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Blood at the crossroads: Making the case for a global Arms Trade Treaty Executive Summary



**INTERNATIONAL S
KINGDOM**

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 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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TABLE OF CONTENTS

1. Introduction.....	1
2. Illustrative cases of irresponsible arms transfers.....	3
2.1 Colombia - small arms supplies fuel grave human rights abuses.....	3
2.2 Côte d’Ivoire - a belated UN arms embargo	5
2.3 Guatemala - exacerbating violent crime.....	7
2.4 Guinea - arms used for excessive force against protestors.....	8
2.5 Iraq - unceasing small arms supplies worsen carnage and despair.....	10
2.6 Myanmar – ongoing misuse of arms transfers fails to halt supplies.....	13
2.7 Somalia - continuing inflow of arms worsens a human rights catastrophe.....	16
2.8 Sudan and Chad - arms flows fuel attacks in Darfur.....	19
2.9 Uganda - disproportionate military force and abuse of small arms.....	24
3. Applying human rights standards to arms transfer decisions... 	26
3.1 State obligations and International human rights law	26
3.2 Relevance of IHL and international criminal law.....	27
3.3 Key concepts for applying international human rights law... 	28
4. Conclusion and recommendations.....	30
Recommendations on the Parameters of the ATT.....	30
Recommendations on the Scope of the ATT.....	31

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Blood at the crossroads: Making the case for a global Arms Trade Treaty

1. Introduction

The world is reaching the crossroads where governments must decide which approach to take in order to control the increasingly globalized 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 UN General Assembly (UNGA) 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 UNGA with 153 States voting in favour and only one State, the USA, voting against, is a landmark step towards a more effective regulation of the international arms trade. However, a handful of states are now trying to delay and water down the proposed scope and parameters of such a treaty.

This summary highlights key points from the main report by Amnesty International of the same name. The main report describes irresponsible and poorly regulated trade and shows graphically through several illustrative cases how that trade contributes to serious violations of international human rights law and international humanitarian law (IHL) 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.

An ATT should identify core substantive obligations that reflect existing international legal commitments on the part of States to:

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

Accordingly, the main 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.

As a first step towards an ATT, UNGA 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.*” During 2007, at least 98 Member States submitted their views to the Secretary-General, reflecting an emerging consensus that an ATT is needed and should be universally fair and objective, reflect the existing legal obligations and commitments of States and must address the realities of globalizing markets and international assistance programs in conventional arms.

These new realities were recognised by the UN Secretary General’s Group of Governmental Experts which met during the first half of 2008 (hereafter referred to as the ATT GGE 2008): “*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.*”

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. In December 2003, all of the 194 State Parties to the Geneva Conventions undertook to make respect for international humanitarian law 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. Moreover, 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.

These obligations are especially relevant for the world’s major arms exporters (listed in Appendix 2 of the main report), but apply to all States involved in the transfer of conventional arms and related items.

2. Illustrative cases of irresponsible arms transfers

The contemporary cases elaborated in the main report illustrate a range of circumstances in which different types of conventional arms are transferred and used for serious human rights violations and abuses and how the adoption of an Arms Trade Treaty is necessary to address these problems. The cases have been selected to cover a variety of regions, arms suppliers and institutional circumstances.

2.1 Colombia - small arms supplies fuel grave human rights abuses

This case shows why the risk of diversion of arms is a key problem. At present there is no international legal instrument with a provision that requires States such as Colombia and its arms suppliers to assess the risk of diversion of conventional arms not only to unauthorized users but also to specific state forces or units committing serious abuses of human rights. Moreover, there is no global legal instrument with a provision requiring States to establish common standards and specific mechanisms to control the brokering of conventional arms transfers and closely related activities such as transport and finance.

All parties to the conflict in Colombia – 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 displaced by confrontations between the warring parties.

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. Guerrilla groups killed roughly 260 civilians in 2007 compared to around 200 in 2006. The dispute between the FARC and ELN in Arauca Department has resulted in the killing of hundreds of civilians over the last few years. The groups use anti-personnel mines resulting in numerous serious casualties, including of civilians.

The demobilization of paramilitary groups in Colombia, which have for decades been supported by powerful economic and political interests and by members of the security forces, has been seriously flawed. Some paramilitary groups continue to operate, often in collusion with the security forces. These groups violate human rights throughout the

country, including in areas in which Colombian military units are receiving foreign military aid, despite assurances by the Colombian government that over 31,000 combatants have been demobilized. 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. 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 sometimes paramilitary groups continue to play a counter-insurgency role in coordination with the security forces. A number of Colombian parliamentarians, other politicians and state officials, have also been linked to paramilitary groups.

Members of the security forces reportedly carried out at least 330 extrajudicial executions (EJEs) in 2007 compared to 220 in 2006. The victims, mostly peasant farmers, were often presented by the security forces as “guerrillas killed in combat” without proper independent investigations. Most EJE cases have been referred to the military justice system, yet the 1997 ruling of the Constitutional Court stated 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 investigate and hold accountable those responsible.

Colombia has a self-sufficient military industry able to produce annually 45,000 Israeli Galil assault rifles under licence, 30 million rounds of 5.56mm ammunition, and 7,500 revolvers. Nevertheless, Colombia still relies to a considerable degree on imports. According to customs data, in 2006, Colombia imported well over US\$40 million worth of equipment under the category “military weapons”. The major suppliers were the USA (US\$26,436,462); South Africa (US\$10,228,363); Israel (US\$8,711,630) and France (US\$2,323,161). Colombia also imported large quantities of other types of “revolvers and pistols”.

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 and Israel has recently revised its arms export control legislation. 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. Amnesty International has repeatedly argued that the US State Department has not met US congressional human rights criteria for certifying military aid to Colombia.

Illicit supplies of arms to the paramilitaries and guerrilla groups in Colombia enter the country through the neighbouring States, mostly manufactured in and/or shipped from Europe, China, North Korea, USA, and Latin America according to the UN. Small arms and light weapons confiscated from paramilitaries and rebel groups by the Colombian authorities between 2005 and 2006 show they were mostly made in Brazil, Bulgaria, Germany, Russia, USA and Venezuela. Paramilitary and guerrilla groups have attempted to clandestinely procure such weapons directly through fluid and mobile international arms brokering and trafficking networks, examples of which are given in the main report. This is made easier because, to date, only about 40 States have enacted laws for controlling arms brokering and even then some of these laws are weak.

2.2 Côte d'Ivoire - a belated UN arms embargo

This case illustrates how the international community has had to resort to imposing a UN arms embargo on Côte d'Ivoire whereas if an ATT was well established with provisions to refuse arms transfers where there was a serious risk of the violation of international human rights law and IHL, such an arms embargo may not have been necessary. Also, the absence of coherent robust legal measures to control intermediaries such as brokers and private dealers has meant that arms transfers and transactions were not properly assessed by all the relevant national authorities in advance, exposing the people of Côte d'Ivoire to further risk.

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, MPC), which later became the New Forces (Forces Nouvelles) after merging with two other armed opposition groups. 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. A series of agreements were signed between January 2003 and November 2007 to initially impose a ceasefire and then to put an end to the conflict. The parties pledged to demobilize, disarm and reintegrate all forces, but tensions continued.

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. Acts of sexual violence by combatants constitute a war crime and if they are widespread or systematic, they may be a crime against humanity. The

nature of the fighting led to hundreds of thousands of civilians becoming internally displaced or becoming refugees who fled to neighbouring countries. Many examples show how such grave human rights abuses and serious violations of IHL have been greatly intensified by the proliferation of small arms.

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 nine French soldiers of the Force Licorne. The French forces retaliated by destroying the aircraft of the Ivorian Armed Forces.

Eventually, on 15 November 2004, the UN Security Council imposed an arms embargo upon Côte d'Ivoire with exceptions for the UN peacekeeping force. However, the UN arms embargo came too late. The parties to the conflict were already heavily re-arming between January 2003 and September 2003. During 2002 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 notably from Belarus, Bulgaria, Romania and Ukraine, as well as small arms and light weapons. The UN Group of Experts monitoring compliance with the UN arms embargo on Côte d'Ivoire reported 80 shipments of small arms and light weapons between 2002 and 2004.

Amnesty International has obtained a document indicating a shopping list of weapons which a Togolese based company, Darkwood, proposed to obtain for the Ivorian government. Information available indicates that Darkwood delivered some items on that list to Côte d'Ivoire in 2004 before the imposition of the UN arms embargo. UN officials claim that foreign nationals under contract by Darkwood were maintaining the remaining aircraft of the Ivorian armed forces and that Darkwood has been under investigation in Togo for allegations of illicit arms brokering and maintenance services.

Amnesty International is also in the possession of another document which purports to be a contract for the supply of a wide array of weapons, including attack helicopters, armoured vehicles, rockets and rifle ammunition, 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 Ivorian President and is wanted by law

enforcers in France for fraud and forgery. 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.

2.3 Guatemala - exacerbating violent crime

There is strong evidence that one cause of the high murder rate in Guatemala has been 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.

Like other Central American countries, Guatemala experiences high levels of violent crime including gun-related violence. State authorities have been criticized for 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. The Human Rights Ombudsman's Office reports that in all murder cases, 80 per cent of men and 69 per cent of women are killed with firearms.

Yet 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 and noted the involvement of the police and other citizens in killings of gang members, criminal suspects and others. The Vice President of Guatemala reported that approximately one percent of all killings resulted in a conviction. 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.

Guatemala'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. 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.

However, 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. Since then there have been no significant disarmament efforts beyond the regular confiscations and destruction of a few small arms by the police. Estimates suggest that there are between 800,000 and 1.5 million illegal arms in circulation. Many of these are bought legally and afterwards are sold illegally onto the black market.

In spite of the high levels of gun violence and small arms circulating around the country, Guatemala continues to ignore its due diligence responsibility and imports large numbers of small arms and ammunition, typically pistols and revolvers. There is also a lack of transparency in the reporting by governments on the types and quantities of weapons delivered to Guatemala, but available customs data shows the top five suppliers of “pistols and revolvers” between 2004 and 2006 were Argentina, Czech Republic, Germany, the Republic of Korea and Slovakia. The designated end-user for each consignment could be, for example, a registered firearms dealer (since civilians are allowed to carry arms), or military, security or police forces. Other arms suppliers to Guatemala include Israel, Italy, Mexico, Slovakia, Turkey, and the USA. 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.

The recognition of a 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.

2.4 Guinea - arms used for excessive force against protestors

In this case, the absence of a legally binding instrument requiring States to demonstrate full respect for international human rights law has enabled ongoing supplies to Guinea of armoured vehicles, small arms, ammunition and tear gas to continue unquestioned in the supplier states. The authorities in Guinea also did not take steps to address the serious failings of its security forces’ use of arms at a much earlier stage, thereby helping to avert the tragic events in 2007 described briefly below.

Over a period of almost 10 years, the Guinean security forces have responded to protests with excessive force, including firing live ammunition into crowds of demonstrators, causing heavy loss of life. Such 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. This occurred in the December 1998 presidential elections, the local elections of June 2000, the 2001 referendum, and during demonstrations of February 2004, November 2005, February and June 2006, and January/February 2007.

In January and February 2007, a wave of mainly peaceful demonstrations 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 the President's "meddling" in judicial matters. The strike and protests organized around the country were met with the use of excessive and arbitrary force by the security forces which over this period left 130 people dead and more than 1,500 injured. The government ignored UN standards requiring all law enforcement officials to avoid using force when policing unlawful but non-violent assemblies, and to use force only to the minimum extent necessary when dispersing violent assemblies.

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" armoured vehicles and other vehicles in the city. Film footage reportedly taken on 22 January 2007 in Conakry, shows security forces firing on participants in a peaceful demonstration using what appear to be Mamba armoured vehicles and other vehicles matching those in the photographs.

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 ten "Mamba Mk3" 4x4 armoured "mine-protected" vehicles from South Africa to Guinea. Alvis said these armoured vehicles would be used for "border control" in Guinea and offered a three-week in-country training programme. 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. South Africa's national arms

export law requires the government to “avoid contributing to internal repression” and “avoid transfers of conventional arms to governments that systematically violate or suppress human rights”, yet the transfer was approved.

During the 2007 unrest, other serious violations of humans rights, such as dozens of arbitrary arrests, sexual violence and looting, were perpetrated by security forces who also fired on children who were criticizing them for having fired at peaceful demonstrators. 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. In May 2007, a law was adopted for the establishment of an “Independent National Commission of Inquiry”, charged with “conducting investigations into grave human rights violations and offences committed during the strikes of June 2006 and January-February 2007.” However, in May 2008, the President of the Commission publicly denounced the fact that the Commission was not operational due to the lack of funds from the government.

Despite these chronic human rights violations, France has been a significant source of supply of military and lethal equipment to Guinea, especially cartridges for shotguns in 2003 and again in 2004, 2005 and 2006, totalling US\$6,213,611. Portugal supplied cartridges in 2003, 2004 and 2006 worth US\$246,388, and Spain supplied US\$105,841 of cartridges in 2003. France, Portugal and Spain subscribe to the voluntary 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.” In 2005, Senegal delivered equipment under the category of munitions and cartridges, and Turkey delivered firearms in 2004 and 2005. 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.

2.5 Iraq - unceasing small arms supplies worsen carnage and despair

In this case, the massive proliferation, mismanagement and gross misuse of weapons in Iraq from many states has been encouraged by the absence of any legally binding treaty containing provisions that require States to establish accountable, effective and transparent safeguards when considering the transfer of conventional arms. Weapons and ammunition have been transferred to Iraq in circumstances where there was a substantial risk they will be misused or diverted for the commission of serious violations of international humanitarian and human rights law.

In particular, the easy availability of small arms and the lack of accountability for their management and misuse in Iraq 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 arbitrary detention of thousands of suspects by Iraqi soldiers backed by US armed forces since 2003. 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. The violence has displaced over four million Iraqis, two million of whom have fled the country as refugees and a further two million of whom are internally displaced.

Iraqi authorities have failed to hold the perpetrators to account – and the USA and its allies have failed to insist that they do so. Soldiers belonging to the US-led Multinational Force (MNF) and personnel of private military and security companies have also committed human rights abuses and violations of IHL; some of the former have been prosecuted on charges including the killing, rape or inhumane treatment of civilians 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.

Prior to the 2003 invasion, there were an estimated 15 million small arms and light weapons in circulation and possession amongst Iraq's 25 million people. All the Permanent Members of the UN Security Council, as well as Bulgaria, Belarus, Bosnia, Ukraine, Serbia and Syria, had supplied arms and related materials to the Iraqi government despite such arms being used for grave violations of human rights. Just before the US-led invasion, the Iraqi government reportedly distributed small arms and light weapons among sections of the Iraqi population. When the US occupation administration, the Coalition Provisional Authority (CPA), decided in May 2003 to disband the estimated 400,000 Iraqi army, most returned home or went into hiding with their weapons. The looting of military stockpiles and police stations between 2003 and 2005, also contributed to the number of small arms in the hands of criminal gangs and armed groups. It is further alleged that some armed groups also received covert supplies of small arms and munitions from Iran.

Frequent desertions from the army and police, official support for irregular militia and the constant threat of attack from armed groups have amplified the problem. Moreover, the Iraqi security forces are trained by officers from MNSTC-I, primarily US officers, under an assistance program agreed with the Iraqi government, despite the poor

understanding by US soldiers in Iraq of international human rights law and IHL and the continuing impunity for those officers who commit grave violations.

Since 2003, the US Department of Defense (DoD) has directly funded the transfer of at least 800,000 Soviet-type weapons and 9mm pistols from several countries (as detailed in the main report) to Iraq but no exact figure has been released on the amount of weapons donated to Iraq by other Member States of the North Atlantic Treaty Organization (NATO). In addition, the new Government of Iraq, which receives US financial aid, has also planned to procure at least 262,000 small arms from China, Serbia and the USA. Overall, Amnesty International estimates that contracts and orders for the transfer of more than 1,000,000 small arms have been concluded since 2003, including weapons already transferred or soon to 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 already possessed such weapons.

Despite this massive flow and proliferation of weapons, US and allied officials have admitted that many of these US-sponsored imported weapons remain unaccounted for and that stocks have been diverted to and captured by individuals, militia and armed groups who commit grave human rights abuses, as highlighted by an Amnesty International and TransArms report in May 2006. The CPA and Iraq's Ministry of Defence and security officials have been primarily responsible, but a significant share of the responsibility rests with US and UK coalition forces and their contractors who organized the deliveries and storage (as detailed in the main report).

US inspection reports have found serious errors in accountability procedures, including insufficient staffing, inadequate distribution networks, and poor record keeping technology and data collection. An October 2006 report from the Office of the Special Inspector General for Iraq Reconstructions 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.

The Inspector General of the US DoD issued a report in May 2008 on the lack of proper DoD accounting for billions of US dollars spent on commercial contracts and miscellaneous payments for arms and security in Iraq, as well as Afghanistan and Egypt. Amnesty International and TransArms have since found that between 2000 and 2007, the DoD 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 Administration. This obscure system prevents transparency required for effective democratic oversight. Irregularities in the supply by US private contractors of arms to Iraq are detailed in the main Amnesty International report.

Amnesty International has now identified another 47 US Department of Defense contracts for 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 in the main report).

The delivery of weapons and ammunition to the Iraqi security forces is ongoing. In addition to US DoD sponsored supplies, other sources for small arms and related military equipment supplies to Iraq forces include:

Direct arms purchases by the Iraq government recently conducted on a large scale from China, Serbia and the USA.

Donations of military equipment to Iraq from a number of NATO member countries worth more than €110 million.

Commercial sales of military weapons and ammunition from over 20 countries to entities in Iraq totalling \$226 million and more than 9,000 tons between 2003 and 2006.

Recirculation of thousands of weapons seized from armed groups and individuals since 2003 then refurbished and reissued to Iraq forces. US officials remarked: *“Some of these (AK-47s) are more than 30 years old. They’re fairly indestructible.”*

2.6 Myanmar – ongoing misuse of arms transfers fails to halt supplies

This case highlights the supply of arms to Myanmar despite its blatant use of armed force for gross violations of human rights and serious violations of IHL, and the defiance of a small group of arms supplying states which refuse to heed world opinion and halt such arms transfers. In the absence of an ATT 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, those defiant States do not come under international pressure to comply with the same criteria. This pressure would occur even if they

were not initially States Parties to an ATT, not least because much of the international arms trade depends on reciprocal arrangements across many countries.

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. 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. Armoured personnel carriers (APCs), tanks, helicopters and other larger conventional weapons are used outside of the cities, particularly in the ethnic states, and are 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 UN 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, 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. In June 2008, Amnesty International described these serious human rights violations in eastern Myanmar as crimes against humanity.

Since 1988, China has reportedly supplied the army in Myanmar with military equipment, including tanks, APCs, military aircraft and artillery pieces such as howitzers, anti-tank guns, anti-aircraft guns, firearms and parts and accessories for weapons. The Chinese authorities have generally not reported such transfers to the UN. A US\$1 billion arms deal with China reportedly enabled the Myanmar government to pay for a range of military equipment and training in China. Since 1998

at least 14 K-8 light attack aircraft, co-developed by China and Pakistan, have been reportedly transferred to Myanmar. The initial seven aircraft were reportedly financed by China.

A photograph 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). Since 6 December 2007, a reported 450 Chinese FAW trucks arrived on the Chinese-Myanmar border at Jui and Jehong. 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. A Chinese company reportedly sold 400 military trucks to the Myanmar government in 2005. Between 1988 and 1995, China is reported to have provided about 1,000 vehicles to the Myanmar security forces.

The Russian Federation exported 100 large calibre artillery systems to Myanmar in 2006. Russia also exported ten combat aircraft in 2002 and four combat aircraft to Myanmar in 2001. The Russian MIG military aircraft company had a representative office in Myanmar in October 2006.

In 2006, Serbia reported exports worth US\$8,377,800.00 to 'military' end-users in Myanmar covering 'howitzer sets, build-in services, self-propelled gun'. In addition, Serbia and Montenegro exported US\$5,672,349 worth of "military weapons" to Myanmar in 2005, and US\$1,260,00 in 2004 – the latter included 36 large artillery calibre systems.

The Ukrainian state owned arms company, *UkrpetsExport*, announced in April 2004 a ten year contract to supply 1,000 APCs to be assembled in Myanmar as part of a deal reportedly worth about US\$500 million. In 2003, Ukraine exported 10 BTR-3U armoured combat vehicles and ten R-27 missiles to Myanmar in 2003.

In January 2007, the Indian Foreign Minister promised a "favourable response" to any Myanmar request for military equipment. In April 2007, Indian and Myanmar security forces were reportedly conducting joint military operations against insurgent groups along the 1,643-km Indo-Myanmar border. This military co-operation was linked with an Indian government offer to supply military hardware such as tanks, aircraft, artillery guns, radar, small arms and advanced light helicopters. In 2007, Amnesty International, Saferworld and other non-governmental organizations detailed concerns about the potential transfer to Myanmar of Indian-made attack helicopters, which are highly likely to contain components, technology and munitions originating from

the EU and the USA. EU officials say they have since been reassured by the Indian government that such a transfer will not go ahead.

In 1998 Singapore reportedly supplied Myanmar with a purpose-built factory to manufacture assault rifles and ammunition. A photograph taken during the crackdown in September 2007 has enabled Amnesty International to identify a grenade launcher as visually identical to one originally designed and produced by a Singapore company.

In response to the latest violent crackdown, Amnesty International called for a worldwide mandatory arms embargo on Myanmar. However, China and Russia blocked efforts in the Security Council to establish an arms embargo on Myanmar. The EU and the USA, which had imposed arms embargoes on Myanmar in 1988 and 1993 respectively, were left to enact or tighten arms embargoes and sanctions on their own and with their allies.

2.7 Somalia - continuing inflow of arms worsens a human rights catastrophe

It is clear from this case that the ongoing challenges of stemming the flow of arms into Somalia 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 transshipment of arms to Somalia simply do not have adequate national systems of arms control. In the absence of an effective ATT implemented by a majority of states, arms traffickers can all too easily exploit loopholes in national laws, regulations and administrative procedures with dire consequences.

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 Somalia apart resulting in massive violations and abuses human rights, and violations of IHL. Following 13 failed peace conferences, a Transitional Federal Government (TFG) was formed in October 2004. Despite international support, the TFG has been unable to effectively establish control. Armed opposition groups including remnants of the Islamic Courts Union (ICU) and various factions of the *Shabab* militia ("youth" – formerly young ICU fighters), refused to accept the TFG. Over 600,000 Somali civilians were internally displaced from and around Mogadishu and an estimated 335,000 fled Somalia in 2007 despite enormous obstacles to their movement including theft, rape and shootings.

By 2006, the ICU, later the Council of Somali Islamic Courts (COSIC), emerged from numerous local Islamic courts in and around

Mogadishu. After some months of armed fighting against the Alliance for the Restoration of Peace and Counter Terrorism which reportedly received covert U.S. backing, the Islamic Court fighters captured Mogadishu. Hundreds of civilians were killed in this fighting. In late 2006, the ICU began to further extend control to much of southern and central Somalia, challenging the TFG which remained in Baidoa supported by Ethiopian troops and groups of militia.

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 authorized the establishment and deployment of the African Union Mission in Somalia (AMISOM). Uganda and Burundi contributed some troops but AMISOM has neither the mandate nor the capacity to protect civilians in Somalia.

After the ICU launched attacks around Baidoa, 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 military advance, with some ICU leaders and troops retreating south from Mogadishu, and others melting back into the city's population. The humanitarian and human rights situation in Somalia has only grown worse.

Arms have continued to pour into Somalia. Inadequate arms control systems especially in the region and thriving local arms markets controlled by warlords and corrupt officials have undermined the efficacy of the 1992 UN Security Council arms embargo. Only ten years later, in 2002, did the Security Council establish a three-member team of experts for a period of six months to study the violations of the arms embargo. This "team" and a subsequent "panel" and "monitoring group" of experts issued ten reports between August 2004 and April 2008 detailing embargo violations, but the Council has taken little effective action to prevent such violations.

In November 2006, the Monitoring Group's report described the key role of Ethiopia and Eritrea in arming Somalia's militias. Eritrea was accused of supplying 2,000 troops and arms to the ICU, including portable surface-to-air missiles. The Monitoring Group reported on the delivery of arms to the ICU using an Ilyushin-76 transport aircraft (call sign LFT 1221) on 26 July 2006. 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. The International Civil Aviation Organisation airline call sign LFT belonged to

a South African-based airline company named Aerolift registered in the British Virgin Islands and managed from Johannesburg. The managing director told a researcher for Amnesty International that he was deceived by the Eritrean military into allowing his aircraft to be used to make at least three clandestine arms and ammunition deliveries from Massawa to the ICU.

When the Ethiopian government deployed 6,000 troops in conjunction with and at the request of the TFG to forcibly expel the ICU from power in Somalia, it imported considerable quantities of military equipment. With US support, the UN Security Council adopted Resolution 1744 of 21 February 2007 establishing exemptions to the arms embargo for AMISOM and for arms and technical assistance ‘intended solely for the purpose of helping develop security sector institutions’ in Somalia.

Ethiopia had previously imported heavy weapons such as tanks and other armoured vehicles from Russia (worth US\$12 million) and China (\$3 million) in 2006 and also from North Korea (\$3 million) and the Czech Republic (\$1 million) in 2005. Ethiopia had imported other types of 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. The Ethiopian government acknowledged a cargo shipment from North Korea of spare parts for machinery and engineering equipment and raw material to Ethiopia for the making of assorted ammunition for small arms had taken place on 22 January 2007.

Despite this backing, the TFG faced increasing armed opposition from remnants of the Islamic Courts and was unable to establish control or security in the capital, with dire consequences for the civilian population. For example, 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. US and Ethiopian aircraft bombed fleeing ICU forces in the south west of Somalia twice in early 2007, reportedly killing some 70 individuals, all civilians. Meanwhile, insurgent groups reportedly planted roadside bombs and mines to target government officials, soldiers and Ethiopians. The UN Monitoring Group claimed that Ethiopian forces used white phosphorous bombs, including in Mogadishu during April 2007.

In April 2008 the UN Monitoring Group described how armed opposition groups established bases across Somalia since October 2007 and used 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.”* Somaliland, the coast of Puntland and central and south Somalia have been used for the illegal import of weapons and an increasing number of hijackings.

Illegal cross-border arms shipments reached parties to the conflict via seven different arms markets, according to the Monitoring Group. 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.”* Arms on sale originated from army stocks or from seizures following battles with insurgents, according to arms traders interviewed by the UN monitors, and 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, *“has purchased arms in Yemen, in violation of the arms embargo, not having 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.”*

2.8 Sudan and Chad - arms flows fuel attacks in Darfur

This case shows why 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 recipient government’s assurances or certificates about its end-use of military transfers. 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 are weak because of the absence of an effective ATT.

As a result of indiscriminate and direct attacks on civilians, ongoing serious violations of human rights, particularly by Sudanese government and paramilitary groups, about 280,000 people in Darfur were displaced during 2007 bringing the number of displaced 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.

After the signing of the Darfur Peace Agreement in May 2006 which contained pledges to disarm the government's notorious *Janjawid* militia, groups which had formerly been part of the *Janjawid* were merely incorporated by the Sudanese government into the Popular Defence Forces (PDF), the Border Intelligence, and the Border Police or the Nomad Police, and equipped with new small arms, uniforms and 4x4 vehicles. Meanwhile, breakaway factions of the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), contributed to a process of fragmentation so by early 2008 there were numerous armed opposition groups operating in Darfur, increasingly divided along ethnic lines.

In early 2008, a spate of attacks, including on civilians, worsened the already-dire human rights and humanitarian situation in some areas of Darfur. On 7 January 2008, Sudanese Armed Forces attacked peacekeepers of the UN-African Union Hybrid Operation in Darfur travelling in a supply convoy in Darfur eight days after their arrival in blatant violation of IHL. A week later, a Sudanese Antonov military utility aircraft bombed two villages near El Geneina.

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 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, the Sudanese Armed Forces and militia launched an attack against the JEM-held areas in Darfur using indiscriminate aerial bombing of settlements with Antonov planes and striking with helicopter gunships before launching ground attacks, 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 an estimated 30,000 people were displaced while 12,000 refugees fled into eastern Chad.

In October 2007, the UN Panel had issued yet another report documenting further numerous violations of the arms embargo by the Sudanese government, including:

The deployment of three Chinese-made "Fantan" jets in Nyala used as ground attack fighters.

The deployment of Russian Mi-24 "Hind" attack helicopters and a Mi-8 assault/transport helicopter to Darfur.

The use of two white-painted 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.

The transport of military material in many of the 409 military and police cargo flights to Darfur between September 2006 and July 2007, using six cargo companies: Ababeel Aviation, AZZA Transport, Badr Airlines, Juba Air Cargo, Trans Attico and United Arabian Airlines.

Launching sixty-six aerial attacks in Darfur from September 2006 to June 2007, involving aerial bombardments by Antonov aircraft, aerial attacks by Mi-24 attack helicopters and the use of aircraft for military surveillance.

When the UN Security Council prohibited arms transfers to all parties to the conflict in Darfur on 29 March 2005, it specified that the Government of Sudan may not transfer military equipment to Darfur without prior approval from the UN Sanctions Committee. In addition, it prohibited offensive military flights in and over the Darfur region. Despite the Sudan government's repeated violation of these provisions, several Member States including mainly China and Russia, but also Iran and Egypt, have continued to approve the supply of arms to Sudan.

In what is effectively a massive loophole, the UN Sanctions Committee on Sudan agreed in December 2006 that the embargo allows Member States to "provide arms and military equipment to the Government of the Sudan outside the Darfur region." The Chinese and Russian governments say they have told Sudan's government that their weapon supplies must not be used in Darfur to violate the embargo, but Sudan's government openly says it will send military equipment where it likes.

In September 2007, the Sudanese Minister of Defence said 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. He said the Government of Sudan wants to produce a wider range of military equipment. Amnesty International research reveals that Sudan imported military and civilian arms and ammunition worth \$17.2 million in 2006 through commercial entities mostly from China but also Iran and Egypt. This total does not include government-to-government arms transfers to Sudan, mostly from China and Russia.

Commercial transfers from China accounted for 67 percent of Sudan's commercial arms and ammunition imports in 2006. Small arms

and light weapons with Chinese manufacture markings are pervasive and were seen in the hands of Sudanese soldiers and militia backed by the Sudan armed forces in Darfur from late 2007 to mid 2008. 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.

In 2006, China supplied eight K-8 jet trainers to Sudan which are equipped with a cannon, rockets and bombs for air to ground attack, along with K-8 flight simulators to train Sudanese pilots. Sudan also acquired Nanchang A5 “Fantan” jets from China, first seen in Darfur in January 2007 and used there for air to ground attacks. On 19 February 2008, two Fantans were used in an aerial attack at Beybey where three large bombs were dropped in a settlement killing eight civilians, including children, and wounding others. Shrapnel was spread over a wide area. Two Fantans were then seen flying westward from Nyala with bombs and returning without them. Chinese technicians serviced the Fantans recently. Allegedly Sudanese pilots have been trained in China to fly the Fantans.

A Chinese firm, the Dong Feng Automobile Import and Export Limited, supplied 212 military trucks to the Sudan government in August 2005. Some of these trucks have been used to deploy troops and militia in Darfur in violation of the UN arms embargo and 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.

Russia sold twelve Mi-24 attack helicopters to Sudan in 2005 and signed a deal to supply at least 15 Mi-8 helicopters to Sudan for delivery in 2005 and 2006. Such helicopters have been persistently used for indiscriminate attacks and direct attacks on civilians in Darfur. In 2004, Russia also exported twelve MiG-29 military fighter jets to Sudan which were reportedly seen flying in Darfur that year. According to reliable aviation records, one of Sudan’s Antonov planes was supplied from Russia in September 2006. The Sudanese Government reportedly asked the Russian Government in October 2006 for a US\$1 billion loan to fund the purchase of new fighters and attack helicopters. In 2007, the Russian government continued to provide training to the Sudanese air force pilots.

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 of these were delivered from Belarus in 2003 and another 21 in 2004. In addition, Russia and Belarus supplied larger BTR-80 and BTR-70 armoured personnel carriers to Sudan in 2000, 2004 and 2005.

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.

When in January 2008, JEM backed by Chadian armed forces clashed with a Chadian armed opposition group based in Darfur 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. The UN Secretary-General's report of 14 February 2008 spoke of 74 vehicles carrying Chadian forces entering Sudan and linking up with JEM in December 2007.

Israeli-made infantry weapons were reportedly seized by the Sudanese Government forces from armed groups in El Geneina after being sold by Israel to Chad. Following armed clashes near Abeché in late November 2007, it could be seen that the Chadian army used an armoured Israeli RAM 2000 vehicle armed with heavy machine gun and other weapons mounts. Such vehicles 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. An AFP photograph taken on 6 December 2007 shows "*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).

In 2006, Serbia was the largest commercial supplier of cartridges to Chad with a recorded delivery of 48,610 kilograms of cartridges worth nearly US\$900,000. France has also been a commercial supplier of cartridges and firearms to Chad.

2.9 Uganda - disproportionate military force and abuse of small arms

This case points out the crucial need for the Governments of Kenya and Uganda to urgently strengthen efforts, including through international, regional and bilateral cooperation, 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” (May 2005). However, the Protocol does not cover conventional arms such as the attack helicopter used in this example and is only sub-regional while the normative criteria on human rights in Ministerial Guidelines do not have a legally binding status. Only an effective ATT would overcome these limitations.

A longstanding and low intensity rivalry over livestock and grazing areas between the pastoralists groups of Karamojong in Uganda and the Turkana and Pokot groups in Kenya has escalated into violent clashes partly because of the influx of small arms. Increasingly organized cattle raids have become more lethal. 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.*” 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 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. The government has responded to these criticisms by highlighting incidents when armed individuals attacked civilians and soldiers.

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 of Karamojong warriors held in custody until exchanged for weapons brought by friends and relatives; the alleged use of force on civilians to

reveal cached weapons; and the destruction of villages from the air and by small arms fire. While the Karamojong have borne the brunt of UPDF operations, the army has also targeted the Turkana pastoralists living in Kenya. Serious human rights violations by the UPDF have been documented against the civilian population in connection with an ongoing disarmament exercise. The government has instigated four investigations into allegations of violations. It is also engaging with community members and local leaders about disarmament.

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 were killed. In November 2006, OHCHR reported that the actions of the UPDF during the disarmament process in Kotido, Karamoja from 29 October to 15 November 2006, amounted to indiscriminate and excessive use of force. A more recent incident occurred July 2007 when the UPDF was accused of ground attacks against Pokot pastoralists in an attempt to disarm them.

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. Local residents reported as many as 500 people killed in a 25 minute attack and the loss of some 2,000 head of cattle. 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.

A researcher in the region photographed and had verified some of the munitions that were picked up by the Turkana after the attack and transported back into Kenya. These include Russian-manufactured 80mm S-8 rockets and 23x115mm canon ammunition, produced in Novosibirsk, Russia in 1985 and consistent with the armament of the Russian-made Mi-24 "Hind" attack helicopters flown by the UPDF. The three Mi-24PN attack helicopters were supplied to the UPDF by the Russian company Rostvertol in 2004 and are equipped with a fixed gun mount and suited for night operations.

In this case, an effective ATT could help prevent the flows of small arms into the region. It could also 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.

3. Applying human rights standards to arms transfer decisions

All States have obligations under international human rights law and IHL applicable to transfers of conventional arms and related items. Many States recognize these obligations, but the rigorous and consistent application of these obligations must be improved to avoid the destructive effects described in the cases in the main report.

3.1 State obligations and International human rights law

Under Articles 1, 55 and other articles of the UN Charter, all Member States have a legal obligation to encourage and promote universal respect for, and observance of, human rights and fundamental freedoms. The Charter also requires Member States to "*take joint and separate action*" in cooperation with the UN to promote human rights. These Charter provisions reflect a positive obligation of all States to cooperate in the protection and fulfilment of human rights *within and beyond their borders*.

Since the adoption 60 years ago of the Universal Declaration of Human Rights by the UN General Assembly, a range of specific human rights obligations of States has been developed. Now, there are over one hundred international treaties that concern the protection of human rights. Through these 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 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.

In addition to their primary obligations to realize and promote human rights, States are responsible for the actions of their agents (e.g. police officers, soldiers). 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 abuses by private actors that impair

the enjoyment of human rights of anyone within its territory or subject to its jurisdiction.

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 international humanitarian law (IHL) will clearly be failing its obligation to ensure respect for international law including the UN Charter. 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 commended by the General Assembly on 12 December 2001.

3.2 Relevance of IHL and international criminal law

During armed conflict, States have specific obligations under IHL, including a general obligation to “respect and ensure respect” for the rules of IHL. 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.

Thus, when States are considering the authorization of the transfer of conventional arms, they 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, as confirmed by the ICRC.

International human rights law also applies during times of armed conflict and is not displaced by the application of IHL. 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.

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 individual 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. Under the Rome Statute, international crimes include

crimes against humanity, war crimes, genocide and the crime of aggression.

3.3 Key concepts for applying international human rights law

Decisions on arms transfer authorizations based on international human rights obligations should be made within a “preventative approach” framework. Where there is credible and reliable information indicating there is a substantial risk that a particular entity will use those types of arms for serious violations or abuses of human rights or violations of IHL, the presumption should be to refuse the transfer of arms to that entity until the risk of such serious violations or abuses has been curtailed

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 may also undermine 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.

An assessment process for proposed arms transfers should apply a human rights criterion in an objective and fair manner. This should include:

- All arms transfer and transaction authorizations to all countries, without distinction;
- A case-by-case assessment of each application for a license;
- Objective, verifiable and detailed information from credible and reliable sources on the type of arms or military/security item, the intended recipients, the likely uses, the route and all those involved in the transfer;
- Up-to-date credible information on human rights standards and violations.

The following are a few of the additional steps recommended in the main report:

- (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 and associated items proposed for transfer, its stated end-use and the stated end-user, as well as the route, those involved in the transfer and the risk of diversion; *all equipment and associated items that can be used to facilitate serious violations of human rights and IHL should be included in this assessment.*
- (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.

In determining whether human rights abuses are *serious*, each situation needs to be assessed objectively on a case-by-case basis. Reference should be made to credible evidence regarding the occurrence and nature of human rights violations or abuses and violations of IHL including the following aspects:

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. *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. Where evidence shows that the recipient has not taken appropriate steps to end violations and prevent their recurrence, the likelihood of substantial risk becomes greater.

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.

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 measured against the longevity of the arms in question?

- 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.

4. Conclusion and recommendations

It is vital that all UN Member States grasp the opportunity presented now by the current political will and the UN process on an ATT to address this grave international problem with the realism and urgency it deserves. States should cooperate in line with their obligations to help 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.

Recommendations on the Parameters of the ATT

1. Incorporate the “*Golden Rule on Human Rights*” within an ATT. 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 to facilitate 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,

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.

Recommendations on the 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; also include 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, transshipment, 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.
