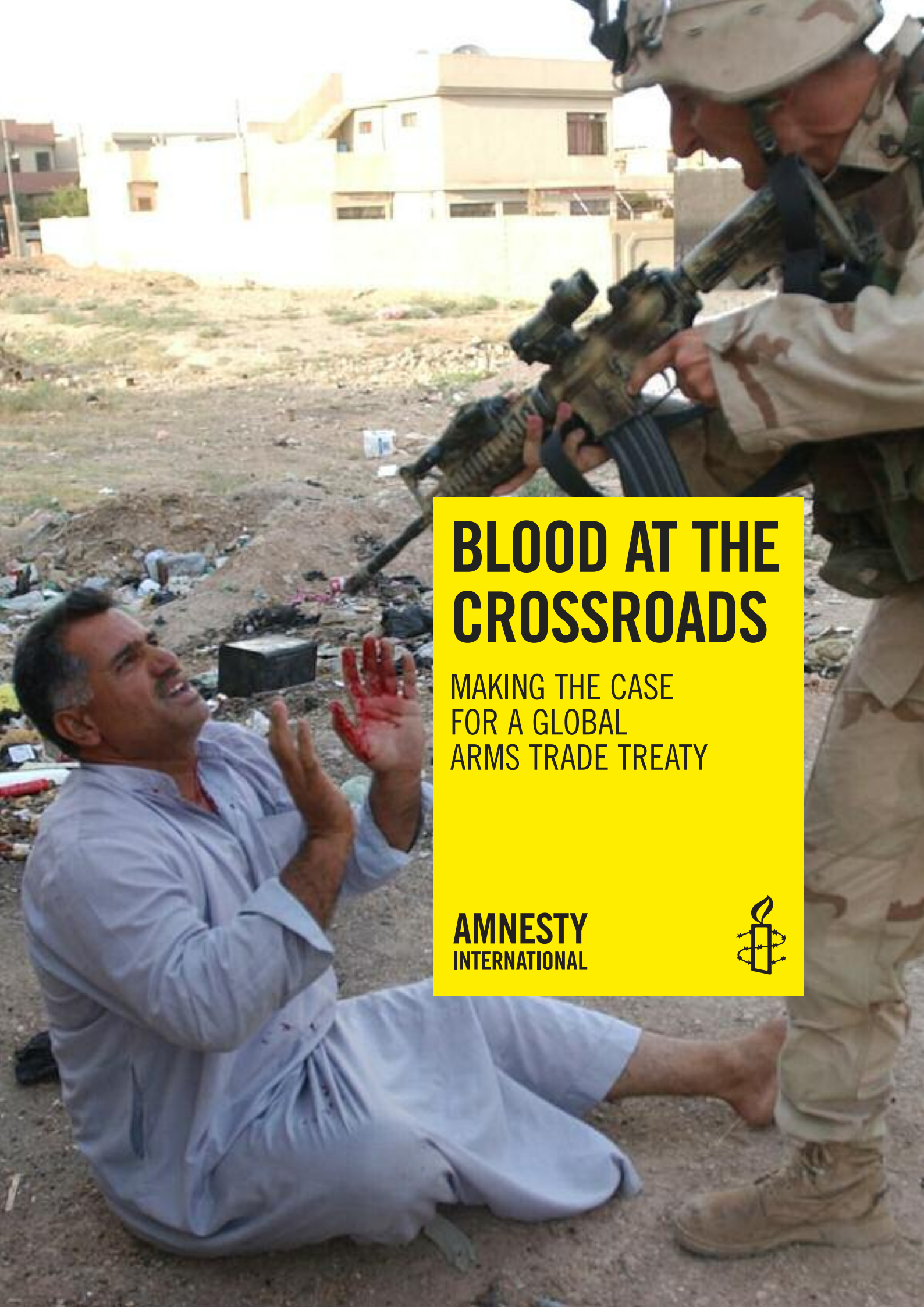

BLOOD AT THE CROSSROADS

MAKING THE CASE FOR A GLOBAL ARMS TRADE TREATY

AMNESTY INTERNATIONAL

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion – funded mainly by our membership and public donations.

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Cover photo: A US soldier aims his weapon at a man who has just been shot by another soldier for failing to stop in Mosul, northern Iraq, on 23 July 2003. US troops had been on high alert in the area after a shootout the previous day in which two sons of former Iraqi President Saddam Hussein were killed.
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Acknowledgements

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1. Introduction

The world is reaching the crossroads where governments must decide which approach to take in order to control the increasingly globalised trade in conventional arms. If the current practice of allowing irresponsible transfers of military and security equipment and related items across borders is allowed to continue, millions more lives and livelihoods will be destroyed and the fundamental human rights of many more people will be seriously violated.

On 6 December 2006 an overwhelming majority of United Nations (UN) Member States voted in the General Assembly to begin work for the elaboration of an agreement on the principle of a legally binding and universal Arms Trade Treaty (ATT). Resolution 61/89, adopted by the UN General Assembly with the support of 153 States and only one State against, is a landmark step towards a more effective regulation of the international arms trade.[1] The vote is a strong indication that the global political will now exists to address the poorly regulated trade in arms, a trade which as this report shows contributes widely to serious human rights abuses and violations of international humanitarian law (IHL). However, a handful of states are now trying to delay and water down the proposed scope and parameters of such a treaty.

This report describes the irresponsible and poorly regulated trade and shows graphically through several illustrative cases how that trade contributes to serious violations of human rights in different parts of the world. In particular, it seeks to help demonstrate why the establishment of a global ATT is an urgent necessity and how an ATT could work to save lives, preserve livelihoods and enhance respect for human rights. This analysis shows that failure or protracted delay to establish an ATT with provisions requiring respect for human rights will, conversely, have dire consequences for the lives of millions of people in many countries.

The idea of an ATT rooted in universal principles based on international law, especially objective standards drawn from international human rights law and IHL, was initiated by non-governmental organizations (NGOs) and Nobel Peace Laureates, including Amnesty International and Oscar Arias, in the 1990s. Through the efforts of an increasing number of civil society actors and those of a few supportive governments, the idea has gained significant ground in recent years and there is now considerable support amongst UN Member States for a concerted effort to take this important initiative forward. However, there has also been a minority of States strongly sceptical or opposed to an ATT, notably China, Russia, Egypt, Iran, Pakistan and the USA.

The current initiative to establish an ATT is not the first time the international community has sought agreement on a global arms trade treaty. Under the League of Nations the Convention for the Control of the Trade in Arms and Ammunition[2] was negotiated in

[1] See Appendix 1 for the full text of UN General Assembly Resolution 61/89.
[2] Also known as the Treaty of St. Germain for the Control of the Traffic in Arms.

1919 in response to the excessive accumulation of arms after the First World War.[3] The Convention would have required state parties to licence arms exports, publish an annual report detailing the export licences granted as well as quantities and recipients of exported arms and ammunition, and prohibit arms to Africa and the Asian parts of the then Ottoman Empire. Many States signed the Convention but very few ratified it mainly because it would have imposed a ban on sales to non-signatories. In 1925, the League of Nations sought agreement on a new Arms Traffic Convention which would allow exports to non-signatories and loosen the prohibition on granting licences. However, this initiative also failed amidst increasing rivalry between military power blocs as the world moved towards the Second World War.

As illustrated in the examples further below, the arms trade is now much more globalised and States' legal obligations much more refined and extensive. States may lawfully acquire conventional arms for legitimate self-defence and law-enforcement needs in accordance with international law and standards. General Assembly Resolution 61/89 acknowledges that the authority to do so is also accompanied by responsibilities. An ATT should not minimize or detract from this need of States but must recognize that there are other obligations that States have with respect to their transfers of arms. An ATT should identify core substantive obligations that reflect existing international legal commitments on the part of States to:

- Prevent threats to international peace and security;
- Ensure respect for IHL; and
- Co-operate in the respect, protection and fulfilment of human rights.

Accordingly, this report explains why the use of conventional arms by States must comply with international standards including those set by the UN Charter, IHL and international human rights law. Crucially, these responsibilities also extend to the *transfer* of conventional weapons and, if it is to be credible, an ATT should fully reflect these obligations.

As a first step towards an ATT, UN Resolution 61/89 requested 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 to the General Assembly at its sixty-second session." At least 98 Member States submitted their views to the Secretary-General, reflecting a strong consensus that achieving an ATT is an urgent global priority.[4]

[3] The agreement included the United States, Belgium, Bolivia, the British Empire, China, Cuba, Ecuador, France, Greece, Guatemala, Haiti, the Hedjaz, Italy, Japan, Nicaragua, Panama, Peru, Portugal, Roumania, the Serb-Croat-Slovene State, Siam and Czechoslovakia.

[4] By September 2007, 89 States had made submissions on an ATT to the UN Secretary General which were publicly available including: Albania, Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Chile, People's Republic of China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of Congo (DRC), Denmark, Ecuador, Egypt, El Salvador, Estonia, Fiji, Finland, France, Georgia, Germany, Germany

Amnesty International, on behalf of the ATT Steering Committee of NGOs, conducted an analysis of 92 of the submissions available at the time from Member States.[5] The submissions show an emerging consensus that an ATT needs to be universally fair and objective, should reflect the existing obligations and commitments of States and must address the realities of globalizing markets and international assistance programs in conventional arms. The UN Secretary General's Group of Governmental Experts which met during the first half of 2008 agreed there was a need to face up to these new realties: "*Experts observed that globalization has changed the dynamics of the international arms trade. They noted that the types of weapon systems, equipment and their components being manufactured in cooperation, under joint ventures and licensing is increasing and that most arms producing States are increasingly relying on technology transfers and upgrades from external sources other than from their own indigenous production*."[6]

Most States, approximately 81 of the 92 submissions to the UN Secretary General analyzed by Amnesty International, expressed their support for the development of a comprehensive, legally binding instrument aimed at the establishment of common international standards for the export, import and transfer of conventional arms.[7]

A very large majority - 72 of the 92 submissions reviewed - recognized the key importance of assessing the potential for a transfer to be used for at least certain abuses and violations of human rights law and IHL. The language ranges from ensuring that the criteria take into account "respect for international law including international human rights law and IHL…" to an ATT that will assist in "the prevention of a breach of IHL [and] prevention of abuses of human rights. Language in some submissions by States references the need to assess the potential risk of a transfer on human rights and IHL.

In addition, a majority of States in their submissions believe that respect for IHL is one of the fundamental criteria by which arms transfers decisions must be assessed.[8] All 194

on behalf of the European Union, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Mali, Malta, Mexico, Morocco, the Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Russian Federation, Samoa, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland (UK), Venezuela, Zambia. Note that the world's largest arms exporter, the United States of America, has opposed the idea of an ATT as set out in its recent public statements.

[5] See: *A global Arms Trade Treaty: What States Want*, published by Amnesty International on behalf of the Arms Trade Treaty Steering Committee, October 2007, (AI Index: POL 34/004/2007); The UN Insititute for Dismarmament Research also analysed the results and published two reports – see Sarah Parker, "*Analysis of States' Views on an Arms Trade Treaty*", UNIDIR, October 2007, and "*Implications of States' Views on an Arms Trade Treaty*", UNIDIR, January 2008

[6] Report of the Group of Governmental Experts to examine 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, United Nations, August 2008 – hereafter referred to as ATT GGE 2008

[7] States that did not support this view in their submissions to the UN Secretary General were: Cuba, Egypt, Israel, Lebanon, Pakistan, Russian Federation, the former-Yugoslav Republic of Macedonia, and Venezuela.

[8] At least 64 States are known to have raised IHL considerations in their submissions on an ATT to the UN.

States party to the Geneva Conventions have already adopted this as Final Goal 2.3 at the 28th International Conference of the Red Cross and Red Crescent, on 6 December 2003.[9]

The central role of human rights in the arms transfer licensing process is already clear in a number of existing legal and other instruments jointly agreed by States at the multilateral, regional and sub-regional levels. Through their participation in existing regional and multilateral arms transfer control agreements, 118 States have explicitly recognized that transfers of conventional arms and small arms should be refused where there is a substantial risk that they will contribute to serious human rights abuses or violations of IHL.

Box 1: Examples of international human rights law criteria in existing multilateral and regional instruments

"Transfers of arms, ammunition, explosives and other related material shall not be carried out from or to States which (…) commit and/or sponsor crimes against humanity or human rights violations."
(*Code of Conduct of the Central American States, 2 December 2005*)

"A transfer shall not be authorised if the arms are destined to be used: a) for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purpose of oppression."
(*ECOWAS Convention, 14 June 2006*)

"Member States will: (a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression and b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe, or by the EU."
(*EU Code of Conduct, 8 June 1998*)

"We will not authorise international transfers of SALW (small arms and light weapons) which are likely to be used: (a) to commit grave or persistent violations of human rights or fundamental freedoms."
(*Best Practise Guidelines For Implementation of the Nairobi Protocol, 20-21 June 2005*)

"Each participating State will avoid transfers which would be likely to be used for the violation or suppression of human rights and fundamental freedoms."
(*OSCE Principles Governing Conventional Arms Transfers, 25 November 1993*)

"Each Participating State will avoid issuing licences for exports of SALW where it deems that

[9] In 2003, the 194 States Parties to the Geneva Conventions undertook to make respect for international humanitarian law as one of the fundamental criteria on which arms transfer decisions are assessed and to incorporate such criteria into national laws or policies and into regional and global norms on arms transfers.

there is a clear risk that the small arms in question might (…) be used for the purpose of repression; Be used for violation or suppression of human rights and fundamental freedoms:…"
(*Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons, 11-12 December 2002)*

An increasing number of national laws and regulations also identify international human rights law as a fundamental criterion when considering the authorization of international arms transfers. Though a variety of language is used, these instruments generally require that States assess the recipient country's respect for human rights and refuse proposed arms transfers in cases where there is a substantial risk that the proposed transfer of arms is likely to be used for serious human rights violations.

All arms transfer decisions should include a consideration of international human rights law to help ensure that transfers of conventional arms do not contribute to serious violations or abuses of such rights. Specifically, all States should be required by law to refuse authorization of any transfer of conventional arms where there is a substantial risk that they will be used, or are likely to be used, for serious human rights violations or abuses.

Box 2: At what point does a violation become "serious"?[10]

Each situation needs to be assessed objectively on a case-by-case basis and the final assessment must be carried out by the state authorising the transfer. In determining whether human rights abuses are serious, reference should be made to credible evidence and previous findings of serious violations by independent competent bodies, NGOs, UN reports etc. (see below in this report for Sources of Information). Such reports might also establish the occurrence and nature of human rights violations or abuses leading the prospective transferring state to determine for itself that those violations or abuses are serious. Two aspects are helpful for such a determination:

[10] The commission of serious violations of human rights would include violations of the non-derogable provisions of the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international human rights treaties. The most prominent right likely to be breached using arms, including small arms and light weapons is the right to life. This right imposes both a positive duty on States to enact laws to protect the right to life and a negative duty not to arbitrarily deprive anyone of their right to life. Other non-derogable rights have been set out for Member States by the UN Human Rights Committee. In its General Comment on States of Emergency, the Committee broadened the list of non-derogable rights contained in Article 4 of the ICCPR to include: the prohibition against arbitrary detention; the prohibition against taking of hostages, abductions or unacknowledged detention; the protection of the rights of persons belonging to minorities; taking of hostages, abductions or unacknowledged detention; the protection of the rights of persons belonging to minorities; the deportation or forcible transfer of population without grounds permitted under international law; and the prohibition against engaging in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence (UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001).

1. Scale and persistency of the violations: Is there conduct that involves a pattern of violations or abuse of that right? Are the violations persistent or affecting many people? Violations that are widespread or systematic are among the **most** serious.

2. Character and pervasiveness of the violations: Do the violations or abuses apply to a significant spectrum of human rights including civil, cultural, economic, political and social rights? The range and fundamental nature of the rights being violated or abused can also determine the overall severity of the violations.

In order to be effective, a global ATT should reflect the core set of 'Global Principles for Arms Transfers' proposed by Amnesty International and its NGO partners.[11] The Principles indicate what many leading NGOs consider to be the best general rules for effective control of international transfers of all conventional arms and ammunition. These Global Principles include obligations based on relevant international law treaties and international customary law, principles recognized by the UN, including international human rights law and IHL, and principles of state responsibility.

There is a positive obligation of all States to cooperate in the protection and fulfilment of human rights within and beyond their borders.[12] Under Articles 1, 55 and other articles of the UN Charter, all Member States have an obligation to encourage and promote universal respect for, and observance of, human rights and fundamental freedoms. Article 1(3) requires all Member States "*to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.*" The range of specific human rights obligations of States has been developed since the adoption 60 years ago of the Universal Declaration of Human Rights by the UN General Assembly. Now there are over one hundred international treaties that concern the protection of human rights. (See further below)

A State which transfers weapons or munitions in circumstances where they know the arms are likely to be used to commit serious violations of international human rights and humanitarian law will clearly be failing its obligation to ensure respect for international law including the UN Charter.[13] Moreover, under international human rights law, States are not

[11] *Compilation of Global Principles for Arms Transfers* (Revised and Updated) Published by Amnesty International, 2007. Available in English, Spanish, French, Chinese, Portuguese, and Russian. Available at http://www.controlarms.org/find_out_more/ Non-governmental organisations involved in developing the Global Principles include: Africa Peace Forum, the Albert Schweitzer Institute, Amnesty International, Arias Foundation for Peace and Human Progress, Caritas Internationalis, Friends Committee on National Legislation, Nonviolence International Southeast Asia, International Action Network on Small Arms [IANSA], Oxfam International, Project Ploughshares, Saferworld, Sou da Paz, Viva Rio, and Women's Institute for Alternative Development (WINAD). Additional legal advice to the group on this text was provided by Clare da Silva and the Lauterpacht Centre.

[12] This was recognised by the UN Group of Governmental Experts on an ATT, see ATT GGE, 2008, op cit

[13] The principle is expressed in Article 16 of the United Nations International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts* of 2001 which were commended to Governments by a

only responsible for their own actions and the actions of their agents, but they also have a duty to prevent patterns of grave abuse committed by private persons, whether or not they are acting under the control of the State.[14]

These obligations are especially relevant for the world's major arms exporters (see the list of major exporters in Appendix 2), but apply to all States that transfer conventional arms, whether through exports, imports, transit or transhipment, or whose nationals and companies are otherwise involved in arms deals and transactions, as explained further below. However, as this report shows, when it comes to the international arms trade, such legal obligations are not being strictly observed by States or properly codified into state practice.

Box 3: Lessons from Ten Years of the EU Code of Conduct

It is now ten years since the European Union (EU) Member States agreed on 8 June 1998 to adopt the EU Code of Conduct on Conventional Arms Transfers (EU Code). The EU Code is the only multilateral regime with procedures to regulate conventional arms exports according to common criteria based on international standards. The Code requires EU Member States to use one or more of eight Criteria to prevent arms transfers from the EU contributing to inter alia human rights abuses or internal repression, undermining international peace and security or sustainable development. It also contains a set of operative provisions intended to assist implementation by Member States, develop co-operation and promote convergence between them. However, the EU Code is not a legally binding instrument and not all Member States have introduced the EU Code or referenced it in their national laws.

Since 2003, the EU has been working to strengthen the EU Code, including by making it a Common Position, which will give it some legal status. Other changes include the introduction of IHL into criterion two, the addition of re-export provisions in criterion seven, and making it clear in operative provision one that licence applications for licensed production overseas, brokering, transhipment, and intangible transfers should be assessed against the EU Code criteria.

In June 2005 the European Council working group on arms (COARM) approved a draft text for a Common Position. However, the adoption of this has been delayed because some Member States, notably France, chose to make the adoption of the Code as a Common Position conditional upon the lifting of the EU arms embargo on China. With a change in government, it is now expected that France will push for the adoption of the EU Code as a

resolution of the General Assembly of 12 December 2001 (A/RES/56/83, 12 December 2001).; see Box on state responsibility further below in this report.

[14] For example, under the Rome Statute of the International Criminal Court (ICC), in Article 25 (3)(c), a state must establish criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by providing the means for its commission. Deliberately supplying weapons or munitions in the knowledge they will be used to commit or attempt to commit crimes against humanity or war crimes for which the ICC has jurisdiction would be sufficient to give rise to responsibility as an accomplice.

Common Position during the French Presidency of the EU (from 1 July until 31 December 2008). This will finally put the EU Code on a common EU legal footing.

This will require EU Member States to comply with and uphold the EU Code. However, it is not entirely clear what immediate effect this change will have on national legislation. Member States have an EU treaty obligation to implement the Common Position through national legislation, however there is no deadline placed on this and no EU enforcement mechanism to ensure that it is carried out.

The effectiveness of the EU Code is dependent not only on making it legal but also on closing the loopholes and attending to its weaknesses in implementation, so as to:

(a) prevent irresponsible arms transfers by strict application of the Code's criteria to both companies and national armed forces;
(b) improve and apply brokering controls, and prevent illegal arms trafficking by air, land and sea;
(c) ensure prompt investigation of recent allegations about violations of arms embargoes;
(d) prevent the selling-off to private dealers of arms collected in the course of European Security and Defence Policy (ESDP) and security sector reform (SSR) operations and other EU initiatives and their subsequent transfer;
(e) include police equipment which falls outside the scope of the EU military list and therefore of the EU Code; and,
(f) improve the transparency and quality of data submitted by Member States in the context of the Annual Report on the Code of Conduct.

Nevertheless, even a stronger legally binding EU Code will not address the arms transfers of non EU States. Only a properly drafted global ATT can overcome the shortcomings of the EU Code.

2. Illustrative cases of irresponsible arms transfers

The following cases illustrate a range of circumstances in which different types of conventional arms are transferred and used for serious human rights violations and abuses. They show why the establishment of a global treaty to control arms transfers with respect to international human rights and humanitarian law is so urgently needed. The case examples demonstrate the inadequacies of many States' arms trade control practices and how existing international mechanisms, such as mandatory arms embargoes imposed by the UN Security Council, will not be fully implemented unless underpinned by common standards and measures implemented by States agreed in a global ATT.

The illustrative cases have been selected to cover a variety of regions, arms suppliers and institutional circumstances. They describe recent tragic situations involving serious violations and abuses in armed conflict as well as situations where serious human rights violations have been perpetrated with armed force outside armed conflict, sometimes experiencing pre-conflict or post-conflict armed violence. The sources of arms vary from major arms exporters to smaller producers and local supplies from the holdings of import or transit counties. The transfers cross different world regions and also circulate within regions and single countries, carried out by a variety of actors.

Nevertheless, what stands out is the repeated failure of States to properly consider the impact of their arms transfers on fundamental human rights and to take preventive and precautionary action when making decisions to transfer weapons and munitions.

3. Colombia - small arms supplies fuel grave human rights abuses

This case study highlights how small arms in particular are contributing to serious human rights abuses and violations of IHL by all parties to the conflict in Colombia. Supplies of small arms are brought into the country through imports by the government or illicit trafficking by the paramilitaries and guerrilla groups. The lack of a shared global agreement on standards and methodology to consistently and objectively guide States to avoid arms transfers in instances where there is a substantial risk of serious violations or abuses of human rights or serious violations of IHL has made it difficult to know how some exporting governments have assessed that risk in the Colombia case and what legitimate safeguards they require. The problem of illicit supplies is exacerbated by the risk of diversion from authorized supplies and the lack of adequate control by most States over the activities of arms brokers and their associates who seek the weakest links in national arms control systems.

Civilians continue to bear the brunt of Colombia's long-running internal armed conflict, which has driven the demand for small arms. All parties to the conflict – guerilla groups, paramilitaries and the security forces – continue to commit serious human rights abuses and violations of IHL. At least 1,400 civilians were killed in the context of the conflict in 2007. Hundreds of thousands of people were again displaced by confrontations between the warring parties.[15] The Colombian government has an obligation to rigorously and impartially investigate cases in which there are allegations that civilians were targeted or where the attack was indiscriminate or disproportionate to the military objective, yet this often does not take place.

[15] Amnesty International Annual Report 2008, p.13.

3.1 Guerrilla groups

The Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC) and the much-smaller National Liberation Army (*Ejército de Liberación Nacional*, ELN) guerrilla groups have continued to commit serious and repeated human rights abuses and violations of IHL, including hostage-taking and the killing of civilians.[16] Some 260 civilians were killed by guerrilla groups in 2007 compared to around 200 in 2006. Four people were killed, reportedly by the ELN, in San Joaquín, Mercaderes Municipality, Cauca Department, on 14 March 2007.

The FARC continued to target elected officials and were also allegedly responsible for most of the 29 killings of candidates in the run-up to the local elections held on 28 October 2007. Amnesty International condemned the killing in uncertain circumstances in June 2007 of 11 of the 12 deputies from Valle del Cauca kidnapped by the FARC in 2002. The FARC claimed they were killed in crossfire during combat with an unidentified group, but the authorities disputed this. On 5 June 2007 in Cumbal, Nariño Department, the FARC allegedly killed eight members of the Indigenous Awá and Pasto communities.[17] On 14 and 15 July 2007, five members of the Awá Indigenous community, including two children, were killed by landmines reportedly laid by the FARC in Ricaurte Municipality, Nariño Department.[18]

Amnesty International reiterates its call on guerrilla groups to immediately and unconditionally release all civilians still detained by them and to ensure that anyone they continue to hold in detention, including captured soldiers, is treated humanely. The Geneva Conventions totally prohibit any party to an armed conflict from taking a person hostage who is not taking an active part in the hostilities.[19] Amnesty International is also concerned about the dispute between the FARC and ELN in Arauca Department, which has resulted in the killing of hundreds of civilians over the last few years, and about the continued use of anti-personnel mines by guerrilla groups resulting in numerous serious casualties, including of civilians.[20]

3.2 Paramilitary groups

Amnesty International has expressed concern about the seriously flawed demobilization of paramilitary groups – which for decades have been supported by powerful economic and political interests and by members of the security forces – and has warned that paramilitary

[16] Amnesty International Annual Report 2007, p.89-90.
[17] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 28 February 2008, A/HRC/7/39.
http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informes.php3?cod=11&cat=11
[18] Amnesty International Annual Report 2008, p.99.
[19] See Common Article 3.1 (c) of the Geneva Conventions.
[20] See the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 18 September 1997. Colombia ratified this treaty on 6 September 2000.

groups continue to operate, often in collusion with the security forces, and to violate human rights throughout the country, including in areas in which military units are receiving foreign military aid, despite assurances by the Colombian government that over 31,000 combatants have been demobilized.[21]

While some paramilitary groups are operating as criminal gangs, and some of the resultant violence is linked to disputes between such groups, there is evidence that paramilitary groups continue to play a counter-insurgency role in coordination with the security forces in many regions. A significant number of Colombian parliamentarians, as well as other politicians and state officials, have also been linked to paramilitary groups. Paramilitaries were responsible for at least 300 killings of civilians in 2007 compared to 240 in 2006 - either acting alone or in conjunction with security forces.[22]

Grave human rights abuses by such groups continue to be reported. For example, on 13 July 2007, a member of the Peace Community of San José de Apartadó, Dairo Torres, was on a bus travelling between the municipal capital of Apartadó and San José de Apartadó, Antioquia Department, that was reportedly stopped by two armed members of a paramilitary group. They forced Torres to get off the bus and killed him there. The killing occurred a short distance from a police checkpoint situated along the same road.[23]

On 23 February 2007, Alba Milena Gomez Quintero and her 18-year-old son Miguel Antonio were killed after being taken from the taxi in which they were travelling by two suspected paramilitaries on the San Juan de Arama-Granada highway, Meta Department, in a spot which lay between two army roadblocks. Alba Milena Gomez had reportedly made an official complaint against the army, which she claimed had falsely accused her of being a guerrilla auxiliary.[24]

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[21] *Colombia: Latest killing of human rights defender throws controversial paramilitary demobilization process into further doubt*, Amnesty International, Public Statement of 2 February 2007, (AI Index: AMR 23/002/2007). Also note: The Seventh Quarterly Report of the Secretary General to the Permanent Council on the OAS Mission to Support the Peace Process in Colombia, published in August 2006, noted the "appearance of new groups in the area where the demobilized units were operating. These units… are expanding and taking control of illegal economic activities… The Mission is also concerned over police reports of the discovery of secret caches of weapons that certain AUC groups failed to hand over when they were demobilized." OAS, CP/doc.4148/06.

[22] More than 70 legislators are under investigation by the Supreme Court for their alleged links to paramilitaries; more than half of these are in detention. In December 2007, one of these, Erik Morris, was sentenced to six years in prison. Hundreds of other state officials, including governors, mayors, and members of the security forces, were being investigated by the Offices of the Attorney General and Procurator General. In November 2007, Jorge Noguera, the former director of the civilian security agency, the Department of Administrative Security, was disqualified from public office for 18 years by the Office of the Procurator General for his links to paramilitaries.

[23] Urgent Action - Colombia*: Further Information on: Fear for safety* Amnesty International,19 July 2007, (AI Index: AMR 23/022/2007).

[24] Also on 22 October 2006, paramilitaries operating in the Puerto Vega area of Puerto Asís Municipality, department of Putumayo, abducted and forcibly disappeared brothers Silvio Solarte Narváez and Noraldo Solarte Narváez. The two brothers were travelling between Puerto Asís and La Esmeralda by motorcycle. Witnesses saw the paramilitaries forcing them to stop in Puerto Vega and saw them leading them at gunpoint to a rural area. The bodies of the two brothers were found in the La Balastrera area on 27 October 2006 and reportedly bore signs of torture. One of the brothers had previously been detained by the army. On 5 August 2006 Douglas Antonio Pérez

3.3 Security forces

The increasing reports of extrajudicial executions (EJEs) carried out by the security forces are of particular concern for Amnesty International.[25] In 2007, at least 330 people were reported to have been extrajudicially executed by members of the security forces**,** compared to 220 in 2006. The victims, mostly peasant farmers, were often presented by the security forces as "guerrillas killed in combat".

Most EJE cases have been referred to the military justice system, despite the 1997 ruling of the Constitutional Court stating that human rights cases implicating the security forces should be handled by the ordinary justice system. The military justice system usually closes such cases without any serious attempt to hold accountable those responsible. Amnesty International is concerned that the government is failing to ensure the complete exclusion of such cases from military courts in line with repeated UN recommendations.[26]

On 9 June 2007, Edwin Cubillos Romero was reportedly detained by troops of the 4th Mobile Brigade in the El Palmar area of Puerto Rico Municipality, Meta Department. According to information received, witnesses reported hearing his screams as he was tortured. He was reportedly dressed in guerrilla uniform and the body taken to the morgue in Granada Municipality. The body was taken by helicopter to Granada and soldiers reportedly made the body wave at witnesses.

On 22 April 2007, soldiers of the army's XVI Brigade entered the home of Ernesto Cruz Guevara in Aguazul Municipality, Casanare Department. The soldiers interrogated him about guerrilla activities. Before leaving, they told his wife they were taking her husband to the local Office of the Attorney General. Ernesto Cruz's family later identified his body; the army claimed he was a guerrilla killed in combat. On 15 April 2007 units attached to the Joaquín Paris Battalion reportedly killed Ester Julia Lozada in the Chispas area of Puerto Rico Municipality, Meta Department. She was reportedly dressed in guerrilla uniform and presented to the media as a guerrilla killed in combat.

On 16 March 2007, 16-year-old Roque Julio Torres Torres and Daniel Torres Arciniegas were reportedly killed by troops belonging to the *Brigada XVI,* (XVI Brigade), in the El Triunfo area of Aguazul Municipality, Casanare Department. The two young victims were reportedly presented as guerrillas killed in combat. Prior to their death the two youths had reportedly been subject to death threats made by the XVI Brigade. Roque Julio Torres Torres had reportedly witnessed the EJE of two people in the area carried out by troops of the XVI Brigade, a case which is reportedly under criminal investigation.

Sivaja, a member of the Nasa indigenous reserve of Kiwnas Chxab in the Villa de Leyva area of Puerto Asís Municipality, was killed by gunmen reported to be paramilitaries.

[25] Also see Amnesty International Annual Reports 2003-2007 for examples of EJEs.

[26] See annual reports of UN Office of the High Comissioner for Human Rights on the situation in Colombia.

3.4 Importing small arms

Colombia has a profitable self-sufficient military industry organised under the *Industria Militar* (INDUMIL) that is currently able to produce annually 45,000 Galil rifles[27], 30 million rounds of 5.56mm ammunition[28], and 7,500 revolvers[29]. In 2006, INDUMIL was granted the exclusive right to commercialize the Israeli Galil assault rifle.[30] Nevertheless, Colombia still relies to a considerable degree on imports.[31]

According to UN customs data, Comtrade, in 2006, Colombia imported well over US$40 million[32] worth of equipment under the category "military weapons".[33] The major suppliers were the USA worth US$26,436,462; South Africa worth $10,228,363; Israel worth $8,711,630 and France worth $2,323,161. Colombia also imported large quantities of other types of small arms according to UN customs data: under the category of "revolvers and pistols" a total of US$1.5 million and under the category of "non-military arms" a total of US$4.1 million.[34] INDUMIL is the only legal channel through which arms can be imported, exported, manufactured and sold within Colombia.[35]

France, South Africa and the US have laws that require the assessment of the impact on human rights in the recipient country from an arms transfer. Israel has recently revised its arms export control legislation, but this has not yet been made public.[36] The formulation of human rights criteria varies between national laws and regional arrangements which means that these governments often apply their obligations under international human rights law inconsistently. Evidenced by the continued supply of small arms, it is not clear how these governments are assessing the risk of an arms transfer contributing to human rights abuses. There is also a risk of diversion to unlawful users or for misuse as described below. Amnesty International has repeatedly argued that the US State Department has not met US congressional human rights criteria for certifying military aid to Colombia.[37]

[27] "Galil, un fusil nacionalizado", *AFP/Diario Occidente*, 15 May 2006.
[28] *Small Arms Survey 2006*, footnotes 9 and 10, p. 242.
[29] *Small Arms Survey 2004*, p. 23.
[30] "Colombia quedó como único fabricante de los fusiles Galil y ahora los exporta a Israel", *El Tiempo*, 07 April 2006.
[31] See "Continuity and Change: Products and Producers", in *Small Arms Survey 2004*. Oxford University Press, 2004; "Colombia's Hydra: The Many Faces of Gun Violence", in: *Small Arms Survey 2006*. Oxford University Press, 2006; *Violence, Crime and Illegal Arms Trafficking in Colombia*, United Nations Office on Drugs and Crime, Bogota, November 2006.
[32] The figure reported by COMTRADE is $47,702,874.
[33] UN Comtrade SITEC Rev 3, category "military weapons", code 89112 as reported by Colombia.
[34] Code 89114 for the category "revolvers and pistols" and code 8913 for the category "non-military arms" which includes, for example, sporting rifles, shotguns, gas guns and so on.
[35] See http://www.embaven.org.co/Contenido/Default.aspx?id=73 (date visited 3 July 2007).
[36] As of 20 June 2008.
[37] In 2007, US aid for Colombia amounted to some US$727 million, some 82 per cent of which was destined for the security forces. The total included some US$595 million from the Foreign Operations funding bill, 25 per cent of which was dependent on progress by the Colombian authorities on certain human rights indicators. In April 2007, US Secretary of State Condoleezza Rice certified that Colombia was making progress on human rights and

3.5 Illicit small arms supplies

In general, illicit market arms shipments of small arms and light weapons are quite small, but they happen frequently. Illicit supplies of such arms to the paramilitaries and guerilla groups in Colombia come into the country through the neighbouring States. In turn, these arms have mostly been manufactured in and/or shipped from Europe, China, North Korea, USA, and Latin America.[38] The table below lists the national origin of some of the small arms and light weapons confiscated by the Colombian authorities between 2005 and 2006 from paramilitaries and rebel groups.

Confiscated small arms and light weapons in Colombia (2005-2006)

Type of Weapon	Country of origin					
	Venezuela	**Brazil**	**Russia**	**USA**	**Bulgaria**	**Germany**
Assault rifle	535	52	628	1,172	482	1,668
Rifle		1		149		
Sub-machine gun	17	2		85		
Pistols	120	78	2	2,370		
Revolvers	25	117		4,258		
Shotguns	23	2		531		

Source: Ministry of Defence, Colombia

The risk of diversion from arms exported to countries neighbouring Colombia remains high. This is one of the criteria that States need to consider when deciding whether or not to allow an international transfer of arms or ammunition. However, the risk of diversion should not simply just concern the diversion of arms to an unauthorized user, but also the risk of arms being diverted to another state force and misused.

authorized the release of all 25 per cent of Fiscal Year 2006 certifiable military aid. But the US Congress withheld the release of the money to the military, worth some US$55.2 million, because of concerns over extrajudicial executions and the para-political scandal. In February 2008, $32 million of the funds were released because much of the aircraft fleet necessary to carry out the aerial drug eradication and interdiction program would have been grounded. The balance of $23 million remains on hold by Congress until Colombia makes further progress in addressing concerns about human rights, including extrajudicial executions by the Army.

[38] *Violence, Crime and Illegal Arms Trafficking in Colombia*, United Nations Office on Drugs and Crime, Bogota, November 2006, p. 32-35.

3.6 Procuring arms through brokering

Both paramilitary and guerrilla groups have also tried to clandestinely procure small arms and light weapons directly on the international market through arms brokering and trafficking networks.[39]

To date only about 40 States have enacted laws and regulations for controlling the business of arms brokering – including or excluding related financial and transport services and extra-territorial provisions.[40] Given this limited geographical coverage and the weak provisions of many these legal controls, arms brokers and dealers are able to move around and operate easily in many jurisdictions, exploiting loopholes in national laws, working from countries that do not have effective arms brokering controls. This is one of the key reasons why a global ATT must include comprehensive controls on arms brokering and related activities.

In August 2007, Russian police arrested the Israeli arms dealer, Yair Klein, in Moscow. The Colombian authorities sentenced him in 2001 for training paramilitary groups and drug traffickers.[41] The European Human Rights Court has reportedly postponed his extradition to Colombia on the grounds that he would suffer ill-treatment.[42]

The following two high profile cases regarding allegations to broker the supply of arms to the FARC involved sting operations conducted by US authorities. These operations reveal the apparent willingness of known international arms brokers to arrange transactions for the illicit supply of arms to the FARC using a complex web of activities and circuitous delivery routes:

- On 6 March 2008, one of the world's most notorious arms dealers, Victor Bout, was arrested in Thailand for allegedly supplying the FARC with arms and explosives.[43] Thai police said that Victor Bout was arrested on a Thai warrant which stemmed from

[39] See for example the case 'Arms brokers and trafficking to the Colombian paramilitaries' involving AUC arms procurement cited in Amnesty International, *Dead on Time – arms transportation, brokering and the threat to human rights*, May 2006, (AI Index ACT 30/008/2006) pp.17; Interpol has also investigated a case subsequently prosecuted in Colombia, the USA and Peru involving brokering activities by Vladimiro Montesinos and Sarkis Soghanalian in the supply of 10,000 AK-47s from Jordan that were air dropped to the FARC in 1999.
[40] See Silvia Cattaneo, "National systems of licensing and registration", chapter two in United Nations Institute for Disarmament Research, "Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications", Geneva, 2006, and Graduate Institute of International Studies, "Targeting the Middlemen: Controlling Brokering Activities" in Small Arms Survey 2004: Rights at Risk, Geneva 2004.
[41] "Colombia seeks Israeli mercenary", *BBC News*, 29 August 2007; "Colombia: Russia Moves To Extradite Israeli Mercenary", *The New York Times*, 13 March 2008.
[42] "Rights court halts mercenary's extradition", *The Guardian*, 3 June 2008; "Despite recent case, Israelis never excelled as mercenaries", *Haaretz.com*, 24 June 2008.
[43] See Complaint, United States, Southern District of New York for more information on the charge brought by the US Attorney for the Southern District of New York and the United States Drug Enforcement against the defendents Victor Bout and Andrew Smulien.

an earlier one issued by the US Attorney for the Southern District of New York at the request of the US Drug Enforcement Administration.[44]

- In June 2007, the Syrian arms dealer Monzer al Kassar was arrested by the Spanish authorities as he was suspected of preparing to finalize a multimillion-dollar transaction of weapons with persons who claimed to represent the FARC, but were in fact confidential sources who were working for the US Drug Enforcement Agency (DEA).[45] Two of his suspected accomplices were arrested in Romania. According to the charges brought against them by the US Attorney, they agreed to sell assault rifles, millions of rounds of ammunition, pistols, hand grenades, rocket-propelled grenade launchers, and surface-to-air missiles.[46]

On 6 January 2003, the General Secretariat of the Organization of American States issued a report documenting the illegal shipment from Nicaragua to the paramilitary group, United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, AUC) of 3,000 AK 47s and 2.5 million rounds of ammunition.[47] The shipment was reportedly unloaded at the port of Turbo, Antioquia Department, by Banadex S.A. then a subsidiary of Chiquita Brands. In March 2007 Chiquita Brands admitted to US judicial authorities that the company had paid US$1.7 million between 1997 and 4 February 2004 to the AUC.[48] The company reportedly made over 100 payments to the AUC through its Colombian subsidiary Banadex.[49] Amnesty International considers that the recent admission of making payments to the AUC, taken together with the OAS report regarding an illegal arms deal potentially implicating Banadex S.A. merits full, independent and impartial investigation by Colombian and US judicial authorities to establish the full extent of any criminal liability of Chiquita employees,

[44] The Russian arms dealer has also been accused of trafficking weapons to Central and West Africa since the early 1990s. According to the United Nations and Amnesty International reports, Bout supplied guns to UN-embargoed destinations such as Angola, the DRC, Liberia and Sierra Leone. The guns were transported using a network of shipping agents and cargo planes that operated from various different countries. Many of the guns were paid for with diamonds. However, Bout has never been prosecuted for arms trafficking because of the inadequate laws of most states to regulate arms brokering and arms transporting activities.

[45] For further information see "Syrian arms dealer in custody", *Financial Times*, 8 June 2007; see also Count One: Conspiracy to provide material support or resources to a foreign terrorist organization, Indictment S2 07 Cr. 354, United States District Court, Southern District of New York ,versus Monzar Al Kassar a/k/a "Abu Munawar," a/k/a "El Taous," Tareq Mousa Al Ghazi and Luis Felipe Moreno Godoy, Defendants.

[46] "DEA Investigation Nets International Arms Dealer With Ties to Terrorist Organizations", News Release, Drug Enforcement Agency Public Affairs, 8 June 2007; "Spain arrests Syrian man for selling arms to FARC", *Washington Post*, 8 June 2007; "Detenido en Barajas un sirio buscado por EE UU por colaborar con organización terrorista", *El Pais*, 8 June 2007.

[47] Report of the General Secretariat of the Organization of American States on the diversion of Nicaraguan Arms to the United Defence Forces of Colombia, 6 January 2003.

[48] The company has also reportedly admitted to making payments to the FARC and ELN between 1989 and 1997.

[49] According to a 19 March 2007 US Department of Justice press release: "*Chiquita began paying the AUC following a meeting in 1997 between the then-leader of the AUC, Carlos Castaño, and a senior executive of Banadex. Castaño implied that failure to make the payments could result in physical harm to Banadex personnel and property. No later than September 2000, Chiquita's senior executives knew that the corporation was paying the AUC and that the AUC was a violent, paramilitary organization led by Carlos Castaño. Chiquita's payments to the AUC were reviewed and approved by senior executives of the corporation, including high-ranking officers, directors, and employees*".

including executives, with regards to providing material support to a paramilitary group committing serious human rights violations.

While these cases have been investigated, they indicate a deeper problem and illustrate the need for States to enact into national law and procedures the control "elements" and the specific recommendations agreed by the UN Group of Governmental Experts in August 2007[50] as well as the common standards adopted by relevant regional organizations to prevent illicit arms brokering and closely related illicit activities.[51] Otherwise unscrupulous arms brokers and dealers will continue to take advantage of lax laws and their arms trafficking activities will contribute to serious human rights violations and abuses.

3.7 Lessons from the Colombia case

The case of Colombia shows why it is critical that States agree a comprehensive and effective global ATT. Governments must agree a stringent human rights provision that prohibits the transfer of arms or ammunition to forces where there is a substantial risk that those forces are likely to use the arms or ammunition for serious violations of international human rights and humanitarian law. For example, to reduce such a risk, safeguards to ensure the prompt and rigorous investigations of the serious misuse of arms need to be in place.

This case study also shows why the risk of diversion should be a key consideration in any decision to transfer arms. An ATT should include a provision that requires States to assess the risk of diversion not only to unauthorized users but also to specific state forces or units committing serious abuses of human rights. The duty to prevent diversion is underlined in several agreements including the UN Programme of Action on Small Arms and Light Weapons and the UN Firearms Protocol. It is also a consideration in several regional agreements, but there is no global standard yet which requires States to prohibit a transfer if there is substantial risk that the weapons or ammunition are likely to be diverted from their intended legal recipient or re-transferred contrary to States obligations under international human rights and humanitarian law.

Moreover, a key element in an ATT could be a provision requiring States to establish common standards and specific mechanisms to control arms brokering and closely related activities. Establishing a strict national registration and licensing system as well as information-sharing procedures to control such activities could help better protect human rights, as could the increased interstate judicial cooperation to ensure prompt investigations and prosecutions according to the rule of law.

[50] Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.
http://daccessdds.un.org/doc/UNDOC/GEN/N07/442/32/PDF/N0744232.pdf?OpenElement

[51] See the Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD) Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition (2003).

4. Côte d'Ivoire – a belated UN arms embargo

This case shows how grave human rights abuses and serious violations of IHL, notably violence against women and other abuses perpetrated by all parties to the conflict including the security forces and the armed opposition groups, has been greatly intensified by the proliferation of small arms imports into Côte d'Ivoire. Prior to the belated UN arms embargo, several Eastern European countries supplied large consignments of arms to the Government of Côte d'Ivoire despite its forces' involvement in serious violations of human rights. Small arms continue to circulate in the country and international arms brokers and traffickers threaten further deliveries of small arms and larger conventional weapons.

In September 2002, following a failed coup attempt, the country was divided *de facto* in two, with the south controlled by the government and the north held by an armed opposition group, the Côte d'Ivoire Patriotic Movement (*Mouvement patriotique de Côte d'Ivoire*, MPCI), which later became the New Forces (*Forces Nouvelles*) after merging with two other armed opposition groups.[52]

Even though the two parties were very quickly separated by a buffer zone controlled by international troops, including French soldiers and UN peacekeeping forces, the fighting continued well into 2003. Serious human rights abuses and violations of IHL, including arbitrary detentions, killings and rape of women and girls, were committed throughout the country by all parties to the conflict. The nature of the fighting led to hundreds of thousands of civilians who were internally displaced and refugees who fled to neighbouring countries. Jeanne, a 23-year-old mother of several children, who was assaulted in March 2003, recounted that: "*Two of them caught me. I was beaten with Kalashnikov rifle butts. Some of them said 'Let's finish her off'. The two who had caught me refused to kill me but they had sex with me. They raped me, one after the other.*"[53]

[52] These two armed opposition groups, the *Mouvement Patriotique Ivoirien du Grand Ouest* (MPIGO) and the *Mouvement pour la Justice et la Paix* (MJP) emerged in late 2002 in the western part of the country and reportedly comprised armed elements from Liberia. They are now formally part of the New Forces.
[53] See *Targeting women: the forgotten victims of war*, Amnesty International, 15 March 2007, (AFR 31/001/2007).

An AK-47 machine-gun at a makeshift roadblock set up by Forces Nouvelles troops to stop vehicles near the town of Bouaké, Côte d'Ivoire, July 2005.
© AP/PA Photo/Schalk van Zuydam

A series of agreements were signed to initially impose a ceasefire and then to put an end to the conflict, and pledged to demobilize, disarm and reintegrate all forces.[54] In March 2007, an agreement was signed in Ouagadougou (Burkina Faso) between President Laurent Gbagbo and the secretary general of the New Forces, Guillaume Soro under which a new power-sharing government was formed and a joint army command set up. This agreement led to a decrease of the tensions and of the number of reported human rights abuses and presidential elections are now scheduled for 30 November 2008, after having been postponed twice. However, despite international pressure, the repeatedly postponed disarmament, demobilization and reintegration (DDR) programme was deadlocked because of disagreement over the timetable.

After the November 2007 agreement,[55] the demobilization process began moving forward more rapidly even though it encountered several major difficulties. The first was the

[54] The first two main peace accords were the Linas-Marcoussis Agreement signed on 23 January 2003 and under which all parties to the conflict agreed upon a cease-fire and the establishment of a Government of National Reconciliation (GNR) that would set forth the conditions for disarmament. On 30 July 2004 the Accra III Agreement was signed. It included a timetable and framework to re-activate the peace process with a view to ensuring the full implementation of the Linas-Marcoussis Agreement. The parties committed themselves to the commencement of the disarmament, demobilization and reintegration process, including all paramilitary and militia groups.

[55] Two supplementary agreements to the Ouagadougou Agreement were signed between President Laurent Gbagbo and Prime Minister Guillaume Soro (leader of the former rebel Forces Nouvelles) which, among other things, called for the disarmament process to begin by 22 December and set a new date for national elections to be held by the end of June 2008. (http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.2876173/)

lack of funding for the regrouping of the New Forces which caused significant delays in the disarmament of the New Forces. The second was the disorder from a number of demonstrations held in 2007 and 2008 by soldiers who had not received payment. Both these factors aggravated the longstanding debate over having elections before disarmament, which eventually ended in another postponement of elections.

Many examples show how grave human rights abuses and serious violations of IHL, notably violence against women and other abuses perpetrated by the security forces and the armed opposition groups including the New Forces, have been greatly intensified by the proliferation of small arms. Acts of sexual violence by combatants constitute a war crime. If sexual violence by combatants is widespread or systematic it may be a crime against humanity. Constance, recounted how she and her sister were abducted from a village in western Côte d'Ivoire and raped by members of an armed group:

> "*The rebels were already in our village before December 2002. In February 2003, my sister and I were surprised on Castle Road around 1700 hours on our way back from visiting our maternal grandmother. The rebels spoke to us in English and asked us to get in their vehicle. We refused and they became threatening. My sister and I were standing side by side. One of them fired a bullet between us to frighten us and another shot bullets into the air. They threatened to kill us if we refused to get in the vehicle*." [56]

Other serious human rights violations and abuses have been committed, notably the extrajudicial execution of dozens of civilians by the security forces after a banned demonstration took place in April 2004. Then again, between 4 and 6 November 2004, the Ivorian armed forces launched several air attacks in the area of Bouaké (the stronghold of the New Forces). These air strikes resulted in the death of a number of civilians and French soldiers of the Force Licorne. After the killing of 9 French soldiers the French forces retaliated by destroying the air assets (Su-25, MiG-23, Mi-8T) of the Ivorian Armed Forces. As a result, huge demonstrations were organized in the following days in Abidjan to protest against the action of the French troops leading to a confrontation between the Ivorian army and population and the French troops.[57] Eventually, on 15 November 2004, the UN Security Council imposed an arms embargo[58] upon Côte d'Ivoire with exceptions for the UN peacekeeping force.

There was another major confrontation in January 2006 between Ivorian civilians, the majority of them unarmed, and a Bangladeshi contingent of the UN peacekeeping forces (the

[56] (AI Index: AFR 31/001/2007), p.39.

[57] *Côte d'Ivoire: Clashes between peacekeepers forces and civilians – lessons for the future*, Amnesty International, 19 September 2006, (AI Index: AFR 31/005/2006).

[58] Paragraph 7 of UN Security Council Resolution 1572, 15 November 2004: *Decides* that all States shall, for a period of thirteen months from the date of adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer to Côte d'Ivoire, from their territories or by their nationals, or using their flag vessels or aircraft, of arms or any related materiel, in particular military aircraft and equipment, whether or not originating in their territories, as well as the provision of any assistance, advice or training related to military activities. This embargo has been extended until 31 October 2007 by Resolution 1727 adopted by the UN Security Council on 15 December 2006, See Paragraph 1: S/RES/1727 (2006)

United Nations Operation in Côte d'Ivoire - UNOCI).[59] While the UNOCI peacekeeping forces claimed to have acted in self-defence and that their use of force was proportionate, political parties and groups professing support for President Gbagbo have, for their part, repeatedly insisted that peacekeeping forces fired live bullets at "unarmed demonstrators".[60]

4.1 Rearming on all sides before the UN embargo

The UN arms embargo came too late. Despite the signing of the January 2003 Linas-Marcoussis Agreement, that aimed to set forth the conditions for disarmament, the parties to the conflict were already heavily re-arming between January 2003 and September 2003.[61]

In 1998, the Economic Community of West African States (ECOWAS) had declared a voluntary three-year Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons[62] to control the proliferation of such arms in West Africa. The Moratorium was extended in 2001 and again in 2004. As a Member State of ECOWAS, Côte d'Ivoire government should not have carried out these arms imports until it had first notified the ECOWAS secretariat of the imports and obtained an exemption from ECOWAS. Yet, according to the UN Group of Experts[63] the majority of these shipments of small arms and light weapons were left unreported to ECOWAS by the government of Côte d'Ivoire.[64]

Number of air shipments of Small Arms and Light Weapons to Ivory Coast not reported to ECOWAS[65]

Year	2002	2003	2004
Shipments	29	35	16

Between 2002 and 2004, and prior to the UN arms embargo, several Eastern European countries supplied large consignments of arms to the Government of Côte d'Ivoire. These consignments included heavy equipment, and small arms and light weapons. The UN

[59] The UN peacekeeping forces were deployed following UNSC resolution 1528 of February 2004; Amnesty International visited Ivory Coast in April 2006 in order to investigate the circumstances in which a Bangladeshi contingent of UNOCI used lethal force in the town of Guiglo, in the west of the country, killing five people and wounding at least 20 others

[60] Amnesty International, AI Index: AFR 31/005/2006, p.1.

[61] See statements in Reports of the Secretary-General on the UN Mission in Cote d'Ivoire for example, S/2003/801, paragraph 6: "There are also confirmed reports about continuing rearmament by FANCI, as well as suspicions that the Forces nouvelles are rearming…". There were also 35 air shipments of small arms and light weapons to the Cote d'Ivoire. Report of the UN Group of Experts, S/2005/699, p.8.

[62] The voluntary nature and the lack of enforceable sanctions impaired the effectiveness of the Moratorium and it was superseded by the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials signed on 14 June 2006.

[63] Established by paragraph 7 of UN Security Council Resolution 1584 (2005).

[64] Report of the Group of Experts pursuant to paragraph 7 of the Security Council Resolution 1584 (2005) concerning the Cote D'Ivoire (S/2005/699), paragraph 11, (Report of the Group of Experts pursuant to paragraph 7 of the Security Council Resolution 1584, paragraph 11).

[65] Report of the Group of Experts pursuant to paragraph 7 of the Security Council Resolution 1584, paragraph 11

Group of Experts on Côte d'Ivoire reported 80 shipments of small arms and light weapons between 2002 and 2004. The Group identified some of the companies involved in these transfers: Metalika AB Ltd (Bulgaria), BSVT (Belarus) and Darkwood Logistique[66] (Togo).[67]

Major Arms Exports to Côte d'Ivoire 2003-2004

Year	Exporter	State of Origin	Number of Items	Description	Source
2003	Belarus	Russia	1	BMP-1 armoured combat vehicle	UN Register of Conventional Arms
2003	Belarus	Russia	13	BRDM-2 armoured combatvehicle	UN Register of Conventional Arms
2003	Belarus	Russia	6	BTR-80 armoured combat vehicle	UN Register of Conventional Arms
2003	Belarus	Russia	10	82mm BM-37 mortar	UN Register of Conventional Arms
2003	Belarus	Russia	2	Su-25UB combat aircraft	UN Register of Conventional Arms
2003	Bulgaria		3	120mm mortar	UN Register of Conventional Arms
2003	Bulgaria		2	MiG-23 combat aircraft	UN Register of Conventional Arms
2003	Bulgaria		2	Mi-24 attack helicopter	UN Register of Conventional Arms
2003	Romania		4	IAR 330 Puma attack helicopter	UN Register of Conventional Arms
2003	Ukraine		1	BMP-2 armoured combat vehicle	UN Register of Conventional Arms
2004	Belarus	Russia	2	Su-25 combat aircraft	UN Register of Conventional Arms
2004	Belarus		1	AN-12 transport aircraft	UN Doc. S/2005/699
2004	Belarus		1	Mi-8T + spare parts	UN Doc. S/2005/699

Amnesty International is concerned that these arms supplies continued into Côte d'Ivoire between 2002 and 2004 at a time when serious abuses of human rights and violations of IHL involved the use of small arms and air attacks, and that these arms have also been used for such violations since 2004. If an effective ATT had been in place, with provisions to prohibit the transfer of military and related equipment in circumstances that pose a high risk that the transfers would be used to facilitate serious violations of human rights and IHL, then these arms transfers could have been prevented.

[66] Darkwood is based in Lomé (Togo) and run by a French national named Robert Montoya. With regard to Darkwood the Panel wrote: "Some defence experts estimate that Darkwood was responsible for two thirds of Ivorian military procurement between 2002 and 2004" (§114: S/2005/699).
[67] S/2005/699, paragraphs 10 and 11.

4.2 Shopping lists of arms

Amnesty International has obtained a shopping list of weapons which the Togolese based company, Darkwood, proposed to obtain for the Ivorian government. Information available to Amnesty International indicates that Darkwood delivered some items on that list to Côte d'Ivoire in 2004 before the imposition of the UN arms embargo. The list included 5,000 AK-47 assault rifles, 200 PKM light machine guns, 200 RPG-7 rocket launchers, 100 82mm mortars, 5 million AK-47 ammunition rounds, 2,000 RPG-7 ammunition rounds, 2 Su-25 combat aircraft, 2 Antonov-12 cargo aircraft, 6 BTR-80 armoured vehicles, 13 BRDM-2 armoured vehicles, 6 BM-21 multiple rocket launchers, and 7,000 air to surface missiles.

In 2005, the UN Group of Experts spotted two Mi-8T transport helicopters under repair at the hangar of Darkwood in Lomé.[68] Meanwhile foreign nationals – which UN officials claim have been under contract by Darkwood - were maintaining the remaining air assets of the Ivorian armed forces.[69] According to the UN Group of Experts, Darkwood is currently under judicial investigation by the Togolese authorities "over allegations of illicit arms brokering and maintaining aircraft that might constitute a violation of Security Council sanctions".[70]

Amnesty International is also in the possession of a document which purports to be a €2 million contract[71] between a company with a registration in the Dutch Antilles (but with an administrative address in Belgium) and the Ministry of Defence of Guinea-Bissau. The broker is identified as an Ivorian national who is close to the ruling Ivorian President and is wanted by France for fraud and forgery.[72] The contract does not specify a delivery date nor does Amnesty International know if the items were delivered but the contract specifies that the final instalment for payment is due on the 21 March 2009. Relevant officials in Guinea Bissau are still investigating this contract. According to sources in Belgium the equipment would most likely have been procured from a company in Belarus.[73] Amnesty International suspects that, taking into account the background of the broker and that the Ivorian government has repeatedly showed continued interest in Mi-24 attack and Mi-8 transport helicopters[74], these items were destined for the Government of Côte d'Ivoire.

[68] S/2005/699, paragraph 114.
[69] See UN investigative reports S/2006/204, S/2006/735, and S/2006/964.
[70] S/2006/735, paragraph 82.
[71] Contract obtained in 2006.
[72] Telephone conversation with source, **July 2007**
[73] Confidential sources
[74] See for instance S/2005/699, S/2006/204, S/2006/735, and S/2006/964.

Arms to be bought supposedly for "Guinea-Bissau"

Quantity	Description
4	Mi-24 attack helicopters
1	Mi-8 transport helicopter
10	BTR-80 armoured vehicles
20	AGS-17 rocket launchers
5,000	RPG-7 ammunition rounds
6,000	122mm BM-21 rockets
80,000	23mm ZU-23 ammunition rounds
100,000	12.7mm DshK ammunition rounds
1,000,000	7.62x39mm ammunition rounds
1,000,000	7.62x54mm ammunition rounds
10,000	Grenades
10,000	30mm VOG-17 grenades

4.3 Lessons from the Côte d'Ivoire case

If an effective ATT had been in place prior to the UN arms embargo, with provisions to prohibit the transfer of military and related equipment in circumstances which pose a substantial risk that the transfers would be used to facilitate serious violations of human rights and IHL, then the irresponsible re-arming of all sides in Côte d'Ivoire could have been prevented or at least reduced. Moreover, the UN arms embargo could have been better respected if such an ATT had been in place and implemented in most countries.

Moreover, if an ATT included not only provisions to respect human rights, IHL and UN arms embargoes when considering prospective arms transfers, but also robust measures to control intermediaries such as brokers, the above transfers and transactions by private arms dealers would have been properly assessed in advance. If common standards were agreed, the authorities in States where the dealers and brokers reside, operate and hold citizenship, would have a chance to consult the intended receiving States before a brokering transaction was approved, and thus provide another means to help protect human rights in countries such as Côte d'Ivoire.

5. Guatemala - exacerbating violent crime

This case study illustrates the way small arms transfers from several foreign countries exacerbate a pervasive pattern of violent crime in a country with existing high levels of small arms availability. The failure of the Government of Guatemala to exercise due diligence when small arms are being so widely misused by private persons and illegal armed criminal groups, presents a substantial risk that future small arms transfers are likely to exacerbate violent crime in Guatemala.

In common with some other Central American countries, Guatemala experiences high levels of violent crime including gun-related violence.[75] State authorities have come under criticism for what many perceive as a failure to control spiralling violence and provide public security. The murder rate for both men and women has continued to rise. Police records indicate that a total of 5,781 people were killed in 2007, 5,885 in 2006, 5,338 in 2005 and 4,346 in 2004. Estimates put Guatemala at approximately an average of 44 killings per 100,000 inhabitants.[76] Actual convictions for killings have remained extremely low.

With no visible progress being made in improving the quality of criminal investigations and prosecutions of crimes, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions criticized Guatemala in 2006 for fostering a culture of impunity for killings.[77]

5.1 A legacy of arms

Guatamala's 36-year internal armed conflict officially came to an end in 1996 with the signing of peace accords by the guerrilla group, the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca*, URNG), and the government. Over 200,000 people, mainly of Mayan origin, were killed or 'disappeared' during the conflict while over one million were forcibly displaced.[78] The conflict left the country awash with small arms. The estimated 1.8 million firearms in Guatemala, 90 per cent unregistered, contribute to a climate of fear and criminality.[79]

[75] According to Arturo Matute and Iván Garcia, small arms were responsible for 85% of homicide deaths. Cited in the Small Arms Survey Year book 2007, p.171.
[76] Figures drawn from various communications from the Guatemalan Ministry of the Interior (*Ministerio de Gobernación*) to Amnesty International; The rate of killings per 100,000 is based on an estimated population of 12,700,000 as stated in the *UNDP Human Development Report 2007/2008*, page 245, but does not take into account any variations of the estimated population between 2004-2007
[77] United Nations, 19 February 2007, Civil and Political Rights, including questions of disappearances and summary executions, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum*, Mission to Guatemala, 21-25 August 2006, A/HRC/4/20/Add.2
[78] AI 2006. AMR 34/035/2006.
[79] Estimates are between 1.5 and 2 million. The UN estimated in 2002 there were 1.5 million illegal firearms in Guatemela, see UN Doc A/57/336, 22 August 2002; "approx. 250,000 armas legales, y se estiman en cerca de 1.5 millones las armas ilegales," *El costa economico de la violencia en Guatemala*, UNDP, 2006.

The only major weapons collection effort was in 1997 when the UN Observer Mission in Guatemala oversaw the disarmament of armed group units which resulted in the surrender of approximately 1,500 weapons and 535,000 rounds of small calibre ammunition and grenades.[80] Since then there have been no significant disarmament efforts beyond the regular confiscations by the police. As such, small arms control remains a massive challenge in Guatemala. While these types of weapons are being confiscated and destroyed, by the police, it is only in small numbers.[81] The Civil National Police seizes annually an average of 3,000 arms, 45 percent of which are pistols and 27% are revolvers.[82]

5.2 Failing to protect human rights

Research carried out by the Human Rights Ombudsman's Office shows that in all murder cases, 80 per cent of men and 69 per cent of women are killed with firearms.[83] The lack of investigation into murders and the low rate of convictions have contributed to a culture of impunity for such crimes. The Vice President of Guatemala reported that approximately one percent of all killings resulted in a conviction.[84]

Violence against women is especially widespread in Guatemala: in 2007, at least 590 women were murdered according to the police and many of the bodies showed signs of sexual violence and other forms of torture.[85] The lack of police response to cases of women who disappear as illustrated in the following story raises questions about state acquiescence given the high murder rate of women and the dismal conviction rate.

At approximately 9:30 pm on 27 July 2005, 20-year-old university student Cristina Hernández(1) was forced into a grey car outside her home by four men. Neighbours witnessed the abduction and immediately alerted her father who later related:

I borrowed a car from a neighbour and my son and I tried to chase them in the car. Then I went to San Juan police station and begged the police to try to stop their car. I begged

http://www.pnudguatemala.org/documentos/EstudioCostodeViolencia.pdf; ."Estimated 1.8 Million Unregistered Firearms in Guatemala", *El Periodico* (Guatemala City) 11 July 2004. FBIS Translation

[80] Laurance, Edward and William Godnick. 2001. "Weapons Collection in Central America: El Salvador and Guatemala". In Faltas and Di Chiaro III.

[81] The first public destruction of illegal arms was in 2006 of approximately 502 arms.

[82] See "Armas pequenas y livianas en America central y Panama informe sub regional", by Carmen Rosa de Leon-Escribano, p.267-268, in *Armas pequeñas y livianas : una amenaza a la seguridad hemisférica* , ed. María Stella Sáenz, Breckenridge. - la.ed. - San José, CR : FLACSO, 2008.

[83] AI 2006. AMR 34/019/2006.

[84] Meeting with Amnesty International, London, 15 October 2007.

[85] See Amnesty International, *Guatemala: No protection, no justice: killings of women (an update)*, 18 July 2006, AI Index: AMR 34/019/2006, and Amnesty International, *Guatemala: No protection, no justice: killings of women*, 9 June 2005, AI Index: AMR 34/017/2005 and also other organisations: Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala, 2 June 2006, CEDAW/C/GUA/CO/6; Report of the Special Rapporteur on Violence against women, its causes and consequences, Mission to Guatemala, 10 February 2005, E/CN.4/2005/72/Add.3.

them to put up road blocks to stop them and catch them. Then after two hours of searching everywhere I went back to the police station to see if they had any news…they claimed I hadn't reported anything and so they'd done nothing. Then my brother-in-law went to the homicide department; and they said nothing could be done. They said many young girls run off with boyfriends; and so they couldn't start a search for 24 hours.[86]

The next morning her dead body was found. She had been shot four times and bitten all over her body. Instead of being subjected to a forensic examination, all but one item of clothing she was wearing were returned to the family. When the family presented the clothes to the Public Ministry to assist in the investigation, they were reportedly told to burn them or throw them away. No one has been brought to justice for her killing.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions issued a report criticizing Guatemala for fostering impunity for killings and noted the involvement of the police and other citizens in killings of gang members, criminal suspects and others.[87] In this context of increasing insecurity combined with a failure by the state to undertake efficient and effective investigation and prosecution, more violence has filled the vacuum: agents of the security forces have been accused of carrying out extra-judicial executions and torture.

Reports from local organizations and international bodies contain credible allegations that members of the security forces are implicated in cases of torture and extra-judicial executions of those deemed socially undesirable.[88] The victims, including young people, tend to be members or alleged members of street gangs (known as maras). These killings should be immediately and thoroughly investigated by the authorities, although this has not taken place to date.[89]

The Government of Guatemala has made a welcome step in tackling the problem of criminal networks embedded within state institutions by ratifying the UN-backed International Commission Against Impunity (CICIG).

[86] Interview with father of Cristina Hernández, *BBC This World* documentary, *Killer's Paradise*, cited in AI publication *Guatemala: No protection, no justice: killings of women (an update),* 18 July 2006, AMR 34/019/2006.
[87] United Nations, 19 February 2007, Civil and Political Rights, including questions of disappearances and summary executions, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum*, Mission to Guatemala, 21-25 August 2006, A/HRC/4/20/Add.2.
[88] Op cit & Committee Against Torture, *Conclusions and recommendations: Guatemala*, 24 July 2006, CAT/C/GTM/CO/4; CALDH, ICCPG & SEDEM*, Las Ejecuciones Extrajudiciales de Jovenes Estigmatizados: Dimension juridica, social y humana del fenomeno y responsabilidad del Estado de Guatemala sobre la mal llamada "limpieza social"*, May 2007.
[89] Guatemala, Amnesty International Submission to the UN Universal Periodic Review, Second Session of the UPR Working Group, 5-9 May 2008.

5.3 Continuing small arms supplies

In spite of the high levels of small arms circulating around the country, Guatemala continues to import large numbers of small arms and ammunition, typically pistols and revolvers.[90]

Top Five Exporters of "Pistols and Revolvers" to Guatemala between 2004 and 2006 by value[91]

Exporter	Year	Total Value US$	Total (kg)
Czech Republic	2004, 2005	1,480,725	5308
Rep. of Korea	2004, 2005, 2006	1,040,328	8508
Argentina	2004, 2005	818,902	9929
Slovakia	2005	221,711	760
Germany	2004, 2005, 2006,	155,000	800

The above table shows the top five suppliers of "pistols and revolvers" as reported by exporting States to the UN customs database, Comtrade. There is a lack of transparency in the reporting by governments on the types and quantities of weapons delivered to Guatemala, according to the information they supplied to UN Comtrade. However, in the absence of figures on the actual number of weapons delivered, the value in US dollars and weight in kilograms is useful in conveying the amount of arms transferred. Furthermore, no information on the recipient of these weapons shipments is published by the Government of Guatemala or the exporting governments so the designated end-user could be, for example, a registered firearms dealer (since civilians are allowed to carry arms), or military, security or police forces.[92] Other arms suppliers to Guatemala include: Israel, Italy, Mexico, Slovakia, Turkey, and the USA.[93]

According to a recent report, many citzens have unregistered arms and the ease with which someone can buys arms without registering them is a major cause for the increase in

[90] Compared with other countries in Central America, Guatemala imports the largest value of arms under the UN category of 'pistols and revolvers' 89114. Guatemala imports $4,295,161 under this category; Nicaragua $1, 919,774; and El Salvador $1,537,718 for example. The table only shows the top five exporters to Guatemala.

[91] Based on the total value of exports to Guatemala using SITEC Rev 3 Code of UN Comtrade Database where entries have been reported by the exporter under code 89114 'Pistols and Revolvers (other than those of heading 891.31). It is worth noting that $104,272 worth of pistols and revolvers in 2006 were supplied to Guatemala through Honduras without them being imported into Honduras. Honduras has no small arms manufacturing base (Omega Research Foundation database).

[92] Guatamala also makes its customs declarations available online through the Superintendencia de Administracion Tributaria (SAT). However, up until 2007 Guatemala was one of the few countries to provide detailed information on the types and models of weapons, the quantities, values and dates of importation. Since then the data now is actually less detailed.

[93] Based on governments reporting exports to Guatemala under the UN Comtrade and company information.

unlicensed weapons.[94] Estimates suggest that there are between 800,000 and 1.5 million illegal arms in circulation.[95] Many of these are bought legally and afterwards are sold illegally onto the black market.[96] Therefore, there is a substantial risk that continued supplies imported into the country will end up in the illicit market in the hands of criminals.[97] For example, according to the statistics of the *Policia Nacional Civil de Guatemala*, "about 1,500 firearms are stolen every year in Guatemala."[98]

Domestic production in Guatemala is small. The *Industrias Militares de Guatemala* (IMG) produces 5.56 mm ammunition for the military and police. However, there have been reports of theft from these stocks, for example, bullet casing from a series of armed assaults were traced back to the IMG.[99] The government entity responsible for small arms control is the Department for Control of Arms and Munitions (DECAM, a Ministry of Defence dependency).[100] The Guatemalan government has also established a National Commission for Disarmament, however the Commission has not met for two years. Guatemala has ratified the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives, Ammunition, and Other Related Materials which is an important tool for reducing the illicit trade in small arms and light weapons.

5.4 Lessons from the Guatemala case

In order to protect the right to life and physical integrity which is enshrined in the Universal Declaration of Human Rights and international human rights treaties to which most States are parties, there is a need to hold States accountable in instances where they repeatedly fail to act with due diligence to prevent patterns of murder and other violent crimes by private persons, and not only those crimes perpetrated directly by state personnel. As in Guatemala, such patterns of violence are often prolonged and made more severe by a State's failure to establish

[94] See "Armas pequenas y livianas en America central y Panama informe sub regional", by Carmen Rosa de Leon-Escribano, p.267-268, in *Armas pequeñas y livianas : una amenaza a la seguridad hemisférica* , ed. María Stella Sáenz, Breckenridge. - la.ed. - San José, CR : FLACSO,2008

[95] For example, the 800,000 is used in in the chapter "Armas pequenas y livianas en America central y Panama informe sub regional", by Carmen Rosa de Leon-Escribano, p.267-268, in *Armas pequeñas y livianas : una amenaza a la seguridad hemisférica*, ed. María Stella Sáenz, Breckenridge. - la.ed. - San José, CR : FLACSO ,2008; whereas the 1.5 million figure is used by UNDP in "El Costa economico de la violencia en Guatemala", Programa de Seguridad Ciudadana y Prevención de la Violencia del PNUD Guatemala, 2006, pp.24.

[96] See "Armas pequenas y livianas en America central y Panama informe sub regional", by Carmen Rosa de Leon-Escribano, p.267-268, in *Armas pequeñas y livianas : una amenaza a la seguridad hemisférica* , ed. María Stella Sáenz, Breckenridge. - la.ed. - San José, CR : FLACSO, 2008.

[97] "Incautan al mes las misma cantidad de armas robadas", *El Periodico*, 17 December 2006; "Agrego que hasta la primera quincena de juno se habian decomisado 1548 armas de todo tipo: incluyendi fusiles de asalto, carabina, revolverees y escopetas. En 2006, fueron aseguradas 3,814 armas; y en 2005, 3,716. Alrededor de 10 al dia." 'La PNC decomisa diez armas de fuego cada dia', *El Periodico*, 2 July 2007.

[98] As cited in *Crime and Development in Central America*, UN Office on Drugs and Crime, May 2007, p.56.

[99] William Godnick, *Monitoring the Implementation of Small Arms Control in Guatemala*, International Alert, with assistance from Mayda de León (Instituto de Enseñanza para el Desarrollo Sostenible, (IEPADES) 2005; Los Effectos de la Proliferación de armas livianas: inseguridad en las calles y carreteras de Guatemela, no date.

[100] It shold also be noted that the 1996 Peace Accords call for the transfer of the firearms registry from the military to a civilian institution, however all proposals to implement this have failed.

reasonable regulation regarding the private ownership of small arms; failure to protect individuals from domestic or family violence; and failure to protect individuals from organised crime, including kidnapping for ransom.[101]

Under international human-rights law, every person has a duty to respect another's right to life and physical integrity.[102] Most importantly, States have a duty to take positive measures to prevent acts of violence and unlawful killings, including those committed by private persons.[103] There is growing recognition that States' duties under international human rights law include exercising due diligence to ensure basic rights – certainly the right to life and security of the person – are not abused by private actors.[104]

There is strong evidence that one cause of the high murder rate in Guatemala is the State's failure to exercise adequate control over civilian possession and use of firearms. This lack of State action coupled with pervasive failures by the State to investigate and prosecute those responsible for the murders, raises the issue of the state's acquiescence in these murders and demonstrates a serious disregard for the exercise of due diligence.

The recognition of this due diligence responsibility towards the protection of human rights by all States should be reflected by the inclusion of a principle in an ATT that requires State Parties to suspend the authorization of international transfers of firearms that it is known will contribute to a pattern of violent crime.

6. Guinea - arms used for excessive force against protestors

This case shows how the failure of the Government of Guinea to respect the law, its repeated excessive use of force against political opponents, and its failure to bring the perpetrators of such acts to justice should have disqualified the Guinea armed forces from receiving weapons and munitions from certain EU States and from South Africa to carry out such unlawful acts. The supplier States should have been aware at least from 2003 of the foreseeable and significant risk that the security forces in Guinea would most likely use such vehicles to facilitate serious human rights violations, especially while policing demonstrations, since there was a consistent pattern of excessive use of force by the Guinea armed forces and

[101] See Working paper submitted by Ms. Barbara Frey, op. cit.
[102] Article 3 of the Universal Declaration of Human Rights.
[103] Article 6 of the International Covenant on Civil and Political Rights; see the report by the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions which includes the requirement on States "to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction." (E/CN.4/2001/9, para. 7).
[104] For example, the UN Special Rapporteur on Violence against Women has affirmed that: "a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights… To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses." Report by the UN Special Rapporteur on Violence against Women, E/CN.4/1996/53, paragraphs 32 and 33.

police, ordered and supported by the highest authorities of the State over a period of almost 10 years. The continuing disregard for human rights of the government and the irresponsible supply of arms contributed to the tragic events in January and February 2007 in Conakry, including the firing of live ammunition into crowds of demonstrators, causing heavy loss of life, and the firing on children.

In August 2003, a South African company, Alvis OMC, then a subsidiary of UK company Alvis and now a subsidiary of UK-based BAE Systems, signed a multi-million rand contract to supply the Ministry of Internal Security of the Republic of Guinea with ten "Mamba Mk3" 4x4 armoured "mine-protected" vehicles for immediate delivery from South Africa.[105] A spokesperson for Alvis said these armoured vehicles would be used for "border control" in Guinea and that a three-week in-country training programme would form part of the contract.

On the other hand, the South African government should have been aware in 2003 of the foreseeable and significant risk that the security forces in Guinea would most likely use such vehicles to facilitate serious human rights violations if it granted permission for their export. The Guinean security forces had violently suppressed, in particular, demonstrations organized during the December 1998 presidential elections, the local elections of June 2000, and the 2001 referendum. Tensions were evident, and erupted again during the demonstrations of February 2004, November 2005, February and June 2006, and January/February 2007.

Amnesty International has gathered information showing that the security forces in Guinea used armoured vehicles, including of the type imported from South Africa, to commit human rights violations while policing demonstrations held in January and February 2007 in Conakry. Photographs taken in Conakry on 20 January 2007 show the deployment by security forces of Mamba and other vehicles in the city.[106] Film footage, reportedly shot on 22 January 2007 in Conakry, shows security forces firing on participants in a peaceful demonstration using what appear to be Mamba and other vehicles matching those in the photographs.[107]

In January and February 2007, a wave of mainly peaceful demonstrations had swept through Guinea, particularly the capital Conakry. On 10 January a general strike was started by the trade unions, supported by political opposition parties, who were protesting against corruption, misappropriation of public funds and President Lansana Conté's "meddling" in judicial matters.[108] This and other protests and marches organized around the country were met with the use of excessive force by the security forces. The excessive and disproportionate force used by the security forces over this period left 130 people dead and more than 1,500

[105] Alvis OMC media announcement, 9 September 2003.
[106] Photographs taken by Georges Gobet (Agence France Presse/Getty Images), Conakry, 20 & 22 January 2007 (Getty Images Ref: 73052501 and 73066914).
[107] Film footage taken privately, 22 January 2007; the vehicles in the film match the vehicles shown in AFP newswire images from Conakry around the same time.
[108] Amnesty International documented incidents of excessive use of force from 10 January 2007 onwards. There were massive street demonstrations on 22 January and on 9 and 10 February in Conakry.

injured.[109] In addition, other serious violations of humans rights, such as dozens of arbitrary arrests, sexual violence and looting, were perpetrated by security forces. [110]

An armoured personnel carrier used during a demonstration in Conakry, Guinea. ©Private

These violations were the latest example of a consistent pattern of excessive use of force by the Guinea armed forces and police, ordered and supported by the highest authorities of the State over a period of almost 10 years.[111] Whenever Guineans, exasperated at difficult living conditions or a lack of political transparency, have expressed their discontent through public demonstrations and marches, especially during election campaigns, the Guinean security forces have responded with excessive force, including firing live ammunition into crowds of demonstrators, causing heavy loss of life.[112] Such use of excessive force has been accompanied by persistent violations of the right to freedom of expression and arbitrary arrests of political opponents and critics of the President of Guinea.

[109] A document from the Guinean Ministry of Public Health (Crisis Committee, Situation at 1 March 2007) reports 136 dead and 1,667 injured.
[110] OCHA situation report on Guinea-Conakry, 31 May 2007.
[111] See, in particular, Amnesty International, *Guinea: Maintaining order with contempt for the right to life* (AI Index: AFR 29/001/2002) and See Amnesty International Annual Reports for these years.
[112] Amnesty International *"Soldiers were shooting everywhere" - The security forces' response to peaceful demands for change* AI Index: AFR 29/003/2007 (27/06/2007), p.2-3.

During the 2007 unrest, members of the security forces also fired on children who were criticizing them for having fired at peaceful demonstrators, and who could in no way have been construed as threatening the lives of soldiers or others. [113] A relative of 14-year-old Kafala Ba told Amnesty International how he had been shot and killed at point blank range by a red beret soldier in Conakry on 23 February 2007:

> "*I was with Kafala in front of our compound. Several children were playing. At around 17.00 hours, some red berets went by in a Land Cruiser. The children shouted out, making fun of them. The vehicle drove at the children, who tried to escape. Kafala was hit by the vehicle and he fell to the ground. He was lying face down. A red beret took his firearm and shot the boy twice. He was hit between the shoulders and the hips. Another boy who was trying to escape was also hit by a bullet. Kafala's body was transported to Donka hospital*." [114]

Amnesty International has also gathered information concerning the unlawful use of tear gas. On 22 January 2007, soldiers patrolling in their vehicles in Conakry threw a tear gas grenade into Donka hospital. The grenade landed in the morgue. A witness told the Amnesty International delegation: "[b]etween 15.00h and 16.00h, a vehicle belonging to the red berets was on patrol outside Donka hospital. Suddenly, they threw a grenade into the hospital. Everyone fled, but the grenade didn't explode." [115]

In late January 2007, the UN Secretary-General "strongly urge[d] the Government to carry out investigations into the killings with a view to bringing those responsible to justice, including members of the security forces, and to take the necessary measures to ensure the safety of all citizens throughout the country."[116] The African Union in an official statement on 16 February 2007 "deplored the losses in human lives recorded at the time of the general strike of January 2007, like those which have occurred during February 2007." The UN High Commissioner for Human Rights Louise Arbour said in a statement that "[t]he killings have to be investigated expeditiously and impartially, and anyone found responsible for abuses must be brought to justice."[117]

UN standards require government law enforcement agencies to avoid using force when policing unlawful but non-violent assemblies, and when dispersing violent assemblies, to use force only to the minimum extent necessary.[118] In May 2007, a law was adopted for the establishment of an "Independent National Commission of Inquiry", charged with

[113] Amnesty International *"Soldiers were shooting everywhere" - The security forces' response to peaceful demands for change* AI Index: AFR 29/003/2007 (27/06/2007), p.11.
[114] Ibid
[115] Amnesty International *"Soldiers were shooting everywhere" - The security forces' response to peaceful demands for change* AI Index: AFR 29/003/2007 (27/06/2007), p.16
[116] New York, 22 January 2007 - Statement attributable to the Spokesperson for the Secretary-General on Guinea http://www.un.org/apps/sg/sgstats.asp?nid=2417 Emphasis added.
[117] UN News Service, 24 January 2007 – http://www.un.org/apps/news/story.asp?NewsID=21322&Cr=guinea&Cr1= . Accessed 21 August 2007.
[118] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 9,12, 13, and 14)

"conducting investigations into grave human rights violations and offences committed during the strikes of June 2006 and January-February 2007." In May 2008, the President of the National Commission of Inquiry, which was only set up in December 2007, publicly denounced the fact that the Commission was not operational due to the lack of funds from the government.

6.1 Deliveries of arms to Guinea during 2003-06[119]

Apart from the armoured vehicles from South Africa referred to above, which would appear to be recorded under the UN trade data as being delivered in 2003[120], France has been a significant source of supply of military and lethal equipment to Guinea, especially cartridges for shotguns in the period 2003 - and again in 2004, 2005 and 2006, totalling a value of $6,213,611.[121] Both Portugal and Spain have also supplied cartridges in 2003, 2004 and 2006 worth $246,388, and in 2003, $105,841 respectively.[122] In 2005, Senegal delivered equipment under the category of munitions and cartridges,[123] and Turkey delivered firearms in 2004 and 2005 respectively.[124]

It is not possible to know to which end-users these deliveries were destined because there is no requirement on States to share such information. From the data it is clear that equipment of concern to Amnesty International continues to be delivered to Guinea, particularly from France and Portugal, both of which subscribe to the 1998 EU Code of Conduct on Conventional Arms Exports which includes a criterion requiring States not to issue a licence "*if there is a clear risk that the proposed export might be used for internal repression*."

South Africa's national arms export law also requires the government to "avoid contributing to internal repression" and "avoid transfers of conventional arms to governments that systematically violate or suppress human rights".[125] However, it is possible that the authorization of the armoured vehicles took place before this law was enacted in 2002.

[119] UN Comtrade data, using classification SITEC REV 3 as reported by the exporters under the commodity code 891. Accessed 13 Sept 2007.
[120] In 2003, South Africa reported the delivery of military equipment to the value of $1,503,118 under the UN Comtrade classification Sitec Rev 3 code Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles 89111.
[121] UN Comtrade, classification SITEC REV 3, code Cartridges for shotguns 89122. Accessed 13 Sept 2007.
[122] UN Comtrade, classification SITEC REV 3. Portugal reported in 2003, 2004, and 2006 delivered a total of $246,388S under the code Cartridges for shotguns (89122). 89122. Spain reported in 2003 Cartridges for shotguns (89122) of the value $52,252 and other cartridges and parts thereof (89124) of the value of $53,589.Accessed 13 Sept 2007.
[123] UN Comtrade, classification SITEC REV 3, $22,552 for goods under code 'Munitions of war and parts thereof, (89129), $20,826 for goods under code 'Other cartridges and parts thereof' (89124), and $117,195 for goods under the code 'Airgun pellets and parts of cartridges for shotguns' (89123); accessed 13 Sept 2007.
[124] In 2005 Turkey reported the delivery of equipment under the code 'Firearms' (89131) of the value of $51,036.
[125] South African National Conventional Arms Act 2002, Article 15 c) and d).

6.2 Lessons from the Guinea case

The implementation of effective provisions in an ATT requiring States to demonstrate full respect for international human rights law could have prevented many of the ongoing supplies of armoured vehicles, small arms, ammunition and tear gas to Guinea and helped convince the authorities in Guinea to address the serious failings of its security forces at a much earlier stage, thus perhaps averting the tragic events in 2007.

This case also shows the inadequacy of the EU Code of Conduct and the existing national laws on arms control in the arms supplying States, notably by South Africa and several EU States. Even though the Code and South Africa's national law explicitly require the States concerned to avoid arms transfers to recipients that would use the arms to facilitate serious violations of human rights, it has been possible for those States to authorize arms transfers to the Guinean security forces despite their persistent pattern of human rights violations, including the use of excessive force.

As stated further above in the introduction to this report, the EU Code is essentially a voluntary agreement and is not legally binding on EU Member States. Although EU States do attempt to publish some data on their arms exports, this data is *post facto* and far from adequate to enable parliamentary oversight and public scrutiny, as is largely the case pertaining under the US and South African national laws and regulations – and although these national laws have positive features there is, furthermore, no mechanism for periodic peer review by States of arms export control policies and practices.

These basic shortcomings in States' arms control systems could be relatively easily addressed in the provisions of an ATT, for example by establishing a procedure whereby all State parties would be required to promptly publish a report on their previous year's annual arms exports, using meaningful generic categories so that this data could be discussed by legislatures and be subjected to public examination.

7. Iraq - unceasing small arms supplies worsen carnage and despair

This case illustrates the massive proliferation and misuse of weapons in Iraq resulting initially from the importation and widespread distribution of arms under the previous Iraqi government and then the failure of invading US-led forces to act decisively to take measures to prevent human rights abuses, control stockpiles, disarm Iraqi soldiers when the armed forces were disbanded, and safeguard against arms surpluses and imports getting into the hands of militias working as death squads or insurgents. This has been compounded by a failure to adequately vet, monitor, train and hold to account the various Iraqi security forces consistent with international human rights and IHL standards, and by the flawed systems of the new Iraqi government and Multinational Force for their further weapons imports and

distribution. The case highlights in particular how US-sponsored systems of outsourcing and sub-contracting for arms supplies to Iraq have failed to protect against the diversion of weapons.

The Iraqi people are suffering grave human rights violations and abuses that are being exacerbated by one of the highest rates of possession of small arms per head of population in the world. In addition to millions of assault rifles amongst the population prior to the US-led invasion in 2003, Iraq has agreed contracts with the USA and its partners for the import of at least 1,000,000 infantry weapons and pistols with ammunition[126] as well as other munitions and military equipment. These ongoing supplies are sponsored mainly by the US Department of Defense the stated purpose of which is to arm the 531,000 members of the Iraqi security forces who mostly lack basic systems of human rights training and accountability.[127] As indicated below, many of these imported weapons remain unaccounted for and stocks have been diverted to and captured by individuals, militia and armed groups who commit grave human rights abuses. Some armed groups also allegedly receive covert supplies of small arms and munitions from Iran.[128]

In Iraq, the easy availability of small arms and lack of accountability has contributed to sectarian killings by armed groups, as well as torture and other ill-treatment and sectarian extra-judicial executions by Iraqi government forces and the continuing arbitrary detention of thousands of suspects by Iraqi soldiers backed by US armed forces since 2003.[129] Thousands of civilians, including women and children, have been killed or maimed, humanitarian aid workers have been kidnapped and communities that formerly lived in relative harmony have been propelled into open conflict since the US and allied military invasion in March 2003 and the ensuing military occupation.[130] The Security Council formally declared the end of the foreign occupation of Iraq with the dissolution of the Coalition Provisional Authority (CPA) at the end of June 2004, but the substantial US-led Multinational Force (MNF) has continued to effectively control all significant military and security operations, unilaterally or in conjunction with the Iraqi military and security forces."[131] The violence has had a devastating impact, causing massive population displacement - more than four million Iraqis are now

[126] These weapons have included mainly Soviet-style AK-47 and AKMS assault rifles, RPK and PKM portable machine guns, and RPG-7 shoulder-fired rocket propelled grenades as well as US assault rifles and 9mm Austrian Glock pistols.
[127] See "The Continuing Challenge of Building the Iraqi Security Forces," US House of Representatives, Committee on Armed Services, Subcommittee on Oversight & Investigations, June 2007.
[128] The US and UK governments have claimed that arms supplies from Iran have been delivered to armed Shiite groups in Iraq.
[129] Amnesty International, *Carnage and Despair Continues in Iraq* March 2008 (AI Index: MDE 14/001/2008)
[130] No-one knows exactly how many people have been killed in Iraq since the US-led invasion in March 2003. According to the largest survey, carried out jointly by the World Health Organisation and the Iraqi government and published in January 2007, more than 150,000 people had been killed by June 2006. The UN reported that almost 35,000 people were killed in 2006, the latest year for which figures are available; for an example of kidnapping, see"Men in Iraqi police garb kidnap scores in raid", Sudarsan Raghaven, *Washington Post,* November 15, 2006;
[131] See Security Council Resolution 1546 of 8 June 2004

displaced, two million of whom have fled the country as refugees and a further two million of whom are internally displaced within Iraq.[132]

Those subject to serious human rights abuses include members of religious and ethnic minorities, such as Yezidis, Christians, Mandaean-Sabeans and Palestinians; members of professional associations, such as medical doctors and judges; and human rights defenders, including journalists and lawyers. Iraqi authorities have failed to hold the perpetrators to account – and the USA and its allies have failed to insist that they do so.[133] Amnesty International is also concerned that soldiers belonging to the US-led Multinational Force (MNF) and personnel of private military and security companies have also committed human rights abuses; some of the former have been prosecuted on charges including the killing, rape or inhumane treatment of civilians[134] but personnel of private military and security companies have had a measure of immunity in Iraqi courts and have not been tried in US civilian courts.[135] In addition, civilian casualties resulting from suspected indiscriminate attacks or disproportionate use of force have been reported in the context of air strikes or search operations carried out by the MNF.[136]

Prior to the 2003 invasion, there were an estimated 15 million small arms and light weapons, predominately AK-47 type assault rifles in circulation and possession amongst a population numbering some 25 million.[137] During the military build up to the invasion,

[132] Refugees from Iraq in the region are estimated as 2-2.4 million; internally displaced persons in Iraq as 2.2-2.4 million (*Iraq Weekly Status Report*, February 27, 2008, Bureau of Near Eastern Affairs, US Department of State).
[133] Armed groups have routinely targeted civilians directly through suicide bombings, abductions and deliberate killings and also targeted schools. Numerous children have been killed and maimed in these attacks.
[134] See: *Carnage and Despair Continues in Iraq,* op cit; "Return to Fallujah. Iraqi city left without clean water, electricity and medicine," by P. Cockburn, *The Independent*, January 28, 2008; "State Dept. Renews Blackwater Contract in Iraq Despite Pentagon Labeling Sept. Baghdad Killing of 17 Civilians 'A Criminal Event'," *Democracy Now*, April 7, 2008, interview with Jeremy Scahill; "Iraqis angered by renewal of Blackwater contract," Reuters, April 6, 2008; "Another KBR Rape Case," by Karen Houppert, *The Nation*, April 3, 2008; "Congress keeps up pressure about assaults of contractor employees," by Suzanne Gamboa, AP, April 9, 2008: "*The Justice Department has not prosecuted any cases involving sexual assaults against civilians who work for contractors in Iraq or Afghanistan, despite a law giving it that authority, according to written testimony submitted to a Senate subcommittee and obtained by The Associated Press Tuesday."*
[135] The status, privileges and immunities of U.S. forces in Iraq are still governed by an order issued in June 2004 by the Coalition Provisional Authority as the occupying authority during the initial period of U.S. operations in Iraq. That order, known as Coalition Provision Authority Order Number 17 or CPA 17. This law grants immunity to all MNF personnel from Iraqi arrest and criminal jurisdiction, and regulates other matters usually covered by SOFAs, such as contracting, travel, taxes and fees. It differs from typical SOFAs in one significant respect, in that it grants such immunity to civilian contractors with respect to acts performed under their contracts. Technically this immunity is only for work done under the terms of their contract. In addition, it has been widely reported that the new Status of Forces Agreement between the US and Iraq will drop even this immunity. See e.g. "US drops immunity from Iraqi SOFA", UPI, 18 June 2008
[136] Human Rights Report, 1 July-31 December 2007, UN Assistance Mission for Iraq: §28-31; and American Civil Liberties Union , "ACLU Releases U.S. Army Documents That Depict American Troops' Involvement in Civilian Casualties in Iraq and Afghanistan (9/4/2007)."
[137] Small Arms Survey 2005 (p. 88-91) estimated conservatively that prior to invasion 4,2 million small arms were in hands of Iraqi military and that currently the civilian population has conservatively 8 million firearms in possession. The Small Arms Survey 2004 (p. 44-50) says about Iraq's weapons arsenal "this figure should be used as a starting point for understanding a public weapon inventory that almost certainly was larger, even before the

Amnesty International expressed concern that all the Permanent Members of the UN Security Council, as well as several East European States and Syria, had supplied arms and related materials to the Iraqi government despite such arms being used for grave violations of human rights.[138] In the weeks prior to the US-led invasion, small arms and light weapons were reported to have been distributed by the government among sections of the Iraqi population.[139] Combined with the looting of weapons stockpiles and police stations between 2003 and 2005, this increased the number of small arms in the hands of criminal gangs and armed groups therefore contributing to gross human rights abuses in Iraq.[140] Another major factor in the widespread proliferation of small arms among the Iraqi population was the May 2003 decision by the US occupation administration, the Coalition Provisional Authority (CPA), to disband the Iraqi army, estimated at around 400,000 men, most of who returned home or went into hiding with their weapons.

Since 2003, the US Department of Defense has directly funded the transfer of at least 800,000 Soviet-type weapons and 9mm pistols from several countries (see below) to Iraq but no exact figure is known on the amount of weapons donated to Iraq by other Member States of the North Atlantic Treaty Organization (NATO). Moreover, the Government of Iraq, which receives financial aid from the US Government, has also planned to procure at least 262,000 small arms from the USA and from China with the assistance of the UK. Overall Amnesty International can reasonably conclude that contracts for the transfer of more than 1,000,000 small arms have been concluded since 2003 and these have been already transferred to Iraq or will soon be transferred to Iraq. The stated purpose of such contracts has been to arm the 531,000 Iraqi military, security and police forces despite the fact that many of these personnel did already possess such weapons.[141]

Very serious failures have occurred in the effective management of huge quantities of weapons and munitions supplied to Iraq since 2003. While Iraqi officials, particularly in Iraq's Ministry of Defence (MoD), have been primarily responsible, a significant share of the responsibility rests with US and UK coalition forces and their contractors, who organized the deliveries and storage (see below). This mismanagement and the resulting diversion of arms have also exacerbated the high levels of armed violence and human rights abuse in large parts

war. Iraq's combined civilian and military stockpile can be conservatively estimated at between 7 million and 8 million firearms, with the potential to be considerably higher." (p. 47)

[138] Amnesty International, *Terror Trade Times*, Issue No 4, AI Index: ACT 31/002/2003, June 2003; in addition to naming China, France, Russia, the UK, the USA and Syria, the East European countries named were Bulgaria, Belarus, Bosnia, Ukraine and Serbia; concern was expressed that the Iraqi armed forces, such as artillery, tanks, military vehicles, fighter planes and helicopters, have reportedly been used to commit grave human rights violations.

[139] "Iraq Arms Civilians As Second Line of Defense Against U.S". Rajiv Chandrasekaran, *The Washington Post*, 5 February 2003; "*Over the past two years, Hussein's government says it has trained 1 million civilians in the basics of armed combat and given many of them firearms to keep at home. With Iraq now facing a possible U.S. military invasion, Iraqi leaders are encouraging -- and counting on -- those people to act as a last line of defense in cities and towns across the country*."; see also http://www.washingtonpost.com/wpdyn/content/discussion/2006/11/22/DI2006112201345_pf.html.

[140] Amnesty International, *Iraq - In Cold Blood: abuses by armed groups*, 25 July 2005, MDE14/009/2005

[141] Total estimates of small arms are explained in the tables below. The total for Iraqi military, security and police forces is drawn from official data.

of Iraq. This has been compounded by the large scale of corruption within the Iraqi MoD involving millions of missing US dollars from funds allocated to defence contracts and the failure of the US government to ensure accountability and oversight.[142] US, Iraqi and other foreign nationals have been a focus of about 80 criminal investigations by Iraqi and US authorities.[143] In November 2005 it was reported that more than 27 arrest warrants had been issued against former government officials, including Defence Minister Hazem Shaalan and his deputy, Ziad Cattan. These individuals were the named recipients of many of the arms transferred to Iraq and were under investigation for fraud and corruption and the squandering of public funds.[144]

The Inspector General of the US Department of Defense issued a report in May 2008 on the lack of proper accounting by this Department for billions of US dollars spent on commercial contracts and miscellaneous payments for arms and security in Iraq, as well as Afghanistan and Egypt. For example, on commercial contracts, the Inspector's report "*estimated that the Army made $1.4 billion in commercial payments that lacked the minimum documentation for a valid payment, such as properly prepared receiving reports, invoices, and certified vouchers. We also estimated that the Army made an additional $6.3 billion of commercial payments that met the 27 criteria for payment but did not comply with other statutory and regulatory requirements. These other requirements included taxpayer identification numbers, contact information, and payment terms.*"[145]

This failure to account for contractual expenditure on arms and security has been compounded by a considerable lack of transparency in the US Department of Defense procurement system for the supply of arms and security services to Iraq and other countries, thus making public scrutiny of arms transfers involving a high risk of serious human rights violations very difficult. Amnesty International and TransArms found that between 2000 and 2007 the Defense Department granted $11.7 billion for about 14,000 contracts (including weapons and ammunition) to an entity listed as "Miscellaneous Foreign Contractors", located in Crystal City, near Washington DC in office "911" of the General Service

[142] "$5 Billion in CENTCOM Contracting Under Scrutiny", *Defense Industry Daily***,** 4 September 2007; "Ex-State officials allege corruption in Iraq", Anne Flaherty, *Associated Press*. Judge Radhi Hamza al-Radhi, a top anti-corruption official in Baghdad whom many US officials have hailed as the most effective in exposing fraud and abuse estimated that corruption had cost Iraq — and US taxpayers — some $18 billion.

[143] "Iraq Weapons Are a Focus of Criminal Investigations**",** James Glanz and Eric Schmitt, *The New York Times*, 28 August 2007; fraud investigations have been carried out by the Iraqi Board of Supreme Audit – see www.bsaIraq.net - the US Special Inspector General for Iraq Reconstruction, the Defense Criminal Investigative Service, and the US Army Criminal Investigation Command; prosecution has been carried out by US Justice Department which has indicted contractors, US Army personnel, for example;"The Pentagon and Congress are investigating about 80 cases of alleged contractor waste, fraud and abuse in Iraq. To date, 26 have been referred to the Justice Department for possible prosecution. So far a few individuals have been charged, most from a single case, and a few million dollars has been paid back. After 3 1/2 years of war, not a single criminal case has been filed against any large corporation doing work in Iraq." *CBS News*, January 2007, http://www.cbsnews.com/stories/2007/01/05/cbsnews_investigates/main2334784.shtml.

[144] **"**Iraq: Before Rearming Iraq, He Sold Shoes and Flowers", Solomon Moore and T. Christian Miller, *The Los Angeles Times,* 6 November 2005

[145] *Internal Controls over Payments Made in Iraq, Afghanistan and Egypt*, Inspector General, Department of Defense, 22 May 2008

Administration.[146] Supposedly set up to facilitate the assignment of contracts to foreign companies not yet in the US Administration's acquisition programs, this system allows the DoD to spend billions of dollars in procurement contracts, yet a sizeable portion of the contracts granted to the "Miscellaneous Foreign Contractors" either do not show the name of the real contractor or merely list the "Miscellaneous Foreign Contractors" as both the entity that receives the DoD contract and the entity that is actually assigned to execute the contract. Moreover, many of the contracts only refer to the goods and services to be supplied as "Miscellaneous".

7.1 US Funded Military Sales to Iraq

In May 2006, Amnesty International and TransArms USA published a report *Dead on Time – Arms Transportation, Brokering and the Threat to Human Rights*[147] which amongst other things exposed irregularities in the supply by US private contractors of arms to Iraq. One major Pentagon arms supply contractor in the USA used a foreign airline company previously named by UN investigators to have been involved in illegal arms trafficking to Liberia. The airline company was used with a chain of other foreign subcontractors in the delivery of large quantities of small arms, light weapons and ammunition from the Balkans to Iraq, and especially from Bosnia-Herzegovina to Iraq between 31 July 2004 and 30 June 2005. [148] The deliveries from Bosnia-Herzegovina were initiated by a US Department of Defense contract for the CPA in Baghdad but could not be accounted for by US officials.[149] The US Department of Defense has yet to respond adequately to these concerns.[150]

Amnesty International has now identified another 47 US Department of Defense contracts for such weapons and munitions dated between 2003 and July 2007 representing at least 115 delivery orders to Iraq with a total value of nearly US$217 million, including as principal contractors (for the list of contracts and principal companies involved, see Table 2 below).[151] All these contracts relate to the procurement of small arms, light weapons and associated equipment[152] for the Iraqi Security Forces. Nineteen (19) of these contracts fall under the Iraq Relief and Reconstruction Fund and relate to the transfer of 370,251 small arms

[146] See: http://www.fedspending.org/; http://www.fedmine.us.
[147] Amnesty International, *Dead on Time – arms transportation, brokering and the threat to human rights*, 10 May 2006, ACT 30/008/2006.
[148] Whilst working as a consultant to Amnesty Intenational, Hugh Griffith contributed to that particular research.
[149] This contract was identified as W914NS-04-D-0115.
[150] Inspector General, Department of Defense, 22 May 2008, op cit, does admit failings but the US Department of Defense said it would investigate the use of known arms smugglers by US contractors and results have yet to be published
[151] Three delivery orders are not included in this calculation. Delivery orders W56HZV-04-D-0181-0001-0001AA, W56HZV-04-D-0181-0003-0001 and W56HZV-04-D-0181-0004-0001 have expended nearly US$256 million for the purchase of battalion sets for the new Iraqi Army. These battalion sets did include SALW and ammunition from Bulgaria and Romania but at present we do not know the quantity or value.
[152] Not included are the contracts for the procurement of body armour, batons, uniforms, or the sole acquisition of ammunition. Some of these SALW contracts do include a small amount of ammunition.

and light weapons.[153] According to information supplied to the Associated Press by the US training command, some 701,000 weapons (until July 2007)[154] have been supplied.[155] The majority of these weapons are Soviet-type infantry weapons – assault rifles (AK-47, AKMS), portable machine guns (RPK, PKM), shoulder-fired rocket propelled grenades (RPG-7) and 9mm pistols (mostly Glocks). The Soviet-type weapons are popular with private individuals and non-state groups because of the perceived sense of security they bring to owners, the ease of maintenance and the available supply of ammunition. Since July 2007 at least two additional contracts have been awarded representing 60,000 AK-47s.[156]

The delivery of weapons and ammunition to the Iraqi security forces is ongoing. Recently Amnesty International received additional information on future deliveries of weapons and ammunition. One such shipment involves the delivery of 1,280 tonnes of weapons. In March 2008 a broker distributed a price request for 40 charter flights of an Ilyushin 76 cargo aircraft for a period of eight weeks from Kiev (Ukraine) to Baghdad (Iraq).[157] The second shipment involves the delivery of 620 tonnes of small arms ammunition. The price request sent out by AEY Inc. specifies the flight route as Pardubice (Czech Republic) to Baghdad (Iraq) to be performed in three weeks or two months.[158] At least since mid-2007, AEY Inc. has been under investigation by the US Department of Defense for fraud and providing poor quality ammunition to Afghanistan after an exposé by the *New York Times*.[159]

7.2 Sub-contracting

The widespread use of sub-contracting by the principal contractors to the US Department of Defense and Iraqi Ministry of Defence has led to arms supply chains which often use a complex labyrinth of arms companies and transportation agents operating across several geographic boundaries and national export control jurisdictions. This outsourcing has made accountability and transparency difficult although these are highly necessary if arms transfers are to be strictly regulated. The failure to establish effective systems of accountability and transparency especially by the US Department of Defense and the Iraq Ministry of Defence

[153] *Iraqi Security Forces: Weapons Provided by the U.S. Department of Defense Using the Iraq Relief and Reconstruction Fund*, Special Inspector General for Iraq Reconstruction, SIGIR-06-033, 28/10/2006.
[154] "Italy probe unearths huge Iraq arms deal", *Associated Press*, 12 August 2007.
[155] Amnesty International's calculation of the number of small arms and light weapons transferred stand at approximately 600,000 (as of July 2007). Since early 2007 Amnesty International has filed several Freedom of Information Act Requests with the Department of Defense to obtain additional data on all the contracts
[156] W91GY0-07-M-0861, $3,689,400, AEY Inc; and W91GY0-08-M-0011, $3,630,000, Taos Industries; in addition there are 5 open solicitations for the procurement of weapons: W91GY0-07-Q-0220, W91GY0-08-Q-0004, W91GY0-08-Q-0005, W91GY0-Q-0012, and W91GY0-08-Q-0062
[157] Confidential information, March 2008.
[158] Ibid
[159] Christopher Chivers, Eric Schmitt and Nicolas Wood, "Supplier under scrutiny on aging arms for Afghans" *New York Times*, March 27, 2008; Christopher Chivers "Allegations lead army to review arms polis", *New York Times*, April 27, 2008; Letter to AEY Inc., Department of the Army, Contact and Fiscal Law Division, Procurement Fraud Branch, US Army Legal Services Agency, March 25, 2008 .

has made it virtually impossible for those who authorized these weapons and munitions transfers to fully account for how many were supplied and to whom. As a result it is impossible to ascertain how many arms have ended up in the hands of armed groups or have entered illicit arms markets.

The May 2006 report of Amnesty International showed how one series of such US Department of Defense contracts involved sub-contracting out to companies operating in Bosnia and Herzegovina, Bulgaria, Croatia, China, Germany, Israel, Moldova, Serbia, Switzerland, Ukraine, and the United Kingdom. In a series of exchanges with the Pentagon,[160] Amnesty International has noted that various US government department contracts contain a clause that stipulates that actors previously involved in criminal activities should not be recipients of US government funding.[161] Yet Amnesty International revealed that Taos Industries Inc., a US company with multiple US Department of Defense contracts, subcontracted to a Moldovan/Ukrainian company Aerocom to transport 99,000 kilograms of arms, mostly Kalashnikov rifles, from Bosnia to Iraq between July 31, 2004, and June 31, 2005, for Iraqi security forces[162] even though Aerocom smuggled weapons from Serbia to Liberia during 2002 in violation of a UN arms embargo, according to a UN expert report to the UN Security Council.[163] In addition, Taos claimed not to know that Aerocom was operating without a valid air operator license in 2004.[164] A Croatian company, Scout d.o.o was also named as the broker in these shipments yet was not registered in Croatia to deal in arms. US military air traffic controllers in Iraq said Aerocom never requested the necessary landing slots and Amnesty International requested but was not shown any official record of these deliveries ever ending up in Iraq. Taos has since received further contracts for the supply of military equipment (see Table 2 below).

[160] Five letters were written between May 2007 and August 2007 by Amnesty International to the Pentagon expressing concern over large quantities of missing weapons delivered to Iraq and the use of entities with a record in arms trafficking by US government-funded contractors and subcontractors. On 6 April 2007 the US Under Secretary of Defense, Kenneth Kreig, replied to Amnesty International USA stating that "I have requested a review into the Iraq-to-Bosnia shipments referred to in your letter to determine if they occurred under DoD contracts…The Department is already in the process of conducting an assessment to determine if DoD controls governing DoD-contracted arms, ammunition and explosives shipments need to be updated to provide continuing effective oversight of related transportation agents."

[161] For example, in a US Department of Defense (TACOM) solicitation dated April 29, 2004 and related to military equipment to be sent to Iraq (Kirkush and Tadji military training bases, An Numaniyah, and Al Kasik), it is clearly stated – under the section "Standards of Conduct – Improper Business Practices" - that "*any other improper business practices related to this solicitation and any resulting contract(s) will not be tolerated. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct by contractors, subcontractors, and any other agent acting in connection with this contract….. Contractors, subcontractors, and any other agents acting under the contract awarded herein are expected to employ due diligence and have internal controls in place towards practicing good governance in execution of this contract. Any one of these entities found to have engaged in illegal activity, improper behavior,or corrupt practices will be subject to corrective actions in accordance with the respective FAR or DFARS clause incorporated into this solicitation and any resultant contract.*"

[162] See Amnesty International and TransArms, *Dead on Time – arms transportation, brokering and the threat to human rights*, 10 May 2006, ACT 30/008/2006.

[163] Letter to the UN Secretary General, report on the arms embargo on Liberia, 24 April 2003, S/2003/498

[164] According to the Moldovan Civil Aviation Authority, Aerocom had its Air Operator C ertificate revoked from 6 August 2004 onwards

According to further documents obtained by Amnesty International in 2006, it was shown that 63,800 Kalashnikov assault rifles and more than 23 million rounds of ammunition were approved for transfer from Bosnia to Iraq.[165] The name of a Swiss gun dealer Marius Joray Waffen appears on official Bosnian arms export documents approved by the European Union Force (EUFOR) for the export to Iraq of 12,700 assault rifles, 6.6 million rounds of 12.7mm ammunition and two million rounds of 15.5mm ammunition.[166] Marius Joray Waffen had been issued with Swiss arms import certification for 30,000 AK47 rifles, 59 million rounds of ammunition, 2,770 light machine guns, 300 sniper rifles and 113 heavy machines guns.[167] These Swiss import licenses should only have allowed the said weapons and ammunition to be transferred to Switzerland. According to Swiss export control legislation, Joray would require an additional brokering licence to supply such a deal from Bosnia to Iraq and no such license appears to have been issued.[168] Marius Joray has denied any knowledge of transfers of ammunition and AK-47s from Bosnia to Iraq[169], claiming that another company must have abused his import licences. Scout d.o.o, the Croatian arms brokering firm mentioned in the same documents involved in the deal stated that all these deliveries were made to Iraq under the terms of legitimate contracts received from foreign buyers.[170]

In another case of sub-contracting involving arms supplies to Iraq from Taos Industries, on 26 May 2005 an Italian newspaper[171] revealed that among the weapons seized in Iraq from operatives connected with Al Qaida who were responsible for killings of civilians, were thousands of Italian-made Beretta 92S pistols, according to information that US intelligence officers had passed to their Italian counterparts on 14 February 2005.[172] The Beretta pistols had been dispatched to the US military base in Baghdad from the UK in July 2004. Italian investigators subsequently found that several factors helped facilitate the illegal export of those pistols from Italy and their subsequent diversion to unauthorized users. Alerted by the secret service, Italian prosecutors found that the seized pistols were part of a batch of 36,356 such pistols. They alleged that the Beretta company in Italy had illicitly refurbished and then sold the pistols for an estimated value of 2.5 million Euros using irregular and deceptive documentation to a UK arms dealer for export to the Coalition

[165] *Dead on Time*, op cit, page 105.
[166] EUFOR Form 6 delivery documents state the end user as Marius Joray Waffen, Republic of Iraq, c/o General Saad Saleh Khafagi; research on this case was originally carried out by Hugh Griffiths when he was a consultant for Amnesrty International and then also by Peter Dansseart; see also *Recent arms deliveries from the successor States of the former Yugoslavia*, Peter Danssaert, Jan Cappelle and Brian Johnson Thomas, IPIS report for the OSCE, February 2007 available at http://www.ipisresearch.be/download.php?id=164
[167] On 9 September 2004, a Swiss import certificate issued by the State Secretariat for Economic affairs (SECO) for a Swiss arms dealing company, Marius Joray Waffen was faxed to the Bosnian authorities. The import document allowed for 30,000 AK-47 type derivatives and other calibres of 7.62, 5.45 and.223 assault rifles, 59,000,000 rounds of 7.62, 7.9, 12.7 and 223 ammunition, 2770 light machine guns, 300 sniper rifles and 113 heavy machine guns.
[168] Discussion with Swiss officials, 2006
[169] "Marius Waffen im Visier", Johannes von Dohnanyi, *Sonntags Blick*, 14 May 2005
[170] Scout's claims were made in applications to EUFOR, documents obtained by Amnesty International and IPIS;
[171] "Italian Guns For Iraqi Insurgents," by N. Vallini, Il Corriere della Sera, May 25, 2005, English translation, http://www.corriere.it/english/beretta.shtml
[172] "S" denotes a 9 mm parabellum model for law enforcement use.

Provisional Authority (CPA) in Iraq.[173] On 20 April 2005 the Italian prosecutors ordered the seizure of 15,478 pistols from the batch that was still waiting to be exported and stored at Beretta facilities in Italy. Beretta appealed against that decision but lost their case in court on 11 May 2005.[174] However, on 8 February 2006 the Italian government - in a decree regulating security for the imminent Winter Olympic Games in Turin - incongruously inserted an ad-hoc "Beretta-saving" paragraph in the decree stating that arms manufacturers were allowed to refurbish the arms they had produced and to commercialize them.[175]

It was revealed in the course of an Italian judicial investigation[176] that: (a) Beretta had received the "dismissed" pistols from the Italian Ministry of Interior but did not at that time have a valid license to refurbish them;[177] (b) the pistols were wrongly classified as "civilian" in Beretta's application for export license in violation of Ministerial Decree of 1 May 1978 that defined the 92S pistol as a "weapon of war";[178] (c) Italian exports of arms defined as "civilian" or intended for use by law enforcement agencies are regulated by the outdated Law 110/75 (1975) and not by the stricter Law 185/90 (1990), which requires that export documentation is accompanied by financial information in order to avoid possible diversion;[179] (d) in the export license application Beretta had indicated a UK company as the consignee but that UK firm was not found to be the real buyer of the pistols;[180] (e) the UK authorities in the then Department of Trade and Industry appear to have failed to properly supervise the risk of diversion when they granted export licenses to the UK firm that had bought the pistols; (f) the pistols dispatched to the US military base in Baghdad from the UK in July 2004 were not recorded as delivered and officially accepted in Iraq until 18 April 2005.[181]

[173] Brescia Court, First Penal Section, Dr. Enrico Fischetti, President, May 11, 2005. Text of the sentence rejecting Beretta's Appeal. The prosecutors found that the pistols seized in Iraq were part of a lot of pistols Beretta 92S manufactured by Beretta and sold between 1978 and 1980 to the Italian ministry of Interior. They also found that the Ministry of Interior, without a proper dismissal documentation, gave back to Beretta the same weapons (for a total of 44,926 pistols, barrels and spare parts) between February 2003 and April 2004 in exchange of an equal number of new model Berettas.

[174] Brescia Court, First Penal Section, May 11, 2005, quoted.

[175] "Beretta Connection," report by P.Gomez and M. Lillo, L'Espresso, March 2, 2006; "Oltre 44 mila Beretta finiscono in Iraq, una norma del decreto Olimpiadi salva l'Azienda," La Stampa February 24, 2006.

[176] The investigation was carried out by the G.I.P.(investigating magistrate) at the Beretta premises in Gardone Val Trompia (Brescia, Italy) between the end of 2004 and the beginning of 2005 and led the same G.I.P. to order the seizure of 15,478 pistols model 92S. The order was dated April 20, 2005. This order was appealed by the defendant Ugo Gussalli Beretta, legal representative of the "Fabbrica d'Armi Pietro Beretta Spa". Beretta lost the appe

al Brescia Court, First Penal Section, May 11, 2005, quoted.

[178] Brescia Court, First Penal Section, May 11, 2005, quoted.

[179] In June 2003, the Italian Parliament modified the Law 185/90, cancelling the provision requiring arms manufacturers to accompany export documentation with an end-user certificate.

[180] Brescia Court, First Penal Section, May 11, 2005, quoted. Helston Gunsmiths of Cornwall was mentioned as a consignee; the real buyer was Super Vision International Ltd.

[181] BBC, Radio 4, Transcript of file on 4 programme: - 'Iraqi Guns', 23 May 2006; porter Allan Urry stated that: "but we've seen a verification certificate for them which says they weren't delivered and accepted by the authorities in Iraq until April 18 2005 or earlier."

The US Department of Defense, had contracted a US-based arms dealing firm - Taos Industries (Alabama) – which had used a UK-based company, Super Vision International Ltd,[182] to arrange the pistol deal with Beretta. An established UK arms manufacturer, Helston Gunsmiths, was included in the Beretta export license as the consignee of the pistols in the UK.[183] The 11 May court judgment stated that: "*Some of the same Beretta 92S were found in Iraq in the possession of 'hostile forces*'. *(See communication by M.S.U. dated February 22, 2005).*"[184]

Several other US companies in addition to Taos Industries have also been used by the US Department of Defense in its arms supply programme for the Iraqi security forces. A Chinese-controlled company, Poly Technologies, was sub-contracted under a $29 million Department of Defence contract with a Jordanian firm to supply more than 16,000 AK-47 style assault rifles, machine guns and 72 million rounds of ammunition for the Iraqi security forces in 2005. Poly Technologies had been previously indicted in the United States by a Federal Grand Jury for an attempt to smuggle large quantities of AK-47 type assault rifles into the USA for use by organized crime gangs and former executives from the company have also been arrested in China.[185] Poly Technologies acts as the US-based distributor for weapons manufactured by China's state owned China North Industries Corporation (Norinco). In 2003 and 2005, Norinco was placed under a two year US embargo following accusations that it had supplied ballistic missile technology to Iran.[186]

[182] Super Vision International Ltd - domiciled at Claridge House, 29 Barnes High Street Barnes, London and directed by Chris Bradbury - advertises itself as a supplier of "New & used ordnance - all types; Military and police specialist equipment (Restricted to government agencies with correct documentation); Body armour, Demining suits, vehicle armoured glass, gas masks, military specification boots." http://www.applegate.co.uk/company/12/30/880.htm. Curiously, the firm has the same name of a manufacturer of optic fibers and lighting devices based in the United States: "Super Vision International Ltd (USA)."

[183] "UK guns in al-Qaeda hands," by M. Townsend and B. McMahon, *The Observer*, March 19, 2006; "Inquiry into secret guns-for-Iraq deal," by By D. Kennedy and P. Bompard, *The Times*, April 1, 2006; "Iraqi Guns," File On 4, BBC, May 23, 2006.

[184] Brescia Court, First Penal Section, May 11, 2005, quoted . M.S.U. is the acronym for Multinational Specialized Unit, a police force with military status in which the Italian special military corps "Carabinieri" in Iraq contributed until 2006

[185] "US buys weapons from indicted company", Jonathan S. Landay, *Knight-Ridder News Agency*, April 29, 2005. Information on Poly Technologies Ltd. and the US subsidiary accused of smuggling, Dynasty Holding Co. of Atlanta, can be found in "Chinese Military Commerce and US National Security", by James Mulvenon, RAND Corporation, July 1997: p. 13-16; Affidavit Matthew H. King, Northern Judicial District of California (www.courttv.com); USA v Ku et al. (3:96-cr-00155).

[186] Imposition of Nonproliferation Measures on an Entity in China, Including a Ban on U.S. Government Procurement, Bureau of Nonproliferation, Public Notice 4370, Federal Register, 23 May 2003; Imposition of Nonproliferation Measures Against Foreign Entities, Including a Ban on U.S. Government Procurement, and Removal of Penalties From One Entity, Public Notice 527, Bureau of International Security and Nonproliferation; Federal Register, 30 December 2005.

7.3 Military equipment supplied by the UK[187]

Amnesty International has also received reports that UK arms dealers involved in the delivery of AK-47 type assault rifles to the Iraqi security services have procured significant quantities of these weapons from China which has been subject to an EU arms embargo since 1989 largely due to concerns over China's poor human rights record. This embargo requires EU Member States to halt "trade in arms with China"[188] leaving EU Member States to interpret its meaning.[189] Nevertheless, in late January / early February 2007, a consignment of approximately 20,000 assault weapons reportedly arrived in the UK via ship from China for onward export to Iraq.[190] It is reported that these weapons were destined to arm sections of the Iraqi police force.[191] Any such consignment imported into the UK would require authorization by the UK government, for example via import licenses, transit/trans-shipment licences or other approvals relating to contractors working for government projects and for the transfer of firearms within the UK. The EU parliament has expressed concern that Chinese state controlled arms manufacturers have supplied large quantities of small arms, including AK-47 style assault rifles to numerous zones of conflict and repression where they have been used to commit serious violations of international humanitarian law and grave human rights violations and abuses including in Chad, Zimbabwe, South Africa, and the Democratic Republic of Congo.[192]

Under Project Osiris, the UK government supplied a variety of military and security equipment to the Iraqi security services between November 2004 and April 2006 including: 6,500 AK-47 style assault rifles, 11,966 9mm pistols, 2,009 light and medium machine guns, 438 grenade launchers, 5.3 million rounds of 7.62mm ammunition, 25,058 sets of body armour and 79 armoured Landrovers.[193] Between March 2005 and December 2006, a variety

[187] The initial two Freedom of Information Act Requests submitted at the Foreign Office were rejected. A new truncated information request was submitted. A partial reply was received on 12 March 2008, but many questions remained unanswered.

[188] The EU arms embargo on China is based on a political declaration issued on June 27, 1989, by the then-12 member European Community, the EU's precursor. The declaration condemned the "brutal repression" taking place in China, requested that the Chinese authorities cease executions and respect human rights, and contained measures agreed by the Member States. These included the suspension of military cooperation and high-level contacts, reduction of cultural, scientific and technical cooperation programs, and the prolongation of visas to Chinese students. The specific wording of the arms restrictions on China called for "*interruption by the Member States of the Community of military cooperation and an embargo on trade in arms with China*."

[189] The UK government in 1995 interpreted the EU arms embargo on China as applicable only to some UK exports - see www.sipri.org/contents/expcon/euchiuk.html

[190] Confidential reports to Amnesty International.

[191] Ibid

[192] Amnesty International, *China: Sustaining conflict and human rights abuses: the flow of arms continues*, 11 June 2006, ASA 17/030/2006

[193] For details of equipment supplied under project Osiris see Letter of Ministry of Defence to Peter Danssaert, 12 March 2008, Freedom of Information Act Request, Ref. 18-02-2008-080953-019; http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070508/text/70508w0014.htm; http://www.official-documents.gov.uk/document/cm68/6882/6882.pdf; http://www.mod.uk/NR/rdonlyres/964AE5F9-271F-4A31-9406-4736876ED606/0/semiautomatic_pistols_supplied_iraq.pdf and International Defence Review, 01/10/2005.

of small arms, light weapons and related ammunition were exported from Bosnia and Herzegovina and Serbia to the UK ostensibly for re-export to Iraq.[194]

Despite assurances from the UK government that specific procedures were in place in Iraq to avoid the possibility of weapons ending up in the wrong hands,[195] interviews by Amnesty International with eye witnesses responsible on the ground for distribution of this equipment suggest there were serious deficiencies with the management systems in place (see further below).

7.4 Arms procurement by the Government of Iraq

Since 2006, the Government of Iraq has stepped up efforts to make its own arms procurement arrangements. In September 2006 the Government of Iraq submitted its first major order under the US Foreign Military Sales programme. The US Defense Security Cooperation Agency notified the US Congress on 19 September 2006 of a request from the Government of Iraq for the purchase of 126,210 small arms and ammunition.[196] (See below)

In the months that followed, Iraqi government ministers voiced their dissatisfaction with the US over slow deliveries of this military equipment and in mid-2007, the Iraq government announced a $100 million deal for the purchase of small arms from the People's Republic of China.[197] The deal included rifles, pistols and machine guns, and some of these have already been delivered.[198] In early 2008 the Iraqi government signed another contract for the supply of a range of weapons and military equipment worth US$236 million from Serbia, which used to supply arms to Iraq prior to 2003, the majority of which is for further supplies of assault rifles (M-21, older M-70 models), sub-machine guns, pistols, anti-tank rockets, mortar shells, ammunition and explosives.[199]

On 25 September 2007, the US Congress was notified of a possible $2.6 billion procurement deal by the Government of Iraq which includes the sale of 123,544 M16A4 assault rifles and 12,035 M4 carbines to Iraq.[200] On 28 February 2008, it was reported by the

[194] EUFOR Form 5 and Form 6 authorizations for arms export from Bosnia and Herzergovina, 2004 and 2005; Government of Serbia, , annual report on the export of controlled goods, 2005, 2006, Ministry of the Economy and Regional Development, 2007

[195] http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070508/text/70508w0014.htm

[196] U.S. Federal Register, Vol. 71, No. 187, Wednesday, September 27, 2006, Notices; DSCA Transmittal N° 06-69 (19/09/2006): the possible Foreign Military Sale also includes 20 Mi-17 transport helicopters, 600 light armoured personnel carriers, and 41 million rounds of ammunition.

[197] "China to arm Iraqi Police", *AFP*, 27/06/2007; "Iraq envoy slams US over arms supplies", *DefenceTalk.com*, 27/07/2007; "Iraqis to Pay China $100 Million for Weapons for Police - Experts Fear More Will Go to Insurgents", *Washington Post,* 4 October 2007; "Iraq says US behind in arms deliveries", *Boston Globe*, 03/11/2007.

[198] Department of Defense Bloggers Roundtable with Major Gen. Michael Jones, Commanding General, Coalition Police Assistance Training Team, 27 February 2008.

[199] "Serbian arms industry expects to thrive after securing major contract with Iraq**",** *Beta News Agency*, 10 March 2008

[200] DSCA Transmittal N° 07-64 (25/09/2007). Also included are 169 million rounds of various ammunition.

US Department of Defense that some 80,000 M16A4 assault rifles had been purchased and transferred to Iraq.[201] It was announced that the intention of the US military and the Government of Iraq is to equip each Iraqi soldier with an M16 assault rifle and each Iraqi officer with an M4 rifle.[202] This announcement would translate into a need of 181,000 M16/M4 rifles as of February 2008 for the Iraqi Army.

Small Arms FMS Requests by Government of Iraq

FMS request from Iraq Government, September 2006		FMS request from the Iraq Government, September 2007	
Amount	**Weapon System**	**Amount**	**Weapon System**
10,126	M17 9mm Glock pistol		
50,750	M16A2 assault rifle	123,544	M16A4 assault rifle
50,750	M4A1 rifle	12,035	M4 rifle
3,442	M24 sniper rifle		
8,105	M249 machine gun		
3,037	M240B machine gun		
126,210	**Total small arms 2006**	**135,579**	**Total small arms 2007**

NOTE: Foreign Military Sales (FMS) refer to US Government sales to the military authorities of other governments

In another sign of increasing Iraqi Government activity in arms procurement, the Italian authorities announced in February 2007 that they had interrupted an international arms trafficking ring that was to have operated between China, Malta, Italy and Libya.[203] In November 2006, an Iraqi-owned trading firm Al-Handal General Trading Company e-mailed a Malta-based company MIR Ltd. about whether MIR could supply 100,000 AK-47 assault rifles and 10,000 machine guns for the Iraqi Ministry of the Interior. Associated Press was able to obtain email and documents that showed that the negotiations had focused on the source of the weapons: "*The Iraqi middlemen said their buyer insisted they be Russian-made, but the Italians wanted to sell AK-47s made in China, where they had better contacts. 'We are in a hurry with this deal', an impatient Waleed Noori al-Handal, Jordan-based general manager of the Iraqi firm, wrote the Italians on 13 November 2006.*" By December 2006 a Bulgarian broker had been found who offered Russian-made rifles: 50,000 AKM rifles,

[201] Department of Defense Bloggers Roundtable with Lt. Col. Keith Muschalek, Security Assistance Program Manager for the Iraqi Ministry of Defense, 28 February 2008.
[202] Department of Defense Bloggers Roundtable with Col. Stephen Scott, US Army, Security Assistance Office, Multinational Security Transition Command Iraq, 15 February 2008.
[203] "Operation Parabellum," carried out by the anti-mafia prosecutor Dario Razzi of the Perugia Court, started in 2005 as an anti-drug smuggling operation. During the investigation, details on the arms brokering activity of the ring-leaders emerged and lead to the arrests of 16 people. Only one of the indicted, an Italian businessman based in D.R. Congo, remains on the run. The arrests were announced February 11, 2007 (see "Spoletonline.com, February 12, 2007).

50,000 AKMS rifles, and 5,000 PKM machine guns.[204] Mohammad Noori Al Handal, general manager of Al-Handal, denied all allegations of arms smuggling.[205]

7.5 NATO military equipment donations

Various NATO countries through the NATO Training Mission-Iraq (NTM-I) have donated military equipment to the Government of Iraq. To date the NTM-I has coordinated donations of military equipment to Iraq from a number of NATO member countries worth more than €110 million. These donations include personnel transport and general-purpose cargo trucks, various types of ammunition, refurbished T-72 tanks and BMP armoured personnel carriers as well as personnel protective equipment.[206] Early in 2005, then-commander of NTM-I, General David Petraeus, spoke of the distribution of 9,000 weapons to the Iraqi security forces. These three contributions came from Romania, Estonia and Denmark.[207]

7.6 Commercial sales of military equipment

An analysis of available UN customs data shows that between 2003 and 2006 several countries were sources of the commercial supply for items of military equipment to Iraq. Tanks and other armoured vehicles were supplied from Bulgaria, Canada, Namibia, Poland, South Africa, the United Arab Emirates and the USA; other military weapons were supplied from Bosnia and Herzegovina, Estonia, Latvia, Poland, Romania, Serbia, Slovenia, and the USA. Military revolvers and pistols were supplied by from Czech Republic, Germany, Italy, Poland, Serbia, UK, and USA. Munitions of war, including cartridges and parts, were supplied by Albania, Bosnia and Herzegovina., Czech Republic, Estonia, Iran, Latvia, Poland, Romania, Serbia, Slovakia, Syria, Thailand, the UK, and the USA. Between 2003 and 2006, commercial sales to Iraq of military weapons and ammunition totalled $226 million and more than 9,000 tons.[208]

7.7 Recirculation from seizures and stockpiles of weapons

Another source of weapons supply in Iraq is weapons seized from armed groups and individuals. The Multinational Force-Iraq has reported that since 2003 thousands of weapons have been seized. These seized weapons are supposed to be brought to collection points where they are inspected to determine which are still operational. "*Some of these (AK-47s)*

[204] "Italy probe unearths huge Iraq arms deal", *Associated Press*, 12 August 2007; "Maltese company implicated in arms trafficking to Iraqi insurgents", *Malta Independent*, 13 February 2007.

[205] "Arms smuggling denied", http://www.xpress4me.com/news/uae/dubai/20002686.html, 19 August 2007

[206] http://www.afsouth.nato.int/JFCN_Missions/NTM-I/Articles/NTMI_A_06_07.htm. NATO, the US Department of Defense and NTM-I have been contacted with a request to send an overview of the equipment donated to the Iraqi government.

[207] "DoD Briefing on NATO Training Mission in Iraq", 10 February 2005.

[208] A search query was made utilising relevant SITC customs tariff codes to cover supplies of military equipment to Iraq. An online searchable database is available from the United Nations Commodity Trade Statistics Database (COMTRADE) at http://comtrade.un.org/db/.

are more than 30 years old. They're fairly indestructible."[209] Weapons are refurbished and reissued to Iraqi forces.[210]

There have also been very serious concerns over the failure to effectively manage and control the distribution of small arms, light weapons and associated munitions within Iraq and to ensure that they are used by well-trained, accountable Iraqi security services according to recognized international standards. In a damning US Government Accountability Office Report[211] published in July 2007,[212] it was revealed that at least 190,000 weapons were "unaccounted for" in Iraq due to discrepancies between what was authorized for export under US contracts and what was actually noted in the Multinational Security Transition Command-Iraq (MNSTC-I) property books for the period June 2004 to July 2007. The official report concluded that it was impossible to ensure that these 190,000 weapons had been delivered to their intended recipients in the Iraqi security forces. The report found serious errors in accountability procedures, including insufficient staffing, inadequate distribution networks, and inadequate record keeping technology and data collection.[213]

Crucially, an October 2006 report from the Office of the Special Inspector General for Iraq Reconstructions (SIGIR)[214] revealed that only 2.7% of some 370,000 infantry weapons supplied to the Iraqi security forces under US Government contracts had details of the serial numbers of these weapons logged in US Department of Defense inventories.[215] The report also found that only two contracts covering the supply of 10,000 9mm pistols out of a total of 19 contracts contained any stipulation that the contractors should record serial numbers and be provided to the relevant authorities when the weapons were supplied.[216] This

[209] "Insurgent arms become allied assets", Multi-National Force Iraq, 5 October 2006.
[210] "Insurgent arms become allied assets", Multi-National Force Iraq, 5 October 2006; see also the AK-47 refurbishment program (Contract W91GY0-07-C-0035), Contracts from the US Department of Defense, N° 524-07, 3 May 2007.
[211] "The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. GAO's work is done at the request of congressional committees or subcommittees or is mandated by public laws or committee reports. GAO also undertake research under the authority of the Comptroller General." (http://www.gao.gov/about/index.html).
[212] GAO Report to Congressional Committees, "Stabilizing Iraq, DOD Cannot Ensure That U.S.-Funded Equipment Has Reached Iraqi Security Forces," July 2007, available at http://www.gao.gov/new.items/d07711.pdf
[213] Ibid
[214] "The Office of the Special Inspector General for Iraq econstruction (SIGIR) is the successor to the Coalition Provisional Authority Office of Inspector General (CPA-IG). SIGIR was created in October 2004 by a congressional amendment to Public Law 108-106, triggered by the June 28, 2004, dissolution of the CPA. The amendment allows SIGIR to continue the oversight that CPA-IG had established for Iraq reconstruction programs and operations. Specifically, SIGIR is mandated with the oversight responsibility of the use, and potential misuse, of the Iraq Relief and Reconstruction Fund (IRRF) and all obligations, expenditures, and revenues associated with reconstruction and rehabilitation activities in Iraq. SIGIR reports administratively to the Secretaries of State and Defense. In addition, SIGIR provides quarterly and semi-annual reports directly to the U.S. Congress." (http://www.sigir.mil).
[215] " Iraqi Security Forces: Weapons provided by the US Department of Defense using the Iraq relief and reconstruction fund", SIGIR – 06-033, October 28, 2006, available online at http://www.sigir.mil/reports/pdf/audits/06-033.pdf
[216] Ibid

issue was further exacerbated by the procurement of Soviet-type weapons from various sources. It is a well known fact that Soviet-type weapons do not have unique serial numbers. Weapons from various countries could have the same serial number. Moreover it was common practice for each factory to restart numbering from the beginning when they had reached the end of the production run.

An investigation by the *New York Times* reported in November 2007 that a US military company had appointed an Iraqi businessman and veteran officer of the Iran-Iraq war to distribute US Department of Defense weapons and ammunition from the Baghdad Police Academy armoury in mid 2004 to Iraqi security forces and that "*co-workers say, he also turned the armoury into his own private arms bazaar with the seeming approval of some American officials and executives, selling AK-47 assault rifles, Glock pistols and heavy machine guns to anyone with cash in hand — Iraqi militias, South African security guards and even American contractors*."[217] US military officials accused Iraqi security guards of stealing hundreds of weapons in 2006 in about 10 major thefts at arms depots at Taji and Abu Ghraib and the two army majors assigned to issue weapons to the Iraqi military and National Guard did not always fill out inspection reports, known as DD-250s, when receiving US-sponsored arms imports from contractors.[218]

According to Amnesty International sources, only a handful of UK military logistics personnel managed the entire weapons distribution from Basra, comprising of some 90 shipping containers of military equipment.[219] This very small team was responsible for the distribution over 10,000 assault rifles and pistols to Iraqi units operating not only in Basra but also in other parts of the country. These units included the Iraqi National Guard, the Iraqi army, the Iraqi police, the Iraqi border police and the Iraqi facilities protection force,[220] none of which, according to Amnesty International sources, had been trained sufficiently to internationally acceptable standards in firearms management and usage. Neither was any attempt made by the UK armed forces to recover existing weapons before new ones were issued. For example, the UK armed forces were responsible for arming units of the 5,000-strong National Guard with each recruit given either a 9mm pistol or an AK 47 assault rifle. These units were essentially military units responsible for law enforcement and policing duties, yet were not barracked and took their weapons home with them at night. Arming law enforcement units in this way would appear to be in contradiction to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles are crucial international standards to ensure that armed law enforcement officials act accountably, proportionately and lawfully. Article 11 of the Basic Principles states that law enforcement authorities should:

[217] "Broken Supply Channel Sent Arms for Iraq Astray", Eric Schmitt and Ginger Thompson, *New York Times*, November 11, 2007
[218] Ibid
[219] Eyewitness testimony, interviews conducted with Amnesty International, 2007
[220] Ibid

> *"Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;* [221]

A severe shortage of translators to monitor and screen who was applying for posts within these various units meant that there was effectively no accountability in place to ensure who was being armed. Those working on weapons distribution alleged that some military equipment was ending up on the illicit arms markets[222] or in the hands of armed groups who had infiltrated the Iraqi police force and were using such weapons in armed attacks both against other armed groups and UK forces, carrying out indiscriminate attacks, resulting in killings of civilians and other serious human rights abuses.[223] In August 2007, the UK's chief police advisor working in Iraq, Mike Colbourne, confirmed that some Iraqi police officers in Basra were working for Shia Muslim militias and were carrying out sectarian violence as well as acts of corruption, kidnapping and murder.[224]

In August 2007, a senior Pentagon official acknowledged that some of the weapons might have been used against US forces and referred to the Iraqi brigade created at Fallujah "that quickly dissolved in September 2004 and turned its weapons against the Americans."[225] Also in August 2007, US Pentagon officials confirmed that a number of 9mm Glock pistols originally supplied to the Iraqi police force had been diverted to illicit arms markets and had ended up in the hands of armed groups operating in Turkey[226]. The weapons were identified by US officials who analysed their serial numbers, clearly demonstrating that effective marking and tracing of weapons inventories is vital in efforts to identify and curb illicit arms trafficking. It is worth re-stating that only two US Department of Defense contracts to supply approximately 10,000 9mm pistols contained obligations on the weapons suppliers to record serial numbers.[227] On 19 May 2007 MNSTC-I promised that with the issuance of the M16 and M4 rifle a more rigorous accountability system will be put in place: "*A photograph is taken of the soldier with his weapon, showing the serial number. Biometrics, such as a printing of the soldier's palm and fingers as well as an eye retinal scan, are also recorded. This information is collected and centrally located in a database at the Ministry of Defense in Baghdad, Iraq.*"[228]

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[221] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, http://www.unhchr.ch/html/menu3/b/h_comp43.htm

[222] See also, "UK guns in al-Qaeda hands" Mark Townsend and Barbara McMahon, *The Observer*, March 19, 2006, http://observer.guardian.co.uk/uk_news/story/0,,1734304,00.html

[223] Op cit, eye witness testimony, May 2007

[224] "Basra police 'work for militias"**,** *BBC News***,** 21 August 2007, http://news.bbc.co.uk/1/hi/world/middle_east/6957170.stm

[225] "Weapons Given to Iraq are Missing", Glenn Kessler, *Washington Post*, 6 August 2007

[226] "U.S. Weapons, Given to Iraqis, Move to Turkey", *New York Times*, 30 August 2007, http://www.nytimes.com/2007/08/30/washington/30contract.html

[227] Op cit. "Iraqi Security Forces: Weapons provided by the US Department of Defense using the Iraq relief and reconstruction fund", SIGIR – 06-033

[228] "Iraqi Army receives improved weaponry", *The Advisor*, 19 May 2007: p. 3. See also: "Measuring Stability and Security in Iraq", Report to Congress, December 2007: p. 48.

Nevertheless, in January 2008, the US Defense Department Inspector General told Congress before the House Appropriations Defense Subcommittee, that his office had received complaints nearly a year ago from Turkish officials that weapons intended for Iraq's growing military and police forces were being used by militant groups in Turkey.[229] "'*We were also beginning to find some weapons that the U.S. had supplied to* (Iraqi security forces) *were in the hands and control of insurgent groups and U.S. contractors in Iraq*,'" he said.

7.8 Inadequate training and accountability of Iraqi security forces

The consequent easy availability of small arms in Iraq is a major factor fuelling grave abuses of human rights especially given the inadequate systems of training and accountability of the Iraqi security forces. This deficiency has been reflected in frequent desertions from the army and police, some official support for irregular militia and the constant threat of attack from armed groups.

In total it is estimated that some 531,000 Iraqis were assigned to the Iraqi security forces in early 2008 including military, paramilitary and civilian law enforcement entities. The armed forces are administered by the Ministry of Defence (MoD) and the police are administered by the Ministry of Interior (MoI). The US Department of Defense reflected in December 2007 that "*This number exceeds the number of total trained personnel because many of them—mainly police—have never been trained as rapid hiring over the past two years outstripped academy training capacity. In addition, the MoD and MoI do not accurately track which of those personnel who have been trained as part of U.S.-funded programs are still on the force and which are no longer on the force as a result of being killed in action or leaving for other reasons*."[230] This total figure includes casualties and desertions. According to the same US Department of Defense report, the annual attrition rate of the Iraqi security forces stands at 15%-25%.[231] It is not known how many infantry weapons and rounds of ammunition are lost due to desertion, casualty of war, illicit sales by security force members and theft, but in 2007, 21,000 Iraqi soldiers were dropped from the rolls for desertion or absence without leave.[232]

In February 2008, the US State Department reported on the numbers of personnel in the Iraqi security forces who went through official training courses as follows[233]:

[229] "Flow of Weapons to Iraq Still a Problem", Richard Lardner, *Associated Press*, 30 January 2008
[230] "Measuring Stability and Security in Iraq", DoD, December 2007: p. 30.
[231] Ibid: p. 29. According to the US Department of Defense, the attrition rate is: "A factor, normally expressed as a percentage, reflecting the degree of losses of personnel or materiel due to various causes within a specified period of time."
[232] Ibid, US Department of Defense, December 2007: p. 42.
[233] "Iraq Weekly Status Report", Bureau of Near Eastern Affairs, US Department of State, 28 February 2008.

Iraqi Security Forces as of February 27, 2008			
Component	**Authorized**[234]	**Assigned**[235]	**Trained**[236]
Ministry of Interior Forces			
Police	288,001	275,300	55,248
National Police	33,670	32,389	41,399
Border Enforcement	38,205	39,649	27,959
Total MoI	**359,876**	**347,338**	**224,606**
Ministry of Defense Forces			
Army	186,352	159,938	174,940
Support Forces	17,369	18,794	19,750
Air Force	2,907	1,305	1,370
Navy	1,483	1,115	1,194
Total MoD	**208,111**	**181,152**	**197,254**
Counter-terrorism Bureau			
Special Operations	4,857	3,126	3,485
TOTAL	**572,844**	**531,616**	**425,345**

The Iraqi security forces are trained by officers from the Multi-National Security Transition Command - Iraq (MNSTC-I), primarily US officers, under an assistance program agreed with the Iraqi government. Private military and security companies mainly from the US and UK using ex-military and security personnel have also trained many of the Iraqi forces. Both army and police training is focused on counter-insurgency and although the police course curriculum now includes notions of democratic policing, human rights and police ethics, the US claim that some 425,000 out of 521,616 Iraqi security forces personnel had been adequately "trained" is seriously open to question given the Iraqi security forces' poor understanding of international human rights law and IHL, and continuing impunity for those officers who commit grave violations.

The dependency of Iraqi forces on US military training has hardly encouraged Iraqi security forces to respect such international laws since US training of its own soldiers in Iraq appears seriously lacking in this regard. According to a survey conducted by a US army mental health advisory team between August and September 2006, only 47% of US soldiers and 38% of marines deployed in Iraq agreed that non-combatants should be treated with dignity and respect. More than one third of soldiers and marines reported that torture should be allowed to save the life of a fellow soldier or marine, and less than half said they would report a team member for unethical behaviour.[237] These findings were largely replicated in another survey in September and October 2007.[238] The lack of human rights considerations in

[234] Numbers reflect Government of Iraq authorizations.
[235] Numbers are based upon Government of Iraq payroll data and do not reflect present for duty totals. It is unknown how many personnel trained in US-funded programs are still on the force.
[236] Numbers reflect total ISF personnel trained to date, some of whom are no longer assigned due to casualties, absent without leave, etc.
[237] Fourth Mental Health Advisory Team Survey, 4 May 2007; www.armymedicine.army.mil/news/mhat/mhat_iv/mhat-iv.cfm; summarised in Defense Department releases findings of mental health assessment, 4 May 2007; www.defenselink.mil/news/newsarticle.aspx?id=33055
[238] Mental Health Advisory Team V Operation Iraqi Freedom 06-08, Office of Surgeon/Multinatiional Force Iraq, and Office of the Surgeon General, US Army Medical Command, 14 February 2008.

the US security assistance strategy for Iraq is indicated by the total absence of any mention of human rights by the most senior US commander in his recent testimony to the US Congress.[239]

In early 2008 the UN Mission for Iraq (UNAMI) called on the Iraqi Government to "*implement policies aimed at achieving the proper vetting and training of law enforcement personnel*" and to "*establish effective monitoring and accountability mechanisms to ensure oversight of the conduct of security forces personnel.*"[240] In a detailed report UNAMI said it "*remains gravely concerned at continuing reports of the widespread and routine torture or ill-treatment of detainees, particularly those being held in pre-trial detention facilities, including police stations. Detainees interviewed by UNAMI at both Ministry of Interior and Ministry of Defense facilities regularly claimed to have been beaten or otherwise ill-treated, particularly upon arrest or while undergoing initial interrogation, most commonly to extract confessions from them. In some cases, the detainees bore injuries consistent with the torture alleged….Particularly worrisome were allegations of ill-treatment or other abuse of juvenile males, several of whom at the al-Tobchi facility told UNAMI they had been beaten and sexually abused while held in the custody of the Ministries of Interior or Defense prior to their transfer to a juvenile facility. Upon examining them, UNAMI observed injuries consistent with beatings and, in one case, an injury consistent with burns caused by a heated implement.*"[241]

In some cases disciplinary measures were taken but sanctions remained limited to demotion and fines. UNAMI "*remains hard pressed to find evidence that arresting or detaining officials are held accountable to the full extent of the law. UNAMI believes that the failure to institute criminal proceedings against officials found responsible for abusing detainees only serves to perpetuate a climate of impunity that inevitably leads to the commission of further abuses*"[242].

7.9 Lessons from the Iraq case

Despite the context of serious violations of human rights and humanitarian law by all parties to the conflict in Iraq, the threat posed by the proliferation of small arms in Iraq has been made worse by poor systems of arms management by arms suppliers like the US and UK, as well as by the Iraqi government. There appears to be no accountable and transparent audit trail for approximately 360,000 infantry weapons supplied to the Iraqi security forces and under such contracts the weapons are now almost totally untraceable.[243]

[239] Report to Congress on the Situation in Iraq**,** General David H. Petraeus**,** Commander, Multi-National Force–Iraq**,** 8-9 April 2008.
[240] Human Rights Report, UN Mission to Iraq, 1 July – 31 December 2007: §13 (g).
[241] Human Rights Report, UN Mission to Iraq, 1 July – 31 December 2007: §64.
[242] Ibid §65.
[243] SIGIR report of October 2006 calculates that only 2.7% of some 370,000 infantry weapons supplied to the Iraqi security forces under US Government contracts had details of the serial numbers of these weapons logged in US

An ATT could address this by containing common provisions that require States to establish an accountable, effective and transparent system to ensure that weapons and ammunition are not transferred in circumstances where there is a high risk they will be used in the commission of serious violations of international humanitarian and human rights law, or diverted for other illicit uses. For example, the treaty could require those States responsible for authorizing weapons and military equipment transfers to first put in place mechanisms to maintain accurate records and safe inventories of what has been supplied and to whom, ensure that all personnel handling weapons and military equipment are adequately trained to international standards and best practice procedures, and above all to place strict limitations of the transfer and recirculation of arms according to a set of common objective criteria. Such records and common criteria would enable States, for example, to more objectively assess the risk that transfers of small arms would contribute to serious violations of international law, including human rights and humanitarian law, including in the context of excessive accumulation of small arms.[244]

Table 2: Procurement by US Department of Defense for the Iraq Government

Contract	Amount	Description	Expended	Vendor
DABV01-03-M-034		AK47	$6.183.065	Unknown
DABV01-04-M-037		AK47		Unknown
DABV01-04-M-043		AK47		Unknown
W52H09-04-D-086		M4 weapons	$82.357	Colt Defense LLC
W52H09-05-C-058		9mm Ruger pistols	$1.271.700	Sturm, Ruger & Company Inc.
W52H09-05-C-059		9mm SIG handguns	$1.756.550	Iraqi Contractor 4711
W52H09-07-P-0219		weapons	$55.000	O.F. Mossberg & Sons Inc.
W56HZV-04-D-181		Battalion sets incl. arms and ammunition from Romania/Bulgaria	$255.956.675	Anham JV
W56HZV-05-D-126		9mm Glock, shotguns, night vision goggles, Beretta shotguns	$7.151.415	International Trading Establishment
W914NS-03-D-002		9mm Walter pistol; RPK; PKM; AK47; ammunition	$7.139.220	Golden Wings

the Department of Defense inventories. For example, according to a 9 March 2007 update from the SIGIR, the US Department of Defense was trying to account for the 9mm pistols, among others, but had yet to find them all.

[244] A 1997 United Nations Report of the Panel of Governmental Experts on Small Arms stated that "accumulations of small arms and light weapons become excessive and destabilizing: (a) When a State, whether a supplier or recipient, does not exercise restraint in the production, transfer and acquisition of such weapons beyond those needed for legitimate national and collective defence and internal security; (b) When a State, whether a supplier or recipient, cannot exercise effective control to prevent the illegitimate acquisition, transfer, transit or circulation of such weapons; (c) When the use of such weapons manifests itself in armed conflict, in crime, such as arms and drug trafficking, or other actions contrary to the norms of national or international law." [A/52/298, 27 August 1997, paragraph 37]

W914NS-04-C-110			$111.000	Defense Contracting and Consulting L.L.C
W914NS-04-D-115		AK47, 9mm Glock pistols, ammunition, RPK, shotguns	$65.817.213	Taos Industries
W914NS-04-D-116		9mm Glock pistol, AK47, ammunition	$40.598.461	Keisler
W914NS-04-D-119		AK47, 9mm Glock, ammunition	$129.451	Defense Contracting and Consulting L.L.C.
W914NS-04-D-181			$8.240.000	Unknown
W914NS-04-D-003		M4 carbine	$25.500	Unknown
W914NS-04-F-004		firearms	$1.754.505	FATS Inc
W914NS-04-M-204			$370.000	Unknown
W914NS-04-M-004		M4 Benelli shotgun, 9mm pistol, ammunition	$169.021	Taos Industries
W914NS-05-C-035				BLP
W914NS-05-C-047		PKMS, RPKS, ammunition	$2.401.102	Green Shield Ltd.
W914NS-05-C-048		RPK, PKM	$8.776.936	MLM International
W914NS-05-D-003		UBGL M1 grenade launcher	$2.205.000	Taos Industries
W914NS-05-D-004		RPK, PKM	$1.599.705	Sidney Loggins
W914NS-05-D-005			$120.000	Unknown
W914NS-05-D-010		RPKS, 9mm Glock, PKM, RPK, RPG launcher, AK47	$19.785.166	TAOS
W914NS-05-D-011		Beretta pistols	$463.680	Iraq Business & Logistics Center
W914NS-05-D-012		PKM, ammunition, weapons	$4.552.119	AEY
W914NS-05-D-013		AK47, 9mm pistols, ammunition, SA-58 assault rifle	$12.793.660	Blane International group Inc.
W914NS-05-D-014		weapons	$1.221.500	Defense Logistics Services
W914NS-05-M-557		SGM	$1.928.000	Iraqi Contractor 5031
W914NS-05-M-859		PK, AK47, RPK, PKM	$326.872	Taos Industries
W914NS-05-M-320			$15.300	Unknown
W914NS-05-M-374			$531.000	Unknown
W915WE-0655768		M9, M240B, shotguns, M4A1 carbine	$2.354.941	Unknown
W915WE-1397581		M2 machine guns	$1.831.910	Unknown
W915WE70382175		rifles, carbines, grenade launchers	$8.366.927	Unknown
W91GY0-06-C-020		machine guns, sniper rifles, ak47	$3.166.980	Taos Industries
W91GY0-07-C-017		machine guns, pistols, scopes…	$576.003	Green Dream Trading Ltd.
W91GY0-07-C-035				MPRI
W91GY0-07-F-027		rifles	$42.500	Forceone LLC
W91GY0-06-M-0821		9mm pistols, pkm	$4.250	Glock Gesellschaft mbH

W91GY0-06-M-0821		9mm Glock, AK47	$357.500	Glock Gesellschaft mbH
W91GY0-06-M-1024		Shotguns	$33.304	Sweet Analysis Services Inc.
W91GY0-06-M-1107		Dragunov sniper rifle, ak47	$137.315	Iraqi Contractor 4653
W91GY0-06-M-1144		weapons, ammunition	$199.625	Blane International Group
W91GY0-07-M-0327		machine guns	$238.000	Blane International Group
W91GY0-07-M-0382		machine guns, pistols,	$1.305.211	Rock River Arms Inc.
W91GY0-07-M-0384		machine guns, pistols,	$570.641	Sierra Four Industries Corp.
	600.000	**TOTAL**	**$472.716.280**	
		minus 256 million	$216.759.605	W56HZV-04-D-181
W91GY0-07-M-0861	30.000	AK-47	$3.689.400	AEY Inc.
W91GY0-08-M-0011	30.000	AK-47	$3.630.000	Taos Industries
TOTAL SALW	**660.000**		**$224.079.005**	

Sources: Quarterly Report to Congress (SIGIR, October 2007); various contracts; FBO Daily.

8. Myanmar – ongoing misuse of arms transfers

Despite the persistent pattern of serious human rights violations committed by Myanmar's security forces, this case demonstrates how China, India, other Association of South-East Asian Nations (ASEAN) States, Russia, Serbia, and Ukraine, through the involvement of their agencies, companies, and nationals, have supplied military, police or security equipment (including transfers claimed to be 'non-lethal') to Myanmar. Continuous supplies of arms to Myanmar have aggravated an already grave human rights situation. The failure of Myanmar's main arms supplier States to recognize this problem, suspend international arms transfers and agree to the imposition an arms embargo on Myanmar enables them to circumvent their obligations under international law.

China has been the principal source of arms supplies to the Myanmar forces, followed by India, Serbia, Russia, Ukraine and other countries. In response to the violent crackdown by the armed forces to continued mass protests by those calling for democratic reforms, Amnesty International urged the United Nations Security Council to immediately impose a mandatory arms embargo on Myanmar. It also called on States, in particular China, India, and ASEAN States in addition to Russia, Serbia and Ukraine, to suspend all direct or indirect supplies to Myanmar of any military, police or security equipment.

8.1 Imposing the crackdown

Between 25 and 29 September 2007, security forces in Myanmar attacked peaceful demonstrators and raided many monasteries, in response to the largest display of civil unrest seen in the country since 1988. Initially a police response, the military quickly took over and fired both rubber and live ammunition, used tear gas and smoke bombs, and beat protesters with rubber and wooden batons to suppress the wave of peaceful protests. Thousands were arrested, hundreds were injured, and at least 31 were killed although the actual number is likely to be over 100.

The repression was carried out by the Myanmar security forces using military trucks, batons, tear gas, rubber bullets, less-lethal-munitions, grenade launchers, assault rifles, shotguns, and small arms ammunition. Amnesty International has not seen evidence of the use of armoured personnel carriers (APCs), tanks, helicopters and other larger conventional weapons, although such equipment is used outside of the cities, particularly in the ethnic states, and is available for deployment for further repression at any time by the Myanmar military authorities.

The government of Myanmar and its military, security and police forces of around 400,000 personnel have a well documented record of serious human rights violations, which the United Nations has described as widespread and systematic. Abuses also include extrajudicial killings, enforced disappearances, torture, forced labour and the recruitment of child soldiers. In continuing military operations against ethnic Karen civilians in eastern Kayin (Karen) State, small arms have been used by the army, officially known as the *tatmadaw,* to intimidate, torture and kill people and to destroy houses and crops often as acts of collective punishment.[245] These actions were described by Amnesty International as crimes against humanity in a recent report. [246]

8.2 Main suppliers of military equipment to Myanmar

Since 1988, China has reportedly supplied the army in Myanmar with military equipment, including tanks, armoured personnel carriers, military aircraft and artillery pieces such as howitzers, anti-tank guns and anti-aircraft guns.[247] The Chinese authorities have not reported such transfers to the UN but in 1998 China did report that it had delivered US$5.9 million worth of military equipment to Myanmar under a trade category entitled “tanks and other

[245] The Myanmar armed forces have destroyed crops and food stores and prevented farmers from leaving their villages to cultivate their land or purchase food supplies, announcing in some areas a shoot-to-kill policy for those found outside their villages. During 2006 and 2007, farmers grazing livestock, or individuals foraging for food outside their villages in Tantabin township, Thandaung township and Papun District were shot and wounded or killed by the *tatmadaw*, with no verbal warning issued. Internally displaced villagers, who had been hiding in the jungle from the Myanmar army told Amnesty International that the *tatmadaw* would shoot them if they were found.

[246] *Crimes against humanity in eastern Myanmar*, June 2008, AI Index: ASA/16/011/2008.

[247] “Asia, the Burmese Army”, Andrew Selth, *Jane’s Intelligence Review*, 1 November 1995.

armoured fighting vehicles", and US$3.4 million of "military weapons."[248] This image of a Myanmar army truck, used to carry security forces during the most recent crackdown, shows the distinctive logo on the flap of the back wheel of a Chinese company, First Automobile Works (FAW).

Some of thousands of protesters rally as military officials arrive at the scene of demonstration in Yangon's city centre, 27 September 2007. © Private

Since 6 December 2007, a reported 450 Chinese FAW trucks arrived on the Chinese-Myanmar border at Juili and Jehong.[249] Witnesses told Amnesty International that military trucks drove into a crowd and killed at least three people on 27 September 2007 in front of Yangon's Tamwe State High School (it is not known whether these were FAW trucks). A Chinese company reportedly sold 400 military trucks to the Myanmar government in 2005.[250] Between 1988 and 1995, China is reported to have provided about 1,000 vehicles to the Myanmar security forces.[251]

[248] UN Comtrade 1998 Classification SITC Rev 3 Codes 89111 and 89112.
[249] Burma Update, no 276 , 8 December 2007.
[250] "400 Chinese military trucks arrive at Burma Shweli", 7 August 2005, *Democratic Voice of Burma*, http://english.dvb.no/news.php?id=5343.
[251] *Jane's Intelligence Review*, 1 November 1995.

In 2002, China reported to the UN that it delivered 3,200 firearms to Myanmar, and between 1997 and 2004 China reported deliveries of US$1,155,067 of parts and accessories for weapons.[252] A US$1 billion arms deal reportedly enabled the Myanmar government to pay for a range of military equipment and training in China for armed forces officers.[253] Since 1998 at least 14 Karakorum K-8 light attack aircraft, co-developed by China and Pakistan, have been reportedly transferred to Myanmar.[254] The initial seven aircraft were reportedly financed by China.[255]

In January 2007, the Indian Foreign Minister Pranab Mukherjee promised to give a "favourable response" to the Myanmar government's request for military equipment[256], and in April 2007 it was reported that Indian and Myanmar security forces were "conducting joint military operations along the 1,643-km Indo-Myanmar border to neutralise insurgent groups."[257] India has not reported any arms transfers to Myanmar to the UN. Myanmar military co-operation with the Indian Government in dealing with these groups has been reportedly linked with an Indian government offer to supply a variety of military hardware such as tanks, aircraft, artillery guns, radar, small arms and advanced light helicopters.[258]

Amnesty International, Saferworld and a number of other non-governmental organizations in the European Union published a report in July 2007, outlining in detail concerns about the potential transfer from India to Myanmar of such attack helicopters, which are highly likely to contain components, technology and munitions originating from Member States of the European Union and the USA.[259] EU governments have apparently been reassured by the Indian government that the transfer of such helicopters will not go ahead, and a report by *Jane's Defence Weekly* in January 2008 stated that "*[p]lans to supply at least one Dhruv, India's locally designed advanced light helicopter, were permanently shelved following intense diplomatic and commercial pressure from the EU, as some of the aircraft's components originated from member states that back sanctions against Myanmar*".[260] Amnesty International has not received such a reassurance from the Indian government.

[252] UN Comtrade 2002 Classification SITC Rev 3 Code 89131 and 1997, 1999, 2001 and 2004 Code 89199
[253] *Burma: Insurgency and the Politics of Ethnicity*, Martin Smith, Zed Books, 1999, p. 426.
[254] "Myanmar's military links with Pakistan", *Jane's Intelligence Review* 1 June 2000
[255] "Myanmar is first export customer for K-8 trainer", *Jane's Defence Weekly* (24 June 1998). Also see Amnesty International's report, *Northern Ireland: Arming the World.* http://www.amnesty.org.uk/uploads/documents/doc_17903.pdf
[256] "India to snub US on Burma arms embargo", Bruce Loudon, *The Australian*, 23 January 2007; "India to supply military equipment to Myanmar", *The Hindu*, 22 January 2007
[257] "Defense Relations With Myanmar Surge; Progress Made During Vice Admiral Thane's Visit", *India Defence*, 3 April 2007, http://www.india-defence.com/reports/2996.
[258] See, for example, "Indian Navy to Transfer BN2 Maritime Surveillance Aircraft to Myanmar", *India Defence,* 12 May 2007, http://www.india-defence.com/reports/3179; Rahul Bedi, "Indian training missions underline desire for greater strategic influence", *Jane's Defence Weekly*, 9 May 2007.
[259] This potential transfer highlights the importance of ensuring an Arms Trade Treaty contains robust controls on end-user agreements and re-transfers. Such controls are critical for preventing arms transfers to states using them to seriously violate human rights and for implementing and enforcing arms embargoes.
[260] "Indian arms sales to Myanmar remain under scrutiny", *Jane's Defence Weekly*, 10 January 2008.

The Russian Federation reported to the UN in 2007 that it exported 100 large calibre artillery systems to Myanmar in 2006.[261] Russia also exported ten combat aircraft in 2002 and four combat aircraft to Myanmar in 2001.[262] The Russian MIG military aircraft company had a representative office in Myanmar in October 2006.[263]

Serbian arms exports to Myanmar are summarised in the table below. It shows the value of arms deliveries to Myanmar between 2004 and 2006.*[264]*

Commodity	Total Value ($)	Year	Net Weight (kg)
Military Weapons (89112)	6,455,129	2006	340,632
Munitions of war and parts thereof, n.e.s.(89129)	2,491,920	2006	99,255
Military Weapons (89112)	1,467,247	2005	76,261
Munitions of war and parts thereof, n.e.s (89129)	4,205,102	2005	230,322
Military Weapons (89112)	1,260,000	2004	76,261

In 2006, Serbia reported exports worth $8,377,800.00 to 'military' end-user in Myanmar covering 'howitzer sets, build-in services, self-propelled gun'.[265] In addition, Serbia and Montenegro exported 36 large artillery calibre systems (105mm M56 Howitzers) to Myanmar in 2004.[266]

The Ukrainian state owned arms company, UkrpetsExport, announced in April 2004 that it had agreed a ten year contract to supply 1,000 armoured personnel carriers to be assembled in Myanmar as part of a deal worth reportedly in excess of US$500 million[267], and in 2004 Ukraine told the UN that it had exported 10 BTR-3U armoured combat vehicles to Myanmar in 2003.[268] The Ukraine also reported to the UN that it exported ten R-27 missiles to Myanmar in 2003.[269] According to a report in *The Irrawaddy*, the Ukraine in 2003 also shipped more than 50 T-72S main battle tanks to Myanmar.[270] There is no data recorded by

[261] Reported by the Russian Federation to the United Nations Register of Conventional Arms on 24 May 2007
[262] As reported by Russia to the UN Register of Conventional Arms on 26 June 2003 and 23 August 2002 respectively
[263] RAC MiG / Russian Aircraft Company RSK (Mig Corp) http://www.migavia.ru; http://www.migavia.ru/eng/contacts/ 23/10/2006:
[264] UN Comtrade classification SITC REV 3. Accessed 5 September 2007; the entry for 2004 was reported by Serbia and Montenegro.
[265] See the Serbian national Annual Report on the Realization of Foreign Trade Transfers of Controlled Goods for 2005 and 2006 published in 2007 which can be downloaded from http://hei.unige.ch/sas/files/portal/issueareas/transfers/transam.html
[266] Reported by Serbia-Montenegro to the UN Register of Conventional Arms on 18 May 2005
[267] "Junta failing to pay for military facilities",18 May 2006, *The Irrawaddy Online Edition*; "The Kiev Connection", 1 April 2004, *The Irrawaddy Online Edition*
[268] As reported by the Ukraine to the UN Register of Conventional Arms on 24 May 2004.
[269] As reported by the Ukraine to the UN Register of Conventional Arms on 24 May 2004.
[270] "The Kiev Connection", 1 April 2004, *The Irrawaddy Online Edition*. The newspaper claims that this story is corroborated by an advert in the Kiev press for Ukrainian-to-English translators to work on a 'Myanmar-Ukrainian tank project that involved "combat usage, operation and maintenance of tank T-72S". The article also cites that "the Democratic Voice of Burma…claimed that a Ukrainian flagged ship docked in Rangoon port on February 25 [2004] and its cargo unloaded at night. It also report in July last year that Burma had taken delivery of 52 T-72 tanks from the Ukraine."

Ukraine in its submission to the UN Register on Conventional Arms to confirm this report of exports in 2003, but there is, however, an entry in 2002 for the export of 14 T-72C battle tanks.[271]

In addition there have been allegations about Myanmar's military relations with Singapore. According to *Jane's Intelligence Review*, in 1998 Singapore supplied Myanmar with a purpose-built factory to manufacture assault rifles and ammunition.[272] The plant was reportedly designed and built by a state owned Singapore company with assistance from Israeli consultants, then dismantled and re-assembled in Myanmar.[273] Suspicions regarding Myanmar's procurement of Singapore-origin arms are supported by a photograph taken during the crackdown in September 2007, in which Amnesty International has identified a grenade launcher being held by a soldier as visually identical to the CIS40GL 40mm grenade launcher, originally designed and produced by Singapore's Chartered Industries (now part of ST Engineering Ltd). Although it is impossible to state definitively the route by which this weapon came to be in Myanmar, the image indicates that this Mynamar grenade launcher was either produced in Singapore, or produced elsewhere based on Chartered Industries designs.[274] A local company in Myanmar controlled by the Myanmar government produces a range of small arms and light weapons for the Myanmar armed forces. The company reportedly has several factories throughout the country.[275]

8.3 Abuses since the crackdown

In the ten months since the crackdown, Myanmar security forces have continued to arrest protesters and those suspected of being associated with them, including monks, journalists, human rights defenders, and other activists. Amnesty International documented 96 new arrests between 1 November 2007 and 1 February 2008, and at least 40 sentences handed down to protesters between the crackdown and 1 April 2008.

At least 860 prisoners of conscience from the crackdown remain detained in Myanmar, in addition to the approximately 1,190 other political prisoners held from before the crackdown. Among the roughly 2,050 total detainees are senior political figures, including U Tin Oo, Htay Kywe, U Gambira, and other leaders of the protests. Conditions in detention do not meet minimum international standards and amount to inhumane treatment. Credible reports of torture continue to emerge.

[271] As reported by the Ukraine on 16 June 2003.
[272] "Expose Burma's Weapon Industry", *Jane's Intelligence Review*, December 1998; "Singapore weapons factory for junta", *South China Morning Post*, Wednesday 22 July 1998.
[273] "Expose Burma's Weapon Industry", *Jane's Intelligence Review*, December 1998; "Singapore weapons factory for junta", *South China Morning Post*, Wednesday 22 July 1998.
[274] Amnesty International is not aware of any production outside Singapore of CIS 40GL launchers, but such overseas production cannot be ruled out.
[275] The largest weapons factory in Myanmar is reportedly at Sindell. See "Military-Expose: Burma's Weapons Industry", *Jane's Intelligence Review*,1 December 1998

There was a spate of arrests in the run-up to the constitutional referendum on 10 May 2008, as government authorities targeted opposition political activists who conducted a 'vote no' campaign. Peaceful demonstrations relating to the extension of Daw Aung San Suu Kyi's detention and in celebration of her 63rd birthday were also marred with arrests.

In the wake of Cyclone Nargis, which devastated the Irrawaddy Delta and the surrounding region on 2 and 3 May 2008, the arrest of political activists has continued unabated. This has included members of the public who criticized the cyclone relief operation and private donors who attempted to transport much-needed aid to the affected area. Popular comedian Zarganar, an out-spoken critic of the military regime, was among those arrested for providing aid and relief, and his whereabouts remain unknown.

8.4 Arms embargoes on Myanmar

The European Union (EU) and the USA imposed arms embargoes on Myanmar in 1988 and 1993 respectively. The EU arms embargo is legally-binding and requires all EU Member States to implement and enforce its provisions at the national level.[276] The EU embargo also bans the direct and indirect provision of technical or financial assistance, brokering and other services related to military activities and military and related material.[277] Indirect transfers of military components are covered within the scope of the EU embargo, yet there is no comprehensive EU-wide control system in place to ensure that governments can effectively implement and enforce their embargo commitments. The indirect transfer of dual-use items and technology by EU Member States is also controlled by the EC Regulation on Dual-Use Items and Technology adopted 22 June 2000.[278]

The US embargo requires the administration to refuse all licences and approvals to export or transfer defence articles or defence services by US manufacturers and exporters including *"[m]anufacturing licenses, technical assistance agreements, technical data, and commercial-military exports of any kind subject to the Arms Export Control Act."*[279] US export control regulations specify that re-export controls apply to all US supplied military

[276] "The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Burma/Myanmar by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories." Article 1 of the Common Position 2006/318/CFSP.

[277] The EU embargo on Myanmar (Burma) includes "military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar." Article 2 of the Regulation No 817/2006.

[278] Council Regulation (EC) No 1334/2000 of 22 June 2000. This Regulation was also renewed on the 11 April 2006 (Council Regulation (EC) No 394/2006 of 27 February 2006, http://www.dti.gov.uk/files/file26940.pdf.) and includes an updated list of dual-use items and technology subject to control

[279] On 16 June 1993 the US government imposed an arms embargo on Myanmar "in light of the human rights abuses being committed by the current Government of Burma." US Department of State Public Notice, 16 June 1993 available at: http://www.pmddtc.state.gov/docs/frnotices/58FR33293.pdf.

components.[280] Therefore, before any state could re-export US-made weapons or munitions to Myanmar, any licensable US components originally imported from the US, would require a further US export licence. Under the US arms embargo on Myanmar, such licences would almost certainly be refused.

8.5 Responding to the repression

During the September-October 2007 crackdown, ASEAN issued a critical statement on Myanmar, but allowed it to sign its new Charter in November which commits Member States to the "promotion and protection of human rights". In July 2008, Myanmar ratified the Charter and appointed a representative to ASEAN's High Level Panel on the development of an ASEAN human rights mechanism.

The UN Security Council issued a presidential statement in October 2007 that strongly deplored the crackdown and issued another in May 2008 in anticipation of the constitutional referendum later that month. The UN General Assembly strongly condemned the crackdown in a resolution in November 2007. The UN Secretary-General's Special Adviser on Myanmar, Ibrahim Gambari, visited Myanmar in October and November 2007, as well as in March 2008, and is scheduled to go again in August 2008. The UN Human Rights Council called a Special Session on 2 October 2007 and passed a resolution strongly deploring the brutal suppression on protesters.[281]

In November 2007, the UN Special Rapporteur on the Situation of Human Rights in Myanmar, Sérgio Pinheiro, visited Myanmar for the first time since 2003. Following this visit, the UN Human Rights Council passed another resolution, based on his report and requesting a follow-up mission.[282] In March 2008, Sérgio Pinheiro presented his final comprehensive report to the Human Rights Council in which he pressed the international community, including the UN, to ensure "an adequate response to the situation of conflict in eastern Myanmar."[283] The Human Rights Council responded with a resolution urging the Myanmar authorities to take urgent measures to end violations of human rights and humanitarian law.[284]

Despite these international responses to the serious human rights violations in Myanmar, China and Russia, two permanent members of the UN Security Council, blocked

[280] The US International Traffic in Arms Regulations (§123.9) explicitly requires that re-exports or re-transfers of US-origin defence articles or components must obtain written approval from the Directorate of Defense Trade Controls. Without prior written approval, India would be in breach of US regulations and potentially subject to penalties.
[281] http://www2.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.RES.S.5-1.pdf
[282] HRC Resolution 6/33 of 14 December was adopted by consensus, including by the following HRC members that are also on the Security Council: China, France, Italy, Indonesia, Russian Federation, South Africa, UK. http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_33.pdf
[283] Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, 7 March 2008, A/HRC/7/18, pg. 80 and 101(c).
[284] Human Rights Council Resolution 7/31 on the "Situation of human rights in Myanmar", adopted by consensus on 28 March 2008.

efforts to establish an arms embargo on Myanmar. The US, EU, and other Western nations were left to enact or tighten arms embargoes and sanctions on their own. The Myanmar government has made no substantive changes, only cooperating in a limited tactical manner with the UN to decrease the international attention on the continuing repression. The International Committee of the Red Cross (ICRC), for example, has not been allowed back into the country to carry out its core mandate.

8.6 Lessons from the Myanmar case

In response to the recent crackdown on democracy protests, Amnesty International's appeal to the United Nations Security Council to immediately impose a mandatory arms embargo on Myanmar has gone unheeded principally because two of the Permanent Members, China and Russia, have refused to suspend their arms transfers to the Myanmar security forces despite those forces' blatant violations of international human rights law and IHL.

If an ATT was established by a majority of States with common criteria derived from principles of international law to suspend all international transfers where they are likely to be used for serious violations of international human rights law and IHL until respect for that law by the recipient was clearly demonstrated, then those States allowing arms transfers to Myanmar in violation of the treaty would come under enormous pressure to comply with the same criteria. This pressure would occur not least because much of the international arms trade depends on reciprocal arrangements across many countries associated with the globalization of arms industries. Under such a treaty, all States would be required to suspend arms transfers to governments such as the Myanmar government until concrete independently verified steps are taken to demonstrate that there is no substantial risk of using armed force to facilitate serious human rights violations. Supplier States could request safeguards from a potential recipient to improve human rights protection for all, including for example the release of all prisoners of conscience as should be the case with Myanmar.

This case also shows that an effective ATT should establish specific common standards for controlling the transfer of production capacity for arms and ammunition and the transit and trans-shipment of arms and ammunition.

9. Somalia - continuing inflow of arms worsens a human rights catastrophe

Despite the imposition of the 1992 UN arms embargo, widespread human rights abuses and serious violations of IHL have been committed by all parties to the conflict in Somalia who have continued to use a range of small arms and large conventional weapons and munitions. The supply of such items particularly via Eritrea, Ethiopia and Yemen has contributed to direct attacks on civilians and some attacks may have been indiscriminate and/or disproportionate, resulting in widespread killing and injuring of civilians. The traditional frame of UN arms embargoes is not effective in regions where States which are the sources of arms exports and the transhipment of arms simply do not have adequate national systems of arms control. Arms trafficking networks using brokers and transporters can easily exploit loopholes in such national laws, regulations and administrative procedures, as is shown in this case. The problem is made worse where those weak States are in turn being supplied arms by powerful arms exporting States which are not committed to upholding international human rights standards and IHL when considering arms transfers – in this case the USA, China, North Korea and other States.

Amnesty International has documented the toll that the use of artillery, rockets and mortars has taken on the population of Mogadishu, resulting in wide-scale deaths and injuries - sometimes of entire families as artillery shells destroyed their houses - and the displacement of the population of entire districts of the city.[285] Some 6,000 civilians were reportedly killed in fighting in the capital Mogadishu and across southern and central Somalia in 2007,[286] and over 600,000 Somali civilians were internally displaced from and around Mogadishu.[287]

[285] These violations are documented in reports of Amnesty International most recently *Somalia: Routinely Targeted: attacks on civilians in Somalia* (AI Index AFR 56/009/2008), June 2008.
[286] In early December the Elman Human Rights Organization estimated that close to 6,000 civilians had been killed in Somalia due to conflict in 2007.
[287] The UN has estimated 600,000 new internally displaced people in 2007, which, combined with 400,000 long-term IDPs in southern central Somalia, brings Somalia's estimated total IDPs to approximately one million.

Woman and child try to avoid the shelling on the opposite side of the building, Hamar Bile, Somalia, 20 February 2007. ©AP Graphics Bank

In addition, an estimated 335,000 displaced Somali refugees fled Somalia in 2007,[288] despite enormous obstacles to their movement, including Kenya's closure of its border with Somalia,[289] armed combatants and bandits on the roads, and perilous travel across the Gulf of Aden. Those fleeing violence in Mogadishu still face violence on the roads north toward Puntland and west toward Afgooye and Baidoa, including theft, rape and shootings. Once they arrive in both Internally Displaced Persons (IDP) and refugee settlements, they face further violence, and lack of access to services essential for the realization of human rights, including clean water, medical care, and adequate food supplies. Humanitarian organizations face numerous obstacles to provide emergency assistance as humanitarian operations are frequently impeded by parties to the conflict and armed criminal groups, the overall high levels of insecurity in these areas, or the lack of capacity among humanitarian organizations.

[288] USAID estimates that 335,000 Somali refugees were newly displaced in 2007, a figure which does not include long-term Somali refugees displaced in prior years. (Somalia Complex Emergency Report #1, December 20, 2007).

[289] In reality some Somali refugees, particularly adult men, have still reached Nairobi and other areas of Kenya, despite the border closure.

One of the many displaced Somalis interviewed by Amnesty International told of the impact of these weapons that the UN arms embargo has failed to prevent from entering Somalia. She was living in the Hawl Wadaag District of Mogadishu when her house was hit by artillery shells on 1 November 2007. She said her sister (aged 40) and eight of her children (aged 8, 10, 11, 12, 13, 15, 18 and 20) were all killed. She saw pieces of her sister's body strewn about. That was also the last time she saw her husband, who arrived home after the shelling, asked from which direction it came, then ran from the house. Another displaced Somali gave Amnesty International a clear picture of the complex mix of fighters that overran her neighborhood, Merca, in Lower Shabelle in March and April 2007:

> *"It started with the Islamists, then the Ethiopians came to Mogadishu. I left my house two months ago, before that the Ethiopians occupied my house. My family died in the first fighting in an artillery bombardment. After that, one day it was al-Shabab, the next it was the Ethiopians, who decided to stay. My own neighbours were attacked by the resistance, who blew up a military vehicle. In response the Ethiopians cordoned off the area. Then we found people cold bloodedly killed—shot in the forehead."*

These civilian casualties have been caused in part by the continuing inflow of conventional arms, particularly firearms, ammunition and light weapons. The arms flows to the parties to the conflict in Somalia have taken place in violation of the UN arms embargo, and those responsible for supplying and delivering the arms bear an important responsibility for worsening the pattern of human rights violations and abuses.

Since the overthrow of Siad Barre's 21-year rule in 1991, civil conflict based on clan rivalries, competition over scarce resources, and criminal activity has torn the country apart. Following 13 failed peace conferences, mostly attended by leaders of militia groups affiliated with specific clans and sub-clans, and two years of difficult negotiations, the process culminated in the development of a Transitional Federal Charter and the selection of 275 members of the Transitional Federal Parliament (TFP) to form a Transitional Federal Government (TFG) in October 2004. This interim government, while supported by the UN, the US government and other States in the International Contact Group for Somalia, and international donors, has since been unable to effectively establish control. Armed opposition groups in Somalia refused to accept the interim government – these groups included remnants of the Islamic Courts Union (ICU), supporters of the Alliance for the Re-Liberation of Somalia (ARS), and various factions of the *Shabab* militia ("youth" – formerly young ICU fighters).

By 2006, the ICU, later the Council of Somali Islamic Courts (COSIC), emerged from numerous local Islamic courts in and around Mogadishu, which had been functioning for a number of years in the absence of a central justice system. After some months of armed fighting against a coalition of armed groups calling themselves the Alliance for the Restoration of Peace and Counter Terrorism and who have been reported to have received covert U.S. backing,[290] the Islamic Courts (as they are commonly known) captured Mogadishu. Hundreds of civilians were killed in this fighting. The Islamic Courts began to

[290] *Washington Post*, Wednesday 17 May 2006; Terrorism Focus, 31 May 2006.

provide basic security services in Mogadishu, such as policing the streets to stop violent crime. In late 2006, the ICU began to further extend their control to much of southern and central Somalia, challenging the TFG which remained in Baidoa supported by Ethiopian troops and groups of militia attached to, or acting as proxies for, the TFG.

The League of Arab States' sponsored-attempts to broker reconciliation and power-sharing between the TFG and Islamic Courts failed. In December 2006, the UN Security Council (UNSC) adopted Resolution 1725, which authorized the establishment and deployment of an 8,000-strong regional peacekeeping operation in Somalia called the African Union Mission in Somalia (AMISOM). By May 2008, Uganda, the initial troop contributor, had contributed some 1,600 troops and Burundi had committed some 1,700 troops (some of which arrived in late December 2007). Due to a severe lack of capacity, the AMISOM mission has neither the mandate nor the capacity to protect civilians in Somalia and has been limited to providing VIP escort, "confidence-building patrols" within its area of operations, and protection of the Mogadishu airport, seaport and Villa Somalia (presidential office).

The ICU then launched attacks around Baidoa, and the Ethiopian government launched a military response in conjunction with and at the request of the TFG, to forcibly expel the ICU from power in Somalia. By the end of December 2006, the ICU had folded before an Ethiopian-led TFG advance, with some ICU leaders and troops retreating south from Mogadishu, and others melting back into the city's population. This retreat occurred in the midst of a humanitarian emergency due to a combination of severe drought followed by devastating floods. This emergency was exacerbated by the armed conflict, creating more internally displaced people and greater obstructions to delivery of humanitarian assistance.

The humanitarian and human rights situation in Somalia has only grown worse. Security in many parts of Mogadishu is non-existent. The situation is characterized by growing numbers of IDPs and refugees. Clan militias, remnants of the former ICU, Shabab militia, and armed bandits, as well as TFG and Ethiopian security forces, have all perpetrated abuses against civilians. Death threats and deadly violence against journalists, other media workers, humanitarian workers, and human rights defenders escalated in late 2007 and during the first half of 2008.[291]

[291] See UN Security Council report S/2007/259: paragraphs 46-47 which states that "[i]n 2007, high levels of insecurity and criminal activity have returned to southern and central Somalia and reports of rapes, killings, extortion and torture at checkpoints controlled by local militias are once again being received from protection monitors. There are several reports of girls being raped at checkpoints or within their communities. Due to a lack of government control and institutionalized rule of law, such violations are often carried out with impunity. Some of the reported rape cases during 2006 involved girls as young as 11 years of age".

9.1 The UN arms embargo on Somalia

Somalia has been subject to a UN Security Council arms embargo since 23 January 1992. Originally the UN arms embargo required that "all States shall, for the purposes of establishing peace and stability in Somalia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia until the Security Council decides otherwise."[292] Resolution 751 (1992) called for the establishment of a Committee of the Security Council to monitor the implementation of the arms embargo. In order to ensure humanitarian protection, the UN Security Council clarified in June 2001 that the arms embargo did not cover 'protective clothing' for named categories of people and 'supplies of non-lethal military equipment intended solely for humanitarian or protective use.'[293]

On 22 July 2002, the Security Council extended the scope of the UN arms embargo to cover the 'financing of all acquisitions and deliveries of weapons and military equipment' and 'the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities'.[294] However, the lack of adequate arms control systems especially in the region and a record of irresponsible arms supplies to Somalia over the past two decades have led to local arms markets controlled by warlords and corrupt officials, and undermined the efficacy of the UN embargo.

In 2002, ten years after Resolution 751, the UN Security Council decided to establish a three-member team of experts for a period of six months to study the violations of the Somalia arms embargo imposed in 1992.[295] The UN Secretary General submitted the team of experts' report on violations of the embargo to the Security Council on 3 July 2002.[296] Subsequently, the Security Council appointed two Panels of Experts which issued two further reports in March and November 2003.[297] The Security Council then established a Monitoring Group which has produced seven reports between August 2004 and April 2008.[298] Although the Security Council members have kept reiterating their deep concern about the persistent flow of weapons and ammunition to Somalia and have renewed the UN arms embargo, the Council has focused on continued monitoring of the violations of the arms embargo and has not taken effective action to prevent violations.

[292] United Nations Security Council Resolution 733, paragraph 5.
[293] UN Security Council Resolution 1356, paragraphs 2 and 3.
[294] UN Security Council Resolution 1425 paragraphs 1 and 2.
[295] Ibid.
[296] UN Document S/2002/722, Report of the team of experts submitted in accordance with resolution 1407 (2002)
[297] Reports of the Panel of Experts (S/2003/223 and S/2003/1035) appointed pursuant to resolutions 1425 (2002) of 22 July 2002 and 1474 (2003) of 8 April 2003.
[298] Reports of the Monitoring Group are: S/2004/604, S/2005/153, S/2005/625, S/2006/229, S/2006/913, S/2007/436 and S/2008/274; the Monitoring Group was appointed pursuant to Security Council resolutions 1519 (2003) of 16 December 2003, 1558 (2004) of 17 August 2004, 1587 (2005) of 15 March 2005, 1630 (2005) of 14 October 2005, 1676 (2006) of 10 May 2006, 1724 (2006) of 29 November 2006, and 1766 (2007) of 23 July 2007;

In November 2006, the Monitoring Group's report described the key role of Ethiopia and Eritrea in arming Somalia's militias.[299] Ethiopia had up to 6,000 troops in Somalia supporting the TFG armed forces and supplied TFG militias with a variety of arms. Eritrea was accused of supplying 2,000 troops and arms to the ICU, including portable surface-to-air missiles.[300]

UN Security Council Resolution 1744 of 21 February 2007, later confirmed in Resolution 1772 of 20 August 2007, established an exemption to the arms embargo for: (i) arms supplied solely for the support of or use by a new UN-authorized African Union peacekeeping mission – AMISOM;[301] and (ii) arms and technical assistance 'intended solely for the purpose of helping develop security sector institutions' (Resolution 1744 paragraph 6(b)). This exemption was qualified by requirements of consistency with the political process[302] and advance notification to the Security Council Sanction Committee on Somalia of each individual case of supply, which further requires the absence of a negative decision by the Committee on the proposed supply.

The UN Monitoring Group report in April 2008 described the deteriorating security situation since October 2007 whereby armed opposition groups have established bases across Somalia and use a number of locations to receive regular shipments of arms by sea. The Group concluded that: "*Weapons sent to all parties of the Somali conflict originate in some of the same States as previously reported, namely Eritrea, Yemen and Ethiopia. The routes are, however, more covert, and weapons reach Somalia either by a larger number of smaller vessels, or through remote locations along land borders*."[303] Somaliland, the coast of Puntland and central and south Somalia have been used for the illegal import of weapons and provide bases for heavily armed pirates who have carried out an increasing number of hijackings.

Illegal cross-border arms shipments reached the different parties to the conflict directly, or indirectly via seven different arms markets, according to the last Monitoring Group report. Members of the TFG buy arms at the market in Mogadishu. The Monitoring Group "*received information on sales of arms by prominent security officials of the Government, Ethiopian officers and Ugandan officers of the African Union Mission in Somalia.*"[304] Arms on sale originate from army stocks or from those items seized following battles with insurgents. According to arms traders interviewed by the UN monitors, the biggest suppliers of ammunition to the markets have been Ethiopian and TFG commanders, who divert boxes officially declared "used during combat". Moreover, it was alleged that the Somali Police Force, which includes many former militia and operates jointly with the national army, "*has purchased arms in Yemen, in violation of the arms embargo, not having*

[299] S/2006/913, paragraphs 15 to 86 detail the many accusations against Eritrea and Ethiopia.
[300] Ibid, paragraph 30, 37 , 38, 40 , 41 and 45 in particular.
[301] UN Security Council Resolution 1744, paragraph 6(a).
[302] Set out in paragraphs 1-3 of Resolution 1744.
[303] UN report S/2008/274.
[304] Ibid.

requested an exemption from the [UN Sanctions] *Committee*...[and] *…police commanders are also acting as buyers and sellers of arms at the Mogadishu arms markets*."[305]

9.2 Clandestine deliveries to armed groups via Eritrea

In November 2006, the UN Monitoring Group on Somalia reported on the delivery of arms by an Ilyushin-76 transport aircraft (call sign LFT 1221) on 26 July 2006 to the ICU.[306] Three additional arms flights to Mogadishu followed, two on 28 July 2006 and one on 7 August 2006. An Eritrean company, Eriko Enterprises, operated the latter flight using a "call sign" LFT 3756 according to the UN Monitoring Group.[307] The International Civil Aviation Organisation [ICAO] airline call sign[308] LFT belongs to a South African based airline company named Aerolift. Although Aerolift is registered in the British Virgin Islands, the company is managed out of an office in the Johannesburg suburb of Sandton. Following the publication of a report by the UN Monitoring Group on Somalia on 22 November 2006,[309] Amnesty International visited South Africa in January 2007 to interview the air operator Aerolift.

The managing director of Aerolift told a researcher in detail, and with supporting documents[310] (Contract of Sale and Purchase, Registration Certificate, Certificate of Airworthiness and Noise Certificate) how he claims he was deceived by the Eritrean military into allowing 'his' aircraft to be used to make at least three clandestine arms deliveries to the Union of Islamic Courts. He stated that early in July 2006, Aerolift was approached by a high ranking officer of the Eritrean Peoples' Defence Force, who offered to pay US$1.5 million for the IL-76TD aircraft, registration UN-76496 (s/n 073410303), which at that time was operated by Aerolift. Since the aircraft's actual value was in the region of US$1 million, Aerolift accepted the offer, even though the aircraft was not his property, and then contacted the actual owner GST Aero in Tashkent. Aerolift agreed to pay GST Aero US$1.2 million, thus leaving Aerolift with a notional profit of US$300,000.

A contract was then drawn up between Aerolift and an Eritrean company called Eriko Enterprise, represented by a Mr Kelati Haile.[311] Unusually, the contract does not specify the payment to be made for the aircraft sale, saying merely "payment conditions will be enclosed with contract forms", but Aerolift says that they received a first, and only, 'progress' payment

[305] Ibid.
[306] See S/2006/913, §43-53. The ICU had emerged in the first half of 2006. In the period between March and June 2006 the ICU militias fought a bloody battle against an alliance of southern Somali warlords, the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT). In early June 2006, the ICU captured Mogadishu. The airport was reopened by the ICU on 15 July 2006 after having been closed for more than 10 years.
[307] UN Doc.S/2006/913.
[308] A unique code to identify each airline operator. Usually the telephony designator of the aircraft operating agency. The telephony designator can also be followed by the flight identification. This is referred to as the flight number.
[309] S/2006/913, op cit.
[310] Interviews conducted in South Africa by Brian Johnson Thomas, 20-25 January 2007.
[311] Contract of Sale and Purchase 25 July 2006.

of US$250,000 on signing the contract in Moscow on 25 July 2006.[312] As well as providing for confidentiality (the contract was to be kept secret by the parties to it), Aerolift explicitly agreed that the Eritrean company could use the Aerolift ICAO call sign (LFT) for a period "*not exceeding three months*" whilst a fresh ICAO call sign was being allocated, adding that "*the Buyer is obliged to not perform flights under Sellers call sign on runways not registered in Jeppesen, military flights or flights with arms on board, to transport prohibited cargo*".

The aircraft was reportedly delivered to Massawa airport on 25 August 2006, whereupon the representative of the Eritrean military assumed operational control. According to the Eritrean Civil Aviation Authority documentation, the aircraft was registered as E3-AAF with registered owner Skyroute Aviation (Asmara, Eritrea).[313] So far as Amnesty International is aware, the Eritrean registration E3-AAF was never actually applied to the surface of the aircraft, which remained pure white except for the Kazakhstan registration UN-76496. The aircraft then made, according to Aerolift, at least three flights from Massawa to Somalia - of which only one was to a 'registered runway' at Mogadishu – reportedly carrying arms and ammunition to the ICU militias. According to the Aerolift manager, the cargo consisted of "*used AK47's* [assault rifles] *in bags - six or seven to a bag - and boxes of ammunition to go with them. Also they had backloads of people in uniform - Arabian men with masks. I had lent a crew to the Eritreans while they were still using my call sign, but after three flights my crew wanted to leave, even though they were paid a cash bonus of US$5,000 per man per flight. The later flights were to GPS co-ordinates in southern Sudan, I don't know exactly where*".

Such deliveries of assault rifles and ammunition to the UIC militias, in violation of the UN arms embargo, further fuel the conflict and contribute to the numerous grave human rights abuses and serious violations of IHL by armed groups opposed to the TFG.[314]

The proliferation of small arms and light weapons in Somalia amongst armed groups is evident almost everywhere. Fighters and criminal elements are generally more difficult to identify by dress, vehicle or appearance, and they include remnants of the ICU, supporters of the ARS, and radical *Shabab* youth militia, as well as clan, sub-clan and local political leaders and militias who have acted as bandits, perpetrating raids, robberies and other abuses against civilians, including rape and other forms of sexual violence. For example, those called "Mooryaan" are described as "gun totting young men" or "street kids," who behave as criminals towards civilians.

[312] The Eritreans had reportedly failed to make the subsequent progress payments owing under the contract and the aircraft owners back in Tashkent were apparently also restless. It was agreed therefore that the aircraft would be returned to the owners for disposal, both Aerolift and the Eritreans would pay US$50,000 each for a joint dry-lease, while Aerolift would keep the US$250,000, less a refund of US$86,000 to Eritrea for landing and handling, parking and ATC fees. (Interviews Aerolift, Johannesburg, 20-25 January 2007).

[313] Certificate of Registration, E3-AAF (s/n 073410303), Eritrean Civil Aviation Authority, 1 August 2006; Noise Certificate, E3-AAF (s/n 073410303), Eritrean Civil Aviation Authority, 1 August 2006; Certificate of Airworthiness, E3-AAF (s/n 073410303), Eritrean Civil Aviation Authority, 5 August 2006.

[314] Eritrea has not officially reported arms trade data. The only declarations of arms exports to Eritrea in 2005, 2006, and 2007 were those for 2005 of Italy ($522,000 worth of civilian firearms) and Kenya ($1.1 million worth of armored vehicles and parts).

9.3 Arms deployed from Ethiopia

In late 2006 the Ethiopian government launched a military response with heavy and light weapons in conjunction with and at the request of the TFG, to forcibly expel the ICU from power in Somalia, using considerable quantities of imported military equipment. The Ethiopian government had imported heavy weapons such as tanks and other armoured vehicles from Russia (worth US$12 million) and China ($3 million) in 2006 and from North Korea[315] ($3 million) and the Czech Republic ($1 million) in 2005. Ethiopia had also imported military weapons from China ($11.5 million) in 2006 and Israel ($1.2 million) in 2005. In addition, during 2005 and 2006, Ethiopia had acquired a large range of small arms, light weapons and parts mainly from North Korea, China and Russia.[316]

With Ethiopian military support, the TFG President and other leaders officially moved to Mogadishu in January 2007, but most government ministers and the Transitional Federal Parliament remained in Baidoa. The TFG faced increasing armed opposition from remnants of the Islamic Courts and was unable to establish control or security in the capital. The insurgency escalated as members of Mogadishu's Hawiye sub-clans opposed Ethiopia's military intervention to support a TFG which they perceived as being controlled primarily by the Darod clan.

In Mogadishu the insurgency was met by Ethiopian-led counter-insurgency operations in March and April, and there was additional fierce fighting in the final months of 2007 and during the first half of 2008. Many survivors of violence in Mogadishu reported that armed group "militias" were not visible but launched hit-and-run attacks to which the TFG and Ethiopian military responded with artillery fire, sometimes destroying entire neighbourhoods. All parties to the conflict are reported to have directed attacks at civilian-populated areas, with TFG and Ethiopian government forces using heavy artillery, and armed groups mainly limited to rocket propelled grenades (RPG), small mortar fire and improvised explosive devises.

On 13 April 2007 the Ethiopian Ministry of Foreign Affairs released a press communiqué,[317] following an article[318] that was published in the *New York Times* which alleged that the US administration had allowed Ethiopia to import arms from North Korea, in violation of the UN Security Council Resolution 1718 (2006),[319] to support Ethiopia's

[315] Democratic People's Republic of Korea (DPRK).
[316] UN Commodity Trade Statistics, 2005 and 2006
[317] "Ethiopia acted in full compliance with Security Council Resolutions 1718 (2006)" Ethiopian Ministry of Foreign Affairs, Press Release, 13 April 2007, http://mfa.gov.et/Press_Section/publication.php?Main_Page_Number=3556.
[318] "North Koreans Arm Ethiopians as U.S. Assents", *New York Times*, 8 April 2007.
[319] Security Council Resolution 1718 prohibited (1) the direct or indirect supply, sale or transfer to the DPRK of (a) any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register on Conventional Arms, or related materiel including spare parts, or items as determined by the Security Council or the Committee [§8.a.i], (b) all items, materials, equipment, goods and technology which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction related programmes [§8.a.ii]; (2) the

military operations in Somalia. The Ethiopian government acknowledged that a cargo shipment from North Korea to Ethiopia had taken place on 22 January 2007, but denied that the content of the cargo violated UN Security Council Resolution 1718 imposing a partial embargo on the trade in arms with North Korea.

The Ethiopian government said that the shipment contained spare parts for machinery and engineering equipment and raw material for the making of assorted ammunition for small arms, and was made on the basis of four contractual agreements which were signed between 12 and 22 June 2006 for the purchase of various items required by the military industry in Ethiopia. Furthermore "*irrevocable Letters of Credit were issued between 30 June and 30 September 2006. This means that all payments for the cargo were effected before the adoption of Resolution 1718.*"[320]

The communiqué also stated that the US Embassy in Addis Ababa might have been aware of Ethiopia's importation of said cargo from North Korea but the assertion that "*the United States allowed the arms delivery to go through in January in part because Ethiopia was in the midst of a military offensive against Islamic militias inside Somalia*" is wrong "*since the contractual agreements were signed and all payments made before the ICU extremists in Somalia took control of Mogadishu and declared jihad on Ethiopia*".[321]

US aircraft bombed fleeing ICU forces in south western Somalia twice in January 2007, with the stated intention of targeting what US government officials described as specific "terrorist suspects." Ethiopia also conducted aerial bombings in the area. Total bombings reportedly killed some 70 individuals, all civilians. The US government later acknowledged that they failed to kill the suspects they targeted. For example, on 7 January 2007, a US Air Force AC-130 gunship performed an air strike on Hayo village near Afmadow town, which killed at least 30 civilians.[322] According to a report from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "there were also unconfirmed reports of casualties around Bargal (Puntland) following the reported US military airstrike on the area on 1 June 2007."[323] A US air strike in Dusamareb, on 1 May 2008, reportedly killed at least 11 people, including Aden Hashi Ayro, a leader of *Al-Shabab*. During four days of fighting at the end of March and beginning of April 2007, 400 civilians were killed in indiscriminate firing by Ethiopian forces using tanks, helicopter gunships and artillery, or by return-fire from opponents armed with rocket-launchers and machine-guns. Civilians were located in residential areas, a market, a hospital, and IDP settlements at the time of the attacks. [324]

The TFG, as the internationally recognized government of Somalia, bears principal responsibility for ensuring the human rights of the people of Somalia. Amnesty International

procurement of said items of paragraphs [§8.a.i] and [§8.a.ii] from the DPRK. See S/RES/1718 (2006); S/2006/814; S/2006/815; S/2006/816; and S/2006/853.

[320] Ethiopian Ministry of Foreign Affairs, Press Release, 13 April 2007

[321] Press Release, 13 April 2007

[322] Amnesty International, AFR 52/001/2007 – Press release, 10 January 2007.

[323] OCHA situation report #41 – 8 June 2007, available at http://ochaonline2.un.org/Default.aspx?tabid=5064 (27 June 2007)

[324] AFR/52/007/2007 - Public statement, 4 April 2007.

received multiple reports indicating that among all parties to the conflict, the conduct of TFG forces had, until mid to late 2007, been widely perceived as comparatively more aggressive toward civilians, unprofessional, and prone to theft and looting. Both survivors and civil society observers told Amnesty International that, prior to this time, Somalis would frequently state that they "prefer" Ethiopian troops' conduct over that of TFG troops. However, since late 2007, there were growing reports of increased violations against civilians by Ethiopian forces. One person who had documented 30 extrajudicial executions in October and November 2007 said one such execution involved a young man trying to flee Mogadishu. He was rounded up with eight or nine other men who were then fired on by two Ethiopian soldiers. Four of them died instantly.

In addition, TFG soldiers were regularly reported to have been involved in incidents of sexual violence, including rape and the unlawful killing of civilians as well as theft and looting. TFG and Ethiopian forces would sweep entire streets, moving door to door, beating or shooting those they found in areas from which armed groups were believed to have launched attacks, or areas presumed to be armed group strongholds.

Amnesty International interviewed many Somali civilians drastically affected by this armed violence. **Hodan,** aged 17, from the Hodan District of Mogadishu, only arrived in the settlement six days before Amnesty International interviewed her in early December 2007. She said her house was hit by rockets called "Bien" (known as "Stalin Organs"). Their house was demolished, her brother lost his leg, and she saw her father's dead body. The missile had blown his body apart. She said, *"You just step on corpses on the street."* **Zakaria,** aged 41, from the Black Sea area, near Bakara Market, in Mogadishu told Amnesty International that:

"On 16 October 2007 I was in Somalia. On the fourth night I was there the village was occupied by Ethiopians. I was among 41 who were arrested by the Ethiopians. We were taken to the military base. I could see the battle wagons, and more than 15 technicals [Technicals are jeeps with heavy machine guns mounted on the back]. *I was questioned by a Somali guy who was working with the Ethiopians. We were all asked the same question: 'Why are you here?' We said we were just living in our homes. When the questions ended, nine of us were taken away and dropped into a lorry. I think these nine were taken to Ethiopia. I think this is because two of them were mullahs with long beards. Others looked 'normal,' mostly teenagers, under 20. I used to hear that when the Ethiopians made arrests they pick up people who look like Islamists, and they take them to Ethiopia. The rest, 32 including me, we ran away, we escaped, but 11 were killed, shot dead. I could see them falling as they were ahead of me, they were the first group running away. That was the day I decided to flee the country. Later, on 22 November I saw five bodies that had their throats cut. Two of them were beheaded. The area was occupied by Ethiopians."* [325]

[325] Amnesty International report, AI Index AFR 56/009/2008,, June 2008

9.4 Alleged use of weapons that are inherently indiscriminate

On 6 July, five children playing football with a landmine were killed when the mine exploded during their game.[326] Insurgent groups reportedly plant roadside bombs and mines to target government officials, soldiers and Ethiopians when they pass by. [327] Somalia is not a party to the Ottawa Convention on Landmines[328] and the UN monitoring group reported shipments of antipersonnel mines to Somali factions from Eritrea and Ethiopia, whose governments nevertheless strongly deny the accusations.

The July 2007 report of the UN Monitoring Group also states that on 13 April 2007, Ethiopian military forces used white phosphorus bombs against the *Shabaab* fighters at Shalan Sharaf, in the Shirkole area of Mogadishu and as a result approximately 15 Shabaab fighters and 35 civilians were killed. [329] Witnesses described the impact of the weapon as it "lightened the whole of Mogadishu" like a "fireball" and said the bodies of the victims were "melted" and that the soil and the surrounding area were white in colour. The UN Monitoring Group obtained pictures of the immediate area of impact of the white phosphorous bombs, one of which is shown below, and alleged that the use of white phoshorus was not an isolated case.[330]

As mentioned in the Monitoring Group's report, the Government of Ethiopia stated that "the Monitoring Group's information was baseless, that Ethiopian Defence Forces do not stockpile, use or produce white phosphorous bombs and that it does not exist in their arsenal."[331] Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (a Protocol additional to the 1980 UN Convention on the Prohibition or Restrictions on the Use of Certain Conventional Weapons) prohibits the use of such weapons against civilians. It also prohibits making any military objective located within a concentration of civilians the object of attack by incendiary weapons. Somalia is not a party to Protocol III. However, the prohibition of using such weapons against civilians is customary international law (as customary law prohibits the use of any weapon in a deliberate attack against civilians.) According to the ICRC, it is unclear whether the prohibition on targeting military objectives in the vicinity of civilians with such weapons is customary law.

[326] OCHA *Situation report #45 on Somalia* dated 06 July 2007 – available http://ochaonline2.un.org/Default.aspx?tabid=5064
[327] http://news.bbc.co.uk/1/hi/world/africa/6277310.stm (visited 06-07-2007)
[328] Formally known as the 'Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction'.
[329] Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1724 (2006) dated 18-July-2007 (UN Doc. S/2007/436), p.12, paras 30-31.
[330] Ibid, paragraph 34
[331] Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1724 (2006) dated 18-July-2007 (UN Doc. S/2007/436), p.13, para 34.

9.5 Lessons from the Somalia case

All parties to the conflict in Somalia have continued to commit serious human rights abuses and serious violations of IHL despite the 1992 UN arms embargo, and flows of military equipment described above from Eritrea, Ethiopia and Yeman have more than likely been used in the recent upsurge in brutal violence on the part of Ethiopian and TFG armed forces and attacks on civilians by armed groups and criminal gangs.

The challenges to stemming the flow of arms into Somalia that the UN Monitoring Group on Somalia has documented in its ten reports cannot be fully addressed within the traditional frame of UN arms embargoes because far too many States which are the sources of arms exports and the transhipment of arms to Somalia simply do not have adequate national systems of arms control. Arms traffickers can all too easily exploit loopholes in national laws, regulations and administrative procedures. Even if States in the Horn of Africa established robust systems of control in accordance with best practice standards, such as those in the Nairobi Firearms Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa and the agreed Guidelines to implement the Protocol, it would still leave gaps for illicit arms deliveries from States outside the region.

Amnesty International has appealed to the members of the Security Council to strengthen the UN arms embargo on Somalia and take more determined action to ensure the embargo is fully respected by States in the region, including by increasing the capacity and resources, and extending the mandate for the UN Monitoring Group to investigate, document and expose arms transfers; positioning UN monitors at sea ports and airports; enforcing the requirement of application for exemptions; and considering imposing a ban on aircraft, ships, and land vehicles owned by individuals, companies or States reported to have breached the arms embargo.

Nevertheless, while the Security Council could and should provide additional resources and longer timelines for the UN Monitoring Group to thoroughly investigate, document and expose arms transfers, especially the placement of UN monitors at sea ports and airports where the TFG currently has limited control, little progress can be made in preventing illicit arms flows to Somalia without a considerable improvement in national arms export, import and transit controls - and this can only be effective if it is done according to common high standards – and that requires the establishment of an effective ATT with provisions to ensure respect for human rights and IHL.

10. Sudan and Chad - arms flows fuel attacks in Darfur

In early 2008 a spate of attacks, including on civilians, worsened the already dire human rights and humanitarian situation in certain areas of Darfur. This case shows that even in the face of the UN arms embargo on Darfur and the ongoing serious abuses and human rights violations, crimes against humanity and war crimes being perpetrated by parties to the conflict in that region of Sudan, arms have been continuously deployed into Darfur. Furthermore, arms have been knowingly supplied into the hands of the parties to the conflict through Sudan and Chad, including by Permanent Members of the Security Council. Cargo aircraft have continued to ferry in military items, notably small arms, light weapons and ammunition, used in the bulk of violations and abuses. In addition, the Sudanese armed forces have used jet fighters, military utility planes, military helicopters, artillery and armoured vehicles to facilitate direct attacks on civilians and indiscriminate attacks. The lack of commitment by China and Russia to strengthen the UN arms embargo is made worse by the weak systems of state laws, regulations and corresponding capacities in the region which are insufficient to prevent the violation of the UN arms embargo.

Since 2004, Amnesty International has repeatedly called for all States to refrain from supplying arms to all parties to the conflict in Darfur until they demonstrate respect for their obligations under international law, particularly under international human rights and humanitarian law. [332] Amnesty International drew attention in November 2004 to the fact that Sudanese government Antonov aircraft, MiG fighter jets and helicopter gunships bombed villages, killed civilians and forced the people to flee their homes in Darfur. However, in 2007 and 2008, Sudanese government forces and militia continued using indiscriminate aerial bombardments and direct armed attacks on civilians, while also perpetrating other serious violations of human rights in Darfur. Amnesty International has also condemned the grave abuses of human rights perpetrated by armed opposition groups in Darfur.

As the following account shows, the Government of Sudan, government allied militia (often referred to as *Janjawid*), as well as armed opposition groups operating in Darfur have continued to receive plentiful supplies of small arms and conventional military equipment over recent years which are continually used to facilitate and commit serious violations of human rights and humanitarian law in Darfur. The supply process has continued despite international appeals for the suspension of such arms transfers and the imposition on 29 March 2005 of a UN Security Council arms embargo on all parties to the conflict in Darfur.

10.1 Continued armed clashes affecting civilians

Previous inflows of arms on all sides have preceded an escalation of conflict in Darfur initiated by those who received them. The heavy arming of groups allied to the government intensified in Darfur after the signing of the Darfur Peace Agreement in May 2006 which

[332] Amnesty International, *Sudan: Arming the Perpetrators of Grave Abuses in Darfur* of 16 November 2004 AI Index: AFR 54/139/2004.

contained pledges to disarm the *Janjawid* militia. This was followed by the mass incorporation of groups, which had formerly been part of the *Janjawid,* into government paramilitary organizations - the Popular Defence Forces (PDF), the Border Intelligence, and the Border Police or the Nomad Police. Those incorporated were equipped with new small arms, uniforms and 4x4 vehicles by the Sudanese government.

Breakaway factions of the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), contributed to a process of fragmentation and by early 2008 there were numerous armed opposition groups operating in Darfur, increasingly divided along ethnic lines. As a result of indiscriminate and direct attacks on civilians, ongoing serious violations of human rights, particularly by government and paramilitary groups, about 280,000 people were displaced during 2007 bringing the number of displaced in Darfur to more than 2,387,000 by the beginning of 2008. The death toll in Darfur was estimated to be over 200,000 since the conflict began in 2003.

In October 2007, the UN Panel of Experts, tasked with investigating breaches of the UN arms embargo and identifying individuals who impede the peace process and commit violations of international humanitarian and human rights law in Darfur, confirmed the involvement of members of the Border Intelligence Guard and the Popular Defence Forces in attacks by "tribal" militia groups in Southern Darfur that resulted in significant civilian casualties and destruction of civilian property.[333] The Panel also identified a number of instances in which rape was used as an instrument of warfare and found substantial evidence of violations of the right to life and violation of the prohibition of cruel, inhuman or degrading treatment. The Panel concluded that all parties to the conflict had conducted these violations, but the Sudanese Armed Forces, the faction of the Sudan Liberation Army led by Minni Minawi, and "tribal" militia groups had most noticeably carried out the violations.

Amnesty International reported during May and August 2007 on additional supplies of arms to Sudan and more deployments of arms in Darfur.[334] In October 2007, Amnesty International received further reports of arms flows into Darfur. Sudanese soldiers were reportedly seen unloading arms boxes from a large Ilyushin IL76 cargo plane operated by FASO Airways at Nyala airport in late October.[335] In addition, in late December 2007 and early January 2008 several flights of Antonov 12 and Ilyushin 76 cargo planes operated by AZZA Transport were reportedly witnessed flying into El Geneina airport from Khartoum.[336] According to the UN Panel of Experts investigating breaches of the UN arms embargo, AZZA Transport has frequently carried out cargo flights to supply the Sudanese armed forces.[337] Also in January 2008, Amnesty International received a report that small arms were

[333] Final report of the Panel of Experts as requested by the Security Council in paragraph 2 of Resolution 1713 (2006), 3 October 2007, S/2007/584.
[334] Amnesty International *Sudan: Arms continuing to fuel serious human rights violations in Darfur* May 2007 (AI Index: AFR), Amnesty International News Release, "Sudan: New photographs show further breach of UN arms embargo on Darfur" 24 August 2007.
[335] Eyewitness reports, October 2007.
[336] Confidential sources, January 2008.
[337] UN Panel report S/2007/584, September 2007; On 24 February 2007 an Antonov-12 (ST-AQE) operated by Azza Transport, although belonging to United Arabian Airlines, had crash-landed at El Geneina airport while

being distributed to militia in El Geneina.[338] Sudanese jet fighters, reportedly Chinese Fantans, were also seen above the West Darfur capital, El Geneina. In early 2008, a spate of attacks, including on civilians, worsened the already-dire human rights and humanitarian situation in some areas of Darfur. Sudanese government armed forces and allied militia carried out attacks in order to drive the Justice and Equality Movement (JEM) out of the Sirba/Jebel Moon area of West Darfur.

The apparent air bridge in support of the Sudanese government armed forces and its allied militia broadly coincided with a reported military build up of JEM in West Darfur backed up by the Chadian armed forces. Large supplies of small arms and light weapons reportedly supplied to JEM from Chad for use against the Sudanese government, appear to have helped JEM to capture a wide swathe of land in south-east Darfur from August 2007, attacking closer to the Government of Sudan's important interests - Adila (an important railhead) and Wad Banda (in Kordofan). In August – September 2007, JEM took control of much of Haskanita and on 29 September 2007, the African Union Mission in Sudan (AMIS) base in Haskanita in North Darfur was attacked, killing 10 AMIS peacekeepers. Allegedly two armed opposition groups, reportedly offshoots of JEM and of SLA/Unity, attacked the AMIS base and looted arms. The Sudanese army then occupied the town and burned it to the ground.

In December 2007 and January 2008, with reports of significant military support from the Chadian armed forces, JEM moved to the Jebel Moon/Sirba area, defeated a Sudan Government convoy and took over the area (see further below). The UN Secretary-General's report of 14 February spoke of 74 vehicles carrying Chadian forces entering Sudan and linking up with JEM in December 2007.[339] JEM issued numerous communiqués talking of the "liberated areas" and in January JEM moved south and threatened to attack Sudanese forces based in El Geneina. The Sudanese armed forces responded with a big military build up around El Geneina, and, for a short time, handing over policing to Chadian armed opposition groups, indicating distrust of local police.

On 7 January 2008, only eight days after the UN-African Union Hybrid Operation in Darfur (UNAMID) formally took over peacekeeping from the African Mission in Sudan, Sudanese Armed Forces attacked UNAMID peacekeepers travelling in a supply convoy in Darfur. This attack was in blatant violation of IHL. It was followed a week later on 13 and 14 January by a Government of Sudan Antonov military utility aircraft bombing two villages near Geneina which violated the UN ban on offensive military flights in and over Darfur, under Security Council Resolution 1591 of March 2005. Aerial attacks, conducted by the Sudanese government forces, with Antonov aircrafts rarely allow distinguishing between civilian and military objects, resulting in indiscriminate killings and injuries and destruction

carrying arms and military personnel (122mm two artillery howitzers and 40 to 50 olive drab wooden boxes suspected to contain arms and ammunition). On 29 May 2007, AZZA Transport was added to the economic sanctions list of the US Office of Foreign Assets Control for "constituting a threat to peace and stability in Darfur, and to have directly or indirectly supplied, sold, or transferred arms or any related *materiel* to belligerents in Darfur."

[338] Confidential source, January 2008.

[339] Report on Sudan by the UN Secretary General, 14 February 2008.

of civilian property. Sudanese Antonov aircraft usually carry between 12 and 16 bombs weighing 100kg, described as "very basic steel drums full of dynamite" which are apparently rolled out from the rear load ramp and when used for aerial attacks on villages are not precisely targeted. For example, in April 2007 a Sudanese government Antonov bomber and helicopters attacked the village of Umm Rai in North Darfur, hitting a school and killing two people.

Meanwhile, at the end of January 2008, Chadian armed opposition groups launched an attack against N'Djamena, the capital of Chad, briefly taking control of parts of the city on 2 and 3 February. The Chadian government accused the Government of Sudan of having backed the Chadian armed opposition groups by providing logistical support. JEM forces then reportedly moved rapidly westwards to help President Deby of Chad and the Chadian armed opposition groups were pushed south and moved back to Sudan. The Sudanese authorities allegedly rearmed the Chadian opposition groups, so that by March 2008 they were making attacks once more against Chad army columns in the Chad-Sudan border areas.

In February 2008, while JEM forces were present in Chad, the Sudanese Armed Forces and *Janjawid* militia launched an attack against the JEM-held areas in Darfur. Such attacks occurred on Abu Suruj, Sirba and Sileia on 8 February and on Jebel Moon on 18, 19 and 22 February. The Sudanese armed forces used their traditional tactics: indiscriminate aerial bombing of settlements with Antonov planes and striking with helicopter gunships before launching ground attacks with *Janjawid* militia as well as the army, looting and raping especially in Sirba, and striking indiscriminately at civilians. Altogether, 115 people were reported killed in the campaign, mostly civilians, including women and children, and it is estimated that 30,000 people were displaced. Up to 12,000 refugees fled into neighbouring eastern Chad, according to the UNHCR. An official report on the attacks by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNAMID said that the Sudan Armed Forces had "failed to distinguish between civilian objects and military objectives" and that the scale of destruction "suggests that the damage was a deliberate and integral part of a military strategy". Humanitarian organizations were not able to access any of the internally displaced persons (IDPs) and others in need of food from mid December 2007 until 3 March 2008, leaving around 160,000 people without access to humanitarian assistance. During February-March 2008, JEM was allegedly receiving new armaments from the Government of Chad and had started launching attacks to retake Jebel Moon.

10.2 The UN arms embargo on parties to the Darfur conflict

Since 29 March 2005, the UN Security Council has prohibited arms transfers to any of the parties to the conflict in Darfur and specified that the Government of Sudan may not transfer military equipment to Darfur without prior approval from the Sanctions Committee of the Security Council. However, the parties to the conflict have continued to receive and deploy arms in Darfur, aided by poorly designed and implemented arms trade control laws and mechanisms in neighbouring and supplier States.

The terms of the arms embargo are set out in two Security Council resolutions. In paragraphs 7 and 8 of Resolution 1556 (2004) of 30 July 2004, the Security Council decided "*that all states shall take the necessary measures to prevent the sale or supply, to all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur and West Darfur, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, whether or not originating in their territories*" as well as the provision "*of technical training or assistance*" related to these items. With paragraph 7 of Resolution 1591 (2005) of 29 March 2005, the Security Council decided that these provisions of Resolution 1556 shall "*also apply to all parties to the N'djamena Ceasefire Agreement and any other belligerents*" and therefore to the Government of Sudan.

In addition, offensive military flights in and over the Darfur region are prohibited, according to UN Security Council Resolution 1591. The UN Security Council has explicitly demanded from the Government of Sudan, in accordance with the Sudanese Government's commitments under the 8 April 2004 N'djamena Ceasefire Agreement and the 9 November 2004 Abuja Security Protocol, that it immediately "*cease conducting offensive military flights in and over the Darfur region.*"[340] However, this does not apply to non-offensive military flights which, if carried out in order to move military equipment or supplies *into* Darfur, nevertheless require the prior authorization of the UN Sanctions Committee on Sudan. *Within* Darfur the re-supply of military equipment is not permitted and only the withdrawal of military equipment is allowed when the Parties have notified the Cease Fire Commission (CFC) of a troop movement, and the CFC subsequently specifies the route along which the troops have to move.

A Committee of the Security Council was set up by Resolution 1591, together with a Panel of Experts. The tasks of the Committee described in paragraph 3 include monitoring the implementation of the embargo and authorizing as appropriate "the movement of military equipment and supplies into the Darfur region" by the Government of Sudan. Crucially, in the light of ongoing arms transfers to the Sudanese government including mainly by China and Russia, two Permanent Members of the Security Council, the Committee clarified its understanding in its report of 28 December 2006 that the embargo allowed Member States to "*provide arms and military equipment to the Government of the Sudan outside the Darfur region and that the Government could move military equipment or supplies irrespective of*

[340] S/2006/1591: para 6. The term "offensive military overflight" is discussed in the UN Panel of Experts' October 2006 report (S/2006/795 paragraph 215) is defined according to the following criteria: "• Overflights in pursuit of a specific military objective that are undertaken for purposes other than defending the aircraft from a clear and imminent threat.• Use of the aircraft to achieve a military advantage disproportionate to that required to neutralize a clear and imminent threat.• Unprovoked attack with aircraft, such as strafing or bombing of villages.• Use of aircraft in support of offensive ground operations.• Retaliatory attack, that is, action in response to a prior attack.• Flights that deposit troops participating in an imminent offensive operation.• Operation of the aircraft in a manner to intimidate or harass, for example flying mock attack runs, frightening children and animals, circling over an area for a considerable period of time without any operational reason with the aim of scaring people and animals, destroying buildings with rotor wash, sonic booms and the like

their origin into the Darfur region on the condition that such movement was approved in advance by the Committee upon a request by the Government."

In practice, the UN Sanctions Committee decided that China, Russia and others could continue sending arms, related material of all types and technical assistance and training to the Sudan government despite its repeated flagrant violations of the UN embargo, provided those deliveries were not destined for Darfur. The Chinese and Russian governments say they have told Sudan's government that their weapon supplies must not be used in Darfur but Sudan's government openly says it will send military equipment where it likes.[341] Acknowledging "the risk" in March 2007, the UN Panel of Experts appointed under Resolution 1591 recommended that supplying States should henceforth request the Sudanese government to provide an end-use certificate, which would state the destination of the respective military goods and services, and should notify the Committee in advance.

The UN Security Council Panel of Experts has submitted reports detailing violations of the UN arms embargo by the Government of Sudan and Sudanese armed opposition groups, for example in October 2006[342], and in its March 2007 interim report the Panel noted "the ongoing violations of the arms embargo" and recommended "that the Security Council revisit options for strengthening the arms embargo presented by the Panel in its previous reports, including provisions pertaining to: (a) expansion of the arms embargo to the entire territory of the Sudan (potentially with targeted exemptions); (b) verification of arms and ammunition; (c) end-use certification; and (d) restrictions on dual-use items."[343] In October 2007, the UN Panel issued yet another report that documented further numerous violations of the arms embargo. However, the Security Council has not acted upon the report's recommendations, despite the clear evidence of violations and important recommendations to improve the embargo.[344]

Photographs of three Chinese-made Nanchang A-5 "Fantan" jets in Nyala, South Darfur, whose deployment was a clear violation of UN Resolution 1591 by the Sudanese government, were provided by the UN Panel and the Nyala airport's logbooks were cited as evidence of the jets' arrival from points outside Darfur (El Obeid and Wadi Sayyidna). The UN embargo also prohibits offensive military flights in Darfur and Fantan jets are used as ground attack fighters, not as air supremacy aircraft that could secure Sudan's borders (see more on the Fantan jets further below).

[341] "Envoy to Sudan pledges effort on weapon sales", *Associated Press* 11 July 2007 reported that "the mainland's special envoy to Sudan has pledged that Beijing would try to prevent the weapons it sold to Sudan from being used in Darfur, where more than 200,000 people have been killed and 2.5 million made refugees since 2003, when ethnic African rebels took up arms against Sudan's Arab-dominated government. Liu Guijin said the mainland would do its best to prevent weapons from finding their way into the wrong hands. While he outlined no specific measures, Mr Liu said the issue of where Chinese arms went and how they were used was something he had discussed with Khartoum."

[342] UN Panel report October 2006, S/2006/795.

[343] UN Panel interim report March 2007, 07-27380.

[344] UN Panel report October 2007, S/2007/584.

The UN Panel of Experts report also provided photographic evidence of two Russian Mi-24 "Hind" attack helicopters deployed from Khartoum to El Fasher, and documents an additional nine rotations of Mi-24s to Darfur, as well as the deployment of a Mi-8 assault/transport helicopter in Darfur during 2007. Yet successive attempts by the Sanctions Committee in terms of Resolution 1591 to compel the Government of Sudan to seek prior Security Council permission before deploying such military helicopters to Darfur have been ignored by the government, thus making its deployments formal violations of the UN arms embargo.

In addition, the UN Panel also provided evidence of the Sudan government's use of two white Antonov 26 aircraft to bomb locations and conduct military reconnaissance in Darfur, including one with "UN" painted on its wing, a clear violation of IHL.[345] The use of white paint on such military equipment by the Sudanese Government, which it has done since March 2005, is particularly egregious since aircraft painted white can easily be mistaken for UN aircraft.[346] In addition, three Antonov 26 aircraft appear to have been fraudulently registered with the same number, ST-ZZZ, according to the UN Panel[347]. According to reliable aviation records, one of these planes was supplied from Russia to Sudan in September 2006. After one of the three planes crashed and its markings painted over, another was seen deployed in Darfur by the Sudanese government in September 2007.[348]

The UN Panel concluded that from September 2006 to June 2007, the Government of Sudan conducted offensive military overflights in Darfur, which included aerial bombardments by Antonov aircraft, aerial attacks by Mi-24 attack helicopters and the use of air assets for military surveillance. Sixty-six such aerial attacks were reported during that period, of which 24 were confirmed definitively. Despite this, in 2007 the Russian government continued to provide training to the Sudanese air force pilots.[349]

10.3 Arms supplies to Sudan and deployments in Darfur

Despite the serious ongoing violations of human rights and humanitarian law by the Sudanese armed forces, the Government was able to import military and civilian arms and ammunition worth $17.2 million in 2006 through commercial entities mostly from China but also Iran and Egypt, according to latest available customs data.[350] This total does not include government-to-government arms transfers to Sudan. Most of the recorded commercial imports of arms and ammunition relate to the following categories:

[345] UN Panel report S/2007/584, paragraphs 201 to 210.
[346] UN Panel first reported on the use of white aircraft by the Government of Sudan in October 2006; see S/2006/795: §205 – 213.
[347] UN Panel Interim Report, April 2007.
[348] UN Panel report S/2007/584, paragraphs 209-210.
[349] Confidential source.
[350] UN Comtrade data, checked 8 March 2008.

"military weapons other than revolvers and pistols" accounted for $9.3 million, the bulk of which was 1,653 tons of weapons (54,406 items) from China worth $9.1 million;
"armoured vehicles and parts" accounted for about $4 million, with a large shipment of 500 tons from Iran worth $2.9 million;
"military revolvers and pistols" totalling $1.1 million, with the largest transfers from Egypt ($525,925) and China ($437,911), the latter for 36 tons and 1,403 items.

Recorded arms and ammunition shipped by Chinese commercial entities in 2006 accounted for 67 percent of Sudan's commercial arms and ammunition imports that year according to the customs data, followed by those from Iran (18 percent), and Germany (6.9 percent, the largest transfer being for armoured vehicles). It is not known if such imports from China and Germany could be related to the UNMIS[351], to which China contributes military and police personnel and Germany provides police personnel. Ammunition for assault rifles and machine guns used in Darfur can be traced to China, Bulgaria and Iran.[352] Nevertheless, small arms and light weapons with Chinese manufacture markings were seen in the hands of Sudanese soldiers and militia backed by the Sudan armed forces in Darfur in late 2007 to mid 2008. These have included mortars, machine guns, single-barrel anti-aircraft guns, rocket propelled grenades, assault rifles and sniper rifles.[353]

Weapons and munitions of *Janjawid* fighters seen in Darfur during February 2008 included a considerable arsenal of mortars, rocket launchers and anti-aircraft guns, mostly of Chinese origin, which they claimed was supplied by the Sudanese government in October 2007.[354] Mohammed Hamdan, the commander of one of the main *Janjawid* militia groups, with roughly 20,000 fighters in control of large areas of Southern Darfur, said in early 2008 that "*the weapons, the cars, all that you see, we got it from the government...There were two places that had fallen to the rebels - Um Sidir and Kiryari* [on the Chadian border] *and after they fell, they* [the Sudan government] *called upon us…I had two meetings with the President. This was in September 2006. One meeting with the President was in his home. And they provided us with cars and weaponry and we moved to the Northern area."*[355] He claimed he and his 20,000 men defected from the Government in October 2007 and began forming alliances with non-Arab rebel groups who had been their enemies.[356]

Chadian armed opposition groups based in Darfur, with tacit and active support of the Government of Sudan, have also been using Chinese small arms and light weapons, as

[351] UNMIS is the acronym for the United Nations Mission in Sudan. UNMIS is a UN peace support operation set up under Chapter VI of the United Nations Charter. It is made up of civilian, military and police components. The UN Security Council authorized the establishment of UNMIS through its adoption of Resolution 1590 on 24 March 2005, following the signing of the Comprehensive Peace Agreement (CPA).
[352] Photographs of ammunition markings found in Darfur.
[353] Photographic records.
[354] Film and photographic evidence and testimony collected for the television documentary film, **"***Meet the Janjaweed*", broadcast on "Unreported World" Channel 4 television in March 2008.
[355] Ibid.
[356] Ibid.

evidenced by the identity of arms captured from the Union of Forces of Democracy and Development (*Union des forces pour la démocratie et le développement*, UFDD) in November 2007 and admissions by the other main Chadian opposition group, the Rally of Forces for Change (*Rassemblement des forces pour le changement*, RFC) in 2007.[357] In 2006, members of the United Front for Democratic Change (*Front Uni pour le Changement Démocratique au Tchad*, FUC) were photographed carrying Chinese-made QLZ87 35mm automatic grenade launchers outside the town of El Geneina in western Darfur near the Chad border, and its commander had just claimed to have visited the People's Republic of China.[358] The use of Chinese small arms and light weapons corresponds to the findings of the UN Panel of Experts monitoring the UN arms embargo on Darfur and to the commercial trade data on arms imports to Sudan.

A member of a Chadian armed group operating in the Chad-Sudan border area holds a QLZ87 35mm automatic grenade launcher made by Chinese arms company Norinco.
© Daniel Pepper/Getty Pictures

Between September 2006 and July 2007, the UN Panel of Experts noted 409 military and police cargo flights to Darfur, with an aggregate load capacity of approximately 13,000 tons.[359] The UN Panel of Experts found evidence that many of these flights transported military material to Darfur and recommended that six cargo companies in Khartoum be placed on an aviation ban. The UN Panel of Experts named the companies violating the UN arms embargo as Ababeel Aviation, AZZA Transport, Badr Airlines, Juba Air Cargo, Trans

[357] Photgraphic records of UFDD equipment displayed by Chadian government 27 November 2007 and interviews with RFC during 2007.
[358] Eyewitness accounts and photographs provided to Amnesty International of arms held by the United Front for Democracy and Change (French initials FUCD), see http://www.motherjones.com/news/outfront/2008/03/darfur-china-chad-guns.html.
[359] UN Report S/2007/584, page 33.

Attico and United Arabian Airlines.[360] The UN Panel requested that "*all States take measures to deny permission to any aircraft to take off from, land in, or overfly their territory if that aircraft is owned, leased or controlled by or operated on behalf of these companies…[and] further recommends the immediate and complete closure of all the companies' offices, and ban on the directors and shareholders of these companies from establishing new aviation companies or purchasing or leasing aircraft*."[361]

Sudanese soldiers offloading military containers from an Antonov 12 aircraft onto military trucks, including a Chinese truck, at El Geneina. The UN Panel of Experts on the Sudan arms embargo for arms trafficking into Darfur called for the grounding of this aircraft. © Amnesty International

The Russian Federation and the People's Republic of China have been the main suppliers of military aircraft to the Sudan Air Force. The Russian Federation sold twelve Mi-24 attack helicopters to Sudan in 2005[362] and signed a deal to supply at least 15 Mi-8 helicopters to Sudan for delivery in 2005 and 2006.[363] Such helicopters have been persistently used for

[360] UN Report S/2007/584, recommendation number 13, page 6.
[361] Ibid.
[362] Reported by Russia to the UN Register on Conventional Arms for 2005 and photographed in Darfur from January 2007.
[363] As reported by Russian authorities to the Moscow Defence Brief 1/2006. Note that Mi-8 helicopters are also made with minor variations as Mi-17 helicopters.

indiscriminate attacks and direct attacks on civilians in Darfur. In 2004, Russia also exported 12 MiG-29 military fighter jets to Sudan which were reportedly seen flying in Darfur that year.[364] In October 2006 the Sudanese Government reportedly asked the Russian Government for a US$1 billion loan to fund the purchase of new fighters and helicopter gunships. [365] Sudan acquired three Antonov 26 military utility planes, a type of aircraft used regularly for indiscriminate aerial bombing in Darfur, and one such aircraft was delivered from Russia to Sudan in March 2004 and another in September 2006.[366]

In 2006, China also supplied eight K-8 jet trainers to Sudan capable of being equipped with a cannon, rockets and bombs for air to ground attack and K-8 flight simulators from the China National Aero-Technology Import and Export Corp (CATIC) / China Aviation Industry Corporation II (AVIC II) and Sudan is reportedly expected to acquire more K8 jets.[367] Photos taken in early 2008 of a K-8 jet in Sudanese Air Force livery (No. 802) show it fitted with fuselage-mounted machine gun pod and two wing-mounted rocket pods. In addition, Chinese F-7M military jets (modelled on the MiG-21) were transferred to Sudan in the early 1990s, and Sudan obtained 16 between 2006 and 2007 according to one authoritative source.[368] Eight of the 17 Chinese Shenjang F6 jets reportedly transferred to Sudan in the 1990s were still operational in 2007.[369] In addition, during 2007 Sudan reportedly began negotiations for the purchase of twelve Chinese FC1 jet fighters.[370]

Sudan also acquired Nanchang A5 "Fantan" jets from China which were first seen in Darfur in January 2007 and have been used for air to ground attacks in Darfur.[371] On 19 February 2008, two Fantans were used in an aerial attack at Beybey where three large bombs

[364] Amnesty International, November 2004, op cit. In May 2008 a Russian jet was apparently shot down by JEM and its pilot killed.http://www.sudantribune.com/spip.php?article27350; The Sudan Tribune claimed on 21 July 2008 that 12 Russian-made MiG-29 planes had been secretly delivered to Sudan via Belarus, but both the Russian and Belarus authorities denied the export had taken place; see The Moscow Times "Arms Firm Denies Sudan Link", Issue 3950, 23 July 2008, and RIA Novosti, 21 July 2008

[365] UN Register of Conventional Arms for 2004; Flight International, 21-27 November 2006; "MiG-29 Fulcrum High-Performance Combat Aircraft, Russia", airforce-technology.com, undated, http://www.airforce-technology.com/projects/mig29; "Russian MiGs in Sudan", Charles R. Smith, NewsMax.com, 4 January 2002, http://archive.newsmax.com/archives/articles/2002/1/4/155909.shtml; "Mig-29SMT – Contracts, Orders, Sales" (regarding transfers to Sudan). "African MiGs – Part 3" by Tom Cooper, Air Combat Information Group (www.acig.org), http://www.acig.org/artman/publish/article_197.shtml; "Sudan: Civil War Since 1955" by Tom Cooper, Air Combat Information Group (www.acig.org), 2 September 2003, http://www.acig.org/artman/publish/article_180.shtml.

[366] Delivery of Antonov registration ST-ZZZ in September 2006 according to aviation sources including Aero Transport DataBase; for background see Amnesty International Report *Sudan: Arming the Perpetrators of Grave Abuses in Darfur*, 16 November 2004 AI Index: AFR 54/139/2004, pg. 10; "World Military Aircraft Inventory", *Aviation Week & Space Technology*, 2005-2007.

[367] "China and Sudan pledge closer military ties", *Jane's Defence Industry*, 1 May 2007; Amnesty International, May 2007, op cit, and photographs of K-8 jets in Sudan; and *Air Forces Monthly*, December 2006. For the supply of flight simulators, see http://www.basc.com.cn/en/product/K8S.htm.

[368] "World Military Aircraft Inventory", 15 January 2007, and "World Military Aircraft Inventory", *Aviation Week & Space Technology*, 17 January 2005.

[369] Ibid, "World Military Aircraft Inventory", 1999-2007

[370] Andrai Chang, "China selling advanced weapons to Sudan" UPI, 15 February 2008

[371] Three Fantan jets were photographed in Darfur in January and March 2007.

were dropped in a settlement killing eight civilians, including children, and wounding others. Shrapnel was spread over a wide area. Two Fantans have since been seen flying westward from Nyala with bombs and returning without them.[372] The Fantans have recently been given maintenance services by Chinese technicians and allegedly Sudanese pilots have been trained in China to fly the Fantans.[373]

The devastating impact of using combinations of these different weapons can be shown by the following example documented by the UN Panel in October 2007.[374] On 11 September 2006, the Sudan air force attacked Deribat and other surrounding villages with fighter aircraft believed to be Fantan jets which made low overhead passes, causing panic, while Mi-24 helicopters fired rockets and bursts of machine-gun fire into the village. Antonov aircraft dropped bombs randomly onto the village and surrounding areas. This aerial assault continued periodically until 11 December 2006 during which the village came under 13 aerial attacks, and a total of about 50 bombs and rockets impacted on or near the village. A total of 37 people were injured. Similar attacks occurred on the surrounding villages.[375] Afterwards in late December 2006 the Sudan armed forces, Arab militia and Fur tribesmen launched a coordinated attack on Katur and other villages south of Deribat. The attack was preceded by an aerial assault. Then attackers swept through the village looting and firing machine guns and other weapons into the houses and shops. Then the pillaged goods were loaded into trucks. Similar attacks occurred in other villages in the area. Several thousand civilians were displaced from their villages as a result of the attacks, and 34 women were reportedly raped during the attacks.[376]

The Sudanese government procured 212 military trucks from the Dong Feng Automobile Import and Export Limited in China that arrived at Port Sudan in August 2005.[377] Some of these trucks are used to deploy troops and militia in Darfur in violation of the UN arms embargo.[378] The Sudanese army has used military trucks to facilitate attacks in Darfur during which serious human rights violations have been committed. For example, Sudanese government soldiers used a Dong Feng truck, allegedly with a Chinese-made anti-aircraft gun, in an attack on Sirba on 15 December 2007 where eyewitnesses saw the gun being fired at village huts and one woman was burned alive and two others were badly disfigured by their wounds.[379] One witness recounted: "*We saw a Dong Feng. It started firing. People began screaming. The shooting continued until the houses were burning. The woman was burned on her legs. Her body had a bullet hole that went from her chest to her back."*[380]

[372] BBC Panorama, "China's Secret War", 14 July 2008.
[373] Ibid.
[374] UN Panel in October 2007 S/2007/584, page 82.
[375] Ibid.
[376] Ibid.
[377] UN report S/2006/65.
[378] UN Report S/2006/65, 30 January 2006, and direct sighting in Darfur.
[379] Eye witnees testimonies and research conducted in Darfur by the BBC for a television documentary broadcast by *Panorama* program on 14 July 2008
[380] Ibid

A Dong Feng military truck supplied to the Sudan government from China after the imposition of the UN arms embargo and subsequently captured by the GEM armed opposition. © BBC

The UN Panel of Experts has also documented cases of large-scale looting by Sudanese government soldiers accompanied by Janjawid militia in Darfur with trucks.[381] Also photographed in Nyala, Darfur in March 2007, were six new-looking armoured personnel carriers appearing to be the same as the 4x4 BRDM-2 armoured vehicles previously supplied by Belarus and reportedly of Russian origin - 39 were delivered from Belarus in 2003 and another 21 were delivered from Belarus in 2004.[382] In addition, Russia and Belarus also supplied 8x8 infantry support BTR-80 and BTR-70 armoured personnel carriers to Sudan in 2000, 2004 and 2005.[383]

On 1 January 2008, the Sudanese government displayed a range of heavy weaponry in Khartoum which from video footage included Chinese Type 85 tanks, Chinese Type 59 tanks, Russian T-54 or 55 tanks, Chinese ZSL92 6-wheeled armoured vehicles with mounted canons, Russian M-46 field guns and Chinese 35 Type 59 -1 canon,[384] Belarussian D-30 122 mm howitzers,[385] Chinese Type-55 37mm anti-aircraft gun manufactured by NORINCO,[386]

[381] See for example UN Report S/2007/584, pages 78 and 82
[382] UN Register of Conventional Arms for 2003 and Moscow Defence Brief, 1/2005
[383] Moscow Defence Brief 1/2006; for background see *Jane's Armour and Artillery 2001-2002* – reprinted in Amnesty International, *Sudan: Arming the Perpetrators of Grave Abuses in Darfur*, 16 November 2004, AI Index: AFR 54/139/2004 - pp. 13; "Arzamas BTR-80A APC", *Jane's Defence Weekly,* 16 June 2004. Also see: *Jane's Armour and Artillery, 2003-2004,* pp. 520;
[384] *Jane's Armour and Artillery* 2003-2004, pp. 782
[385] UN Register of Conventional Arms, Trade in Large Calibre Artillery Systems (Category III), 2002, http://disarmament.un.org/cab/register_files/Files%20for%20List%20of%20Documents/UN%20Register-

SA-7 GRAIL man-portable SAM systems probably made in Russia,[387] Iranian armoured personnel carriers, Russian 12-round BM-21 GRAD multiple launch rocket systems transferred from Belarus,[388] Egyptian SAKR multiple launch rocket systems[389] and assorted small arms. Apart from the deployment of artillery, small arms and light weapons, it is not known whether the military equipment on public display has been deployed into Darfur but there is a clear risk that some of these items will be deployed there.[390]

In September 2007, the Sudanese Minister of Defence, Lt-Gen Abdel-Rahim Mohamed Hussein, told reporters that Sudan's main military suppliers are Belarus, China, Democratic People's Republic of Korea, Indonesia, Iran, Malaysia and Russia, and that recently Sudan has signed cooperation deals with China and Russia to modernize its air force.[391] The Minister of Defence said that his government was striving to produce a wider range of military equipment locally within Sudan. According to the Military Industrial Company's (MIC's) website, the Elshaheed Ibrahim Shams Eldeen Complex "has been established in 2002 to produce heavy machineries and armoured vehicles. The complex has many factories to produce tanks, armoured personnel carriers, self-propelled artilleries, bulldozers and excavators for civil and military purposes." However, there is some doubt as to what extent the Sudan factories can produce such military equipment as opposed to maintenance and simple assembly of imported components. In any case this production would almost certainly require the active support of the original supplier companies in China, Russia, Iran and Egypt.

10.4 Arms supplies via Chad

Sudanese armed opposition groups committing grave human rights abuses in Darfur continued to receive small arms, light weapons and ammunition allegedly from Chad to supplement those captured from Sudanese armed forces and militia. The UN Panel of Experts' report of October 2007 documented the transfer of arms to armed opposition groups operating in Darfur and noted the repeated unloading of suspected military supplies in Abeché, eastern Chad near the border with Darfur, from an Antonov 12 cargo aircraft that flew with a fake Kazakhstan registration number (thereby using the registration "UN") and under the name of a company that no longer exists.[392]

Trade%20in%20Large%20Calibre%20Artillery%20Systems.xls; UN Register of Conventional Arms, 2003, http://disarmament.un.org/library.nsf/c793d171848bac2b85256d7500700384/c7b9a51a4973f6e585256dc100585789/$FILE/sg58.203.pdf.

[386] *Jane's Land-Based Air Defence*, 1995-96, pp. 188

[387] *Jane's Land-Based Air Defence*, 1995-96, pp.38. These could also have been made in Bulgaria, Czech Rep. Slovakia, Poland, Romanian and the former Yugoslavia.

[388] *Jane's Armour and Artillery* 2003-2004, pp. 889.

[389] *Jane's Armour and Artillery* 2003-2004, pp. 854; and http://www.forecastinternational.com/archive/or/vo0427.doc.

[390] Deployment of artillery in Darfur was reported by the UN Panel in October 2007 S/2007/584

[391] *Sudan Tribune* 3 September 2007.

[392] UN Panel report October 2007, paragraph 135.

The UN Panel documented two cases of arms deliveries via Chad, including approximately 3,000 AK-47 assault rifles to the Justice and Equality Movement (JEM) active in Darfur. The UN Panel report had a picture of new-looking Tavor-21 bullpup assault rifles made by Israel Weapon Industries, reportedly seized by the Government of Sudan from the National Redemption Front (NRF, an armed group alliance operating in Darfur in 2006).[393] The following Israeli guns reportedly were seized by the Sudanese Government forces from armed groups in El Geneina - Tavor 5.56mm: serial number 34800168, Israel Weapon Industries Ltd. - Galil 5.56mm: serial number 2052161, Hebrew markings and seal - Galil 5.56mm: serial number 99114948, Model 707 (IMI). According to sources in Israel, the Israeli Ministry of Defence admitted that these guns were sold by Israel to Chad.

Sudanese armed groups, especially JEM whose members include those with close ties to Chad, received backing from the Chadian government and armed forces. For example, in early January 2008, JEM backed by Chadian armed forces clashed with the Union of Forces for Democracy and Development- Fundamental (*Union des forces pour le développement et la démocratie – Fondamental*, UFDD-F), a Chadian armed opposition group based in Darfur and supported by the Sudanese government. Sources in Sudan claimed the Chadian government forces were using at least one Swiss Pilatus light plane for bombing in West Darfur accompanied by one Mi-17 military helicopter and one Mi-24 attack helicopter.[394]

Swiss aircraft manufacturer Pilatus confirmed in January 2008 that Chad's military aircraft fleet includes three Pilatus PC-7 turboprops, plus one Pilatus PC-9M bought by the Chadian air force in 2006 to replace a PC-7 it had purchased from France.[395] Most countries use Pilatus aircraft as trainers, but a PC-9 can be modified to carry up to 1,040 kg / 2,900 pounds of ordnance, and PC-7s can also be equipped with up to six hardpoints to carry munitions. Pilatus aircraft do not fall under the strict Swiss War Material Act, which forbids the export of military aircraft to combat zones. Instead, they are subject to Switzerland's Goods Control Act (GKG) that covers dual-use goods and armaments. The sale of the replacement PC-9 was approved by the Swiss government in June 2006, reportedly on the condition that it would be used only to train pilots. Chad's air force has two Mi-24 Hind attack helicopters and Mi-17 medium utility helicopters, which can be armed, and were allegedly also used in the attacks in January 2008. Chad also has two remaining old Aermacchi SF-260 turboprop trainer/ light attack aircraft from the nine captured from Libya during the 1980s. However, the Chadian air force is small compared to that of Sudan.

After the Chadian army fought with Chadian armed opposition groups near Abeche in late November 2007, commanders of the armed group took some journalists to see the captured weapons and damaged Chadian army equipment. This picture (below) shows a damaged Chadian army armoured vehicle armed with heavy machine gun and other weapons

[393] Interim report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan, submitted pursuant to resolution 1713 (2006), April 2007, p.14 Fig. 2.
[394] "Swiss government summons Chad ambassador after Swiss"; http://www.swissinfo.ch/eng/swissinfo.html?siteSect=43&sid=8636633; "Swiss Kerfuffle Over Chad's Use of Pilatus Aircraft", *Defense Industry Daily*, 23 January 2008.
[395] "Swiss Kerfuffle Over Chad's Use of Pilatus Aircraft", *Defence Industry Daily*, 23 January 2008.

mounts. It is an Israeli RAM-2000 vehicle, produced by the Ramta division of Israel Aircraft Industries. This type of vehicle only started appearing in the market around 2004.

In September 2006 *La Lettre du Continent* reported that the President of Chad had signed a contract on 5 September 2006 with a South African company for the delivery of 82 AML-90 armoured vehicles to be delivered with ammunition through Belgium.[396] On 3 March 2007, the Chadian media source *Ramadji.com* claimed that a first delivery "*of an order of forty French manufactured armoured tanks, AML 90, delivered in Belgium by South Africa*" had arrived in Chad. The report added further that: "*the armoured tanks are intended for the town of Adre and its surroundings to prevent the progression of the Chadian rebellion*"[397] near the Sudanese border. On 7 December 2007, an Israeli website for military photographs showed an AFP picture taken on 6 December 2007 of "*Chadian soldiers on armoured vehicles south of the Kapka mountain range in the east of the country near the border with Sudan's troubled Darfur region*". The armoured vehicles were Eland (AML-90).[398] A Belgian company known for supplying such armoured vehicles, approached by Amnesty International declined to confirm or deny delivering them to Chad,[399] but its website stated that the company "*buys military vehicles and surplus goods, and resells after reconditioning them in its workshops. The company is particularly well known for supplying tracked armoured vehicles (AMX-13s, M109s and M113s), armoured wheeled vehicles (AML 60s / 90s) and riot-control vehicles (BDXs). Sabiex currently stocks Eland 60s / 90s (the South African version of the AML).*"[400]

On 7 February 2008, *Le Point* reported that Libya had supplied Chad with ammunition for T-55 tanks and missiles for the Mi-24 attack helicopter. French military aircraft reportedly transported both items.[401] On 14 February 2008, the French Ministry of Defence acknowledged that the French army had helped the Chadian government with the transportation of ammunition from Libya, but the Minister did not say if French aircraft were used. He did reportedly say that Libyan aircraft could have delivered the ammunition, because various Libyan aircraft had landed at N'Djamena airport during the crisis.[402] In February 2008, the French government also announced its readiness to sell ERYX missiles to the Chadian armed forces.

France has been a commercial supplier of cartridges and firearms to Chad but in 2006, the largest commercial supplier of cartridges to Chad was Serbia which recorded the delivery of 48,610 kilograms of cartridges worth nearly $900,000.[403] On 3 February 2008,

[396] "Les frères Erdimi à l'offensive...", *La Lettre du Continent*, 29 September 2006.
[397] http://www.ramadji.com/chadiannews__Delivery.Of.Weapons.from.Belgium.02.03.2007.html
[398] http://www.fresh.co.il/vBulletin/showthread.php?p=2599878&mode=linear
[399] Email from Sabiex to International Peace Information Service on 4 July 2007. "*Vu la confidentialité due à nos clients, laquelle est par ailleurs toujours partie intégrante de tous nos contrats de vente, Sabiex a pour politique de ne jamais ni confirmé ni infirmer ce genre de rumeurs*" [Translation - "*In light of confidentiality supplied to our clients, which is an integral part of all our sales contracts, Sabiex' policy is not to confirm nor deny such rumours.*"]
[400] http://www.army-technology.com/contractors/armoured/sabiex/
[401] "Munitions libyennes pour le Tchad via l'armée française", *Le Point*, 07/02/2008.
[402] "Tchad : la France reconnaît avoir acheminé des munitions libyennes", AFP, 14/02/2008.
[403] UN Comtrade Data 2006

Chadian security forces came to arrest Ngarlejy Yorongar, a Chadian Member of Parliament and opposition leader at his home. They shot and injured his chauffeur in the right hand and then arrested the MP. Amnesty International was shown an ammunition round and a cartridge casing that were found at the compound and identified it as being of Chinese origin manufactured in 2006. Markings from another cartridge used in the attack suggest that one was of French origin.[404]

The lack of border control between Chad and Sudan, combined with active support in Chad for Darfur rebel groups, led the UN Panel on Darfur to suggest in October 2007 that an arms embargo should be imposed by the Security Council on eastern Chad (the Wadi Fira and Ouaddaï regions) to curtail illegal arms shipments to armed groups such as JEM in Darfur and help strengthen the UN arms embargo on the parties to the conflict in Darfur including the Sudan armed forces and militia. Under this arrangement, the Government of Chad could seek exemptions from the UN Security Council for arms transfers to garrisons in these two regions, with UNAMID and/or the EU Force authorized to monitor and inspect all such transfers. Alternatively, this mandate could be given to the United Nations Mission in the Central African Republic and Chad (MINURCAT) instead of UNAMID.

10.5 Lessons from the case of Darfur

Amnesty International believes that no government could be unaware of the serious violations of international human rights and humanitarian law and breaches of the UN arms embargo. Transfers of arms and military assistance, including with maintenance, production and training, have continued to flow to the Sudanese government forces and the allied militia and paramilitary organizations which have continued to use those transfers to commit violations of international human rights and humanitarian law in Darfur on a large scale, including through indiscriminate aerial attacks by the Sudanese air force on villages. In addition, armed groups opposed to the Government of Sudan have continued to acquire arms and commit grave human rights abuses and violations of humanitarian law. The Darfur conflict has escalated and overflowed into Chad and the conflict in Chad has adversely affected Darfur.

There is evidence of military assistance and arms transfers by China and Russia to the Government of Sudan after the UN arms embargo was extended to include the Government of Sudan in March 2005. Some such transfers were deployed into Darfur by the Sudanese government in breach of the UN embargo. If China and Russia did not take necessary measures to prevent such transfers from being transferred and used in Darfur as required by the Security Council, for example by insisting on adherence to satisfactory end use certificates and by notifying the Sanctions Committee in advance of intended transfers to Sudan, then two

[404] Either from French manufacturer, Manurhin Equipment, which now ostensibly only makes small arms ammunition manufacturing equipment, not ammunition itself, or manufactured in 2000 by Euro Impact which was the ammunition division of the French Government-owned Giat Industries (now Nexter); see the company website http://www.manurhin-mre.com/english/ last accessed 4 June 2008; *Arrêté du 18 décembre 2006 autorisant la société GIAT Industries à prendre ou à augmenter des participations au capital de sociétés* (http://admi.net/jo/20070102/DEFA0601697A.html)

Permanent Members of the Security Council could themselves have breached the UN embargo.

However, a mandatory UN arms embargo such as the one on the parties to the conflict in Darfur should not depend for its application on the Government of Sudan's assurances or certificates about its end-use of military transfers, since the Government of Sudan has repeatedly violated the UN embargo and continues to commit serious violations of human rights and IHL in Darfur. Thus, Amnesty International supports the recommendation of the UN Panel of Experts in March 2007 to extend the UN arms embargo to the whole of Sudan with certain targeted exceptions (e.g. for peacekeeping) in order to increase the chances that no military transfers reach the Government of Sudan and any of the other parties of the conflict in Darfur.

Nevertheless, the international community has to face up to the fact that compliance with UN arms embargoes depends crucially on Member States having in place coherent laws and regulations as well as dedicated administrative and law enforcement capacity to control international transfers of arms, related equipment and military assistance programs. In most cases, such systems of coherent state laws, regulations and corresponding capacities are insufficient to prevent the violation of UN arms embargoes. By establishing an ATT with high common standards of control of conventional arms transfers, international cooperation and assistance between States and UN bodies to implement UN arms embargoes could be much more effective.

11. Uganda - disproportionate military force and abuse of small arms

The Ugandan government has in the past few years attempted to tackle the proliferation of small arms amongst pastoralist groups which have escalated into violent clashes in the border areas with Kenya resulting in civilian casualties, but attempts at disarmament by the Ugandan army have been characterized by excessive use of force. This case examines an incident of excessive force involving the use against pastoralists of an imported Ugandan air force attack helicopter with missiles and cannon. The Governments of Kenya and Uganda are party to regional instruments designed to counter the proliferation of small arms and light weapons. These instruments provide common standards for the reform of laws, regulations and administrative practices but currently they lack clear legally binding state obligations to respect human rights and IHL when using necessary lawful force or to authorize arms transfers.

During two decades of war since the mid 1980s, grave abuses of human rights against civilians and war crimes were committed by all parties to the conflict in northern Uganda. These abuses have abated following progress between the Government of Uganda and the armed group, the Lord's Resistance Army (LRA), in peace talks in 2006 and 2007, but

impunity still exists. The proliferation and misuse of small arms by all parties during this conflict has been widespread and widely documented.[405]

This case study focuses on the problem of small arms in the context of the conflicts between the pastoralists group of Uganda and Kenya, and the Ugandan government's disarmament operations.

A longstanding and low intensity rivalry over livestock and grazing areas between the pastoralists groups of Ugandan Karamojong and the Turkana and Pokot groups from Kenya has escalated into violent clashes partly because of the influx of small arms, and increasingly organized cattle raids have become more lethal. This conflict claims many lives. In August 2007, the UN High Commissioner for Human Rights described the region as "characterized by recurrent, problems of proliferation of illegal fire arms, cattle rustling, looting, ambushes and other acts of criminality."[406] Most pastoralists in the region are heavily armed and have been the focus of numerous unsuccessful disarmament operations on both sides of the border between Uganda and Kenya.

The flow of small arms from the conflicts in Uganda, the DRC, Sudan and Somalia has meant that illegal firearms are widely available in the region. The LRA has also reportedly traded cattle for weapons with the Karamoja according to one local religious leader.[407] The Ugandan government in 2004 launched a national action to tackle the proliferation of small arms but attempts at disarmament by the army have been characterized by excessive use of force.[408] The government has responded to these criticisms by highlighting incidents when armed individuals attacked civilians and soldiers.[409]

11.1 Uganda government's forcible disarmament program

In early 2006, the Uganda Peoples' Defence Force (UPDF) launched a new round of forcible disarmament operations in the Ugandan region of Karamoja. The operations allegedly included hostage taking—whereby Karamojong warriors have been held in custody until exchanged for weapons brought by friends and relatives; the alleged use of force on civilians

[405] The LRA committed gross abuses of international human rights and humanitarian law. In October 2005, the International Criminal Court (ICC) issued arrest warrants for five senior leaders of the armed opposition group, the Lord's Resistance Army (LRA). The LRA has been easily able to procure small arms. Supplies from Sudan twenty years ago are still accessible to the LRA; see Small Arms Survey Yearbook, 2006, p.282.

[406] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Uganda: from 1 April to 12 August 2007. Issued by the United Nations High Commissioner for Human Rights

[407] As reported/documented by the Small Arms Survey Yearbook, 2006, p.282.

[408] A recent report *The Scramble for Cattle, Power and Guns in Karamoja*, by Darlington Akabwai with Priscillar E. Ateyo, Feinstein International Center, December 2007, documents human rights violations committed by the UPDF in Kotido, Nakapiripirit, and Moroto districts from May 2006-March 2007, see page 36 for examples.

[409] "UFDF cannot torture Karamojong Pastoralists", the Republic of Uganda Ministry of Defence website. Also Human Rights Watch*, 'Get the Gun!' Human Rights Violations by Uganda's National Army in Law Enforcement Operations in Karamoja Region*, Volume 19, No. 13(A), September 2007, page 5 where in the report describes the UDPF's disarmament techniques involving cordon and search operations as "markedly less violent"; and the Report on the work of the Office of the High Commissioner for Human Rights in Uganda – UN Doc. A/HRC/4/49/Add.2 12 February 2007 at p.2-3.

to reveal cached weapons; and the destruction of villages from the air and by small arms fire. While the Karamojong—and notably the Jie warriors of Kotido District—have borne the brunt of UPDF operations, the army has also targeted the Turkana pastoralists living in Kenya, who they believe escalate conflict among the region's various warring clans. Serious human rights violations by the UPDF have been documented against the civilian population in connection with an ongoing disarmament exercise.[410] The government has instigated four investigations into allegations of violations. It is also engaging with community members and local leaders about disarmament.[411]

On 29 October 2006, according to an investigation by the OHCHR, approximately 48 villagers including women and children, and an unknown number of UPDF soldiers, including the Major, were killed.[412] In November 2006, OHCHR reported that the actions of the Uganda Peoples' Defence Forces (UPDF) during the disarmament process in Kotido, Karamoja from 29 October to 15 November 2006, amounted to indiscriminate and excessive use of force.[413] A more recent incident occurred July 2007 when the UPDF was accused of ground attacks against Pokot pastoralists in an attempt to disarm them.[414] Amnesty International does not oppose the Government of Uganda's disarmament exercise, but believes it has been carried out in a manner leading to human rights violations.

11.2 Counter-operations against pastoralists and Turkana warriors

In October 2006, Kenyan pastoralists grazing in the Loteere area of Uganda (around 40km west of Lokiriama, Kenya) were attacked by a UPDF helicopter gunship. The attack reportedly lasted for 25 minutes before the attack helicopter returned to base.[415] Local residents reported as many as 500 people killed.[416] In addition, the aggrieved parties reported the loss of some 2,000 head of cattle.[417] The UPDF has acknowledged that its aircraft was involved, but claims the attack took place after the helicopter had been shot at by Turkana warriors.[418]

[410] Report on the work of the Office of the High Commissioner for Human Rights in Uganda – UN Doc. A/HRC/4/49/Add.2 12 February 2007 at pg.2-3.
[411] Human Rights Watch in their latest report described the UDPF's disarmament techniques such as cordon and search operations as "markedly less violent":, *'Get the Gun!' Human Rights Violations by Uganda's National Army in Law Enforcement Operations in Karamoja Region,* Volume 19, No. 13(A), September 2007, pg 5.
[412] UN High Commissioner for Human Rights, "Kotido situation report," Oct - 15 Nov 2006.
[413] Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Uganda: Update report on the situation of Human rights in Karamoja, from 16 November 2006 to 31 March 2007
[414] "State told to address attacks by Ugandan soldiers", *The Standard*, 23 July 2007. "Intervene to end Ugandan army raids on pastoralists, Kenyan government urged", *BBC Monitoring Africa*, 24 July 2007; "Kenya; Pokot Petition Govt Over Raids By Soldiers*", East African Standard*, 21 July 2007.
[415] "Eight Kenyans Killed by Uganda Army Bombers", *The Standard*, 5 November 2006.
[416] "Many Said Killed as Ugandan Army Bombs Villages", *Agence France Press*, 6 November 2006.
[417] "Kenya MPs Appeal to Govt over UPDF", *The New Vision,* 7 November 2006.
[418] 'Kenya MPs Appeal to Govt over UPDF', *The New Vision,* 7 November 2006.

A researcher in the region viewed and photographed some of the munitions that were picked up by the Turkana after the attack and transported back into Kenya.[419] These include Russian-manufactured 80mm S-8 rockets and 23x115mm canon ammunition, produced in Novosibirsk, Russia in 1985. Both armaments were independently verified and are consistent with the armament of the Russian-made Mi-24 Hind attack helicopters flown by the UPDF. The three[420] Mi-24PN attack helicopters were delivered to Uganda by the Russian company Rostvertol in 2004.[421] The Mi-24PN is equipped with a fixed gun mount and a standard rotor system and is suited for night operations.[422]

Remnants of Russian 80mm S-8 rockets and 23x115mm canon ammunition, produced in Novosibirsk, Russia, in 1985, and allegedly fired by the Ugandan air force using a Russian-supplied helicopter gunship against Kenyan pastoralists grazing in the Loteere area of Uganda in October 2006.
© James Bevan

[419] James Bevan, Field Researcher, Small Arms Survey was on the Ugandan/Kenyan border and took the photos on 21 November 2006

[420] *Transfers of major conventional weapons: sorted by supplier - Deals with deliveries or orders made for year range 1997 to 2006*, SIPRI (www.sipri.org/contents/armstrad/REG_EXP_RUS_97-06.pdf/download). According to the '*Military Balance 2007*' (IISS, 2007) Uganda has 6 Mi-24 gunships of which 5 non-operational.

[421] *DRC: Arming the East*, Amnesty International, AFR 62/006/2005, 5 July 2005.

[422] "Mi Branded", *Military Industrial Courrier*, 23 November 2005, www.oboronprom.com/cgi-bin/cms/mnews_en.cgi?news=00000000544.

11.3 Lessons from the Uganda case

Amnesty International is concerned about the human rights consequences of proliferation and misuse of small arms amongst the pastoralist groups in the Turkana and Pokot district of Kenya and the Karamoja region of Uganda, as well as the civilian casualties resulting from disproportionate force used by the Uganda government armed forces to disarm pastoralist groups and attack Turkana pastoralists.

It is evident that many small arms, light weapons and related ammunition flowing to the pastoralist groups emanate from outside the region. The Governments of Kenya and Uganda should urgently strengthen efforts to fully implement the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (April 2004) and the associated "Nairobi Protocol Best Practice Guidelines" adopted by foreign ministers of the same States, including Kenya and Uganda in May 2005 to assist the implementation of the Protocol in the region.

These laudable regional instruments have been used to attract international donor assistance to build state and civil society capacity to counter the proliferation of small arms and light weapons in the region and they provide common standards for the reform of laws, regulations and administrative practices. However, the Protocol lacks clear normative criteria for the transfer of arms - for example, it does not set out state obligations to respect human rights when using necessary lawful force or apply international human rights and humanitarian law to control arms transfers. Some criteria are contained in the Ministerial Guidelines, but these do not have a legally binding status as they would if contained in a global ATT. Thus the provisions of the two instruments remain largely an aspiration for all States in the region, while supplier States outside the region are free to ignore them.

With regard to the transfer of heavier arms used in this case by the Ugandan government in acts of disproportionate use of force, stricter control of the supply of such arms from their countries of origin could only be consistently achieved through the adoption of a global ATT. In this case, an ATT could require concrete efforts to make the supply of heavy weapons such as attack helicopters conditional upon more effective training and respect for international human rights and humanitarian law by the armed forces of Uganda, and to encourage international cooperation to that end.

12. Ensuring an ATT has realistic scope

In order to be an effective global instrument, the ATT will need to comprise a comprehensive system to control the cross-border movement of all conventional arms and associated equipment and services. This is the view put forward to the UN Secretary General by the majority of States in their submissions to the UN Secretary-General in 2007. The two main issues that need to be defined in the scope of an ATT are the types of conventional arms and the types of transfers to be covered under the definition of "import, export and transfer of conventional arms".

12.1 Covering all conventional arms

The need to ensure a comprehensive weapons and munitions control list is a normal practice among most States and this has been an area of discussion for the GGE. Several experts during the GGE recommended adopting the seven categories established in the UN Register of Conventional Arms[423] plus the UN definition of small arms and light weapons [SALW]. While the inclusion of these items in an ATT makes common sense, limiting an ATT only to them would create unacceptable loopholes and weaken States' controls. The seven categories of major conventional arms in the UN Register are battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships (including submarines), missiles and missile launchers. These items were chosen just at the end of the Cold War as confidence building measures because they are offensive weapons used in inter-state warfare. However, most armed conflicts nowadays are fought with a much wider array of conventional arms.

More importantly, as the examples in the selected cases above show, the UN Register categories are narrowly defined and do not include some major types of conventional weapons used to commit serious violations of international law, including international human rights and IHL. For example, the UN Register does not cover military vehicles/trucks, military utility aircraft, non-attack military helicopters, munitions (including explosives and ammunition), smaller-calibre artillery, components and parts of the aforementioned, or weapons used for internal security such as riot control equipment, including shot guns and chemical agents like tear gas and other projectile devices.

In this respect, it is noteworthy that during the UN Secretary-General's consultation on an ATT in 2007, many States suggested that the very limited number of categories covered by the UN Register should be expanded to include *all types of conventional arms, components and ammunition, and small arms and light weapons*. The latter would ensure consistency with

[423], The UN Register of Conventional Arms was established on 6 December 1991 through General Assembly through resolution 46/36 L entitled "Transparency in armaments". The Register includes data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies. It has been in operation with effect from calendar year 1992. Thus far, a total of 172 States have reported to the Register on one or more occasions. See also the Inter American Convention on Transparency in Conventional Weapons Acquisition which is based on the UN Register.

the UN Programme of Action, the International Tracing Instrument[424] and the UN Firearms Protocol.[425] The most technically developed multilateral lists of conventional arms are the Wassenaar Arrangement Munitions List[426], and the European Union (EU) Code of Conduct[427] Military List. These lists were suggested by many States as providing more comprehensive and precise specifications.[428] In particular, the Wassenaar Arrangement of 40 participating States have adopted a control list which has been compiled using technical knowledge over the past fifty years.[429]

12.2 Covering all types of transfers

It is both essential and logical that the ATT apply to all aspects of the international arms trade including government-sanctioned transfers and commercial trade in conventional arms. This trade in fact includes:

state-to-state transfers;
state-to-private end-user transfers;
commercial sales;
leases;
transfers of licensed foreign arms production and technology for this purpose; [430] and

[424] International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, adopted by the UN General Assembly on 8 December 2005 (International Tracing Instrument).
[425] Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the UN General Assembly on 8 June 2001 (UN Firearms Protocol).
[426] The Wassenaar Arrangement of 40 major arms exporting states has a Munitions List covering 22 categories WA-LIST (07) 2 Corr. 2, 06-12-2007; see http://www.wassenaar.org/controllists/2007
[427] The European Union (EU) Code of Conduct for Arms Exports (EU Code of Conduct) was agreed to in May 1998 and seeks to create "high common standards" for all EU members to use when making arms export decisions and to increase transparency among EU states on all conventional arms exports. The most recent version of the Common Military List of the European Union, which updates previous versions, was adopted by the Council on 10 March 2008
[428] See, for example, submissions from: Australia, Argentina, Austria, Brazil, Croatia, Cyprus, Denmark, El Salvador, Finland, France, Germany, Hungary, Estonia, Fiji, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Kenya, Latvia, Liberia, Lithuania, Macedonia, Malawi, Malta, Mexico, New Zealand, Paraguay, Peru, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, UK and Zambia.
[429] Participating states in the Wassenaar Arrangement are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia,Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States.
[430] According to the UN Dismarmament Commission's Guidelines on International Arms Transfers endorsed by the General Assembly in 1996 "States have responsibilities in exercising restraint over the production and procurement of arms as well as transfers." Moreover, "States should scrutinize their national arms-control legislation and procedures and, where necessary, strengthen them in order to increase their effectiveness in preventing the illegal production, trade in and possession of arms in their territory that can lead to illicit arms trafficking." [paragraph 24] Also, "all arms-transfer agreements and arrangements, in particular between

loans or gifts or any other form of transfer of material goods or credit or expertise.

To avoid the creation of loopholes that would be exploited by unscrupulous arms suppliers and dealers, the forms of transfer should include a broad definition of the types of transfers. A large majority of States during the UN Secretary General's consultation on an ATT expressed the view that the scope of an ATT should include arms imports, exports, re-exports, temporary transfers, transshipments, re-transfers and brokered arms transactions.[431] Amnesty International would also like to see other types of arms transfers covered by an ATT including agreements or transactions for the service or maintenance of conventional arms, and transactions closely related to the brokering and dealing in the transfer of such arms, especially transportation, logistics, finance and technical expertise.[432]

The sanctioning of any type of transfer of all conventional arms must first be thoroughly assessed by national authorities against fundamental common criteria to ensure that all weapons and munitions to be transferred will remain in the hands of responsible and authorized end-users, and will not pose a substantial risk of being misused for unlawful purposes including for serious violations of international law. One of the most fundamental common criteria must be to ensure that the proposed transfer of any type of conventional arms transfer does not pose a substantial risk of contributing to serious violations of human rights or IHL. Applying international human rights and humanitarian law to all arms transfer decisions is necessary for an effective and responsible regulation of the international arms trade in order for States to meet their shared legal obligations to protect the lives, physical integrity and fundamental universal rights of all people.

Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons. In this context, a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion." [paragraph 33]

[431] The international transfer of arms includes instances where the arms are transhipped (from one carrier to another) or are in transit between an exporting and importing state. The UN Firearms Protocol**,** Article 7, requires State parties to maintain records for ten years on the international transfer of firearms, their parts, components and ammunition including for countries of transit. See Article 10(1). In the 2001 UN Program of Action on the illicit trade in small arms and light weapons, Member States included as one of their aims "promoting responsible action by States with a view to preventing the illicit export, import, transit and retransfer of small arms and light weapons." [Section II, paragraphs 2, 11, 12 and 13]. The Guidelines for Implementation of the Nairobi Protocol define "international arms transfers" to include "export, transit and brokered transactions" of small arms and light weapons [Chapter 2]; Provisions of other international standards also refer to the states' obligations to prevent the diversion, re-sale and re-export of arms contrary to international law and standards are directly relevant to states' obligations to control the transhipment of arms and arms in transit.

[432] For example, the UN Group of Governmental Experts on the Prevention of Illicit Brokering of Small Arms and Light Weapons its report of September 2007 recognized the need to control such activities; see also Amnesty International, *Dead on Time*, 2006, op cit.

13. How to apply human rights standards to arms transfer decisions

In order to achieve a more effective and responsible regulation of the international arms trade, all international transfers of conventional weaponry, munitions and equipment[433] (hereinafter referred to as 'transfers of conventional arms') should be carried out in accordance with States' international legal obligations, and with national laws and policies that implement those obligations. All States have obligations under international human rights law applicable to transfers of conventional arms. These obligations apply to any state with jurisdiction over a transfer of conventional arms and cover the export, import, transit, transshipment, brokerage and licensed production of conventional arms.

While it is clear that many States recognize that their obligations under international human rights law have application to transfers of conventional arms,[434] the rigorous and consistent application of these obligations must also be prioritised. The purpose of the following document is to assist States and regional organisations in applying their human rights obligations. It proposes guidelines for assessing the risk of a proposed transfer being used for serious violations of human rights and sets out a number of elements to consider when forming a judgment.

13.1 International human rights instruments

a. The UN Charter

All UN Member States have accepted the centrality of human rights and their application to a range of state activities, including the transfer of conventional arms and ammunition. The UN Charter requires Member States to promote the full range of human rights, including "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[435] The Charter also requires Member States to "take joint and separate action"[436] in cooperation with the UN to promote

[433] "Transfers" refers to international transfers moving from the territory or from the ownership or effective control of one state to that of another. "Conventional arms and ammunition" includes: military equipment, heavy weapons; small arms and light weapons; parts and components thereof; expertise or technology including logistical or financial support for such transfers, paramilitary equipment; dual-use goods intended for military, security and police purposes; munitions including ammunition and explosives; expertise or technology from one country to another. The Wassenaar Arrangement of major arms exporting states has developed the most technically developed lists defining conventional arms.

[434] 118 states have made explicit commitments in regional and multilateral arms transfer control agreements where human rights is a criterion in the arms transfer licensing process.

[435] Article 55 (c) of the UN Charter.

[436] Article 56 of the UN Charter.

human rights. These UN Charter provisions reflect a positive obligation of all States to cooperate in the protection and fulfilment of human rights within and beyond their borders.

b. Human rights treaties

Every UN member state is a party to one or more of the universal human rights treaties. These treaties include:

- the International Covenant on Civil and Political Rights (ICCPR);
- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Convention on the Elimination of all Forms of Discrimination against Women;
- the Convention on the Rights of the Child;
- the Convention on the Elimination of All Forms of Racial Discrimination;
- the International Convention on the Protection of the Rights of all Migrant Workers and Member of Their Families;
- the International Convention on the Rights of Persons with Disabilities;
- the International Convention for the Protection of all Persons from Enforced Disappearances

Currently there are more than one hundred international treaties that concern the protection of human rights. Through the UN Charter, the Universal Declaration of Human Rights, the 1993 Vienna Declaration on Human Rights, and numerous other instruments, all 192 UN Member States have committed themselves to realizing human rights as part of general international law.

These treaty standards provide the benchmarks for assessing a potential transfer of conventional arms against a human rights criterion. There is no hierarchy of international human rights: the use of conventional arms could result in the perpetration of serious violations of a spectrum of human rights standards (see Box 2 above) including civil, cultural, economic, political and social rights, and rights relating to women, children, minority and indigenous groups. Many of these human rights have attained the status of "customary international law" binding on all States regardless of whether they are parties to a particular treaty.

Respect for human rights will not be achieved by a state if it provides or authorizes arms transfers to a person or an entity with the knowledge that the arms will be used or are likely to be used for the *serious* violation of human rights.

Box 4: Relevance of Economic, Social and Cultural Rights

Under international law States are responsible for serious human rights violations committed by bodies or persons acting on its behalf or with its consent. Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966[437], to which more than two third of UN Member States are parties, specifies that: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

All the rights under the Covenant must be respected, protected and fulfilled. A violation occurs either when a state has omitted to act to overcome deprivation or, alternatively, when it has actively impeded, or allowed others to impede, the realisation of a right. Violations can be of duties to respect, protect or fulfil rights. Where denial of economic, social and cultural rights is a result of inability (there are genuine resource constraints, or circumstances beyond the control or outside the knowledge of the state), a state cannot be said to have violated its international obligations. Violations are the result of unwillingness, negligence or discrimination.

Some of these violations of economic, social and cultural rights are committed with the use of arms. For example, Amnesty International has documented how armed force or the threat of armed force has been used to carry out mass forced evictions, violate land rights of indigenous peoples, to subject people to forced labour, and to repress human rights defenders who are campaigning for economic, social and cultural rights. We have also documented armed attacks on medical personnel and infrastructure, schools, water sources and networks, and to carry out the destruction of crops, homes and livelihoods. While the realization of economic, social and cultural rights may be a greater challenge during armed conflict, there is no provision made for derogation from obligations under the Covenant. Under IHL States have duties, in the conduct of hostilities, which are relevant to economic, social and cultural rights.

States have the duties to take steps towards the progressive full realization of economic, social and cultural rights and have the duty to prioritize minimum essential levels of these rights. However, governments too often unreasonably fail to allocate resources to prioritize the full realization of economic, social and cultural rights in favour of other areas, such as military expenditure. On average, the world's rich countries spend three times as much on health as they do on defence and nearly three times as much on education. The world's low-income countries spend slightly less on health than on defence – an average of

[437] Economic and social rights are also included in numerous other human rights legal instruments, among which are: the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention for the Protection of al Persons from Enforced Disappearances

2.1% of GDP against 2.5% - and only 50% more on education than on defence. Those last proportions have been improving since 1999 but only slowly.[438] An effective ATT will need to address this issue.[439]

13.2 States' human rights obligations

In addition to their primary obligations to realize and promote human rights pursuant to the UN Charter and their treaty law obligations, States are responsible for the actions of their agents (e.g. police officers, soldiers).[440] They also have a responsibility to protect persons from conduct involving abuses by private actors, including companies, whether or not those actors are acting under the control of the state. Such protection involves the exercise of "due diligence", including taking measures to prevent human rights abuses by private actors that impair the enjoyment of human rights of anyone within its territory or subject to its jurisdiction.

Under general principles of state responsibility, the responsibility of a state is engaged if it aids or assists the commission of an internationally wrongful act, including a human rights violation, by another state in the knowledge of the circumstances of the internationally wrongful act (see Box 2). Such assistance might include the provision of material aid, such as weapons or munitions, to a state that uses that aid to commit serious human rights violations.[441]

Box 5: Articles on State Responsibility

"*A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.*"
(Article 16 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (commended by the General Assembly, A/RES/56/83, 12

[438] Data from SIPRI 2007 Report
[439] See *Arms Without Borders, Why a globalised trade needs global controls*, Control Arms, 2 October 2006; and *Guns or Growth? Assessing the impact of arms sales on sustainable development*, Control Arms June 2004 which highlight how excessive military spending can undermine the provision of health, education and other key social services.
[440] The Principles on the Prevention of Human Rights Violations Committed with Small Arms (adopted in 2006 by the Sub-commission on the Protection and Protection of Human Rights) states that "A state agent includes any person or persons acting at the instigation of or with the consent or acquiescence of a public official."
[441] Article 16 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, (Articles on State Responsibility), commended by the General Assembly, A/RES/56/83, 12 December 2001. The customary law status of the Articles on State Responsibility was affirmed by the International Court of Justice in its Genocide Case Judgement (Bosnia v. Serbia), 26 February 2007.

December 2001)

"[A] *State may incur responsibility if it (...) provides material aid to a State that uses the aid to commit human rights violations. In this respect, the UN General Assembly has called on Member States in a number of cases to refrain from supplying arms and other military assistance to countries found to be committing serious human rights violations."*

(Report of the Economic and Social Council, Report of the Third Committee of the General Assembly, draft resolution XVII, 14 December 1982, A/37/745, p. 50)

(Commentary on the Draft Articles on State Responsibility, Article 16, para. 9, pg. 158)

a. IHL and human rights law during conflict

During armed conflict, States have specific obligations under IHL, including a general obligation to "respect and ensure respect" for the rules of IHL.[442] IHL is intended, among other things, to protect civilians and those who are not taking part in hostilities (i.e. wounded, sick and captured combatants) and it regulates the conduct of armed conflict. Serious violations of IHL include the "grave breaches" identified in the four 1949 Geneva Conventions and Additional Protocol I which are applicable in international armed conflict. The Rome Statute of the International Criminal Court also includes other serious violations of IHL applicable in international and non-international conflicts which give rise to individual criminal responsibility, in other words war crimes.[443]

States, when considering the authorization of the transfer of conventional arms, must equally consider the recipient's respect for IHL and should not authorize transfers if there is a substantial risk that the arms will be used to commit serious violations of this law.[444]

International human rights law also applies during times of armed conflict and is not displaced by the application of IHL. The two bodies of law operate concurrently and at times human rights law can be directly applied in situations of armed conflict.[445] The International Court of Justice has affirmed that human rights law, including economic, social and cultural rights, continues to apply in situations to which IHL is applicable.[446] The Human Rights Committee has also affirmed that in situations of armed conflict, "both spheres of law are

[442] Common Article 1 to the four 1949 Geneva Conventions.
[443] Article 8, Rome Statute of the International Criminal Court.
[444] For a fuller discussion on the application of IHL in the arms transfer decision making process, see: "*Arms Transfers Decisions: Applying international humanitarian law criteria*", ICRC, Geneva, June 2007
[445] The International Court of Justice (ICJ) has stated that, "some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law." ICJ, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Advisory Opinion, 9 July 2004106
[446] ICJ, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Advisory Opinion, 9 July 2004, paras 107-112

complementary, not mutually exclusive"[447] Decisions concerning transfers of conventional arms, particularly to States involved in armed conflict, must therefore include not only consideration of the recipient's respect for IHL but must also consider whether there is a substantial risk that a transfer will be used to violate human rights.

b. International criminal law

International criminal law is also relevant to States' arms transfer decisions. All States have an obligation to prohibit the provision of conventional arms to any person or entity which would knowingly assist in the commission or the attempted commission of international crimes.

The Rome Statute establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by providing the means for its commission.[448] Providing the weapons used to commit one of the crimes for which the ICC has jurisdiction may give rise to individual criminal responsibility.

Under the Rome Statute international crimes include crimes against humanity, war crimes, genocide and the crime of aggression. When committed as part of a widespread or systematic attack against the civilian population, a violation, for example, of the right to life or a violation of the prohibition of torture may amount to a crime against humanity. Other acts including for example, murder, enslavement, imprisonment, forcible transfer of a population, sexual violence, and enforced disappearance can form the basis of a crime against humanity.[449]

13.3 Key concepts for applying international human rights law

One of the fundamental normative aims of the application of international human rights law in the arms transfer decision making process is to create a more responsible trade in conventional arms. In order to achieve this aim, the process towards forming a judgement regarding a potential transfer of arms should embody two principles:

a. Prevention of serious human rights violations; and

b. Fairness and objectivity in decision-making.

[447] UN CCPR Human Rights Committee, General Comment 31 on The Nature of the General Legal Obligation on the States Parties to the International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 11
[448] Rome Statute, Article 25 (3)(c)
[449] Article 7, Rome Statute of the ICC

a. Preventative not Punitive Approach

In order to create a more responsible trade in conventional arms and ammunition, decisions on transfer authorizations based on international human rights obligations should be viewed primarily as a means to prevent serious human rights violations or abuses. Therefore, the decision making process should occur within a "preventative approach" framework. Such an approach would aim to prevent arms transfers where there is credible and reliable information indicating there is a substantial risk that a particular group, such as the security forces, will use those arms for serious violations or abuses of human rights. Where there is such information on a substantial risk then the presumption should be to prohibit that transfer of arms until the risk for such further serious violations or abuses with such arms has been curtailed

Through this conceptualization, the application of international human rights law to arms transfer decisions should be a means to prevent irresponsible international arms transfers and ensure that the use of military and security equipment and related items falling within the control list is consistent with international standards.

This approach is distinct from a "punitive" approach to arms control, which reduces the decision-making process to one where States that are seen to have unspecified "bad human rights records" cannot receive any transfers of arms. Such an approach might fail to take fully into account specific legitimate military, security and policy needs of a state to protect its population consistent with international standards for the rule of law. It also undermines the creation of opportunities for constructive dialogue between potential exporting and importing States whereby preventative or remedial measures could be discussed and implemented as a prerequisite for decisions regarding particular arms transfers that would then no longer pose a substantial risk of being used in serious human rights violations. For example, agreed measures could include enhanced systems of accountability and training of police and soldiers that are consistent with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Such an approach is in line with existing state practice and remedial measures imposed by international courts.

Box 6: Example of preventative and remedial measures

"Likewise, the Court has indicated that in order to adequately guarantee the right to life and integrity, the members of the security forces must receive adequate training … Therefore, the State must design and implement, within a reasonable period of time, human rights education programs, addressed to agents of the police force, on the international standards applicable to matters regarding treatment of inmates in situations of alterations of public order in penitentiary centers."

(Case of the Miguel Castro-Castro Prison v. Peru, Inter-American Court of Human Rights, Merits and Reparations, November 25, 2006)

b. Fairness and Objectivity

One concern for States is that an assessment process applying a human rights criterion be applied in an objective and fair manner. In order to ensure fairness and objectivity the following factors should apply to the decision making process for an authorization to transfer arms:

- The assessment process should apply to all transfer authorizations to all countries, without distinction;
- There should be a case-by-case assessment of each application for an arms transfer license;
- Objective, verifiable and detailed information from credible and reliable sources on the arms, the intended recipients, the likely uses, the route and all those involved in the transfer should be used;
- Up-to-date information on human rights standards and violations should be used to ensure proper case-by-case assessments are made.

13.4 Practical application of international human rights law to transfer decisions

To assist licensing authorities and other government officials involved in the arms transfer decision-making process, a clear and consistent procedure for determining whether there is a substantial risk that the transfer will be used or is likely to be used for serious violations of human rights is required. The following steps, including key factors that should be taken into account, are recommended:

(i) An assessment of the recipient state's respect for international human rights law in relation to those rights likely to be impacted;

(ii) A more specific assessment of the nature of the equipment, its stated end-use and the stated end-user, as well as the route, those involved in the transfer and the risk of diversion;

(iii) Reaching a decision based on an overall assessment as to whether there is a "substantial risk" that the transfer in question will be used or is likely to be used for serious human rights violations or abuses.

a. Recipient state's attitude

A thorough assessment of the risk that a transfer of conventional arms would be used or is likely to be used in the commission of serious violations of international human rights law should start with an inquiry into the recipient state's overall conduct in relation to its human rights obligations.

The following indicators should be taken into account, when assessing a recipient state's attitude towards respecting and promoting its obligations under international human rights law:

- The formal commitments made by the state to relevant international and regional human rights instruments;
  - Has the recipient country state become party to key human rights instruments (e.g. the ICCPR, the ICESCR, the regional human rights treaties, the Rome Statute?)?
- The implementation record of the state of its human rights obligations through national policy and practices;
  - Has the recipient country adopted the implementation measures required by the human rights instruments to which it is a party, including the adoption of national legislation and regulations?
- Whether the recipient state has in place the legal, judicial and administrative measures necessary for the respect and promotion of its human rights obligations;
  - Does the recipient state have legislation and procedures in place to allow for investigations into human rights abuses and violations by the state and its agents?
  - Is there a competent, independent, impartial and functioning judicial system in the recipient country, capable of prosecuting serious human rights violations?
  - Does the recipient state educate and train key sectors such as its security forces and police officers (and other arms bearers) in the content and application of international human rights law?
- Whether accountable government infrastructures exist with the capacity to implement and ensure respect for human rights obligations and to bring human rights violators to justice and provide remedy and reparation to victims;
  - Are there independent monitoring bodies and national institutions for the promotion or protection of human rights?
  - Is there a record of impunity for human rights violators?
  - Is there a record of providing full reparation to victims?
- The degree of cooperation with international and regional human rights mechanisms (e.g. the UN treaty bodies and special procedures);
  - Has the recipient state agreed to independent monitoring and investigations into alleged serious violations of human rights and abuses? If so, how has it addressed the outcome? (i.e. has it implemented any recommendations?)

b. Assessing the nature of the conventional arms and its end-use/end-user

In order to ensure that there is a case-by-case analysis a more specific assessment should be undertaken. The objective of such an assessment should be to determine whether there have been previous serious violations or abuses of human rights (See Box 4) and whether there is a substantial risk that such violations are likely to be facilitated by the transfer of those conventional arms under review. The following factors should be considered in this assessment:

- The nature of the military or security equipment, munitions or other items falling within the control list;
- A thorough assessment of the stated end-user and the stated end-use of the transfer;
- Methods agreed to verify the delivery and safe storage;
- Assessment of the risk of diversion.

c. Assessing the nature of the conventional arms

- Is there any evidence that this type or a similar class of military or security equipment or other item on the control list has previously been used by the intended recipient for serious violations of human rights or IHL?
- Is the equipment or other item intended for internal security purposes? If so, is there evidence of the use of this type of arms or a similar type being used for serious violations of human rights or IHL in the receiving country, particularly for example torture and other cruel, inhuman or degrading treatment or punishment, extra-judicial executions, arbitrary detentions and enforced disappearances?
- Are the type, quality and quantity of the equipment or other items requested compatible with the stated end-user's legitimate military, security or policing requirements?

d. Assessing the End–User

Nature of the end-user

- Who is the stated end-user? An assessment of the end-user should be conducted regardless of whether the recipient is a state or a non-state entity (e.g. a private military or security company).
- What is the end-user's role in the recipient state and is it lawful and legitimate?
- Does the end-user (e.g. security forces) operate under clear and accountable lines of command and control?

- Can the recipient guarantee that it is the actual lawful end-user of the equipment or other items?
- Will the recipient accept to not transfer the equipment or other item to a third party without the express authorization of the supplier state?

End-user's capacity

- Does the stated end-user have a legitimate need for this equipment or other item?
- Does the end-user have the knowledge and capacity to manage and use the equipment or item in accordance with international human rights law standards (e.g. if the transfer of arms or munitions is designated for use by the army are there adequate systems of accountability and training in human rights law and IHL by those military or security personnel who will be using the arms or munitions)?
- Does the end-user have the capacity to verify the delivery, to manage the safe storage and distribution, and to properly maintain and deploy the equipment or other item?

End user's human rights and IHL conduct

- Has the conduct of the stated end-user in upholding international human rights standards and IHL been the subject of substantial concern (such as the UN monitoring bodies, national human rights commissions or international human rights NGOs)?
- If yes, has the recipient country or end-user taken measures to prevent serious violations of international human rights law and IHL (including prosecuting those responsible for such violations)?

End user's control over its arms and munitions

- Does the recipient state have effective arms control legislation, regulations and administrative procedures in place regarding the import, export, transit, transhipment, brokerage and closely related activities, and licensed production of military and security equipment and related items? Does this system take international human rights law and IHL fully into consideration? Is the control list of the recipient country sufficiently robust to facilitate delivery verification and lawful control over further transfer?
- Does the stated end-user have adequate stockpile management capacity and security procedures in place, including for the disposal of surplus weapons and munitions?
- Are thefts or leakages from stockpiles known to be a problem in the recipient state?
- Is illicit trafficking of arms or corrupt practices relating to arms a problem in the recipient state?

e. Risk of Diversion

- Does the recipient have the capacity to ensure that the equipment or related items on the control list to be transferred will not diverted or transferred to other entities or destinations where there is a substantial risk that such items are likely to be used for serious violations of international human rights law or IHL?
- Does the recipient maintain strict and effective control over its military and security equipment and related items and their further transfer?
- Have there been previous known or suspected cases of arms or military or security equipment and related items being diverted or re-transferred from this recipient to a third party where there was a substantial risk that they would be used, or were used, for serious violations or abuses of human rights or IHL? The risk of diversion does not relate solely to concerns of diversion to an unauthorized user but also to authorized users who will or are likely to misuse the equipment for serious human rights violations or abuse, or for serious violations of IHL.

f. Reaching a decision

- Based on information and assessment of these various elements a state will be able to reach a decision on whether there is a substantial risk that the proposed transfer of military or security equipment or related item on the control list would be used or is likely to be used for serious violations of international human rights law or IHL and therefore whether the transfer should be authorized or not. A final decision should be based on an overall assessment and decisions should clearly indicate the reasons for believing that there is or is not a substantial risk that the transfer in question would be likely to be used for serious violations of human rights or IHL.
- A decision not to allow the transfer of items on the control list should be based on the principle of human rights humanitarian protection, taking full account of the most likely use of the types of arms in question over the projected life-cycle of the items., The decision should not be a punitive measure in the sense outlined above or made to secure an economic, political or military advantage to a State or group of States.
- If there is a wide range of arms and related items being used for serious violations and abuses of human rights, or for serious violations of IHL, and a substantial risk that further types of arms or related items would be so misused, States should act without delay to impose a generalised cessation or embargo on the transfer all those types of arms and related items. A cessation should be maintained until the substantial risk of the arms or related items being used for serious violations of human rights or IHL has ended through remedial actions.

g. At what point does a risk become "substantial"?

The analysis of "substantial risk" should be carried out by competent authorities based on a case-by-case consideration of available evidence of history and present circumstances in the recipient country regarding the proposed end-use and end-user. In assessing whether there is a substantial risk the following should be considered:

- **The current and past record** of the proposed end-user with regard to upholding their human rights obligations:
  - Have there been any significant recent developments?
  - Are there any identifiable trends (both positive and negative) regarding government action in the area of human rights?
  - Are there any foreseeable future events that would be reasonably expected to create conditions leading to increased or pervasive human rights abuses or serious violations of IHL? Particular weight should be given to the current situation and how it may develop in future when reaching a determination.
- **Time frames**: In determining risk, the focus should be whether any identified past or new trends are continuing or not. Evidence of recent serious violations of international human rights standards and IHL and an analysis of whether such violations may recur is a clearer indication of the level of risk. Evidence of past serious violations could still be relevant, though on their own they are not a sufficiently reliable indicator of present or future conduct. Such information should be taken into consideration along with other relevant institutional factors.
- *Isolated* incidents of violations of international human rights law are not necessarily indicative of a recipient's attitude or commitment towards its obligations under this body of law. An isolated incident may not be a sufficient basis for denying a transfer. However, where there is **evidence of patterns**, or where there is evidence that the recipient has not taken appropriate steps to end violations and prevent their recurrence, the likelihood of substantial risk becomes greater.
- Determination of a substantial risk should be based on a judgment that is objectively informed through the systematic application of clear criteria using reliable and credible evidence, and it should be a balanced finding based on a reasoned consideration of the facts.

Box 7: Uncertainty?

In cases where uncertainty persists, a state should seek further information and clarification from the recipient state or other sources. Where there are substantive concerns about the risk of serious human rights violations or abuses, and where preventative measures can realistically be taken prior to the authorization of a transfer (e.g., training on a type of equipment or human rights accountability for the proposed end-user), the exporting and

importing governments should enter into discussions on ways to carry out such measures.

These discussions should be with a view to continuing a dialogue on the potential authorization of the transfer of conventional arms, and should ensure the successful completion of the agreed preventative measures before any decision is made to authorize the transfer. **However, in circumstances where substantive concerns about the risk of serious human rights violations or abuse persists, the presumption should be against authorizing the arms transfer.**

h. National legislation

In order to give effect to the above principles and guidelines, legislation and regulations should be precise in its terms and concrete in its procedures, avoiding ambiguities and minimizing the scope for interpretation which could contradict the purpose of the law. The objectives and provisions of laws and regulations should be consistent with the UN Charter and international law.

National legislation should also provide for the legislature to be notified of all information necessary to enable it to exercise proper control over the implementation of the law; for all arms transfers to be scrutinized by a legislative committee, and evaluated in advance if there is a real risk of serious human rights violations or abuse, or serious violations of IHL; for reports to be issued on the human rights situation in the receiving countries; and for effective channels to be established for receiving relevant information from NGOs and other sources.

13.5 Sources of Information

A variety of credible, reliable and verifiable information sources exist that are relevant to making assessments should be consulted to assist States in their transfer decision-making process. Such information sources include:

- Documentation from the UN human rights bodies, the ICRC and other international and regional bodies;
- Reports from international human rights NGOs;
- Reports from reliable local sources including local NGOs;
- Reliable media reports;
- Diplomatic missions in the recipient state;
- Human rights reports by States, including domestic human rights commissions reports;
- Judgements and reports by the International Criminal Court and the ad hoc tribunals;
- Research by academic, research and policy institutes on arms transfers and human rights issues.

14. Golden Rules for making an ATT effective

This report illustrates graphically how millions of people suffer the daily effects of the irresponsible transfer, proliferation and unlawful use of conventional arms, including small arms and light weapons. The irresponsible and poorly regulated international trade in arms is contributing to grave human rights abuses and serious violations of IHL, destabilising countries and regions and undermining sustainable development. It demonstrates the urgent need for a global ATT that is effective enough to help save lives and protect livelihoods.

While the absence of an ATT is not the sole reason for the widespread easy access to and abuse of conventional arms, the existence of a strong and comprehensive ATT would greatly reduce the likelihood of arms ending up in the hands of irresponsible end-users and help prevent such destructive impacts on people's lives.

Most States agree that the proliferation and misuse of conventional arms can only be effectively addressed through international cooperation and an increasing recognition that the control of such arms transfers between States must be rooted in international law. Clearly, the establishment of an ATT is feasible for most States if there is sufficient international cooperation, as demonstrated by Member States' submissions to the UN Secretary General in 2007. Moreover, most States now recognize the key importance of assessing the potential for a transfer to be used for at least certain abuses and violations of international human rights law and IHL.

Other key criteria highlighted by States for considering whether or not to approve a licence application for an international arms transfer, include the likely negative impact on sustainable development, the risk of diversion, and whether the transfer might be used in violent or organised crime.

Amnesty International is particularly concerned that *States should not authorize international transfers of conventional weapons, munitions, military equipment or assistance, where there is a substantial risk that such items will be used for serious violations of international human rights law or IHL* – this can be regarded as a "***Golden Rule on Human Rights and IHL***" without which an ATT will be ineffective from the outset.

NGOs working with Amnesty International have been campaigning for other "*Golden Rules*" for an ATT as well.[450] The NGOs have expressed concern, for example, that States should not authorize such transfers where there is a substantial risk that the transfers in question will (i) provoke or exacerbate armed conflict in violation of their obligations under the UN Charter and existing treaties, or (ii) contribute to an existing pervasive persistent pattern of violent crime that the state is not acting with due diligence to prevent, or (iii) undermine sustainable development as measured by the Millenium Development Goals and violations of international law on economic and social rights, or (iv) involve significant

[450] See Global Principles on Arms Transfers, op cit, which detail the six principles including these golden rules that AI and its NGO partners argue should underpin an ATT. Each principle is accompanied by information elaborating relevant principles found in regional and multilateral instruments; see http://www.controlarms.org/find_out_more/

corrupt practices, or (v) be diverted to unauthorized users who may use the arms to violate these ”golden rules”.

Such rules are based on the principle that States must not knowingly aid or assist another State in the commission of an internationally wrongful act (See the Box 5 on state responsibility above) and should not authorize international transfers of conventional arms where there is a substantial risk that those arms will be used for violations of international law.

A global ATT should also *encompass a mechanism for increasing intergovernmental and public transparency and accountability in the international transfer of conventional arms* so as to build confidence in the effective implementation of the global treaty on the part of States.[451] In this regard, as proposed by Amnesty International and partner NGOs in the Global Principles for Arms Transfers, States should submit comprehensive national annual reports on the international transfer of all conventional weapons and munitions, as defined above under the Treaty, to an international registry, which would then publish a comprehensive, international annual report. States should recognize the possibility of enhancing the existing UN Register on Conventional Arms for these purposes.[452]

15. Conclusion and recommendations

The sample cases in this report show that a coherent arms control system for international transfers of conventional arms is desperately needed but that such a system without standards based on international law, including human rights and humanitarian law, will not achieve its most fundamental purpose as outlined by the UN General Assembly, nor will it comply with the existing obligations of States. The Group of Governmental Experts that considered an ATT in the first half of 2008, despite having members from a few States that have opposed or

[451] *Intergovernmental transparency* refers to the confidential exchange of information between governments as a means of building confidence among states and preventing the misinterpretations and miscalculations of state intentions that can lead to interstate conflict. *Public transparency* refers to the practice of making information on a state's preferences, intentions and capabilities available to its citizens. It is often seen as implicitly related to a government's democratic accountability and willingness to subject decisions to parliamentary and public oversight; see Paul Holtom, ”Transparency in Transfers of Small Arms and Light Weapons: Reports to the United Nations Register of Conventional Arms, 2003–2006”, SIPRI Policy Paper No. 22, June 2008

[452] Optimal information required to enhance intergovernmental and public transparency on international arms transfers should include information on: (*a*) the supplier and recipient; (*b*) the type of arms (e.g. aircraft, artillery, rifle etc.); (*c*) the number of units; (*d*) a description of the item (e.g. model), components, knowledge or services transferred; (*e*) the final end-user or -use; (*f*) the dates of agreement and delivery or deliveries; (*g*) the condition of the weapons (e.g. new, second-hand, deactivated, etc.); (*h*) the financial value of the transfer; (*i*) how the transfer is being carried out (e.g. transfer of title, purchase, donation or gift, licensed production or technology transfer); and (*j*) any technical support and training provided; see United Nations, General Assembly, '*Study on ways and means of promoting transparency in international transfers of conventional arms*', Report of the Secretary-General, A/46/301, 9 September 1991, paragraph 14.

been sceptical of the idea of an ATT, nevertheless called for "further consideration of efforts" within the UN to address this issue in "an open and transparent manner." [453]

Thus, it is vital that all UN Member States grasp the opportunity presented now by the current UN process on an ATT to address this grave international problem with the urgency it deserves and to formulate clear proposals for an effective global ATT that can be 'negotiated on a non-discriminatory, transparent and multilateral basis', as requested by the UN General Assembly, so that the international community can agree and benefit from a legally binding and universal ATT by the year 2010.

15.1 Recommendations to UN Member States

Parameters of the ATT

1. Incorporate the "*Golden Rule on Human Rights*", set out above, within an ATT as an essential common criterion to govern international transfers of conventional arms fully consistent with the existing state obligations regarding arms transfers and consider for inclusion in the ATT the other principles and recommendations set out in this report. Clear and objectively applied standards should be established and agreed by States for determining instances of whether there is a substantial risk that an international transfer of arms or ammunition will be used for serious violations of international human rights law or serious violations of IHL – *a proposed transfer should not be allowed to proceed until the substantial risk of serious violations of international human rights and humanitarian law has been removed.*
2. Agree a provision in the ATT to require States to prevent the excessive supply of arms to post-conflict situations where human rights abuses by state and non-state actors are prevalent and security sector reform is being initiated;
3. Develop a common criterion in the ATT to prohibit arms transfers that are likely to be diverted and used for armed attacks by non-state groups that are contrary to IHL and human rights law;
4. Agree provisions in the ATT to enable States to effectively and objectively assess licence applications using clear international standards for each common criterion. These provisions should require a full assessment of the long term lifecycle and potential harmful impact of each item to be transferred so as to ensure respect for each common criterion. The common criteria and international standards should reflect and be consistent with principles of existing international law and instruments, including those on human rights,

[453] See the report of the ATT GGE 2008, op cit; the report was a consenus document and therefore recommended that"*further consideration of efforts within the United Nations to address the international trade in conventional arms is required on a step by step basis in an open and transparent manner to achieve, on the basis of consensus, a balance that will provide benefit to all, with the principles of the United Nations Charter at the centre of such efforts."*

5. Include transparency mechanisms in the ATT so that each state is obligated to issue a comprehensive annual public report with meaningful data on the full range of conventional arms and military assistance transferred from its jurisdiction; more frequent reports should also be made to enable regular and ongoing parliamentary oversight of the arms trade; annual reports should be made by each state to an international registry, which would then publish a comprehensive, international annual report.
6. Agree sufficiently robust compliance and verification mechanisms in the ATT to enable regular monitoring of transfers and licenses and sharing of relevant data with other States. Data sharing should include information on licences issued as well as licences denied, and regular reports on actual transfers carried out. Mechanisms should also enable robust investigations of suspected wrongdoing and procedures for ensuring compliance as well as prosecutions backed by criminal and administrative sanctions.
7. Provide for programs of international cooperation and assistance, where requested and necessary, which are targeted on the basis of realistic needs assessments to build state and civil society capacity vital for the successful implementation of the provisions of the ATT.

Scope of the ATT

8. Agree a common "control list" derived from the most comprehensive list of conventional arms and military assistance and include a provision in the ATT for all state parties to strictly observe this list. States could begin by using the common list developed by major arms producers such as the Wassenaar Arrangement whose munitions list provides a technical basis for creating a comprehensive UN list with, for example, the inclusion of military equipment, components and ammunition, small arms and light weapons, and weapons used for internal security.
9. Include in the control list of the ATT all items that have a "foreseeable military end use or a potentially lethal effect when used in security operations" and all arms manufacturing equipment, components and technology.
10. Require strict control by States of the international transfer of emerging technologies for weapons, other military equipment and munitions and provide for a procedure to address technological changes by amending the control list without needing to amend the ATT.
11. Ensure that the definition of "transfer" in the ATT is a realistic reflection of the modern international arms trade so that all arms movements across borders, changes of ownership and control of arms between States, and arms transactions associated with such transfers are covered. The forms of "transfer" should include the broadest definition possible: import, exports, re-export, temporary imports, exports, re-exports, transhipment, re-transfer, loans, gifts, temporary exports/imports, services and maintenance, and any other form of transfer of material good, credit or expertise.
12. Include specific provision in the ATT for the strict control of arms brokering transactions and closely related activities such as transportation, logistics, finance and technical

services, following the report of the UN Group of Governmental Experts on the prevention of illicit brokering of small arms and light weapons.

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Appendix 1: UNGA Resolution on an Arms Trade Treaty

United Nations A/RES/61/89
18 December 2006, **Sixty-first session,** Agenda item 90, 06-49977

Resolution adopted by the General Assembly

[*from the report of the First Committee (A/61/394)*]

61/89. Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms

The General Assembly,

Guided by the purposes and principles enshrined in the Charter of the United Nations, and reaffirming its respect for and commitment to international law,

Recalling its resolutions 46/36 L of 9 December 1991, 51/45 N of 10 December 1996, 51/47 B of 10 December 1996, 56/24 V of 24 December 2001 and 60/69 and 60/82 of 8 December 2005,

Recognizing that arms control, disarmament and non-proliferation are essential for the maintenance of international peace and security,

Reaffirming the inherent right of all States to individual or collective self defence in accordance with Article 51 of the Charter,

Acknowledging the right of all States to manufacture, import, export, transfer and retain conventional arms for self-defence and security needs, and in order to participate in peace support operations,

Recalling the obligations of all States to fully comply with arms embargoes decided by the Security Council in accordance with the Charter,

Reaffirming its respect for international law, including international human rights law and international humanitarian law, and the Charter,

Taking note of and encouraging relevant initiatives, undertaken at the international, regional and subregional levels between States, including those of the United Nations, and of the role played by non-governmental organizations and civil society, to enhance cooperation, improve information exchange and transparency and implement confidence-building measures in the field of responsible arms trade,

Recognizing that the absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development,

Acknowledging the growing support across all regions for concluding a legally binding instrument negotiated on a non-discriminatory, transparent and multilateral basis, to establish common international standards for the import, export and transfer of conventional arms,

1. *Requests* the 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;

2. *Also requests* the Secretary-General to establish a group of governmental experts, on the basis of equitable geographical distribution, informed by the report of the Secretary-General submitted to the General Assembly at its sixty-second session, to examine, commencing in 2008, 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 transmit the report of the group of experts to the Assembly for consideration at its sixty-third session;

3. *Further requests* the Secretary-General to provide the group of governmental experts with any assistance and services that may be required for the discharge of its tasks;

4. *Decides* to include in the provisional agenda of its sixty-second session an item entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms".

67th plenary meeting
6 December 2006

Appendix 2: The World's Top Exporters of Conventional Arms

(Table provided by TransArms)

All Military Equipment and Services as officially reported – Millions of US$*

Rank	Country	Type	2005	2006	2007	Note
1	**United States of America**					**1**
	Total, exported	Deliveries	**41,131**	**43,737**	na	
	Total, contracts signed	Agreements	37,963	67,525	na	
	of which:					
	Foreign Military Sales	Deliveries	10,985	12,132	na	
	Direct Commercial Sales	Deliveries	30,146	31,605	*8,875*	
	Direct Commercial Sales	Licensed	24,334	19,811	24,531	
	Foreign Military Sales	Agreements	10,240	20,805	na	
	Direct Commercial Sales	Agreements	27,723	46,720	64,281	
2	**United Kingdom**					**2**
	Total, exported	Deliveries	**8,244**	**8,657**	na	
	of which:					
	Conventional	Deliveries	2,533	2,503	4,144	
	Military Aerospace	Deliveries	5,711	6,154	na	
	Total Contracts signed	Agreements	7,264	9,633	na	
3	**Russian Federation**					**3**
	Total, exported (incl. Mil. Aerospace)	Deliveries	**6,126**	**6,460**	**7,500**	
	Total, contracts signed	Agreements	18,000	14,000	5,520	
4	**Israel**					**4**
	Total, contracts signed	Agreements	**3,600**	**4,870**	**5,600**	
5	**France**					**5**
	Total, exported	Deliveries	3,814	4,034	na	
	Total, contracts signed	Agreements	5,122	7,225	na	**6**
6	**Germany**					**7**
	Total, exported	Deliveries	**2,029**	**1,462**	na	
	Total, contracts signed	Agreements	5,249	5,261	na	
7	**Italy**					**8**
	Total, exported	Deliveries	**1,035**	**1,218**	**1,747**	
	Total, contracts signed	Agreements	1,694	2,753	3,248	
8	**Sweden**					**9**
	Total, exported	Deliveries	**1,152**	**1,418**	**1,421**	
	Total, contracts signed	Agreements	2,022	2,055	1,011	
9	**Netherlands**					**10**
	Total, exported	Deliveries	**849**	**1,015**	na	
	Total, contracts signed	Agreements	1,463	1,413	na	
10	**Spain**					**11**
	Total, exported	Deliveries	**522**	**1,061**	na	
	Total, contracts signed	Agreements	1,531	na	na	
11	**China**					**12**
	Total, exported	Deliveries	**900**	**700**	na	

	Total, contracts signed		2,500	800	na	
11	**Ukraine**					**13**
	Total, exported	Deliveries	**680**	**700**	na	
13	**Norway**					**14**
	Total, exported	Deliveries	**433**	**561**	na	
14	**Switzerland**					**15**
	Total, exported		**208**	**318**	na	
	Total, contracts signed		827	752	na	

* NOTES:

Values are at current value and annual average exchange rates of each year as follows: Euro to US$: 2005, 1.245; 2006, 1.256; 2007, 1.371. British Pound to US$: 2005, 1.82069; 2006, 1.84295; 2007, 2.00181. Norwegian Krona to US$: 2005, 0.15540; 2006: 0.15623 ; 2007, 0.17123. Swiss Franc to US$: 2005, 0.80437; 2006, 0.79856; 2007, 0.83424. Swedish Krona to US$: 2007: 0.148.

Rank orders in the table above are based upon an evaluation of the value of total exports for 2005-2007 as officially reported by the authorities of each country listed. Note that different rank orders for major arms exporters and medium-sized arms exporters can be produced using different assumptions.

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BLOOD AT THE CROSSROADS

MAKING THE CASE FOR A GLOBAL ARMS TRADE TREATY

The world is reaching a crossroads in deciding how to control the conventional arms trade. In December 2006 the UN General Assembly voted overwhelmingly to begin working towards a global Arms Trade Treaty. In October 2008, member states must decide whether to start a negotiating process.

The establishment of a global Arms Trade Treaty is urgently needed to save lives, preserve livelihoods and enhance respect for human rights. Governments must prevent transfers of arms when they are likely to be used for serious violations of international human rights law or international humanitarian law.

Using detailed case studies, this report illustrates how the current poorly regulated arms trade contributes to serious human rights violations around the world and, as a result, greatly undermines global security. Millions of people suffer daily the consequences of irresponsible arms transfers, proliferation and unlawful use of conventional arms, including small arms.

It is vital that all governments grasp this opportunity to help reverse the destructive impact of irresponsible arms trading on people's lives.

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