

# **Strengthening compliance with UN arms embargoes – key challenges for monitoring and verification**

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key challenges for monitoring and verification*

*Brian Wood\**

## ***Abstract***

The authority of the United Nations is greatly undermined by persistent violations of Security Council arms embargoes. Objective verification of such violations is necessary to ensure compliance with UN arms embargoes, but experience has shown that successful verification requires a number of specific measures. The Security Council should continue to improve the design of arms embargoes, but address the issue of impunity of embargo violators. Member States should provide a more effective framework of national controls based on a common set of criteria for international arms transfers agreed by the General Assembly fully consistent with international law. UN Sanctions Committees, the Secretariat and investigative teams require better support to improve verification methods, techniques and procedures, especially from Member States close to the embargoed entity, UN peacekeeping missions operating in the vicinity and other relevant inter-governmental organizations.

States have a legal obligation to comply strictly with arms embargoes imposed by the Security Council under the authority of Chapter VII of the United Nations Charter. Rigorous design, monitoring and compliance with the agreed terms of such embargoes can contribute significantly to the promotion of international peace and security, and to the respect of a wide range of human rights and fundamental freedoms as required in international law. The authority of the Security Council and the United Nations is greatly undermined by persistent violations of UN embargoes and impunity of the violators.

Verification arrangements for UN arms embargoes must therefore be capable of providing, in a timely fashion, clear and convincing evidence of compliance or non-compliance. Continued confirmation of compliance is an essential ingredient to building and maintaining confidence among the parties. However, it is clear that some

fundamental elements of the international mechanisms for accurate and timely verification are missing or not adequately functioning.

\**Brian Wood* is the manager of research and policy on arms control at the International Secretariat of Amnesty International in London. He has been researching and writing for Amnesty International on the control of conventional arms, especially small arms and light weapons, and security equipment and services since 1991.

It has become more common practice for the Security Council to impose arms embargoes on parties (State and non-State) to a conflict as a response to the existence or impending threat of violent conflict.<sup>1</sup>

There are currently mandatory territorial arms embargoes in force against the Ivory Coast<sup>ii</sup>, Liberia<sup>iii</sup> and Somalia<sup>iv</sup>. Non-State actors are also subject to arms embargoes. Currently, every State in the international community is prohibited from transferring arms to groups in the Democratic Republic of Congo (DRC),<sup>v</sup> Liberia,<sup>vi</sup> Rwanda,<sup>vii</sup> Sierra Leone<sup>viii</sup> and in Sudan,<sup>ix</sup> as well as to Al-Qaida and associated persons.<sup>x</sup>

Verification of illicit traffic in arms in violation of UN Security Council arms embargoes thus deserves substantive consideration. It should take into account the inherently clandestine nature of such traffic and its grave consequences. In particular, the proliferation and misuse of small arms and light weapons in conflicts and persistent acts of state repression involving serious human rights violations, war crimes and crimes against humanity pose major challenges for such verification for reasons that are set out below.

### **Lack of UN standards to help ensure reliable state monitoring**

1. All UN arms embargoes should be mandatory on Member States – the notion of a non-mandatory embargo is a recipe to allow embargoed entities to make arrangements to flout the will of the United Nations.<sup>xi</sup> Under Article 41 of the UN Charter, States have a legal obligation to abide by embargoes enacted by the Security Council and a duty to implement measures to ensure that persons within their jurisdiction also comply with the embargoes.<sup>xii</sup> However, it is reported that many States have not made the violation of a UN arms embargo a criminal offence under their domestic law.
2. Moreover, the challenges of verifying embargo compliance are compounded when States, especially traditional suppliers and adjacent States, do not have an adequate system of national laws and/or regulations and administrative procedures to exercise effective control over armaments and the export and import of arms in order to prevent illicit arms trafficking. This is particularly important because the UN Sanctions Committees themselves have no operational verification mechanisms. They have to rely on the efforts of individual Member States, acting singly or with others. Such cooperation can take several forms: unilateral, multilateral or the utilization of regional organizations – and it is reliant on political good will and commitment to upholding international norms. The scope and effectiveness of such national laws and regulations is an indicator of such commitment and these should be broad enough to cover all types of arms, especially small arms which often circulate in civil society and are easy to conceal, and to control all actors involved in arms production, assembly, stockpiles, transfers, brokering, financing and use. Unfortunately, this is far from the case and national controls, even in States with great resources.<sup>xiii</sup>

3. The design of effective legal and regulatory standards and systems to prevent the wider illegal traffic in arms is essential to prevent the violation of UN arms embargoes. The wider problem of illegal arms trafficking is closely related to the illegal possession, transfer and misuse of arms by non-State actors, especially criminal groups, and often fuelled by the misuse of arms by state actors. Arms embargoes are imposed in order to address threats to peace and worsening humanitarian crises that in many cases are already being fuelled by such illegal acts. Embargoes are therefore late and often blunt instruments and therefore cannot be deployed effectively as an instrument by the United Nations to prevent illicit arms trafficking without better national controls.

4. Monitoring and compliance with UN arms embargoes would greatly improve if national arms control systems were more consistent with existing international law. States would develop greater trust in supplying information to the UN about diverted arms if they had more common rules based on shared values. According to the UN Disarmament Commission Guidelines on International Arms Transfers of 1996, “*Limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations and the principles and purposes of the Charter.*”[paragraph 8] Moreover “*Illicit arms trafficking is understood to cover that international trade in conventional arms, which is contrary to the laws of States and/or international law.*” [paragraph 7]<sup>xiv</sup> However, the General Assembly has not yet agreed on a set of explicit standards that provide clear and fair criteria for decisions on the international transfer of conventional arms. Such standards should at least reflect existing international obligations of States as agreed in paragraphs 8 and 9 of the Guidelines, and provide for the right of self-defence as well as limit the freedom of States to authorise the transfer of weapons and munitions, including:

- Rules of **State responsibility** prohibiting States from aiding and assisting other States in the commission of an internationally wrongful act, rules which are now codified in the International Law Commission’s Articles on State Responsibility.<sup>xv</sup>
- Rules of **international criminal law** prohibiting persons from aiding and abetting in the commission of an international crime. The “aiding and abetting” provision of the International Criminal Court Statute establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by *providing the means* for its commission.<sup>xvi</sup>

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- **Positive obligations of States** to ensure respect for international humanitarian law and to cooperate in the protection and fulfilment of human rights beyond their borders. For example, the imposition of arms embargoes is another way in which the international community seeks to prevent breaches of the peace while also giving effect to its common Article 1 obligation under the Geneva Conventions, Article 1 of the UN Charter and the International Covenants on human rights.<sup>xvii</sup>

In this regard, many of the guidelines for international transfers of conventional arms agreed by the Disarmament Commission in 1996 are abstract and do not provide Member States with specific common criteria to ensure respect for existing agreed international norms. These guidelines have since been surpassed in providing such specificity by many regional agreements on international arms transfers and, given the gravity of the problem, are in need of urgent review. The 2001 UN Programme of Action on Small Arms and Light Weapons (UN PoA)<sup>xviii</sup> also acknowledges that there is an established body of international legal rules that will be relevant to the assessment of applications for export authorizations covering small arms and light weapons.<sup>xix</sup> A growing number of States have expressed their support for elaborating common criteria based on such rules.<sup>xx</sup>

5. Greater openness by States can contribute significantly to verification of compliance with UN arms embargoes. However, the provision of objective public information on military matters and arms transfers is often not made to the maximum degree possible consistent with national security needs. This can seriously hamper UN investigations of illicit trafficking because it is harder to assess arms movements. Some States do not even report all their relevant transactions in their annual reports to the UN Register of Conventional Arms and do not report reliable customs data to the UN statistical services. The agreement in June 2005 to adopt a UN non-legal instrument on the marking and tracing of small arms and light weapons is a step forward, but currently this proposed instrument excludes ammunition and explosives and has an opt out clause for States to deny information. The vast majority of States favored a legally binding instrument, but a few States thwarted their efforts in the negotiations. These shortcomings should be addressed if ongoing UN investigations of arms embargo violations are to be improved.

6. Another example of the absence of rigorous common standards for effective national laws that undermines the ability of the United Nations to ensure compliance with its arms embargoes is the problem of import licenses or verifiable end-use/end-user certificates for international arms transfers. All too often, UN investigations show

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how such documents are fake, forged or tampered with and issued by unauthorized persons. The Organization should agree on common standards for such documents and for verifying their authenticity, as requested in June 2005 by a number of States during the UN Biennial Meeting of States on small arms and light weapons. In November 2004, the Organization for Security and Cooperation in Europe agreed on standard elements for end use certificates and verification procedures. These offer a step forward, but could be strengthened by requiring the specific inclusion of data on whether any brokers or transport agents were to be used for the arms delivery, and also for delivery verification procedures. One practical measure is that the Secretariat could be tasked to maintain a central database of government officials authorized to sign end-user certificates and to assist UN investigative panels.

7. A key problem for verification of compliance with UN arms embargoes is the lack of stringent national controls on the activities of arms brokers and transport agents who are frequently found to engage in unauthorized diversion of arms.<sup>xxi</sup> In 1996 the Disarmament Commission agreed that: “*States should maintain strict regulations on the activities of private international arms dealers and cooperate to prevent such dealers from engaging in illicit arms trafficking.*”<sup>xxii</sup> Five years later, in 2001, a UN Group of Experts reported to the General Assembly on the feasibility of regulating arms manufacturers and dealers, including brokers and transporters, to prevent the illicit trafficking of small arms and light weapons. The delay in addressing this problem can be measured by the fact that in 1995, it had been shown how such dealers, brokers and transporters had supplied arms to those who perpetrated the Rwanda genocide in 1994, as well to such actors who violated UN arms embargoes in Angola, the DRC, Liberia, Sierra Leone and other countries. In 2004, after some consultations with States and interested groups, the General Assembly decided to set up another Group of Government Experts after mid-2006 to examine how to prevent the illegal brokering of small arms and light weapons.<sup>xxiii</sup> Despite a relatively high level of consensus by States as to the main forms of control, as reflected in a number of regional and multilateral agreements, the latest timetable means that any concerted action by States could take until 2008 or perhaps 2010 – fifteen years after the original expression of concern in the Disarmament Commission. The Security Council and General Assembly should be more proactive in addressing this problem by devoting more urgent time and resources to the development of necessary standards.

8. Often UN investigative problems are compounded by lack of skilled capacity on the part of State regulators and law enforcement agencies, for example too few customs officials are adequately trained to enforce the necessary regulations over the export and import of arms and to collect reliable data from ports. The Organization should be more proactive in encouraging bilateral and multilateral technical assistance

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programs to build such national capacity in accordance with high international standards. This is vital because the United Nations must rely upon Member States to monitor and enforce the implementation of embargoes in various ways such as through surveillance, data collection, inspections, and the investigation of allegations of violations.

9. A related challenge for effective verification is whether States make sufficient efforts to prevent corruption and bribery in connection with the transfer of arms. One measure is the extent to which States implement relevant recommendations of Interpol; another is whether States actively cooperate at the bilateral and multilateral levels as appropriate to share relevant customs information on trafficking in and detection of illicit arms and coordinate intelligence efforts. The United Nations could do more to encourage States to identify, apprehend and bring to justice all those involved in illicit arms trafficking.

#### **Design and functioning of UN embargo verification mechanisms**

10. All measures of verification depend first and foremost upon the specific mandate given by the appropriate authority. In the past, the purpose of UN embargoes was to modify the behaviour of, but not to punish or exact retribution from, the country or party under sanctions; to minimize the impact of conflict on vulnerable groups and neighbouring or other States. In 1991, the UN Sanctions Committee on the former Yugoslavia, was given a mandate that included the power to recommend measures in response to violations and to approve exceptions to the embargo. The UN Committees established since then (Libyan Arab Jamahiriya, Somalia, Haiti, UNITA in Angola, and Rwanda) have had similar mandates. More recently, UN embargoes such as those on Liberia, the DRC and Sudan have included measures to enable the freezing of assets and travel bans for individuals and entities proven to have violated the embargoes.

Sanctions Committees may be asked to (a) develop and improve guidelines for the implementation of measures imposed; b) collect and examine information submitted by States on actions they have taken for implementation with a view to making recommendations to the Council; (c) examine the Secretary-General's progress reports on implementation and to make appropriate recommendations to the Council; (d) deal with violations through consideration of information brought to their attention by States concerning violations, making periodic reports of violations to the Council (identifying where possible persons or entities, including vessels, reported to be engaged in the violations) and recommending appropriate measures in response; (e) approve of exceptions on application by States

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to the measures imposed by the Security Council, for example, on grounds of significant humanitarian need. Greater thought needs to be given to the grounding and impounding of aircraft and other vessels that are repeatedly used to violate arms embargoes, as well as to the prosecution of well-known arms embargo violators, and also to the use of “flags of convenience” by transport companies. As is the case with Interpol, the World Customs Union and the International Criminal Court prosecutor’s office, the United Nations should seek the advice and active cooperation of the International Civil Aviation Organization and the International Maritime Organization on these and similar matters.

11. In accordance with the UN principles for verification, arms embargo agreements should provide for procedures and mechanisms for investigation, review and evaluation. Realistic resources and time-frames for such investigations and reviews should be agreed in order to evaluate compliance. Panels of Experts with sufficient skills and capacity should be created whenever an arms embargo and corresponding Sanctions Committee are established by the Security Council and not, as sometimes happens, months later<sup>xxiv</sup> or not at all when the humanitarian and security situation on the ground in the target country or countries has worsened. The process of setting up a panel should begin in the same Security Council resolution as that which imposes an embargo.

12. To be adequate and effective, a verification regime for an arms embargo agreement must cover all relevant weapons, facilities, locations, installations and activities. In practice, this is very difficult and the UN Sanctions Committee and investigative team leaders must decide what is most relevant within the limited time and resources available. Increasingly, investigations of alleged violations of arms embargoes are also carried out by UN field staff as a form of fact-finding, using liaison officers to maintain contact with armed forces and groups and develop relationships to build trust and benefit from improved data collection and freedom of movement for patrols. The monitoring of ports and border crossings requires an understanding of customs laws and procedures. This has been carried out in some cases by UN personnel and in others, under a UN mandate, by regional organizations or multinational coalitions that possessed the necessary resources to verify the presence, or absence, of compliance. Verification methods ranging from mobile patrols and checkpoints along frontiers and monitors at airports and seaports to intercepts at sea, the use of maritime and aerial assets, including satellite surveillance, provided from national, multilateral and regional resources, has contributed to more effective implementation of the embargoes. In some instances, such as in Angola and the DRC, the United Nations has lacked sufficient resources to cover all airports and landing

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strips frequently enough. Enhanced telecommunications and air surveillance could improve the effectiveness of such monitoring. It is therefore vital that relevant structures in the United Nations establish coordination procedures and training for the close linkage between peacekeeping and security operations and traditional arms control and disarmament verification procedures.

13. The skill and time required for UN panels of experts to carry out competent investigations needs to be reflected in UN institutional arrangements. The Security Council should establish such panels for extensive periods, preferably for at least a year, to allow them to conduct in-depth, non-discriminatory and comprehensive investigations both in the field and in those places suspected of being the sources and routes of illegal arms deliveries. An investigation of a single illicit deal might have to be conducted in several countries in different world regions because of the way trafficking networks operate. Too often panels have been given such short time periods and have too few personnel that they do not carry out what could become important investigations. The range of skills required should also be assessed carefully before panels are appointed. The trend towards appointing a range of specialists familiar with investigating the arms trade, transportation, customs and finance to panels appears to be valuable, as is the use of experienced research consultants, and there needs to be a good mix of language skills, computer literacy, impartial legal knowledge and management and negotiating skills appropriate for the tasks. However, these skills could be wasted and a panel's work undermined if any persons appointed put their allegiance or hostility to the interests of their home state or any other state above that of the United Nations. Recruitment and selection criteria should be designed to assess this difficulty.

14. The Secretariat has developed databases on illicit arms trafficking and the violation of UN embargoes to support the work of the Sanctions Committees and the panels of experts. This should be reviewed and developed further so that the Organization does not waste valuable time and resources reconstructing files to investigate possible violators each time a panel is appointed. Experience has shown that some of the arms dealers, brokers and transporters named in UN reports for definite and probable violations of its arms embargoes are also named in other reliable reports or strongly suspected of violations on other countries. It would be worthwhile considering the purchase of certain reliable data or subscribing to key databases collected by impartial sources so that panels are not dependent on soliciting voluntary ad hoc contributions.

15. It should be recalled that in 1987, the UN Disarmament Commission received a number of proposals to improve systems of verification to achieve compliance with arms limitation and disarmament agreements, for instance: (a) the establishment of a verification database within the United Nations; (b) the development of a UN capacity to provide advice

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to negotiators respecting verification matters; (c) research into the process, structures, procedures and techniques of verification as well as the role of the United Nations, beginning with a request to the Secretary-General to look into these and other matters with the assistance of qualified experts; (d) on a responsive basis, and with the consent of the parties to an arms limitation and disarmament negotiation or agreement, potential involvement by the Organization in the formulation and implementation of verification provisions of specific agreements; (e) the establishment of an integrated multilateral verification system within the United Nations; and (f) the setting up, under the UN aegis, of a mechanism for extensive international verification of compliance with agreements on reducing international tension and limiting armaments and on the military situation in conflict areas. These proposals should be further considered in the light of current circumstances and their implementation reviewed in order to improve systems of monitoring compliance with UN arms embargoes. For example, in post-conflict situations, regional arrangements may be made by affected States to verify limitations of arms imports into their border areas, and it would be useful for the United Nations to be involved in developing model procedures for such purposes.

### **Methods, Procedures and Techniques**

16. The principle that verification arrangements should be implemented without discrimination can in practice be difficult when there is a shortage of resources and time to consider all views. On the one hand, UN investigative teams need to allocate time and resources to act with strict impartiality according to their mandate, and, on the other hand, State officials whom they approach for help should be cooperative, honest and as open as possible. Requests by UN investigative teams for inspections or information in accordance with the provisions of an arms embargo agreement should be as systematic and unbiased as possible, and States should consider such requests as a normal component of the verification process. If a panel is seen to be not pursuing a possible violation case and is then accused of political bias, it needs to be in a position to provide an unbiased answer. Otherwise its credibility will be undermined. If a government repeatedly refuses to cooperate with a UN investigative team without a legitimate reason, the Security Council should impose secondary sanctions on that government.

17. Recent panel reports have been more explicit about the methodology and rules of evidence to be used in establishing a violation. The distinction between a possible violation, a probable violation and a definite violation has been more clearly explained in reports. While rules to ensure only the use of credible evidence have been established, there have still been disputes among officials regarding the nature of evidence and it would be wise to review this aspect of the work of panels.

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18. Improved mechanisms of communication and exchange should be created between UN investigative teams and the UN Sanctions Committee, and competent, independent and impartial bodies within civil society and individuals who have concrete information on possible embargo violations. Requirements of accuracy, discretion, confidentiality and witness protection need to be considered. Member States should be made aware that any attempts by their officials to impede such cooperation or punish civil society groups or individuals for providing what they deem to be reliable information will be reported to the Security Council and invoke counter action.

19. Where UN peacekeeping forces are deployed in a conflict zone in which the embargoed entity operates, skilled members of that UN force should be assigned to protect, inspect and record serial numbers and markings of weapons and the markings of all ammunition and explosives that are found in the possession of, and seized or collected from, any person in the embargoed entity. It is distressing to find that, even sometimes nowadays, UN peacekeeping officials involved in demobilization, disarmament and re-integration programs have diligently recorded the serial numbers of weapons retrieved but have not recorded the corresponding markings, rendering the lists of serial numbers almost useless. Other times ammunition has been destroyed before markings are photographed and recorded. It is vital that reliable records and other observations and reliable reports on illicit traffic should be communicated without delay to the UN authorities and to the relevant UN investigative teams for analysis.

20. Stocks of seized illegal weapons and munitions should be safely destroyed during UN peace processes and embargo enforcement operations, and this can often be publicized to create public confidence. However, such destruction should only be carried out after digital photographic records have been taken of serial numbers and markings of all items to allow for tracing by the relevant authorities in the United Nations and Member States.

21. As a necessary precaution, serial numbers and markings of weapons and markings on ammunition and explosives that are transferred into a conflict zone to an authorized entity, but where one or more of the embargoed entities also operates, should routinely be recorded by each Member State exporting, importing and transiting such items. The UN peacekeeping monitors and UN investigative teams should be allowed to conduct spot checks of those records and inventories. All too often, there is an absence of such records and inventories are kept hidden from UN investigators in circumstances where confidential access would pose little or no risk to national security.

22. The analysis of results and review of reported findings can sometimes involve strong differences of interpretation and opinion amongst panelists, members of the Sanctions Committee and UN Secretariat staff. It is vital that these differences are fully discussed in an impartial manner so that the Sanctions Committee can reach reasonable editorial solutions before UN investigative reports are released publicly. Every effort should be made by the Organization and Member States not to self-censor important facts and prevent uncomfortable facts being published as this merely encourages speculation and misunderstanding of the situation in the affected countries and undermines confidence in UN verification mechanisms.

23. Donor countries should be encouraged to provide financial and appropriate material resources to ensure that the above needs are met. The costs of effective verification activities to ensure compliance with UN arms embargoes are small in relation to the savings – in public expenditure, development aid and most importantly human lives - that would be achieved if every embargo were fully respected.

It is doubtful that this list is exhaustive, but hopefully it will assist discussion in the United Nations to improve the verification of violations of its arms embargoes, and compliance with such embargoes.



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*Notes:*

<sup>i</sup> Embargoes are also imposed by regional organizations, most notably by the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE). In April 2004, there were EU arms embargoes against eleven States: Afghanistan, Bosnia-Herzegovina, Burma (Myanmar), China, Democratic Republic of Congo, Iraq, Liberia, Sierra Leone, Somalia, Sudan and Zimbabwe. In 1993, the OSCE imposed a politically binding embargo on Armenia and Azerbaijan, aimed at “all deliveries of weapons and munitions to forces engaged in combat in the Nagorno-Karabakh area” (*Decisions Based on the Interim Report on Nagorno-Karabakh*, available online: <http://projects.sipri.se/expcon/csceazbarm.htm>). An important expression of political will, such embargoes do not carry the weight of their UN counterpart if only because they are, by their very nature, regional in scope and can be thus undermined by countries outside the arrangement that may not subscribe to the same political view.

<sup>ii</sup> S/RES/1572, 15 November 2004 (for a period of 12 months); S/RES/1584, 1 February 2005 (reaffirming the embargo).

<sup>iii</sup> S/RES/1521, 22 December 2003 (for a period of 12 months); S/RES/1579, 21 December 2004 (renewed for a period of 12 months).

<sup>iv</sup> S/RES/733, 23 January 1992; most recently reaffirmed in S/RES/1519, 15 December 2003 and S/RES/1558, 17 August 2004.

<sup>v</sup> S/RES/1493, 28 July 2003, targeting “all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of Congo” (for a period of 12 months); S/RES/1552, 27 July 2004 (renewed for a period of 12 months).

<sup>vi</sup> S/RES/1521, 22 December 2003, targeting the LURD and the Movement for Democracy in Liberia (MODEL), as well as “all former and current militias and armed groups” (for a period of 12 months); S/RES/1579, 21 December 2004 (renewed for a period of 12 months).

<sup>vii</sup> S/RES/1011, 16 August 1995, targeting “non-governmental forces” inside Rwanda and persons in neighbouring States that intend to use arms and related materiel in Rwanda.

<sup>viii</sup> S/RES/1171, 5 June 1998, targeting “non-governmental forces in Sierra Leone”.

<sup>ix</sup> S/RES/1556, 30 July 2004, targeting “all non-governmental entities and individuals, including the Janjaweed, operating in the States of North Darfur, South Darfur and West Darfur”.

<sup>x</sup> S/RES/1390, 28 January 2002 (for a period of 12 months); S/RES/1455, 17 January 2003 (decision to improve the implementation of the measures over a further period of 12 months); S/RES/1526, 30 January 2004 (decision to improve the implementation of the measures over a further period of 18 months).

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<sup>xi</sup> In a recent resolution on the situation in Burundi, the Security Council expressed “its deep concern over the illicit flow of arms provided to armed groups and movements, in particular those which are not parties to the peace process under the Arusha Agreement” and called upon “all States to halt such flow” (S/RES/1545, 21 May 2004, para. 18).

<sup>xii</sup> Article 41 confers upon the Security Council the power to call for a “complete or partial interruption of economic relations [...] and the severance of diplomatic relations” in response to a threat to or breach of the peace or an act of aggression. It is within the discretion of each State to decide the type of responsibility (administrative offence v. criminal offence) that attaches to a violation of the embargo by a private actor. In a resolution on the situation in Africa adopted in 1998, the Security Council encouraged Member States to adopt measures making the violation of mandatory arms embargoes a criminal offence (see S/RES/1196, 16 September 1998, para. 2).

<sup>xiii</sup> See for example, Amnesty International, “Undermining Global Security: EU arms exports”, October 2004, and Control Arms Campaign, “Arms exports from the G8”, June 2005.

<sup>xiv</sup> *Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991*, UN Disarmament Commission, May 1996, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 42 (A/51/42)*, 22 May 1996

<sup>xv</sup> Articles 16 and 41(2). The Articles were commended by the General Assembly and annexed to resolution 56/83, *Responsibility of States for Internationally Wrongful Acts*, UN Doc. A/RES/56/83, 12 December 2001.

<sup>xvi</sup> Rome Statute, Article 25(3)(c) [emphasis added].

<sup>xvii</sup> *The Question of the Trade, Carrying and Use of Small Arms and Light Weapons in the Context of Human Rights and Humanitarian Norms*, Working paper submitted by Barbara Frey in accordance with Sub-Commission decision 2001/120, Economic and Social Council, UN Doc. E/CN.4/Sub.2/2002/39, 30 May 2002.; also *Prevention of human rights violations committed with small arms and light weapons*, Preliminary report submitted by Barbara Frey, Special Rapporteur, in accordance with Sub-Commission decision 2002/25, Economic and Social Council, UN Doc. E/CN.4/Sub.2/2003/29, 25 June 2003.

<sup>xviii</sup> “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All of Its Aspects”, in *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York, 9-20 July 2001, UN Doc. A/CONF.192/15.

<sup>xix</sup> UN PoA, section 2, Article 11.

<sup>xx</sup> Around 50 States have expressed support for the idea of an International Arms Trade Treaty based upon international norms, and many more States have called for international binding instruments for arms transfers.

<sup>xxi</sup> Brian Wood and Johan Peleman, in a 1999 study entitled *The Arms Fixers*, (available from [www.nisat.org](http://www.nisat.org)) enumerated many loopholes in existing national controls: the lack of specific

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provisions to regulate the brokering and transportation of arms; lax control on weapons stocks; acting as an agent between supplier and buyer without the weapons entering the territory; using barter arrangements and offshore financing especially in tax havens; easily circumvented documentation requirements; using circuitous routes to conceal the true nature of cargoes; exploiting difficulties in enforcing customs controls, particularly in countries with long borders and limited resources. See also: *Small Arms Survey 2004: Rights at Risk*, Oxford, Oxford University Press, 2004, pp.143-146

<sup>xxii</sup> UN Guidelines on International Arms Transfers, op cit.

<sup>xxiii</sup> Resolution 59/86, 10 December 2004.

<sup>xxiv</sup> As happened with the embargoes imposed on Rwanda, the Democratic Republic of the Congo, and Sudan, op cit.