed violence – encourage corruption, or undermine development.

- The Implementation provisions must ensure that public reporting on all transfers is an obligation on member states, and that activities like brokering are carefully and comprehensively covered.
- The Final Provisions must ensure the earliest entry into force for the treaty, and develop amendment provisions that allow the States Parties to develop its provisions over time.

NOTES

- ¹ UN (2012) 'The draft of the Arms Trade Treaty', 26 July 2012, A/CONF.2/7/CRP.1, <http://www.un.org/disarmament/ATT/> (last accessed 8 February 2013).
- ² At the United Nations First Committee on Disarmament and International Security (8 October-6 November 2012) resolution L.11 was passed calling for a second diplomatic conference to be held in 18-29 March 2013. See <http://www.reachingcriticalwill.org/disarmament-fora/unqa/2012/resolutions> (last accessed 8 February 2013)
- ³ Representatives from 74 States took the floor during the Conference in July 2012 to deliver a joint statement underlining what they considered to be the 'core' elements of the treaty 'without which our efforts would fall significantly short of what the General Assembly resolution has mandated,' and that the 'ATT will be judged by the strength of its criteria (and also its scope).' See http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/ negotiating-conference/statements/20July_groupof74.pdf (last accessed 8 February 2013).
- ⁴ UN General Assembly resolution 64/48, paragraph 4.
- ⁵ UN Treaty Collection (1966) 'International Covenant on Civil and Political Rights', http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last accessed 8 February 2013).
- ⁶ *Ibid.*
- ⁷ UN Treaty Collection (1982) 'United Nations Convention on the Law of the Sea', http://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&lang=en (last accessed 8 February 2013).
- ⁸ UN (2010) 'Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction', http://untreaty.un.org/cod/avl/pdf/ha/cpusptam/cpusptam_e.pdf (last accessed 8 February 2013).
- ⁹ UN Treaty Collection (2008) 'Optional Protocol to the International Covenant on Economic, Social and Cultural Rights', http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en (last accessed 8 February 2013).
- ¹⁰ See the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm> (last accessed 8 February 2013).
- ¹¹ UN Treaty Collection (2002) Optional Protocol for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9-b&chapter=4&lang=en (last accessed 8 February 2013)
- ¹² Article 2.A, Paragraph 1 does not include 'ammunition and other munitions' or 'parts and components'. See UN (2012) 'The Draft of the Arms Trade Treaty', 26 July 2012, A/CONF.2/7/CRP.1, http://www.saferworld.org.uk/downloads/120726_CRP.1_%28draft_ATT_text%29.pdf (last accessed 8 February 2013).
- ¹³ *Ibid.*, p.3
- ¹⁴ According to Oxfam estimates, 12 billion bullets are produced each year – nearly two bullets for every person in the world. The global trade in ammunition for small arms and light weapons is worth more than the trade in firearms and light weapons themselves. D. Basu Ray and B. Murphy (2012) 'Stop a Bullet, Stop a War: Why ammunition must be included in the Arms Trade Treaty', Oxford: Oxfam, <http://www.oxfam.org/sites/www.oxfam.org/files/stop-bullet-stop-war-arms-trade-treaty-310512-en.pdf> (last accessed 8 February 2013).
- ¹⁵ Conflict Armament Research (2012) 'The distribution of Iranian ammunition in Africa: Evidence from a nine-country investigation', http://www.conflictarm.com/images/Iranian_Ammunition.pdf (last accessed 8 February 2013).
- ¹⁶ *Ibid.* For examples of where ammunition supplies (or lack thereof) have affected the outcome of conflicts, see also B. Murphy and D. Basu Ray, *op. cit.*
- ¹⁷ P. Herron, N. Marsh, M. Schroeder, and J. Lazarevic (2010) 'Emerging from Obscurity: The global ammunition trade', *Small Arms Survey 2010: Gangs, Groups and Guns*, Cambridge: Cambridge University Press, p.7, <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2010/en/Small-Arms-Survey-2010-Chapter-01-EN.pdf> (last accessed 8 February 2013).
- ¹⁸ According to the Small Arms Survey, the total annual value of authorized transfers of ammunition is estimated to be \$4.266bn. However, new market research suggests that these are likely to be conservative estimates. The think tank, Marketsandmarkets, estimates the value of the global ammunition 'market' at \$8.15bn for 2012, with small-calibre ammunition accounting for 44.51 per cent of this market. According to the Small Arms Survey, out of the total \$8.5bn annual value of authorized transfers of SALW, their parts, components, and ammunition, just over half (\$4.266bn) went towards ammunition. For Marketsandmarkets, 'market' includes domestic production and large-calibre systems, but not ammunition for civilian purposes. J. Grzybowski, N. Marsh, and M. Schroeder (2012) 'Piece by Piece: Authorised transfers of parts and accessories', in *Small Arms Survey 2012: Moving targets*, ch. 8, Cambridge: Cambridge University Press, [28](http://www.smallarmssurvey.org/fileadmin/docs/A-</div><div data-bbox=)

- [Yearbook/2012/eng/Small-Arms-Survey-2012-Chapter-08-EN.pdf](#) (last accessed 8 February 2013); Marketsandmarkets (2012) 'Global Ammunition Market (Large Caliber, Medium Caliber and Small Caliber) (2012-2017)', Marketsandmarkets, *December 2012*, <http://www.marketsandmarkets.com/Market-Reports/ammunition-market-923.html> (last accessed 8 February 2013).
- 19 Marketsandmarkets, *op. cit.*
- 20 D. Basu Ray (2012) 'The Final Countdown: A historic opportunity to deliver an arms trade treaty that saves lives', Oxford: Oxfam, p.30, http://www.oxfam.org/sites/www.oxfam.org/files/tb-final-countdown-arms-trade-treaty-020712-en_1.pdf (last accessed 8 February 2013).
- 21 M. Butcher and D. Basu Ray (2012) 'Piecing It All Together: Why the Arms Trade Treaty must regulate parts and components for weapons and military equipment', Oxford: Oxfam, pp. 2-3, <http://policy-practice.oxfam.org.uk/publications/piecing-it-all-together-why-the-arms-trade-treaty-must-regulate-parts-and-components-230815> (last accessed 15 February 2013).
- 22 A. Cordesman (2004) *Military Balance in the Middle East*, Greenwood Publishing Group, p.96.
- 23 International Institute for Strategic Studies (2010) 'Military Balance 2010', p.263.
- 24 J. Hardy and A. Davis (2013) 'Materiel moves: Chinese arms sales building key alliances in SE Asia', *Jane's Defence Weekly*, 31 January 2013
- 25 'China to train Cambodian army', *Bangkok Post*, <http://www.bangkokpost.com/news/local/332578/china-to-train-cambodian-army>
- 26 During the treaty negotiations, more than 100 Member States expressed strong support for the text to be wider in scope than the 7+1 formula. See armstreaty.org 'Other conventional weapons', Mapping the Arms Trade Treaty, http://armstreaty.org/mapsstates_map.php?sid=1362 (last accessed 8 February 2013).
- 27 Article 3 and Article 4 (paragraphs 2 and 6) of the draft treaty identify a range of risks for national assessments to consider before approving transfers of arms. These include diversion, gender-based violence, organized crime, corruption, and development. UN (2012) 'The draft of the Arms Trade Treaty', 26 July 2012, A/CONF.217/CRP.1, http://www.saferworld.org.uk/downloads/120726_CRP.1_%28draft_ATT_text%29.pdf (last accessed 8 February 2013).
- 28 While more than 130 Member States have called for ammunition to be included within the scope of the treaty, a handful of influential States are unwilling to amend the text of Article 2.A.1 to include ammunition owing to domestic and strategic considerations. These include China, Egypt, Syrian Arab Republic, and the United States. Those member countries calling for a widening of the scope include the Economic Community of West African States (ECOWAS), and the Caribbean Community and Common Market (CARICOM). See armstreaty.org 'Ammunition', Mapping the Arms Trade Treaty, http://armstreaty.org/mapsstates_map.php?sid=1333 (last accessed 8 February 2013).
- 29 These other crimes are specified in the First Additional Protocol to the Geneva Conventions, the Rome Statute of the International Criminal Court, and customary international law.
- 30 Article 1 (1) of the Convention on the Prevention and Punishment of the Crime of Genocide states: 'The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent *and to punish*.' This requires an assessment of whether that which is to be prevented is likely to occur – see, for example, the Bosnian Genocide Case: 'the obligation of States parties [to the Genocide Convention] is ... to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of 'due diligence', which calls for an assessment *in concreto*, is of critical importance. Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide.' International Court of Justice (2007) 'Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina V. Serbia and Montenegro)', Judgement of 26 February 2007, <http://www.icj-cij.org/docket/files/91/13685.pdf> (last accessed 14 February 2013).
- 31 Russia has shipped millions of dollars worth of missiles, combat jets, tanks, artillery and other military gear to Syria for more than four decades. From 2007 to 2010, the value of Russian arms deals with Syria more than doubled, to US\$4.7 billion from \$2.1 billion, compared with 2003 to 2006. D. Basu Ray (2012) 'The Devil is in the Detail: The importance of comprehensive and legally binding criteria for arms transfers,' p.3, <http://policy-practice.oxfam.org.uk/publications/the-devil-is-in-the-detail-the-importance-of-comprehensive-and-legally-binding-221514>; SIPRI Arms Transfers Database, http://armstrade.sipri.org/armstrade/page/trade_register.php (both last accessed 13 February 2013).
- 32 UN Commodity Trade Statistics Database (UN COMTRADE), <http://comtrade.un.org/db/default.aspx>. Customs codes referenced: [HS1996 code 930100] Military weapons, other than hand guns, swords, etc; [HS1996 code 930200] Revolvers and pistols; [HS1996 code 930510] Parts and accessories of revolvers or pistols; and [HS1996 code 930690] Munitions of war, ammunition/projectiles and parts.
- 33 A report from the UN Office of the High Commissioner for Human Rights outlined a litany of government abuses,

- including apparent 'shoot-to-kill' policies against protesters by snipers. The report further stated that, 'Information provided to the commission illustrates the extensive resources that the government and armed forces have devoted to efforts to control protests. In addition to regular military units armed with automatic weapons, the military deployed snipers, Special Forces units, tanks, armoured personnel carriers and intelligence units during operations to end demonstrations.' Human Rights Council (2011) 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', p.15, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session18/A-HRC-S-17-2-Add1.pdf> (last accessed 13 February 2013).
- ³⁴ 'Syria: Incendiary bombs used in populated areas', Human Rights Watch, December 2012, <http://www.hrw.org/news/2012/12/12/syria-incendiary-weapons-used-populated-areas> (last accessed 4 March 2013).
- ³⁵ 'Ban condemns attack on Turkish-Syrian border', UN News Centre, 13 February 2013, <http://www.un.org/apps/news/story.asp?NewsID=44130&Cr=Syria&Cr1=#.UR0Yhx072JY> (last accessed 13 February 2013).
- ³⁶ A. Quinn, 'US approves Egypt military aid despite rights fears', Reuters, 23 March 2012, <http://www.reuters.com/article/2012/03/23/us-egypt-usa-aid-idUSBRE82M0UG20120323> (last accessed 13 February 2013).
- ³⁷ *Ibid.*
- ³⁸ This included \$54m in aircraft and related equipment, as well as \$36m in other equipment. 'The US and Egypt sure look like allies, at Least on Military Matters', *the Atlantic*, 14 September 2012, <http://www.theatlantic.com/international/archive/2012/09/the-us-and-egypt-sure-look-like-allies-at-least-on-military-matters/262411/> (last accessed 13 February 2013).
- ³⁹ Amnesty International, 'Reaction to David Cameron's arms trip to UAE and Saudi Arabia', 5 November 2012, http://www.amnesty.org.uk/news_details.asp?NewsID=20427 (last accessed 8 February 2013).
- ⁴⁰ 'David Cameron defends arms deals with Gulf states', *The Telegraph*, 5 November 2012, <http://www.telegraph.co.uk/finance/newsbysector/industry/defence/9656393/David-Cameron-defends-arms-deals-with-Gulf-states.html> (last accessed 8 February 2013).
- ⁴¹ 'BAE Systems and Saudi Arabia sign £1.9bn Hawk jet deal', BBC, 23 May 2012, <http://www.bbc.co.uk/news/uk-politics-18173779> (last accessed 8 February 2013).
- ⁴² Amnesty International, *op. cit.*
- ⁴³ This secondary set includes the risk of diversion, gender-based violence and violence against children, transnational organized crime, corruption, and 'development'. Within that context, the draft treaty refers specifically to the term 'development', as opposed to the more widely accepted lexicon of 'socio-economic development', or 'sustainable development'. Without these qualifiers, the term 'development' can have a variety of meanings that are not necessarily conducive to the language of socio-economic or sustainable development.
- ⁴⁴ C. Nagarajan and C. Green (2012) 'Putting women's rights into the Arms Trade Treaty', Gender Action for Peace and Security (GAPS), , <http://policy-practice.oxfam.org.uk/publications/putting-womens-rights-into-the-arms-trade-treaty-231631> (last accessed 4 March 2013).
- ⁴⁵ *Ibid.*
- ⁴⁶ *Ibid.*
- ⁴⁷ E. Rehn and E. Johnson Sirleaf (2002) 'Women, War, Peace: The independent experts' assessment on the impact of armed conflict on women and women's role in peace-building', UN Development Fund for Women (UNIFEM), http://www.unifem.org/materials/item_detail89f.html (last accessed 8 February 2013).
- ⁴⁸ 'The impact of Guns on Women's Lives' (2005) Amnesty International, IANSA, Oxfam, p.44, <http://policy-practice.oxfam.org.uk/publications/the-impact-of-guns-on-womens-lives-112463> (last accessed 4 March 2013).
- ⁴⁹ 'UN official condemns sexual violence in DR Congo by renegade soldiers', UN News Centre, 18 July 2012, <http://www.un.org/apps/news/story.asp?NewsID=42507&Cr=#> (last accessed 8 February 2013).
- ⁵⁰ 'Syria: Sexual assault in detention', Human Rights Watch, 15 June 2012, <http://www.hrw.org/news/2012/06/15/syria-sexual-assault-detention> (last accessed 8 February 2013).
- ⁵¹ 'Syria: A regional crisis. The IRC Commission on Syrian Refugees', International Rescue Committee, January 2013, <http://www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf> (last accessed 8 February 2013).
- ⁵² Small Arms Survey 'Gangs', <http://www.smallarmssurvey.org/?id=301> (last accessed 8 February 2013).
- ⁵³ *Ibid.*
- ⁵⁴ *Small Arms Survey 2012: Moving targets* (2012), <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2012.html> (last accessed 4 March 2013).
- ⁵⁵ The Firearm Tracing System data only covers seized weapons that are traced (pursuant to a request by Mexico), i.e.

not all weapons seized or recovered in Mexico are sent for tracing to the United States.

- 56 A total of 14,504 out of 20,335 firearms that were recovered in 2011 could be traced back to the United States, up from 8,338 in 2010. US Department of Justice, 'ATF Mexico, 2007-2011', 12 March 2012, <http://www.atf.gov/statistics/download/trace-data/international/2007-2011-Mexico-trace-data.pdf> (last accessed 8 February 2013).
- 57 *Ibid.*
- 58 The World Bank estimated that more than \$1tn dollars (\$1,000bn) was paid globally in bribes each year (2004). The World Bank also put World GDP at \$41.5tn (current prices, 2004). Global military expenditure in 2004 was approximately \$1tn (current prices, SIPRI). If \$1 in every \$41.5 is misappropriated globally each year, then in terms of the defence sector, worth approximately 1tn, the cost of corruption each year is some \$20bn. This assumes that the defence sector is no more prone to corruption than other sectors – an assumption that conflicts with popular perceptions.
- 59 US Department of Commerce, Trade Promotion Co-ordinating Committee Report (March 2000).
- 60 Simmons & Simmons (2006) 'International business attitudes to corruption – survey 2006', Control Risks Group Limited and Simmons & Simmons, p.5, http://www.csr-asia.com/summit07/presentations/corruption_survey_JB.pdf (last accessed 8 February 2013).
- 61 '70% of governments fail to protect against corruption in the defence sector', Transparency International, 29 January 2013, <http://www.transparency.org.uk/news-room/press-releases/13-press-release/487-70-of-governments-fail-to-protect-against-corruption-in-the-defence-sector> (last accessed 8 February 2013).
- 62 'Six employees of Finnish firm Patria charged with bribery, espionage', Agence France Press, 18 December 2012, <http://www.defensenews.com/article/20121218/DEFREG01/312180007> (last accessed 8 February 2013).
- 63 See for instance, P. Collier and A. Hoeffler (2004) 'The Challenge of Reducing the Global Incidence of Civil War', Centre for the Study of African Economies, Department of Economics, Oxford University, pg. 6, http://www.copenhagenconsensus.com/Files/Filer/CC/Papers/Conflicts_230404.pdf
- 64 UN Stats 'Millennium Development Goals Indicators', <http://mdgs.un.org/unsd/mdg/data.aspx> (last accessed 8 February 2013).
- 65 C. Baudot (2013) 'Mali's conflict refugees', Oxford: Oxfam, <http://policy-practice.oxfam.org.uk/publications/mali-conflict-refugees-responding-to-a-growing-crisis-266392> (last accessed 8 February 2013).
- 66 2006 represents the last available dataset on these indicators. All three countries are designated by the World Bank as Lower Income/Lower Middle Income countries. K. Kotoglou, D. Basu Ray, and S. Jones (2008) 'Monitoring resource flows to fragile States: 2007 report', Organisation for Economic Co-operation and Development, DAC Fragile States Group, p.40, <http://www.oecd.org/dataoecd/4/21/41680220.pdf> (last accessed 8 February 2013).
- 67 *Ibid.*
- 68 This is a non-exhaustive list. Other problems exist which, owing to space constraints, cannot be explored in this paper. Oxfam, Saferworld, and other members of the Control Arms Coalition can provide more information as required.
- 69 'Cyprus stops Syria bound ammunition ship', *the Guardian*, 11 January 2012, <http://www.guardian.co.uk/world/2012/jan/11/cyprus-stops-syria-russian-ship> (last accessed 4 March 2013).
- 70 'Russian Foreign Minister speaks out over Syrian helicopter controversy', *The Telegraph*, 29 June 2012, <http://www.telegraph.co.uk/sponsored/russianow/politics/9365496/russia-syria-helicopters.html> (last accessed 4 March 2013).
- 71 In June of 2012, the US Secretary of State accused Russia of sending attack helicopters to Syria, warning that the shipment 'will escalate the conflict quite dramatically.' However, the Russian Foreign Minister rejected the claim, saying that Russia was only shipping air defense systems under previously signed contracts. 'A glance at Russian arms sales to Syria', *the Guardian*, 14 June 2012, <http://www.guardian.co.uk/world/feedarticle/10288835> (last accessed 4 March 2013).
- 72 'Lavrov Dismisses Claims of New Helicopter Shipments to Syria', RIA Novosti, Moscow, 24 June 2012, <http://en.rian.ru/russia/20120624/174216985.html> (last accessed 4 March 2013).
- 73 UN Register of Conventional Arms, Participation by Member States (2012), <http://www.un.org/disarmament/convarms/Register/DOCS/2012-Register-Composite-Tables.pdf> (last accessed 8 February 2013).
- 74 UN Office for Disarmament Affairs (2012) 'Transparency in Armaments: Reporting to the United Nations Register of Conventional Arms', <http://www.un.org/disarmament/convarms/Register/DOCS/20120312-Register%20Fact%20sheet.pdf> (last accessed 8 February 2013).

© Oxfam International March 2013

This paper was written by Helena Whall, Deepayan Basu Ray, and Elizabeth Kirkham. Oxfam and Saferworld acknowledge the assistance of Anna Macdonald, Roy Isbister, Claire Mortimer, ATT Legal, Ed Cairns, Abigail Humphries Robertson, Jonathan Mazliah, Lorey Campese, Stacey Sundar, Daniel Gorevan, Louis Belanger, and Zahra Akkerhuys in the production and development of the paper. The authors are also very grateful to colleagues from across Oxfam affiliates and Control Arms Coalition who have provided considered comments and suggestions throughout the drafting process, including [from Oxfam] Caroline Green, Nicolas Vercken, Ben Murphy, Scott Stedjan, Robert Lindner, Eveline Philipse, and John Magrath; and also Ken Epps (Project Ploughshares), Daniel Mack (Sou Do Paz), Jeff Abramson (Control Arms Secretariat), Hector Guerra (IANSA), Tobias Bock (Transparency International), Helen Close (Omega Foundation), Nathalie Weizmann (ICRC), and Paul Holtom (SIPRI).

This paper is part of a series of papers written to inform public debate on development and humanitarian policy issues.

For further information on the issues raised in this paper please e-mail advocacy@oxfaminternational.org

This publication is copyright but the text may be used free of charge for the purposes of advocacy, campaigning, education, and research, provided that the source is acknowledged in full. The copyright holder requests that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, permission must be secured and a fee may be charged. E-mail policyandpractice@oxfam.org.uk.

The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under ISBN 978-1-78077-269-1 in March 2013.

Oxfam GB, Oxfam House, John Smith Drive, Cowley, Oxford, OX4 2JY, UK.

SAFERWORLD

Saferworld is an independent international organization working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

OXFAM

Oxfam is an international confederation of 17 organizations networked together in 94 countries, as part of a global movement for change, to build a future free from the injustice of poverty:

Oxfam America (www.oxfamamerica.org); Oxfam Australia (www.oxfam.org.au); Oxfam-in-Belgium (www.oxfamsol.be); Oxfam Canada (www.oxfam.ca); Oxfam France (www.oxfamfrance.org); Oxfam Germany (www.oxfam.de); Oxfam GB (www.oxfam.org.uk); Oxfam Hong Kong (www.oxfam.org.hk); Oxfam India (www.oxfamindia.org); Intermón Oxfam (Spain) (www.intermonoxfam.org); Oxfam Ireland (www.oxfamireland.org); Oxfam Italy (www.oxfamitalia.org); Oxfam Japan (www.oxfam.jp); Oxfam Mexico (www.oxfammexico.org); Oxfam New Zealand (www.oxfam.org.nz); Oxfam Novib (Netherlands) (www.oxfamnovib.nl); Oxfam Québec (www.oxfam.qc.ca)

Please write to any of the agencies for further information, or visit www.oxfam.org

control arms

