UN Arms Embargoes and the Arms Trade Treaty

BY KENNETH EPPS
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About this Paper
This paper argues that forthcoming negotiations of an international Arms Trade Treaty would benefit from the lessons learned from states’ implementation of United Nations arms embargoes. Additionally, by creating a global regulatory framework for the effective control of conventional arms transfers, a robust ATT would strengthen embargo implementation. An ATT and arm embargoes could thus become mutually supportive instruments of the international community for maintaining international peace and security.

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## Contents

*Executive Summary*  
1. Introduction  
2. Global Instruments of Conventional Weapons Control  
3. Building Mutual Effectiveness  
4. *The Lessons of Arms Embargoes*  
   - End-Use Certification and Verification  
   - Effective Control of Brokers  
   - Adequate National Legal and Regulatory Frameworks  
   - International Cooperation and Assistance to Build State Capacity  
   - Clarity and Breadth of the Scope of an Embargo  
5. *A Robust Arms Trade Treaty – Strengthening Embargo Effectiveness*  
   - Risk Assessment Criteria in International Law  
   - Reporting, Information Exchange, and Transparency  
   - ATT Secretariat and Other Treaty Implementation Mechanisms  
   - Preventing Illicit Activity  
6. Conclusion  

References  
Acronyms and Abbreviations  

Appendix 1: Military and Dual-Use Goods Cited in Recent Reports by UN Security Council Committees Monitoring Arms Embargoes  
Appendix 2: Multilateral Instruments Referenced in the Global Principles
The deleterious impact of the proliferation and misuse of conventional weapons on people, communities, and states is well documented and the case for better global standards in the regulation and control of arms transfers is widely recognized. A robust Arms Trade Treaty and effective UN arms embargoes together would make significant contributions to international political security and stability.
Executive Summary

UN negotiations of an international Arms Trade Treaty (ATT) will begin in 2010, culminating in a treaty conference in 2012. The tight schedule for treaty negotiations suggests that UN member states should draw on the provisions and best practices of existing, relevant multilateral instruments, including the arms embargoes imposed by the UN Security Council. The negotiating period is also an opportunity to ensure that the Treaty and UN arms embargoes become effective and mutually supportive instruments. Negotiations to construct a robust ATT would benefit from a review of recent recommendations to improve arms embargo implementation. As well, arms embargo effectiveness would be enhanced by many of the proposed provisions of the ATT.

Although both will be legally binding, global instruments of conventional arms control, the ATT and UN arms embargoes are intended to serve different functions. Arms embargoes are imposed by the UN Security Council to influence the behaviour of a targeted state or entity by preventing access to conventional weapons. The ATT should be a legally binding convention of states parties to establish global standards to improve the national regulation of international arms transfers. Arms embargoes are reactive tools intended to prevent the transfer of all conventional weapons to particular targets. The ATT should better regulate the ongoing authorized trade in conventional arms by requiring states to conduct case-by-case assessments of proposed transfers.

Nevertheless, the two instruments share goals and features. UN sanctions committees and expert groups have studied UN arms embargo implementation and many of their recommendations to improve embargo effectiveness are relevant to the development of a robust Arms Trade Treaty. These include:

- **A standard system of end-use certification and verification for all states to ensure that military goods and services are shipped to the approved recipient and not diverted to illicit channels and to those who would breach arms embargoes.** Currently, many states fail to comply with internationally agreed best practice guidelines for end-use certificates.
Standard international end-use documents would strengthen arms embargoes and an ATT.

- **Effective control of the activities of arms brokers, and other parties involved in arms transfers, to ensure that they do not participate in illicit trafficking or diversion of weapons.** Illicit brokering is widely recognized as a significant factor in arms trafficking. The UN Programme of Action on small arms and other multilateral instruments call for improved international cooperation and national controls on arms brokers.

- **Adequate national legal and regulatory frameworks to provide the necessary controls across the full spectrum of weapons production and transfer.** Coherent and comprehensive export and import controls are essential, including controls on the transit of conventional weapons through interim states. It is important to sufficiently regulate domestic weapons production and stockpiling to prevent the diversion of weapons from government stocks. States also should have control of their borders to prevent illicit movements of weapons, especially in the regions adjacent to the target of an arms embargo. And to ensure compliance with these controls, there must be proper enforcement of all relevant laws and regulations, including the imposition of criminal penalties.

- **International cooperation and assistance to build the necessary capacity of states.** The widely acknowledged variation in state capacity to implement arms embargoes requires measures to assess and assist many states in key operative areas. States with the resources to do so could support capacity-building in, for example, law enforcement, surveillance, and customs and border controls.

- **Standardization and clarity in the descriptions of a broad scope of weapons subject to national regulation.** Although UN Security Council resolutions typically provide broad definitions of weapons subject to arms embargoes, recent re-
ports by embargo Monitoring Groups have been more detailed. The weapon citations of Monitoring Group reports cover a wide range of conventional weapons categories, especially small arms and light weapons subcategories, and extend beyond the seven major categories of the UN Register of Conventional Arms. From the standpoint of the protection of human populations, the scope of arms embargoes and the ATT should include the full range of goods and services that could be misused by security forces or non-state armed groups.

A strong Arms Trade Treaty would include provisions that would also assist state implementation of UN arms embargoes. Such ATT provisions should include:

- **A national risk assessment process.** Mandated by an ATT, with criteria representing the obligations of states under relevant international law, an effective system of risk assessment would require states to deny authorization of arms shipments if there is a substantial risk such authorization would breach international legal obligations and standards, including UN arms embargoes. Also, in the absence of relevant embargo criteria, a risk assessment process would help prevent shipments that pose a substantial risk of diversion – for example, in cases when arms shipments to some recipients are exempted from embargoes.

- **ATT provisions for reporting, information exchange and transparency.** These treaty requirements would assist UN arms embargo monitoring and verification of state compliance. At a minimum the ATT should require annual national reports. Such reports also would make significant contributions to the data available to groups monitoring embargoes. Additionally, information exchange related to the treaty, such as risks of diversion and broker activities, would benefit embargo implementation. And adequate treaty transparency provisions could represent important benchmarks for the public availability of conventional weapons data.
• **An ATT secretariat to support treaty implementation as well as other proposed treaty provisions for monitoring and verification.** These provisions would directly and indirectly support implementation of arms embargoes. Other implementation mechanisms include a proposed role for civil society in advancing treaty implementation. Civil society could monitor state compliance with treaty commitments and could also, in conjunction with efforts to monitor embargo implementation, provide credible evidence to identify illicit arms transfer activities.

• **Codification of existing state obligations under international law.** Beyond the explicit obligation of states to adhere to arms embargoes stipulated by the UN Security Council, ATT provisions should capture all relevant obligations under international law that relate to international arms transfers, including state obligations under human rights law and international humanitarian law. These include commitments to prevent arms transfers if there are substantial risks the weapons would contribute to illicit activities such as organized crime and corrupt practices. The codification of such commitments in an ATT would strengthen implementation of arms embargoes by reducing the influence of actors and actions that would undermine embargo goals.

Imminent Arms Trade Treaty negotiations would benefit from the recommendations of UN sanctions committees and other studies of arms embargo successes and failures. Similarly, embargo implementation would benefit from the negotiation of a robust ATT. If there is sufficient emphasis in the coming months on strong ATT provisions, UN member states have the opportunity to negotiate a robust treaty that would also strengthen arms embargo effectiveness. The Arms Trade Treaty and UN arms embargoes could each become robust and mutually supportive tools of conventional weapons control that would make significant contributions to international peace and security.
1 Introduction

During 2010 the United Nations will begin negotiations of an international Arms Trade Treaty (ATT). UN member states will meet for two weeks in July for the first Preparatory Committee (PrepCom) session to launch a multilateral negotiation process. Two further one-week PrepComs in February and July 2011 will lay the table for a month-long treaty conference in 2012. The PrepCom meetings represent the next stage in a UN process that formally began with the widely supported General Assembly resolution of December 2006, “Towards an Arms Trade Treaty.” Following submissions in 2007 to the UN Secretary-General by member states on the feasibility, scope, and parameters of an ATT; meetings of, and a report by, a Group of Governmental Experts in 2008; and the 2009 sessions of an Open-Ended Working Group the PrepCom meetings provide the opportunity for states to debate and formulate the details of treaty text.

The comparatively tight negotiation schedule up to and including the 2012 treaty conference suggests that states will need to make prudent use of the time available. States that call for a treaty sufficiently detailed and robust to prevent irresponsible arms transfers will need to be especially efficient. To ensure that the schedule results in such a treaty, supportive states will need to seek and take advantage of bilateral and multilateral opportunities outside of scheduled treaty negotiation sessions at the UN to build a collaborative case for meaningful treaty provisions. They will also need to draw on related UN agreements, documents, and processes for examples of relevant provisions and best practices. Of the wide range of instruments to be consulted and reviewed, the arms embargoes imposed by the UN Security Council should certainly be included.

Some would point out that the record of Security Council embargoes threatens the viability of an Arms Trade Treaty. In recent UN deliberations on the Arms Trade Treaty some states have questioned whether a future treaty will be respected while current Security Council arms embargoes, which are legally binding on all UN member states, continue to be violated. This paper will approach the links between arms embargoes and the ATT from a different standpoint. It will argue that attention to the lessons
learned from studies of arms embargo implementation and effectiveness would improve the likelihood that negotiations will produce a robust arms trade treaty with which states parties will comply. The paper will also seek to demonstrate that a well-constructed and -implemented treaty to govern the international transfer of conventional weapons would advance the implementation of arms embargoes as effective tools for the maintenance of international peace and security.

After outlining the nature and purposes of both UN arms embargoes and the ATT, the paper will argue that the acknowledged shortcomings of UN embargoes do not threaten ATT construction and implementation. Rather, upcoming negotiations on the ATT will provide an opportunity for states to benefit from recent analysis of the successes and failures of arms embargo implementation. In particular, recent reports on the effectiveness of UN arms embargoes provide important recommendations to strengthen national procedures and standards that would also advance the effectiveness of an Arms Trade Treaty.

The paper will also seek to show that, beyond the overlapping responsibilities of states to the requirements of embargoes and the ATT, there are additional elements of a robust Arms Trade Treaty that would serve to strengthen UN arms embargoes. A robust ATT should be based on existing responsibilities of states under international law and draw on states’ obligations under relevant multilateral instruments. The codification of these responsibilities in the ATT will be important in promoting parallel state responsibilities to implement arms embargoes. So, for example, strong transparency requirements in the treaty, designed to improve national arms transfer reporting standards, can improve reporting on embargo implementation. The negotiation of a strong ATT will create a global regulatory framework for conventional arms transfers that will extend and deepen compliance with Security Council embargoes.

In effect, this paper will argue that the proposed Arms Trade Treaty and UN arms embargoes may become mutually reinforcing and effective instruments of the international community. Although they serve different functions, both are, or will be, binding global instruments of conventional weapons control. As such, they rely on the legal, and often shared, obligations of states for effective implementation. The success of one instrument will contribute to the success of the other. Before detailing their mutual benefits, let us briefly discuss the nature of each instrument.
2 Global Instruments of Conventional Weapons Control

United Nations arms embargoes are imposed by the UN Security Council under the authority of Chapter VII in the UN Charter, and implementation of embargoes is mandatory for all UN member states. Most Security Council arms embargoes are intended to prevent transfers of conventional weapons to the target of the embargo. Some UN sanction regimes are imposed to prevent the transfer to target states of dual-use items (items with both a civilian and military use) that could be used in the production or delivery of weapons of mass destruction. This was the case, for example, with Security Council sanctions against Iraq during the 1990s. Other sanctions ban arms exports from a target state, such as those imposed by the Security Council against Iran in 2007.

In a recent report (Security Council Report, Inc. 2009, p. 9) the UN Security Council stated that arms embargoes tend to fall into three categories: those designed to force targeted states to comply with international nonproliferation treaties, those against a single party in a conflict, and those designed to prevent weapons transfers to all parties to a conflict. In this paper we will discuss the embargoes that fall into the second and third categories. These require all states to take the measures necessary to prevent the supply of conventional arms, related materiel of all types, and technical training and assistance to designated parties.

A recent study of arms embargo effectiveness (Brzoska 2009, p. 4) has succinctly summarized the objective of most UN arms embargoes as “targeted policy change.” The embargo is intended to influence the behaviour of the targeted state or entity by halting access to conventional weapons and related materiel and assistance until an illegal or destabilizing behaviour is changed. The actions or behaviour that prompt an arms embargo are typically those that are considered to pose substantial risk to international peace and security, such as gross violations of human rights, breaches of international humanitarian law, or significant threats to regional security. Embargoes are reactive tools. They are designed to change a state’s or entity’s behaviour after the fact, to pressure the target to end illegal or unacceptable
actions and to adopt accepted norms of behaviour. Thus arms embargoes are typically considered to be “blunt instruments” of the global community.

Monitoring groups and other observers regularly take note of the weapons transfers that are in breach of an arms embargo. All conventional weapons and related goods and services are generally understood to be governed by an embargo and the embargo is intended to prevent all transfers of such goods and services. However, how the weapons transferred in breach of an embargo are then used is typically not the central concern in this context. National decisions related to embargo implementation may require case-by-case consideration (including whether “dual-use” equipment would breach the embargo), but the embargoed end-user remains the main focus of the exercise.

The objective of the ATT negotiation process, according to the UN General Assembly resolution (UNGA 2010, p. 3) that established it, is “to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.” To better regulate arms transfers across national borders, an ATT should ensure that when a state authorizes the transfer of weapons it has taken full account of its responsibilities under the UN Charter, existing international laws, and emerging international norms. Authorization should be provided on a case-by-case basis with a thorough assessment of the end-use and end-user of the weapons, including an assessment of the risk that the transfer in question might be used in breach of international human rights or humanitarian law. The risk assessment that should be central to the authorization process requires knowledge of the capabilities and uses of the weapons being transferred.

It is important to dispel any misperception that an ATT could provide an internationally sanctioned mechanism for supplier states to cease all conventional weapons transfers to particular recipient states – essentially arms embargos under another name. It is, of course, the prerogative of any state to decide it will not sell weapons to certain states. Given the strategic military and political importance of arms transfers, states exercise this prerogative on a regular basis. Apart from possible commitments resulting from military alliances, there is no obligation in international law to compel supplier states to provide weapons to other states. An ATT will not alter this fact. At the same time, a treaty that requires a case-by-case assessment of each proposed transfer would rarely result in a ban on all arms transfers.
to a particular state. In the limited instances when there were substantial risks associated with the proposed transfer of *every* conventional weapon to a state, such as when the situation posed a significant risk to international peace and security, it is likely the situation would come under the consideration of the UN Security Council and an arms embargo would be imposed.

The decision by a supplier state to deny authorization of requested transfers to a particular recipient would not preclude authorization by the same supplier of transfers of different military goods or services to the same recipient. The case-by-case nature of transfer assessments under an ATT means that the risks associated with some military transfers will be quite different from the risks associated with others. Consequently, it is unlikely that an ATT would result in the cessation of all conventional weapons transfers to a state that is not already the subject of a UN arms embargo.

A properly constructed Arms Trade Treaty would be an effective instrument of conventional arms control that would commit all states parties to use common standards to assess their arms transfer decisions. These standards would need to be integrated into national legislation and regulations governing the transfer of conventional arms and related goods and services. In principle, states’ commitment to implementation of an ATT would do much to prevent the exceptional abuses that give rise to arms embargoes. In this manner, an ATT would be a tool of prevention. Although risk assessments would be based in part on past behaviour, the assessments would be anticipatory, aimed at preventing illegal and egregious acts with weapons before they occurred.

UN arms embargoes and an ATT have distinct purposes. A UN arms embargo imposes a legally binding obligation on all states to cease conventional weapons transfers to the target of the embargo. The ATT should oblige states to prevent particular weapons transfers when there is a substantial risk they will contribute to serious breaches of international law or agreed norms governing the transfer of arms. At the same time, there are a number of commonalities that will arise in states’ implementation of both arms embargoes and the ATT. The effectiveness of both would be improved by paying attention to these commonalities.
3 Building Mutual Effectiveness

Arms embargoes and the ATT may differ in function but they share important goals, features, and obligations. Broadly, the goal of both instruments is to improve international stability and human security by setting a framework for the responsible transfer of conventional weapons. As noted in a recent Stockholm International Peace Research Institute (SIPRI) / Uppsala Universitet publication, “arms embargoes have frequently been employed by the United Nations Security Council to carry out its primary responsibility under the UN Charter – to maintain international peace and security” (Fruchart et al. 2007, p. v). Embargoes are often included within a larger program of international sanctions designed to reduce international, regional, or national threats to security. Although the motivation for Security Council action may be wider international security issues, the resolutions that mandate embargoes and other sanctions routinely cite concerns about violations of human rights, international humanitarian law, and other breaches of international law.

With a similar aim to enhance global security, the Arms Trade Treaty should require states parties to assess the risk that their authorization of arms transfers would breach global legal obligations or standards. Civil society organizations advocating a strong ATT have set out “Global Principles for International Arms Transfers” (ATTSC 2009) that reflect the principles of international conventions and agreements; states’ existing international obligations; and global norms governing international transfers of conventional weapons, ammunition, and related goods and services. In discussions to date at the UN many states have proposed similar parameters.

Under such obligations states should not authorize transfers of conventional weapons where there is a substantial risk that they will be used in serious violations of international human rights law or international humanitarian law; to commit acts of genocide or crimes against humanity; to facilitate terrorist acts, a pattern of gender-based violence, or violent crime; or for the commission of organized crime. Additionally, these core principles require adherence to global norms such as those related to advancing regional stability, poverty reduction, and the elimination of corrupt
practices. Most directly related to arms embargoes, the proposed global principles for an Arms Trade Treaty expressly prohibit the authorization of international transfers of arms when the transfers would violate obligations of states under the UN Charter, including binding resolutions of the UN Security Council such as the resolutions imposing arms embargoes.

The creation of an ATT has entered a new phase at the United Nations, with a set schedule for preparatory committee meetings as well as a negotiation conference in 2012. This period of discussions and negotiations on the content of a treaty provides an opportunity to reflect on and incorporate the lessons of several decades of embargo experience. In particular, treaty negotiations could draw on the recommendations for improving embargo effectiveness found in recent sanction committee and other expert reports. Similarly, embargo effectiveness would be enhanced if the treaty that emerges from state negotiations is robust and comprehensive, and codifies the state responsibilities that would also enhance the implementation of arms embargoes.
4
The Lessons of Arms Embargoes

United Nations arms embargoes have operated for more than four decades, and with increasing frequency since the end of the Cold War. They have spawned a growing body of related research and analysis, including regular reports by UN sanctions committees. These materials have provided important insights into the purpose, implementation, and effectiveness of embargoes and may also assist in the construction of a robust arms trade treaty.

Several studies have pointed to improvement and harmonization of national export control standards as fundamental to improving the effectiveness of embargoes. The SIPRI / Uppsala Universitet report (Fruchart et al. 2007) argues that effective arms embargoes arise from the capacity and political will of UN member states – both of which are reflected in the national standards and procedures that each state applies to the transfer of conventional weapons. It is not a major leap to note that many of the improvements to state export controls and practices recommended by recent studies of UN arms embargoes would also strengthen national implementation of an Arms Trade Treaty. A survey of the studies suggests that areas in which state improvements would be of mutual benefit include, inter alia, end-use certification and verification, effective control of brokers, adequate national legal and regulatory frameworks, international cooperation and assistance to build state capacity, and clarity in the scope of conventional weapons under consideration.

End-use Certification and Verification

UN sanctions panels have recommended clear and consistent end-use certification and verification by countries that conduct trade in military goods and services. In its third report the Panel of Experts on the Sudan (UNSC 2006, para 91) clearly defined the content and purpose of an end-use certificate, as well as the reason for verification checks:

The supplying State would request the Government of the Sudan to provide an end-use certificate, which would state the destination of the respective military goods and services. The Panel notes the poten-
tial risk that military goods and services exported to the Sudan may be diverted to the embargoed states of Darfur. By insisting on end-use certification, the Sudan’s trading partners could play a more active role in ensuring that military goods which originate from their ports are not diverted to Darfur. End-use certification could be more effective if those countries follow up with their own verification checks to trace goods that are at risk of being diverted into Darfur.

End-use certification is particularly pertinent in cases such as the current arms embargo on Sudan, in which sanctions have been imposed on a region within a state, not on the entire state. The risk of diversion in such instances is very real. It is clearly incumbent on supplier states in these circumstances to ensure that military goods shipped to the non-embargoed part of the state do not reach targeted groups in the embargoed region. The supplier can only be confident of the process if an effective system is in place to verify that the end destination of the goods is indeed the non-embargoed recipient. A parallel situation exists when suppliers export military goods and services to states that neighbour an embargoed state. Here, too, it should be the duty of supplier states to require authentic and verifiable end-use documentation to help ensure that arms are not diverted to an embargoed destination.

A 2010 SIPRI study (Bromley & Griffiths 2010) of current practice in the issuing and verification of end-use certificates (EUCs) notes that many states fail to comply with internationally agreed best practice guidelines for issuing EUCs. Governments issue end-use certificates that are easily forged or contain insufficient information to make an informed assessment of an export licence application. The study recommends higher standards in the use and processing of EUCs by national authorities as a significant contribution to preventing weapons diversion. It cites the call in the 2008 small arms report of the UN Secretary-General (UNSC 2008a, p. 19) for states to “develop an international framework for authentication, reconciliation and standardization of end-user certificates.”

Arms control analyst Björn Hagelin (2005) argues that all UN arms embargoes would be more effectively implemented if UN member states routinely used standard international end-use documents. Although, in principle, end-use certification would not apply to states or entities under
an arms embargo (since all arms transfers that would otherwise require end-use certification would be embargoed), as noted above, there are circumstances in which end-use documentation is crucial to preventing diversion to targets of an embargo. Moreover, as Hagelin (p. 76) points out, “arms embargoes are not always complete in their coverage.” Under the less-than-precise circumstances of embargo implementation, an internationally agreed end-use certification process would help to strengthen state control of arms transfers and reduce the risks of diversion in contravention of the embargo. Hagelin emphasizes that international end-use documentation cannot be effective in isolation, but is highly dependent on accompanying measures that must also be implemented as part of the embargo regime. These measures include “real-time interaction” between the UN Security Council, national export control authorities, and others that would involve, inter alia, monitoring of the target and neighbouring states. An international end-use document would need to identify the purpose of the UN embargo; the embargoed categories of goods, installations, and skills; and, significantly, the “not embargoed but related categories” that may be legally transferred but also may be critical to armament activities of the target.

The central features of the international end-use document proposed by Hagelin could also apply to end-use certification mandated by the ATT. An ATT that set out the standard information required for end-use certification would significantly improve regulation of the international arms trade. This information should include a description of the items that are the subject of export authorization, including quantities and values; the end-use(s) of the items; the location(s) where the items will be used; along with a written commitment that the items will not be used for purposes or by end-users other than those declared. Such information would assist supplier states in verifying the final destination of controlled goods and reducing the risks of diversion.

Comprehensive and standard end-use certification, mandated by an ATT, could effectively prevent diversion related to both the treaty and arms embargoes. Moreover, greater emphasis by states on the authentication of end-use information in advance of transfer authorization would likely reduce the need for the more challenging exercise of verifying the end-user or end-use following the transfer. Additionally, the information required to complete end-use documentation would provide opportunities for increased transparency in the arms trade.
Effective Control of Brokers
The controversial role of arms brokers in breaching arms embargoes has been the subject of many studies, reports (Peleman 2000), and even popular cinema (*Lord of War*, 2005). Arms brokers are agents who mediate the transfer of weapons between suppliers and recipients. They do not necessarily acquire or possess the weapons themselves and their place of operation may be distant from the route of a transfer. Unscrupulous brokers have successfully circumvented arms embargoes by taking advantage of the wide variation in transfer control standards among UN member states.

The impact of the inadequately regulated activities of weapons brokers goes beyond arms embargoes. Brokering is recognized as a significant factor in the illicit trafficking of small arms and light weapons; several multilateral small arms agreements give explicit attention to the role of brokers. The 2001 *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)* calls on states to “develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State’s jurisdiction and control” (Para II:14).

In subsequent activity related to the PoA, the UN General Assembly appointed a Group of Experts to study illicit brokering in small arms and light weapons. The 2007 report of the Experts Group recommended state action in five areas: national implementation of legislation and administrative procedures, international cooperation on sharing of information, international assistance in capacity-building, promoting effective reporting, and enhancing international cooperation in preventing illicit small arms brokering in violation of UN arms embargoes.

The destabilizing influence of brokering on the effectiveness of arms embargoes is of particular concern to the international community. The SIPRI / Uppsala Universitet report (Fruchart et al. 2007, p. 56) also calls on states to “improve international harmonization of efforts to limit arms brokers’ violations of UN arms embargoes.” The report notes that, even in cases in which brokers have been known to violate embargoes, brokers have
escaped prosecution because of inadequate national legislation or a lack of cooperation among UN member states. The Bonn-Berlin Process, which examined improvements to targeted UN sanctions, made recommendations in a 2001 report that included a call for national “administrative measures for the registration, licensing and monitoring of arms brokers” (Watson Institute [a] n.d.) There is emerging multilateral consensus that improved national regulations and standards on arms brokering would advance the effectiveness of arms embargoes, even if, as the 2007 UN Report of the Group of Governmental Experts on illicit brokering in small arms and light weapons noted, only approximately 40 states have “enacted national regulations to control arms brokering transactions” (UNODA 2007).

The arguments favouring brokering controls to strengthen arms embargoes and prevent illicit small arms transfers apply equally to the development of an effective Arms Trade Treaty. Illicit or irresponsible brokers operate in jurisdictions where brokering laws and regulations are weakest. Without adequate national controls on arms brokers, ATT standards could also be subject to the destabilizing effects of illicit brokering. Therefore an ATT should include provisions for an effective national system for regulating arms brokers, which requires registration of arms brokers, licensing or authorization of each proposed brokering activity, and disclosure of the names and locations of the brokers involved in transfers. The ATT would standardize the national regulation of arms brokers. Additionally, a robust ATT could provide the legal framework for state cooperation to fully regulate the international operations of arms brokers that operate in or through several states.

Adequate National Legal and Regulatory Frameworks
In addition to better end-use certification and broker controls, studies of arms embargoes have identified national laws, regulations, and procedures that could be improved to strengthen embargo implementation. Without adequate national authorization and control of movements of conventional weapons across borders, UN member states are not able to fully comply with the requirements of a Security Council arms embargo. There are several components to such controls and each must be operative and meet inter-
national standards if a state is to fulfill embargo obligations. These components include:

- **Coherent and adequate export and import controls, i.e., the necessary laws and regulations to fully govern the export, import, and transshipment of conventional weapons from and to the territory of the state.** These controls should extend to the monitoring and verification of the movement of weapons to the end-user. In 2003 the Stockholm Process on targeted sanctions made recommendations on arms embargo implementation, including national measures to “ensure existing legislation is adequate to implement the full range of measures (e.g. export, follow-up export, re-export, licensing and transit restrictions) that may be imposed by a Security Council resolution” (Wallensteen, Staibano & Eriksson 2003, p. 70). Similarly, a 2008 report by Amnesty International noted 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” (p. 101).

To ensure weapon transfers are not diverted from authorized destinations to states or other entities subject to embargo, national officials must have the capacity to monitor arms transfers and verify their final destination and user. Monitoring and verification procedures require national resources sufficient to undertake sustained and consistent data collection and storage, surveillance, inspections, and investigations of alleged violations. Many states lack capacity in some or all of these areas.

- **Adequate control of domestic weapons production and stockpiling to prevent diversion into illicit channels.** Breaches of UN embargoes result from leakages of weapons stocks under the control of government forces. These include situations in which national security forces are exempt from an arms embargo directed at other actors in a state or territory and inadequate
stockpile controls by these forces have facilitated the illicit transfer of weapons to embargoed groups. For example, the Monitoring Group reporting on the UN arms embargo in the Democratic Republic of Congo noted in November 2009 (UNSC 2009, p. 90):

FARDC [Forces Armées de la République Démocratique du Congo – the DRC national army] stockpile management lacks mechanisms for systematic marking of weapons and reliable records to monitor distribution of military equipment across the country. The Group recommends that the Security Council request the Government of the Democratic Republic of the Congo to promote stockpile security, accountability, and management of arms and ammunition as an urgent priority.

• **Control of borders with sufficient monitoring and enforcement to prevent illicit trafficking.** This is especially needed for states neighbouring the subjects of arms embargoes. The inability of some states to adequately control their borders has been an ongoing challenge for embargo implementation. As the 2007 SIPRI / Uppsala Universitetet report (p. 54) stated:

  This report shows that porous borders are an important way in which UN arms embargoes can be circumvented. Thus, there is an international interest in improving state capacity to control land borders and other access points (sea- and air-ports). It is therefore necessary to assess the capacity of states neighbouring embargoed targets before a UN arms embargo is imposed.

• **Proper enforcement of relevant laws and regulations, including criminal penalties for embargo violations.** Each UN member state must not only enact legislation, administrative procedures, and technical measures to ensure compliance with arms embargoes, but must also be in a position to enforce these laws and regulations by prosecuting violators. W. Andy Knight (2004, p. 50) has noted that prosecution should extend to all nationals regardless of their location:
Governments should ... prosecute violators who supply or aid in supplying embargoed weapons to targeted states and non-state actors. Such legislation should also give governments the ability to prosecute their nationals who violate embargoes even if the offenders have committed the deed on foreign soil.

A recent study (Brzoska & Lopez 2009, p. 249) noted: “The threat of the law, even where it exists in authoritative print, becomes empty if there is no enforcement of proper licensing procedures for arms sales, no consistent checks of end-user certificates, loose border controls, unguarded international airports and so on.”

As with arms embargoes, the robustness of an Arms Trade Treaty will also depend on the extent to which it sets out clear standards that must be incorporated into national legal and regulatory frameworks for the control of weapons movements. An ATT should require states parties to bring national regulatory systems up to common high standards. In addition to the end-use certification and brokering requirements already noted, these common standards should include, inter alia, effective national licensing or authorization systems using a case-by-case assessment process based on states’ obligations under international laws; laws and regulations to enable the investigation, prosecution, and punishment of violations; comprehensive information from licence applicants; and marking of conventional arms to permit identification and tracing. The text of the ATT should fully detail the requirements of national regulatory systems to ensure the effective control of all conventional arms transfers.

**International Cooperation and Assistance to Build State Capacity**

In recognition of the significant variation in the capacity of states to meet all the necessary responsibilities for implementing UN embargoes, several panels and studies have called for international assistance to be provided to those states that lack capacity or resources. The Stockholm Process on targeted UN sanctions (Watson Institute [b] n.d.) noted that, because implementation may be a strain on the capacity of many states, measures may be needed to train staff and develop required institutions, especially in the
areas that are critical for implementation. The SIPRI / Uppsala Universitet report (Fruchart et al. 2007, p. 54) calls on the UN Security Council to “assess and strengthen the capacity of UN member states to implement arms embargoes” and proposes international assessments of the “air surveillance, border, customs, law enforcement and transfer control services” of the states that neighbour embargoed targets. Where these states lack capacity the study recommends “monitoring teams” with the task of “supporting and offering best practice training to national state agencies.”

Incorporating mechanisms for international cooperation and assistance to advance implementation is now a standard feature of multilateral instruments on conventional arms. The UN PoA, for example, includes “Implementation, international cooperation and assistance” as one of the four main segments of the agreement. Multilateral and state-to-state cooperation and assistance can provide the means for states to jointly address a common responsibility, as well as to explore complementary and harmonized approaches to implementation.

Just as international assistance is key to improving arms embargo implementation and effectiveness, such provisions within an ATT would help ensure broad compliance with the treaty. At a minimum, the ATT should include provisions to ensure the cooperation of states parties regarding treaty implementation, as well as provisions to facilitate requests by states parties to receive assistance to implement their treaty obligations from the UN, regional organizations, or other states parties.

Clarity and Breadth of the Scope of an Embargo
Typically the arms that are the objects of an embargo are broadly defined by the UN Security Council. The resolutions refer to “arms and related materiel,” without precisely defining the specific categories of the weapons concerned. For example, UNSC Resolution 1343 concerning Liberia (2001) decided

That all States shall take the necessary measures to prevent the sale or supply to Liberia, 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.

The resolution also calls on states to prevent “any provision to Liberia ... of technical training or assistance related to the provision, manufacture, maintenance or use of the items [above].” In contrast, UNSC resolution 1572 (2004) was terser, referring to “arms or any related materiel, in particular military aircraft and equipment ... as well as the provision of any assistance, advice or training related to military activities.”

As with the implementation of the embargo, it is the responsibility of UN member states to determine which equipment should be included in “arms and related materiel.” This lack of precision has been noted by embargo studies, which have called for greater detail and more standardization of the military goods within the scope of the embargo. The Stockholm Process, for example, recommends the establishment of a national list of controlled goods prohibited by the embargo, as well as the establishment of “catch-all” clauses. These clauses are intended to prevent the transfer of goods not covered by the list of controlled goods in cases when the goods may contribute to such embargo infractions as weapons production in an embargoed state.

Although UN Security Council resolutions have not precisely defined what states must not provide to an embargoed state or entity, recent reports by Security Council-appointed groups monitoring arms embargoes have been more detailed, citing classes and models of military materiel and other goods. Appendix 1 illustrates this trend. It compiles the citations of the equipment contained in three recent Monitoring Group reports on the arms embargoes in the Democratic Republic of Congo, Somalia, and Sudan. It serves to illustrate the type and range of equipment that is of concern to the Monitoring Groups and, by implication, is relevant to effective implementation of arms embargoes.

Most of the equipment cited by the reports falls into the category of small arms and light weapons (SALW). Appendix 1 reports these citations under the 16 SALW subcategories proposed by the 1997 Report of the Panel of Governmental Experts on Small Arms. The Monitoring Group reports cited equipment in all but one subcategory (“mobile-containers with missiles or shells for single-action anti-aircraft and anti-tank systems”). Cited equipment in the small arms category ranges from pistols to light machine guns with, not unexpectedly, the AK-47 assault rifle identified most fre-
sequently. The light weapons cited include recoilless guns, rocket launchers, and rocket-propelled grenade launchers. Importantly, the committee reports made regular references to ammunition used in the full range of SALW equipment.

Although small arms and light weapons emerge as the major focus of attention for the Security Council committees monitoring these particular arms embargoes, other classes of military goods were cited, including examples from five of the seven categories of the UN Register of Conventional Arms (combat aircraft, attack helicopters, armoured combat vehicles, battle tanks, and large-calibre artillery systems). In addition, there were several citations of military equipment that fell outside the categories of small arms and light weapons and the major systems of the UN Register, including military utility aircraft, utility vehicles, and “armed ocean-going vessels.”

The Monitoring Groups also expressed concern about additional categories of international transfers that contributed to embargo violations – in particular, dual-use goods and training programs and equipment. Dual-use goods are commercial goods such as cargo aircraft or pickup trucks that, although not designed for military use, may fulfill a significant military purpose. In Somalia, the monitoring committee noted in its report (UNSC 2008b, para 182),

A large proportion of external assistance to the Transitional Federal Government security sector is intended for civilian purposes, primarily policing. For this reason, many Governments and agencies believe that the arms embargo does not apply to their contributions, and therefore fail to notify the sanctions Committee. In reality, the resources donated for such purposes are often put to military or para-military use.

The Somalia Monitoring Group reported the provision of training programs and concomitant training equipment as a significant problem for embargo implementation. It noted (UNSC 2008b, para 168), for example,

The Monitoring Group is unaware of any notification provided to the sanctions Committee or of any exemption granted in respect of training, the provision of weapons or the delivery of the individual
weapons provided to the trainees. These are very strong grounds for believing that a violation of the arms embargo has taken place.

The Monitoring Group reports cited goods and services in several categories, in addition to the seven classes of the UN Register of Conventional Arms, plus the category of small arms and light weapons. These citations suggest that UN member states need to extend embargo controls beyond these eight categories of military-specific goods. National mechanisms are required to ensure that ammunition, other classes of military goods not covered by the seven UN register classes, dual-use equipment that may be put to military or paramilitary end-use, and security training programs and equipment also should be controlled under embargo commitments.

An Arms Trade Treaty will need to define the scope of weapons to which the treaty will apply. Discussions to date have referenced lists of controlled goods. In submissions to the UN Secretary-General and in statements to sessions of the 2009 Open-Ended Working Group, many states have proposed a control list system to define treaty scope, including the minimal “7+1” system based on the seven major weapons categories of the UN Register of Conventional Arms plus the additional category of small arms and light weapons. Refinements of this system have also been proposed, including the “7+1+1” system that would see ammunition added to the 7+1 group of weapons categories. Other states, and especially civil society organizations, have argued that a larger list of conventional weapons categories, based on existing national control lists, would more adequately reflect the breadth of weapons classes subject to existing export controls (Farha & Isbister 2009). From the standpoint of protecting human populations and ensuring that weapons do not contribute to international human rights violations, war crimes, acts of genocide, or other breaches of international law and accepted norms, the scope of an Arms Trade Treaty should be as broad as possible and include all goods and services that could be misused by security forces or non-state entities. This would include the full range of conventional weapons and ammunition, equipment for military end-use, and training programs and related equipment.
A Robust Arms Trade Treaty – Strengthening Embargo Effectiveness

A robust Arms Trade Treaty should contain clear obligations on states parties to enhance responsibility in the global arms trade. These obligations would symbiotically advance the effectiveness of UN arms embargoes. To meet the obligations of a strong ATT, many states parties will need to develop and enhance relevant national laws, regulations, and procedures for the approval (or denial) of arms transfers that would also strengthen embargo implementation. Treaty provisions should include risk assessment criteria based on the responsibilities of states under international law, as well as reporting and transparency procedures and other mechanisms for effective treaty implementation. Other treaty provisions also will be relevant to embargo implementation, including international obligations to prevent arms transfers that feed organized crime or corruption.

Risk Assessment Criteria in International Law

The 2007 SIPRI / Uppsala Universitet report (Fruchart et al. 2007, p. 51) recommended that the UN improve arms embargo effectiveness by establishing the arms transfer guidelines proposed for the ATT:

With regard to improving the effectiveness of UN arms embargoes to limit arms flows to embargoed targets, the UN should support global efforts to improve arms export, transit and transshipment controls. These would include the establishment of a set of legally binding and globally applicable guidelines for arms transfers in the proposed arms trade treaty....

As noted above, civil society organizations advocating a strong ATT have set out “Global Principles for International Arms Transfers.” These principles stem from commitments made by states under the UN Charter, UN and other multilateral conventions, and international agreements and instru-
Adoption of these commitments as parameters for the ATT will advance an emerging global framework for the control of the conventional weapons trade, within which UN arms embargoes serve an important function. The global principles draw on a large body of international treaties and other instruments related to state authorization (or denial) of transfers of weapons, as detailed in Appendix 2.

It is worth repeating that the proposed Global Principles cite state obligations under the United Nations Charter, including “binding resolutions of the Security Council, such as those imposing arms embargoes.” The principles cite UN arms embargoes as one instance of “express limitations” under international law that spell out the commitments made by states in which they may not authorize international transfers of arms or ammunition (ATTSC 2006, p. 3). In this manner the principles explicitly support state adherence to UN arms embargoes.

Additionally, the proposed global principles (ATTSC 2009) call for:

States with jurisdiction over any part of an international transfer of conventional arms or ammunition should ensure, on a case-by-case basis, prior to the authorization of any transfer, that it is in accordance with national laws and procedures that conform with States’ obligations under international law.

In other words, each conventional weapons transfer requires a national assessment, according to established criteria, of the risks that a transfer would result in one or more breaches of a state’s obligations under international laws and standards. If the risks are substantial then authorization should not be granted. When each state party to the ATT commits to implementing arms transfer risk assessments based on criteria drawn from international legal obligations, then the opportunities for weapons diversion or misuse will be much reduced.

Such a risk assessment process would assist states in strengthening UN arms embargo implementation, especially when there are substantial risks that weapons will be diverted in breach of the embargo. Arms embargoes often are implemented in complex conflict and political environments in which diversion risks are high. At the same time, as “blunt instruments” arms embargoes may lack the criteria to adequately assess these risks,
resulting in possible breaches of the embargo and other obligations under international law. To cite one example, in a recent report Amnesty International (2010, p. 12) expresses well-founded concern that arms supplies and assistance to the Transitional Federal Government (TFG) of Somalia — approved as exemptions to the UN embargo of Somalia — were shipped without adequate scrutiny and safeguards. The UN Monitoring Group overseeing implementation of the Somalia embargo is quoted as stating that “as much as 80 per cent of the international investment in the Transitional Federal Government security forces has been diverted to purposes other than those for which it was intended.” The recipients of the weapons diverted from the TFG include Somali armed groups and others that are subject to the Somali arms embargo and are accused of serious violations of human rights.

The UN Sanctions Committee that is mandated with granting exemptions under the Somalia arms embargo receives exemption requests for arms and training transfers to the TFG, accompanied by some documentation such as proposed transport routes. In effect, the Sanctions Committee is tasked with approving weapons shipments within the context of an arms embargo. However, the Sanctions Committee lacks the mandate and machinery to assess the risks of diversion of the weapons transferred or associated risks of breaches of international law, such as international human rights law. It merely determines whether the user — the TFG — falls within the embargo exemption.

Universalization of risk assessment criteria via the Arms Trade Treaty would reduce the risks of diversion in cases like the Somalia example. National “case-by-case” assessments of the risks of weapons shipments would be standard under treaty provisions, designed to prevent the shipment of weapons when there is a substantial risk that they would be diverted or used to violate international laws, including breaches of embargoes. States thus should not need to look to Sanctions Committees for rulings or guidance on diversion or other risks related to “exempted” arms transfers. In this manner, the effectiveness of UN arms embargoes would be enhanced by a national assessment process undertaken by UN member states to ensure that all weapons shipments are reviewed and risks assessed before shipments are approved.
**Reporting, Information Exchange, and Transparency**

To function effectively, the Arms Trade treaty should require states to routinely report on their conventional weapons transfers and treaty implementation progress and exchange information with other states on issues of treaty relevance. These activities should be performed transparently, by placing reports and information in the public domain. Without reporting and information exchange, it will be virtually impossible for states to ensure treaty compliance. Without transparency, it will not be possible to build public confidence in implementation of the ATT. The reporting, information exchange, and transparency requirements of the ATT will strengthen implementation of UN arms embargoes by providing more detailed and public information on states’ arms transfer activities.

Civil society organizations such as Saferworld (Kirkham 2008, pp. 5-13) have argued the merits of the reporting, information exchange, and transparency features of an Arms Trade Treaty. These merits extend to bolstering the operations and effectiveness of UN arms embargoes in at least the following ways:

- **The details of how and when states will report must be well defined in the ATT.** To ensure compliance with all commitments under the ATT, at a minimum the reporting standard should include annual national reports on all international arms transfers. The annual report should be derived from national systems that accurately record and document all international arms transfers that take place under each state’s jurisdiction, as well as all relevant licences and authorizations. The resulting improved level of detail on the global exchange of conventional weapons would contribute substantially to the data available to UN committees monitoring the implementation of UN arms embargoes.

- **Information exchange among treaty states parties would help states to meet their treaty obligations as well as build confidence in the effectiveness of the ATT.** There are several areas in which the exchange of information by states would benefit treaty implementation, such as details on denials of licences to transfer weapons (international arms transfer denials).
Recommended areas of information exchange most beneficial to arms embargo implementation include:

- **Details on the risks of diversion of arms during or following international transfers.** Determining diversion risks will be part of the case-by-case risk assessment of arms transfers required by the Arms Trade Treaty. The interstate exchange of data on diversion risks could take place through a Treaty body such as a Secretariat, which in addition to providing relevant information to Treaty states parties could also make the information available to UN member states to support compliance with arms embargoes.

- **Information on particular actors in the transfer of conventional weapons.** At any point along the weapons supply chain there may be actors whose intentions or activities are sufficiently obscured that ATT states parties have difficulty in assessing the risks of their involvement in a given arms transfer. These may be suppliers, brokers, shipping agents, transit or transshipment states, consignees, or end-users. The accuracy of states’ assessments of the risks associated with particular arms transfers would be advanced by an exchange of information among states on certain actors. Such exchanges currently occur among European Union member states under the EU Code of Conduct on Arms Exports. And information exchange on proliferation risks is standard practice in nonproliferation regimes such as the Australia Group and the Nuclear Suppliers Group. If the exchange under the ATT included information on activities or parties that have been implicated in breaches of UN arms embargoes, then the exchange process would advance implementation of both the ATT and arms embargoes.

- **Reporting and information-exchange mechanisms are necessary for the Arms Trade Treaty, but they are insufficient to provide parliamentary and public confidence**
that states are meeting their treaty obligations. Transparency provisions that call for routine and detailed data that is accessible to the public are also essential. Saferworld (Kirkham 2008, p. 13) has argued that “a fundamental principle underpinning the development and implementation of an ATT should be that as much information as possible is released into the public domain.” Transparency provisions should be a legally binding component of the treaty and the required data should exceed the extent of the information currently provided voluntarily by states to the UN Register of Conventional Arms. The public release of states’ annual reports on their arms transfers described above would represent an important benchmark in conventional weapons transparency. The public nature of such data would assist parliamentary and civil society groups to monitor and verify state compliance with UN arms embargoes.

The reports of UN embargo Monitoring Groups offer examples of the level of detail that would enhance transparency in arms transfer transactions. In the Democratic Republic of Congo, where the arms embargo applies to some armed groups and not others (such as government forces), the Monitoring Groups have recommended that UN member states should report detailed information to Sanctions Committees before seeking approval for the supply of equipment or training. In the case of the DRC (UNSC 2009, p. 90) this means:

accurate records on the equipment transported on behalf of FARDC ... should contain all the relevant information related to the equipment transported, such as quantity and type of transported items, identification serial numbers and markings of the equipment transported, including those appearing on the packages, the date and exact routing of the transport and identification of the FARDC unit receiving the transported equipment.
ATT Secretariat and Other Treaty Implementation Mechanisms

Although implementation of the commitments of the Arms Trade Treaty will occur at the national level, it is apparent that an institutional infrastructure of some kind will be needed to oversee the monitoring, verification, and compliance details of the treaty. The experience of other international treaties suggests that a technical secretariat would be appropriate for an ATT. The secretariat would be responsible for coordinating fundamental requirements of the Treaty, including the reporting, information-exchange, and transparency aspects noted above. It could also act as a resource or support to other treaty implementation mechanisms. Because it would be responsible for compiling the basic data of treaty implementation, including data on international arms transfers, the secretariat would be an obvious resource for assessing state implementation of arms embargoes.

Commentators on embargo effectiveness have called for a similar dedicated body within the UN to oversee the implementation of arms embargoes. As W. Andy Knight (2004, p. 50) has stated:

If the international community is truly serious about making arms embargoes effective, the time has come for the UN to establish a comprehensive mechanism dedicated to monitoring, implementing and enforcing these sanctions. This body would have a norm-building function in that it would help to develop norms for controlling the sale of weapons and related materiel to countries. It would also be responsible for drafting codes of conduct on arms transfers, the establishment of transparency mechanisms, and the methods used by states and international organizations in enforcing embargoes.... Sanctions committees and expert panels would operate under this new UN Unit.

The ATT Secretariat could be mandated to liaise with embargo monitoring committees to provide a more formal and ongoing relationship to support or fulfill many of the requirements for a dedicated unit identified by Knight. Other ATT implementation mechanisms could contribute more directly to the effectiveness of UN arms embargoes. The ATT will require provisions for monitoring and verification mechanisms to ensure treaty compliance, including state-to-state consultations, meetings of states parties, and even
in-country verification procedures (Kirkham 2008, pp.20-24). Since state obligations under the UN Charter and adherence to UN arms embargoes, in particular, are fundamental to treaty compliance, the mechanisms states invoke to ensure treaty compliance may be used to invoke compliance with UN arms embargoes. In effect, if rigorous monitoring and verification procedures are established by the ATT, they will become de facto procedures for monitoring and verifying state compliance with arms embargoes.

In addition, civil society groups will play an important role in the implementation of the Arms Trade Treaty. Apart from encouraging states to meet treaty commitments (as it has done with respect to other international agreements such as the UN Programme of Action on Small Arms), civil society can act as an independent monitor of key aspects of treaty compliance and provide credible evidence to UN and state authorities to distinguish illicit from licit arms transfer activities. Civil society organizations currently play this role with respect to UN arms embargoes and they could fulfill a similar function when the ATT is established.

Preventing Illicit Activity

As noted earlier, the parameters of an Arms Trade Treaty must be firmly based on the obligations of states under international laws and norms, especially obligations under international human rights law and international humanitarian law. These obligations extend to commitments made by states to prevent illicit activities that may contribute to breaches of UN arms embargoes, such as the activities arising from organized crime or corrupt practices.

Criminal networks stand accused of shipping weapons in contravention of UN arms embargoes. Thus the ATT should require a case-by-case assessment of the risk that proposed weapon transfers may reach recipients involved in organized crime. The treaty’s risk assessment process would work to prevent weapons shipments from benefitting criminal elements and would reduce the opportunities for organized crime to divert weapons to targets of arms embargoes. Conversely, if recommendations (Fruchart et al. 2007, p. 55) to criminalize arms embargo violations in national legislation are taken up by states, those found guilty of such violations could be identified as criminal actors. Information shared among states about these parties would enhance the risk assessment analysis related to meeting the
obligations of the ATT. Keeping conventional weapons out of the hands of criminals would be a shared goal of the Arms Trade Treaty and UN arms embargoes.

Under a robust ATT, states also would be obligated to assess the risks of weapons transfers contributing to or involving corrupt practices. There is widespread concern about the extent of corrupt practices with regard to global arms production and transfers. The nongovernmental organization Transparency International has declared the defence sector “one the most corruption-prone of all areas of public life.” An ATT requirement for states to attend to the risks of corrupt practices is thus particularly pertinent. Although corruption comes in many forms and does not necessarily result in other violations of international law, such as breaches of UN arms embargoes, it is apparent that a rigorous assessment of the risk of weapons shipments contributing to corrupt practices is likely to reduce the risks of diversion and breaches of embargoes.
6 Conclusion

This paper has argued that imminent multilateral negotiations of a global Arms Trade Treaty present an opportunity for the international community to create a Treaty that will also advance the effectiveness of UN arms embargoes. The process of developing robust ATT provisions would benefit from lessons learned from embargo implementation; such lessons are found in the recommendations of UN sanctions committees and other studies of embargo successes and failures. As well, embargo implementation could be heightened by an effective ATT.

Although the Arms Trade Treaty and UN arms embargoes serve different arms control purposes, they should be mutually supportive and designed to operate in tandem. If ATT negotiations draw on the analysis of UN arms embargo effectiveness, the treaty could be constructed so that it bolsters effective state implementation of the treaty and arms embargoes. Treaty provisions to mandate national legislation on arms brokers, for example, would be important to strengthen a responsible arms trade and increase the effectiveness of arms embargoes. Similarly, some central features of the ATT, such as a standard risk assessment process, would also provide useful guidance for embargo implementation.

The effectiveness of both instruments will ultimately depend on the extent of state participation and compliance. The standards established by participating states for both can be undermined by nonparticipating states or illegal actors. Just as arms embargoes are weakened by arms transfers to the embargoed target by noncompliant parties, so the ATT would be weakened by transfers where there are substantial risks of breaches of international human rights or humanitarian law. The two United Nations instruments will derive their effectiveness from the width and depth of compliance by states.

The two instruments share similar features. Each is a legally binding United Nations instrument of conventional arms control. Each demands that state regulation of arms transfers conform to international law, and hence each advances the rule of law in the insufficiently regulated domain of conventional arms trade. Fundamentally, they share the purpose of prevent-
ing infractions of international laws and norms in the acquisition and use of conventional weapons. It can be argued that both are instruments of human security, with the protection of civilians – a fundamental responsibility of all states – at their core.

Following the negotiation of a strong and effective Arms Trade Treaty, the two instruments would jointly advance international peace and security. The deleterious impact of the proliferation and misuse of conventional weapons on people, communities, and states is well documented and the case for better global standards in the regulation and control of arms transfers is widely recognized. A robust Arms Trade Treaty and effective UN arms embargoes together would make significant contributions to international political security and stability. Both would save lives and livelihoods.
References


Watson Institute for International Studies, Brown University. (a) n.d. Sum-

## Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATT</td>
<td>Arms Trade Treaty</td>
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<td>EUC</td>
<td>End-use certificate</td>
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<td>FARDC</td>
<td>Forces Armées de la République Démocratique du Congo</td>
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<td>PoA</td>
<td>UN Programme of Action (on small arms)</td>
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<td>PrepCom</td>
<td>Preparatory Committee</td>
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<td>SALW</td>
<td>Small arms and light weapons</td>
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<td>SIPRI</td>
<td>Stockholm International Peace Research Institute</td>
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<td>TFG</td>
<td>Transitional Federal Government (Somalia)</td>
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Appendix 1
Military and Dual-Use Goods Cited in Recent Reports by UN Security Council Committees Monitoring Arms Embargoes*

1. Small arms and Light Weapons†‡
   A. Small arms
      i. Revolvers and self-loading pistols
         9mm pistols
         Tokarev T-33/7.62mm pistols
      ii. Rifles and carbines
         M76 rifles
      iii. Sub-machine-guns
         Uzi sub-machine-guns
      iv. Assault rifles
         AK-47 (Kalashnikov) rifles
         R-4 assault rifles
         Steyr AUG assault rifles
         M-16 assault rifles
         G3 assault rifles
         FN-FAL assault rifles
         Galil assault rifles
         Tavor assault rifles
   v. Light machine guns
      PKM machine guns
      MAG machine guns
      7.62mm front-mounted

B. Light weapons
   i. Heavy machine-guns
      W-85 heavy machine guns
      DShK-type machine guns
      Machine guns - 12.7 - 14.5mm
   ii. Hand-held under-barrel and mounted grenade launchers
      40mm single-shot and automatic grenade launchers
iii. Portable anti-aircraft guns

**Anti-aircraft cannons**

*Vehicle-mounted 14.5 and 23mm anti-aircraft guns*

iv. Portable anti-tank guns, recoilless rifles

**SPG-9 recoilless guns**

75mm recoilless guns

*M40A2 106mm recoilless rifles*

*Recoilless 107mm cannon*

*Rocket-propelled grenade-7V launcher*

*RPG-9 grenade launcher*

*LRAC F1/89mm rocket launcher*

v. Portable launchers of anti-aircraft missile systems

**Man-portable air defence system**

*9P54M launcher unit*

*Rocket launchers*

vi. Mortars of calibers of less than 100mm

*60mm mortars*

*82mm mortars*

*Medium mortar*

C. Ammunition and explosives

i. Cartridges (rounds) for small arms

*5.56 x 45mm*

*5.8mm*

*7.62 x 39mm*

*7.62 x 54mm*

ii. Shells and missiles for light weapons

*12.7mm ammunition*

*14.5mm ammunition*

*PG-7 anti-tank grenades*

*60mm mortar bombs*

*75mm recoilless rifle rounds*

*M310A1 model*

*82mm mortar bombs*

*82mm anti-tank rounds*

*Fuses for mortar bomb*

*106mm recoilless rifle rounds*

*M344A1 model*

*107mm cannon rockets*
Rocket-propelled grenades
RPG-7 rockets
Man-portable surface-to-air missiles
SAM-7 surface-to-air missiles
9M32M missiles
(iii. Mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems)
iv. Anti-personnel and anti-tank hand grenades
Hand-grenades
40 mm grenades
v. Landmines
Anti-tank mines
vi. Explosives
Improvised explosive devices
Bombs
Detonators

2. Other military equipment
A. Aircraft
i. Helicopters
Mi-8 helicopter
Mi-24v attack helicopters
Mi-171 helicopters
ii. Transport
Antonov AN-12 aircraft
Ilyushin II-76 aircraft
iii. Combat
Fantan A-5 fighter jets

B. Land vehicles
i. Transport vehicles
Land Rover Defender 110
Santana PS-10 Anibal military utility vehicle
ii. Armoured vehicles
Armoured vehicles
iii. Battle tanks
T-72 M1 main battle tanks
C. Artillery

**Artillery pieces**
- **ZU-23 anti-aircraft gun**
- **Rocket artillery**
- **Advanced anti-tank weapons**
- **ZPU-4 14.5mm air defence cannons**
- **107mm multiple-barrel rocket launchers**
- **BM-21 122mm multiple rocket launch systems**
- **Type 63 model multi-barrel rocket launchers**

D. Ammunition

- **122mm rockets**

E. Naval vessels

- **Armed ocean-going vessels**

F. Other

- **Night-vision equipment**

3. Dual-use goods

A. Aircraft
   i. Transport
   - **Antonov AN-26 cargo aircraft**
   - **Antonov AN-74 cargo aircraft**
   - **Bombardier BD-700-1A11**
   - **Boeing 727**

B. Land vehicles

- **Dongfeng truck**
- **Toyota Hilux pickup trucks**
- **Toyota Land Crusers**
- **Police vehicles**
- **Motorbikes**

C. Other

- **Generator**

*Military goods and dual-use equipment cited in UNSC 2008a, 2008b, 2009.*
† Cited goods in bold italics.
Appendix 2
Multilateral Instruments Referenced in the Global Principles

American Convention on Human Rights (1969)
Articles on Responsibility of States for Internationally Wrongful Acts (commended by GA resolution, 12 December 2001)
Best Practice Guidelines for Exports of Small Arms and Light Weapons of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (2002)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union (1997)
Criminal Law Convention on Corruption (1999)
Declaration on Principles of International Law concerning Friendly Relations among States in Accordance with the Charter of the United Nations (Resolution 2625, 24 October 1970)
Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (GA resolution 36/103, 9 December 1981)
Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty (General Assembly resolution 2131, 21 December 1965)
Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)
Declaration on the Right to Development (1986)
Economic Community of West African States Convention on Small Arms, their Ammunition and other Related Material (2006)
European Convention for the Protection of Human Fundamental Rights and Freedoms (1950)
Geneva Conventions (including Additional Protocol I and II)
Hague Declaration concerning Expanding Bullets (1899)
Inter-American Convention against Corruption (1996)
Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (1997)
Inter-American Convention on Transparency in Conventional Weapons Acquisitions
International Court of Justice Nuclear Weapons Advisory Opinion (1996)
International Covenant on Civil and Political Rights (1966)
International Covenant on Economic, Social and Cultural Rights (1967)
International Criminal Tribunal for the former Yugoslavia
International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (2005)
Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2004)
OAS Charter
OAS/CICAD Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition (2003)
OAS/CICAD Model Regulations for the Control of the International
Movement of Firearms, their Parts, Components and Ammunition (1998)
OSCE Best Practice Guide on National Control of Brokering Activities (2003)
OSCE Principles on the Control of Brokering in Small Arms and Light Weapons (2004)
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (UN Firearms Protocol)
Protocol on the control of firearms, ammunition and other related materials in the Southern African Development Community region (2001)
Security Council Arms Embargoes (under Chapter VII of the UN Charter)
St. Petersburg Declaration on Explosive Projectiles (1868)
UN Charter (Articles 1, 11, 26, 55 and others)
UN Convention against Corruption (2003)
UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001)
United Nations Human Rights Committee General Comment on States of Emergency (2001)
Universal Declaration of Human Rights (1948)
Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering (2003)