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Building the Path to Disarmament

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In Brief

The goal of this article is to examine and suggest proposals that could enhance the role of the international Arms Trade Treaty (ATT) - presently in discussion at the United Nations - in the regulation of the international arms trade. We address the role of the legal trade in: (a) providing the bulk of the arms used in armed conflicts, armed violence and human rights abuses; (b) the excessive arming of developing countries; and (c) the continuous unsettling of power balances in sensitive world regions, not least because of competition among arms-exporting countries.

Key Concepts

- No global regime exists to control the international trade of conventional arms.
- The international Arms Trade Treaty (ATT), presently in discussion, is a potentially historic step to regulate this trade.
- But the ATT in its current form lacks fundamental elements needed for a robust and effective regulatory framework.

The absence of a global regime to control international trade in conventional arms persists despite the fact that in the 22 years between 1989 and 2010, the world witnessed the outbreak or continuation of 131 international armed conflictsⁱ, involving the forces of 112 countries and 217 political opposition groups. An additional 392 armed intrastate conflicts between political groups took place in the same period across 55 countries.ⁱⁱ In these 22 years, 1.1 million battle-related deaths mounted for the international conflicts, and almost 140,000 for the intrastate conflicts. Government forces of 74 countries perpetrated one-sided violenceⁱⁱⁱ against civilians, resulting in 1.2 million fatalities.

This estimate excludes millions more gun killings and injuries inflicted on civilians. It is estimated that 42 per cent of global homicides^{iv} are actually committed by individuals and criminal gangs using firearms, according to the UN Office on Drugs and Crime (UNODC). This figure is based on statistical returns from 108 countries (estimated to cover just over 50 per cent of the world's homicides). Thus, it is suggested by the UN that around 199,000 homicides of the estimated total of 468,000 homicides were committed using a firearm in 2010.

The root causes of the armed conflicts and other violence of the 1990s and 2000s are complex and no single factor can explain their outbreak and continuation. However, nearly all of the major armed conflicts fought in those decades involved territories located south of the virtual border^v that divides the affluent from the poor economies. (Throughout this article, we use *South* and *North* metaphorically.) South of this border, very few countries^{vi} have a substantial domestic production of conventional arms.^{vii} Most of these conflicts were therefore waged with conventional arms that arrived legally from the North or that were seized from government depots or forces. In fact, since 1990, only about two dozen armed conflicts have been the target of a total or partial United Nations arms embargo.^{viii} These embargoes were frequently violated and in other conflicts where no universal ban existed, governments and parties continued to procure arms from abroad.^{ix}

The geographic component to the figures on non-conflict civilian armed violence is also striking. Sub-Saharan Africa and Central and South America, including the Caribbean, were the

most seriously affected by non-conflict armed violence, experiencing homicide rates of more than 20 per 100,000 per year, compared with the global average of 7.6 per 100,000 population. Countries in Southern Africa, Central America, and South America - including Honduras, Trinidad and Tobago, El Salvador, Guatemala, Jamaica, South Africa, Lesotho, Colombia and Venezuela - report some of the highest recorded rates of violent death in the world.

Evidence suggests that most of the 1989-2010 armed conflicts were waged with conventional arms whose transfer was authorized to the concerned areas and parties. Furthermore, armed groups often fought with arms seized from government depots or from government armed forces.

Regarding civilian-on-civilian armed violence, evidence points to patterns of officially tolerated proliferation of firearms mostly originating from foreign manufacture, but with local firearms and ammunition producers in increasing numbers of countries.

The Global Arms Trade

The recorded value^x of international transfers of conventional arms^{xi} is approaching USD 100 billion annually; in 2010 it was around USD 80 billion. This figure is in addition to more than USD 120 billion in the trade of military services, such as construction and training, and dual-use technologies, such as sensors and lasers. There are presently around 40 countries with large-scale defense production capabilities and another 60 or so manufacturing arms and ammunition at a relatively small scale. This amounts to 52 percent of the 193 UN member States.^{xii}

The five permanent, veto-holding, members of the UN Security Council – China, France, Russia, the United Kingdom, and the United States - accounted for more than 50% of total worldwide arms deliveries in 2010, or \$45 billion, according to national and supranational reports on arms trade.

In other words, the guardians of world security are also the most prominent arms exporters.

The United States ranked first, with 19 billion dollars in deliveries in 2010 and 21.3 billion the following year. In 2011, the United States arms manufacturers and dealers exported to 161 countries, and direct government-to-government sales were arranged with 133 countries. Next in line came Russia, then the UK, France, and lastly China. Other prominent purveyors include Israel, Italy, Germany, Sweden, Spain, and South Africa, in total accounting for a further 18 billion in deliveries in 2010.^{xiii}

The southern demand for conventional arms has been an indispensable component of the arms business, and has helped to maintain the production lines of the North. The governments and arms manufacturers of arms-exporting countries have consistently induced customers in the developing countries (who have often actively colluded) to acquire armaments well beyond their reasonable defense or law enforcement needs. This is done by legal means—such as, credits for importing arms, security assistance and arms surplus programs, offsets policies, and barter trade—or illegally by bribing government procurement officials or politicians. Developing countries share by value of world imports of major weapon systems fluctuated between 62% and 66% of the world total in the last twenty years,^{xiv} with an often appalling accumulation of major equipment^{xv} and infantry weapons.^{xvi} This has undeniably had severe consequences on national budgets and debts, on the proliferation and endurance of armed conflicts and violence, and ultimately on the continuing violation of human rights and disturbance of regional balances of power.

Early “Great Power” attempts to control the arms trade

The earliest attempts by the old European Imperial Powers to restrict the international trade in conventional weapons from Europe to Northern Africa dates back to 1890 and was linked the

abolition of the slave trade.^{xvii} After the First World War the victorious powers attempted to agree a convention with rules to limit their international arms transfers to Africa, Turkey and the Middle East, but the US objected to supervision of the treaty by the League of Nations. A renewed attempt in 1925 to establish an arms traffic treaty with no supervisory body also failed through lack of support. In 1935 the Special Committee for the Regulation of the Trade in and Private and State Manufacture of Arms and Implements of War (hereafter the Special Committee) of the First World Disarmament Conference^{xviii} adopted the “American Draft Articles”^{xix}, a set of measures that included “*defining the categories of arms to be regulated, requiring national licensing of exports, and compelling states to make public their arms transactions*” and limit holdings of arms by States. The articles also proposed “*a powerful international supervisory body, the Permanent Disarmament Commission.*”^{xx} However, other major military powers declined to join the US initiative.

Following the Second World War, as the Cold War emerged the US and its allies set up the Coordinating Committee of the Consultative Group (COCOM) aimed to impose restrictions on the transfer of dual-use technology to the USSR and its allies.^{xxi} While the effectiveness of the COCOM on hampering the military technology development of the Soviet Union and its allies was at least questionable,^{xxii} it demonstrated that control on trade of sensitive goods could be enacted if there was the political will to do so. At the United Nations level almost nothing was done between 1945 and 1991 to establish international arms trade control systems or standards. The decision by 150 states in December 1990 to set up the UN Register of Conventional Arms as a transparency measure for seven categories of offensive weapons^{xxiii} gathered support after the Gulf War, but the voluntary “rules of restraint” agreed by Permanent Members of the Security Council^{xxiv} who had supplied most of the arms used in the Gulf War^{xxv} were vague.

The Arms Trade Treaty

The proposal in 1993 by four nongovernmental organizations (NGOs)^{xxvi} of a legally binding International Code of Conduct on arms transfers drew upon two the European Union Guidelines of Arms Exports and the OSCE Principles on Arms Transfers.^{xxvii} From 1995, the Code was promoted globally by a number of Nobel Laureates and NGOs^{xxviii} but international attention was focused on the prohibition of certain inhumane weapons of war especially landmines and on the UN Programme of Action on the illicit trade in small arms and light weapons. To popularize the treaty proposal, the principal NGOs changed its name to Arms Trade Treaty (ATT) and began the global Control Arms Campaign in 2003.^{xxix}

Following the invasion of Iraq, support for the campaign and idea of an ATT gathered pace amongst governments leading to a benchmark decision approved by 153 votes (with only the USA against) in the UN General Assembly on 6 December 2006 (Resolution 61/89), requesting the UN Secretary General “*to seek the views of Member States on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, and to submit a report on the subject to the General Assembly at its sixty-second session*”.^{xxx}

Between 2007 and 2009, a record number of States submitted mostly positive views on the treaty and expert UN meetings discussed options.^{xxxi} In December 2009 the General Assembly approved a formal treaty negotiation process^{xxxii} and five U.N. preparatory committee meetings fed proposals to the UN Conference on the ATT throughout July 2012. The Chair of the U.N. ATT process, Ambassador Roberto García Moritán, presented several draft papers on the main results of the discussions, and proposed detailed draft elements to be considered in an ATT.^{xxxiii} Representatives from the various nongovernmental organizations that campaigned for an ATT contributed substantially to the discussions of the preparatory committees with several studies, discussion papers, and presentations in side-events, whilst highlighting weak points in the

Chair's drafts. They also advocated for more stringent rules on several issues, including respect of international human rights law and international humanitarian law.^{xxxiv} Ambassador Moritán initially presented a new draft treaty text^{xxxv} but the Conference was unable to come to a final agreement on a modified version^{xxxvi} issued on July 26. To complete the negotiations on the July 26 draft, on December 24, 2012, the General Assembly approved the proposal for a "final U.N. Conference on the ATT" to be held in March 2013.^{xxxvii}

The ratification of an ATT at the U.N. level and the recognition that the international arms trade must be regulated at national level according to common global standards - for its "potential" role in armed conflicts, in severe violations of human rights, and in diverting scarce resources from economic and social development - would be an historic achievement in itself. However, the current lack of some fundamental elements in the proposed ATT could merely perpetuate the status quo. These elements excluded from the draft treaty are:

- International supervision over implementation of the ATT;
- "Ammunition and munitions," "parts and components," and "military technology" as part of the items in the definition of scope to which the ATT fully applies;
- Certain military equipment in the list of the proposed scope;
- Regulation and monitoring of arms export-related financial and transport services;
- Definition of what constitutes *export, import, transit, or trans-shipment*;
- An obligation to publicize annual reports prepared by States on their arms trade, as well as a regulatory framework mandating what those reports contain;
- Mandated reporting on trade and transfers related to military industrial cooperation projects;
- A majority or qualified majority for amending the ATT. (A consensus is now required);
- Regulation of certain types of "internal transfers" of arms.

For the ATT to truly be effective, these exclusions must be addressed.

Further steps needed for an effective and robust ATT

"It has always been considered utopian to suggest any fundamental change in the international system. More and more one wonders, however, whether there is anything so basically unrealistic as "realpolitik," as the traditional strategy of national egotism, national armaments, alliances, balance of power, deterrence, challenge and response."

Charles Yost^{xxxviii}

To make the ATT adequate to the complex frameworks in which conventional arms transfers occur requires realism as well as *vision*. The fact that some states prefer pretense to serious regulation is not enough for the creation of a robust and effective ATT. Without restating everything that has already been proposed over the past two decades about the need for legally binding criteria for arms transfer decision-making, the challenge must also be to develop and shape international arms trade regulation to suit future contexts. The following considerations stem from a reflection on the many contributions that organizations and individuals, including the authors, have made during recent years to improve proposals for the ATT.^{xxxix} These considerations are intended for an ATT that could be pragmatically engineered to achieve the stated goals of the draft treaty in a fast-changing world.

- **The need for an international mechanism with the power to supervise implementation**

of the ATT's provisions. As reported above, the Special Committee in 1934 outlined the need for "a powerful international supervisory body, the Permanent Disarmament Commission".^{xi} It was envisaged that the Commission would help verify the limitations and reduction of national arms holdings, as well as monitor the international trade. What seemed obvious at that time was that an international agreement could not be enforced by simply leaving the task and its policing to the States themselves.^{xii} Attempts by Amnesty International and other Nobel Peace Laureates to float proposals for an international verification mechanism for the treaty were not successful.^{xiii} A fair portion of the proposed ATT's provisions are already in force at regional or State levels but are sometimes either violated by the very authorities in charge of their implementation or else ignored when special interests or supposed national security issues are involved. A permanent disarmament commission could function as an inspection agency, as in other international treaties, and could have the power to propose sanctions on States found ignoring their treaty obligations.

- **The need to fully include in the treaty's scope "munitions", "ammunition", "spare parts and components", and "military technology"**. A rifle without ammunition is a high tech club. Common sense dictates that munitions and ammunition be included in the ATT for it to be effective as has long been demanded by NGO proponents^{xiii}. Currently States regulate the international trade of, say, iron, wood or plastic, but according to several States (including the United States) it is too sensitive and difficult to fully regulate and report on the international trade in ammunition under the ATT. Yet the United States has *national* regulations on the import and export of ammunition. Similarly, some States argue for the need to exclude from the ATT spare parts and components or technology - the systems that enable production and basic functioning of conventional arms.
- **The need to broaden the scope of the ATT.** Excluded in the present ATT draft, as pointed out by NGO proponents^{xiv}, are certain categories of equipment and technologies such as military vehicles, transport aircraft, military training aircraft, robots, drones, optical and electronic devices used in the coordination of combat fields or combat theaters, dual-use items used in cyber wars, and equipment used by security forces. Exclusion of these from a future ATT means willfully turning a blind-eye to the reality of armed violence and warfare: armed drones are currently used for extra-judicial killings,^{xv} and military training aircraft can carry weapons whilst some are specifically designed for counter-insurgency operations.^{xvi}
- **The need to add other services.** In addition to addressing brokering, the ATT should include financial and transport services. These activities are not only essential to the actual transfers of conventional arms, but also leave a physical trace that may serve to verify the contents, their value, and the time of the transfers, beyond that which is declared by private or public entities. The authors of this article have reported extensively since 1999 on the importance and usefulness of monitoring these services for arms control purposes.^{xvii} The ATT should require States to register finance providers engaged in arms provision activities operating within their territory, as well as require licensing or authorization of each proposed finance provision activity. Also mandatory should be the registration of transport service providers engaged in arms transport operating within their territory, along with the notification of relevant authorities regarding each proposed transport service provision activity. Finally, transport service providers should be required to maintain comprehensive and verifiable documentation, including cargo manifests, airway bills, bills of lading and invoices, which at a minimum must contain details of the export authorization, the consignee/consignor, the enduser, and the relevant customs Tariff codes identifying each transported item.

The need for clear definitions of "export", "import", "transit", "trans-shipment" and "transfers". Strictly speaking, *export* or *import* are terms related to commercial activities and do not exhaust the definition of *international transfers*. The concept of international transfers

includes government-to-government deliveries and deliveries as the result of grants, gifts, loans, barter trade, excess arms programs, and so forth. As frequently pointed out by Amnesty International and others^{xlviii}, all of these various types of transfers need to be included in the ATT. For instance, excluding government-to-government deliveries from the ATT would render a considerable amount of international arms transfers outside of the ATT's cover. In a 2010 report the United States Government Accountability Office reported that nearly 41% of the international arms transfers by the United States were government-to-government deliveries.^{xlix} Moreover, the draft text does not properly address customs regulations relating to transit and trans-shipment, as it advocates measures that are either already universally in force or cannot be performed by the State in which a transit or trans-shipment occurs without revision of internationally accepted and regulated practices.^l An enhanced ATT should include a completely revised provision on transit and trans-shipment in order to include the addition of other customs practices that are relevant for arms trade control.

- **The need for enhanced transparency and reporting.** Article 10 of the ATT draft text allows States the freedom to record and report their arms trade "according to their national laws." States may "exclude commercially sensitive or national security information". The current proposal does not consider that the majority of States do not publish national reports on their arms exports and imports, and in several States the national regulations on transparency are minimal, include ineffective requirements, or are purposely weak, thereby reducing record-keeping to an exercise in creative administration. More often, verification mechanisms and law enforcement are under-funded or non-existent. If certain transfers are allowed to go unaccounted for under the guise of being "commercially sensitive" or "national security information", the ATT will provide an excuse for governments to hide information on the transfer of arms used in crimes, human rights violations and the excessive accumulation of conventional arms. Only a firm, robust, and mandatory framework for reporting can serve the purpose of a confidence-building ATT; vague, incomplete, unverifiable or censored information will not.
- **The need for a workable amendment process.** Due to the monumental task of reaching an agreement among the 193 members of the United Nations, no international treaty can be complete or adequate from the beginning. Therefore amending the treaty should be made relatively easy to ensure that the treaty can be strengthened for example in its application to the fast-changing evolution of conventional weapons technology. In article 20 of the draft treaty text regarding amendments, the *consensus* requirement should be substituted with a *majority* or *qualified majority* requirement as demanded by the NGOs^{li}. In the consensus environment, it takes only one State to disagree with proposed changes to indefinitely delay a process of amendments considered necessary by a large majority of other States.
- **The need to include certain types of internal transfers.** The ATT draft text excludes internal transfers, i.e. "*movement of conventional arms by a State Party or its agents for its armed forces or law enforcement authorities operating outside its national territories, provided the conventional arms remain under the State Party's ownership.*" The exclusion of these movements seems consistent with a treaty that regulates international transfers, i.e. transfers in which the ownership of the items changes nationality. However, if "internal" arms transfers to warehouses, depots, military bases and units located in other countries are not reported and controlled, there will be a significant loopholes and distortion in the assessment of the military balance of a certain area or region. Several prominent arms-exporting countries, such as the United States, are supposed to explicitly record equipment sent abroad for use by their troops as exports (or authorization to temporary or permanent exports). Internal transfers should be recorded at least for war-related material and peace-keeping operations. In fact, amazing quantities of armaments have already been abandoned by retreating troops

during wars abroad, seized by non-State actors or diverted – because of negligence or corruption – to unauthorized users, from the Democratic Republic of Congo to Ivory Coast, and Afghanistan to Iraq.

Conclusions

Due to the uneven economic development of nations, the regional balance of power constantly changes and the *realpolitik* sees the arms trade as a means to achieve a military balance and contribute to peace. Unfortunately, in reality, the spiral never ends and no real stability has ever been achieved by an arms race to the ever-elusive military equilibrium.

Within a reasonable timeframe, the ATT should include not only the provisions detailed above, but also that the ATT Secretariat or an ATT Permanent Disarmament Commission actively and periodically promotes arms trade ceiling measures aimed at progressively lowering the volume of arms traded in each region.^{lii} This was the vision in the 1930s that failed but it was partly achieved in Europe at the end of the Cold War. It can and should be revived and improved through mutual acceptance of limits and multi-lateral agreements on the model of other international treaties. The ATT could then be considered the first step in the direction of disarmament, not just regulation.

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ⁱ Uppsala Conflict Data Program, UCDP Conflict Encyclopedia: www.ucdp.uu.se/database, Uppsala University and Centre for the Study of Civil Wars, International Peace Research Institute, Oslo (PRIO), www.prio.no/cscw. Date of retrieval: 2012/02/22, Version 4-2011; Themnér, Lotta & Peter Wallensteen (2011) *Armed Conflict, 1946-2010* Journal of Peace Research 48(4). The UCDP/PRIO Armed Conflict Dataset (ACD) defines an armed conflict as “a contested incompatibility that concerns government and/or territory over which the use of armed force between the military forces of two parties, of which at least one is the government of a state, has resulted in at least 25 battle-related deaths each year.” See: Lotta Themnér, *UCDP/PRIO Armed Conflict Dataset Codebook*, 63324.

ⁱⁱ UCDP Non-State Conflict Dataset, Date of retrieval: 2012/02/22, Version 2.3-2011, 63654; UCDP Non-State Conflict Codebook, Version 2.3-2011, by Ralph Sundberg, 63374

ⁱⁱⁱ UCDP One-sided Violence Dataset, Date of retrieval: 2012/02/22, Version 1.3, 2011, 63356; UCDP One-sided Violence Codebook, Date of retrieval: 2012/02/22, Version 1.3, September 4, 2008, by Joakim Kreutz, 55080. “One-sided violence is the use of armed force by the government of a state or by a formally organized group against civilians which results in at least 25 deaths. Extrajudicial killings in custody are excluded.”

^{iv} Global Study on Homicide, 2011, UN Office for Drugs and Crime, p.15.

^v The “border” was set by the Report of the Independent Commission on International Development Issues, under the Chairmanship of Willy Brandt: *North South. A Program for Survival*. Cambridge, M.I.T. Press, 1980. “South” and “North” are used here metaphorically.

^{vi} For example, Ethiopia, Kenya, Namibia, Nigeria, Tanzania, Uganda, and Zimbabwe. However, their production is heavily dependent on licenses from the manufacturers of the “North”.

^{vii} “Conventional arms” means all types of military and non-military weapons, munitions, armaments and related parts and technology (including such items destined for use by internal security forces). See: Finardi, S., P. Danssaert, *Transparency and Accountability. Monitoring and Reporting Methods Under An Arms Trade Treaty*, TransArms-IPIS vzw, Antwerp, 2012, www.ipisresearch.be/search_publications.php

^{viii} Fruchart, D., P. Holtom, S.T. Wezeman and Strandow, D., P. Wallensteen, “*United Nations Arms Embargoes. Their Impact on Arms Flows and Target Behaviour*”, SIPRI and Uppsala Universitet, 2007.

^{ix} For example, no UN arms embargo existed on governments and armed groups during the Second Congo War (1998-2003), one of the most devastating conflicts fought in Africa. And no UN arms embargo exists since 2007 on DRC government’s procurements from abroad, notwithstanding the evidence that components of the DRC armed forces have sold their armaments to various rebel factions for cash, have no stockpile management, and often resell the arms they have received to foreign allies, such as Zimbabwe in 2008. See UN Security Council, Sanctions Committees, *Report of the Group of Experts*, Resolution 1807 (2008) on D.R. of the Congo, December 2008.

^x These values are about (a) what is recorded in the annual reports of arms-exporting countries - some 36 countries that make their

reports on international transfers of conventional arms publicly available - and (b) what is recorded by the UN Comtrade, a database of the world trade that includes imports and exports of infantry weapons and civilian firearms and parts, as recorded by Customs. See Appendix 1 in Finardi, S., P. Danssaert, *Rough Seas. Maritime Transport and Arms Shipments*, Transport Services under an Arms Trade Treaty Series, TransArms and IPIS vzw, Antwerp 2012, IPIS/TA, July 2012.

^{xi} “International transfers mean the physical movement of equipment and the tangible or intangible movement of technology into or from national territory and includes the transfer of title to and control over the equipment and technology.” See: *Transparency and Accountability*, 2012.

^{xii} United Nations, 2013, <http://www.un.org/en/members/growth.shtml>.

^{xiii} In 2010, Russia arms exports (received orders) reached 10.4 billions USD (13.2 billions in 2011 and 15 billions in 2012 to 88 countries). The United Kingdom reached 9 billions in received orders (including military aerospace); France’s arms exports (deliveries) reached 5 billions (5.3 in 2011 to 95 countries). In 2010, China sold arms for an estimated 2.2 to 3 billions USD. In 2010, Israel’s received orders reached 7.2 billions, while Italy exported arms (deliveries) for 3.7 billions (3.7 billions in 2011 to 73 countries), Germany for 2.8 billions (1.8 billions in 2011 to 53 countries), Sweden for 1.9 billions (2.1 in 2011 to 66 countries), Spain for 1.5 billions (3.4 billions in 2011 to 71 countries), and South Africa for 1.1 (1.3 billions in 2011 to 49 countries). See: *Rough Seas*, 2012.

^{xiv} See Richard F. Grimmett, *Conventional Arms Transfers to Developing Nations*, (CATDN) annual reports, by the US Congressional Research Service 1993 to 2011.

^{xv} According to CATDN, for the period 1988-2011 Developing Countries imported 11,983 Tanks and Self-Propelled Guns; 22,336 APCs and Armored Cars; 3,170 Artillery; 2,742 Supersonic Combat Aircraft; 638 Subsonic Combat Aircraft; 2,306 Other Aircraft; 2,981 Military Helicopters; 162 Major Surface Combatants; 1,149 Minor Surface Combatants; 56 Submarines; 73 Guided Missile Boats; 41,381 Surface-to-Air Missiles; 250 Surface-to-Surface Missiles; 3,615 Anti-Ship Missiles.

^{xvi} See the U.N. COMTRADE database for Customs-recorded arms transfers. The Norwegian Initiative on Small Arms Transfers (<http://legacy.prio.org/NISAT/Small-Arms-Trade-Database/>) maintains the most accurate database on transfers of small arms and regularly publishes reports focusing on various small arms-related issues.

^{xvii} Anderson, David G. "The International Arms Trade: Regulating Conventional Arms Transfers in the Aftermath of the Gulf War." *American University International Law Review* 7, no. 4 (1992): 749-805. See also UN Security Council Report, [The Security Council’s Role in Disarmament and Arms Control: Conventional Weapons and Small Arms](#), September 24, 2009 at www.securitycouncilreport.org

^{xviii} Conference on the Reduction and Limitation of Armaments.

^{xix} Draft Articles for the Regulation and Control of the Manufacture of and Trade in Arms and the Establishment of a Permanent Disarmament Commission.

^{xx} Anderson, 1992, *quoted*, p. 763/764.

^{xxi} The Coordinating Committee of the Consultative Group (COCOM, alternative name Coordinating Committee on Multilateral Export Controls) was proposed by the United States to other 14 “allied” countries (Belgium, Canada, Denmark, France, West Germany, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Turkey, and United Kingdom) as a semi-official body in 1949 (the committee held its meeting in the US embassy in Paris and was later joined by Australia and Spain). Until its official dissolution in March 1994 (when started the process for the formation of the Wassenaar Arrangement) and before its after-Cold War course (revisions of 1990-1993) COCOM maintained three control lists (international atomic energy list, international munitions list, industrial list or dual-use technology not included in the other two lists) and a uniform control procedure (International Import Certificate-Delivery Verification System) to prevent diversion of “forbidden” products to “communist States”.

^{xxii} The effectiveness of the regime in controlling the transfer of military technology was at least very dubious (see Melvern, L. N. Anning, D. Hebditch *Techno-Bandits*. Boston, Houghton Mifflin Co., 1984), and possibly hampered much more the technological development of civilian sectors (in particular for information technologies). See also, for a more general picture of the problems involved in transfers of dual-use technology, Gasparini Alves, P., K. Hoffman (eds.), *The Transfer of Sensitive Technologies and the Future of Control Regimes*. New York, UNIDIR, 1997 (in particular Chapter 13 *Export/Import monitoring Mechanism*)

^{xxiii} UN General Assembly 673, 1991

^{xxiv} Meeting of the Five on Arms Transfers and Non-Proliferation, October 1991

^{xxv} See Richard F. Grimmett, *Conventional Arms Transfers to the Third World 1983-90*, US Congressional Research Service, 1991.

^{xxvi} The four NGOs were Amnesty International, Campaign Against the Arms Trade (CAAT), Saferworld and the World Development Movement. Subsequently, in 1994 CAAT withdrew from this initiative and the British American Security Information Council joined. Amnesty International had been awarded the Nobel Peace Prize in 1977.

^{xxvii} OSCE Criteria for Conventional Arms Transfers, 1993

^{xxviii} See, B. Wood, A. Estévez, “Toward a Bullet-Proof Arms Trade Treaty”, in *Disarmament Times*, Fall 2010,

<http://disarm.igc.org>. “In 1995, a number of Nobel Laureates, including Dr. Oscar Arias, as well as non-governmental organizations (NGOs) such as Amnesty International, Saferworld and the British American Security Information Council proposed such a treaty, initially called ‘The International Code of Conduct’ [...]. By 2000, the revamped proposal, which was circulated at the U.N. by Costa Rica, was called “The Framework Convention on International Arms Transfers.”

^{xxix} The Control Arms Campaign was launched by Amnesty International, the International Action Network on Small Arms (IANSA) and Oxfam. See B. Wood and D. Mack, UNIDIR, 20

^{xxx} United Nations A/RES/61/89, December 18, 2006.

^{xxxi} UN Resolution 63/240, January 8, 2009, and United Nations, “Open-ended Working Group towards an Arms Trade Treaty New York, 13-17 July 2009”, New York 20 July 2009, A/AC.277/2009/1.

^{xxxii} Resolution 64/48, December 23, 2009.

^{xxxiii} See, among others: Chairman's Draft Paper 3 March 2010; Chairman Informal Draft Papers, February 17, 2011; Chairman Draft Paper, March 3, 2011; Chairman Draft Paper July 14, 2011; Chairman Discussion Paper July 3, 2012; The Draft of the Arms Trade Treaty, July 26, 2012.

^{xxxiv} For several NGO reports on the ATT negotiations, see: <http://www.amnesty.org/en/campaigns/control-arms> (Amnesty International) and <http://www.controlarms.org/home> (Control Arms Campaign).

^{xxxv} "Discussion Paper", dated July 3, 2012.

^{xxxvi} U.N. Conference on the ATT, "Draft of the ATT submitted by the President of the Conference", July 26, 2012, A/Conf.217/CRP.1, August 1, 2012.

^{xxxvii} General Assembly, "The Arms Trade Treaty", December 24, 2012, A/RES/67/234 January 4 2013.

^{xxxviii} Charles Yost, US Ambassador to the U.N., *The insecurity of Nations*, F.A. Praeger Publishers, New York 1968.

^{xxxix} Earlier proposals, recommendations, and analyses on the ATT and arms transfers are included in several reports published on the websites of the Control Arms Campaign (<http://www.controlarms.org/en/indepth/>); Amnesty International (<http://www.amnesty.org/en/campaigns/control-arms>), and IPIS vzw (http://www.ipisresearch.be/search_publications.php). Among them, see specific proposals and recommendations in:

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^{xl} Anderson, David G., 1992.

^{xli} Cooper, N., "The Arms Trade Treaty in the Context of Post-Cold War Conventional Arms Trade Regulation", Campaign Against Arms Trade, 10 July 2012 at

:<http://www.caat.org.uk/issues/att/att-neil-cooper.pdf>.

^{xlii} For example, the "Nobel Laureates' International Code of Conduct" (1997) (drawn up by Oscar Arias, Desmond Tutu, Jose Ramos Horta, Amnesty International and other Nobel Peace Laureates and NGOs. It was sent to all UN Member States on 24 February 2000, UN document A/54/766), "Article 13: Verification - Parties to the Code shall convene a review two years after this Code comes into operation with the specific purpose of developing an effective verification commission."

^{xliii} For example, *ibid*, "Article 1: Arms - For the purposes of this Code, arms include:

A. All weapons, munitions, sub-components and delivery systems, including, for example: battle tanks, armoured combat vehicles, military aircraft, artillery systems, military helicopters, missiles, paramilitary police equipment, mortars, machine guns and sub-machine guns, rifles, pistols, anti-tank weapons, mines, grenades, cluster bombs, and all types of ammunition.

B. Sensitive military and dual-use technologies, including, for example: encryption devices, certain machine tools, super-computers, gas-turbine and rocket-propulsion technology, avionics, thermal-imaging equipment and chemical irritants.

C. Military and security training including the provision of expertise, knowledge or skill in the use of such weapons, munitions, sub-components and sensitive technologies.

^{xliv} *Ibid*, and see for example "The Framework Convention on International Arms Transfers" (1999) - drafted by Amnesty International and other NGOs on the Code Steering Committee, March 2001; Article 9 Definitions 1. "Arms" shall refer to:

a) Weapons designed for personal use or for use by several persons serving as a crew, including but not limited to: revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine-guns (small arms); heavy machine-guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems and mortars of calibres of less than 100 mm, ammunition and explosives, including cartridges (rounds) for small arms, shells and missiles for

light weapons, anti-personnel and anti-tank hand grenades, landmines, explosives, and mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems.

b) Major weapons systems, their parts, components, ammunition and related equipment including but not limited to: artillery, bombs, torpedoes, rockets, missiles, military ground vehicles, vessels of war, aircraft designed for military use, kinetic energy weapons systems, armour or other protective equipment, specialized equipment for military training and direct energy weapons systems.

c) Paramilitary, police and security equipment, its parts, components, accessories and related equipment including but not limited to: utility vehicles with ballistic protection, imaging or countermeasure equipment and components and accessories specifically designed for military use, acoustic devices and components suitable for riot control purposes, anti-riot and ballistic shields, leg-irons, gang-chains, shackles and electric-shock belts specially designed for restraining human beings, portable anti-riot devices for administering an incapacitating substance, water-cannon, riot control vehicles which have been electrified in order to repel boarders, portable riot control or self-protection devices that administer an electric shock, including electric-shockbatons, electric-shock shields, stun-guns, electric-shock dart guns and tasers.

d) Military, police and security training, including the provision of expertise, knowledge or skill in the use of weapons, munitions, paramilitary equipment, components, and related equipment.

e) Sensitive military and dual-use technologies, including but not limited to: encryption devices, certain machine tools, super-computers, gas-turbine and rocket-propulsion technology, avionics, thermal-imaging equipment and chemical irritants.

xliv Alston, P., "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum - Study on targeted killings" (A/HRC/14/24/Add.6)

xlvi Upcoming Amnesty International publication on military training aircraft.

xlvii Most recently: Finardi, S., P. Danssaert [with contribution by B. Wood], *Transparency and Accountability*, TransArms/IPIS, 2012.

xlviii See for example "Draft International Code of Conduct on Arms Transfers" (drawn up by Oscar Arias, Desmond Tutu, Jose Ramos Horta, Amnesty International and other Nobel Peace Laureates and NGOs. It was sent to all UN Member States on 24 February 2000, UN document A/54/766, Article 2: Transfers - For the purposes of this Code, transfers are defined as: A. Any transaction resulting in a change of title to, and/or control over, any arms defined in Article 1, and any physical movement of any arms defined in Article 1 from one jurisdiction to another. Such transfers include those conducted in return for direct payment, credit, foreign aid, grants, and goods received as a result of off-set or barter arrangements. They also include transfers of expertise, information, designs, technology or goods under licensing and co-production agreements, leasing arrangements, and arms deliveries in return for which the supplier receives no financial compensation, goods or services. Logistical and financial support for any of the above arrangements are also included. B. Any provision by one or more persons to another in a different jurisdiction of expertise, knowledge or skill in the use of arms as defined in Article 1 above.

xliv "Reporting on Exported Articles and Services Needs to Be Improved, Government Accountability" Office, GAO-10-952, September 2010.

i For a complete review of the meaning of these and other relevant terms, as well as their regulation, see: Finardi, S., P. Danssaert, "Transparency and Accountability. Monitoring and Reporting Methods under an ATT", IPIS/TransArms, Antwerp/Chicago, 2012, www.ipisresearch.be/publications_detail.php?id=348.

ii For example see Amnesty International "Arms Trade Treaty: Key Issues for Consideration", 14 December 2012; "Treaty Amendments: Draft Article 20.3 would require amendments to be adopted by consensus. This has the potential to make amendments impossible and for the treaty to be frozen in time. While attempting to agree amendments to draft treaty text by consensus would make sense in a treaty negotiation process based on consensus, that rule should not be used to allow a single State Party to unduly constrain or prevent most States Parties from developing the treaty in future. In line with other treaty amendment processes the ATT could instead include a provision in Article 20 similar to the following: "The Conference of States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties."

iii Bailes, A., P-E. Christiansen, D. Plesch, B. Wood, *Disarmament and Globalisation Project*, The Centre for International Studies and Diplomacy at SOAS, London, November 2009.